

PURPOSE

This policy sets out the Ministry's expectations for the sourcing and management of suppliers of the goods and services the Ministry uses to run our business.

POLICY STATEMENT

Procurement covers all aspects of the acquisition and delivery of goods or services. This includes the identification of a need, the sourcing of a supplier and the management of the contract through to the end of a service contract, or the end of the useful life and subsequent disposal of an asset.

The Ministry is required to follow the Government Procurement Rules (Rules). This Procurement and Contract Management Policy has been designed to ensure that procurement activities conducted by the Ministry comply with our obligations under the Rules.

SCOPE

This policy applies to all Ministry employees, contractors and consultants involved in the procurement of goods or services. This includes:

- General goods or services
- Professional, Outsourced or Consultancy Services
- Digital or ICT products and services including subscriptions and licences
- Non-Professional Services, such as cleaning services and catering
- Property and Construction Services
- Registered Trades
- Conditional Grants
- Property Leases

Out of Scope: This policy does not apply to the procurement of:

- Contractor Engagements (refer to Contractor Engagement Policy)
- Employment of permanent or fixed term staff
- Procurement that is the direct result of judicial decisions
- Purchases or payments to, or from, a specific entity as required by legislation (e.g. Treaty of Waitangi Settlements)
- Disposals and sales by tender
- Gifts, donations and any form of unconditional grants (refer to Koha Policy)
- Statutory appointments or Ministerial appointments
- Government inter-agency purchases (Memorandum of Understanding)

For clarity, the Ministry's definitions of a *contractor* and *consultant* are included at the end of this document. In the event that uncertainty exists as to whether a procurement activity falls outside the scope of this policy, the Ministry's Commercial Services team should be consulted for guidance.

OUR POLICY

General Principles

In every instance, all of our procurement activity will align to the *Principles of Government Procurement* (the Principles) (**Appendix 2**) and the *Government Procurement Charter* (**Appendix 3**) and where they apply, the *Government Procurement Rules*

How we will work

The way we procure goods and services will vary depending on the value, complexity and risk involved. Value, in this context, refers to the Whole of Life Cost, which includes all one-off or ongoing costs in relation to a procurement. Any change to the Whole of Life Cost of an existing contract must be approved by the relevant *Financial Delegation Holder* and in line with this Policy. As a general principle, NZ\$100k is the Whole of Life

Cost threshold for openly advertising a new procurement, however Commercial Services can provide you with advice tailored to your situation. .

The approach best-suited to the individual purchase should be applied in all instances after considering the following:

- How to conduct the procurement activity in an open and transparent manner with full and fair opportunity for all eligible suppliers
- How we will encourage and support opportunities that support New Zealand businesses
- How to best deliver public value over the whole life of the goods, service, or asset
- How to best minimise procurement costs for suppliers and the Ministry, ongoing operational costs and consequential costs
- How the activity will contribute to the Ministry and wider government directive of achieving positive cultural, environmental, social and economic benefits (together called *Broader Outcomes*)
- How to reinforce positive supplier relationships

In all circumstances, we will record the need for a procurement, how we intend to source the goods and services, the rationale as to why this is the best approach and the reasons why we selected a particular supplier.

Broader Outcomes and Progressive Procurement

The Ministry is committed to achieving Broader Outcomes and Progressive Procurement within our procurement activities wherever possible. Both must be considered when planning any procurement and included in tender documentation and selection criteria in a meaningful way where applicable. Broader Outcomes may not be applicable to all procurement activities, however you should consider where your procurement could add costs and benefits to society, the environment and the economy. Where procurement is below the \$100K threshold, agencies should consider if there is a capable New Zealand business, including Māori businesses, Pasifika businesses and social enterprises, that could fulfil the contract opportunity.

Broader Outcome	What we will do for individual purchases
Increase access for New Zealand businesses	Size and focus our procurement activity in a way that allows New Zealand businesses, including Māori, Pasifika and regional businesses are involved wherever possible.
Increase the size and skill level of the construction sector	Expect and encourage our construction suppliers to actively contribute to developing the construction skills of their workforce.
Improve conditions for New Zealand workers	Test the health and safety capability of our suppliers who work in construction and ensure that our suppliers have appropriate governance and policies in place protecting employment standards where low-paid or vulnerable workers may be involved in providing a service to the Ministry.
Reduce emissions and waste	Make conscious purchases that will either reduce emissions or waste for office supplies, light vehicles and/or stationary/process heating systems.
Progressive Procurement	
At least 8% of Ministry contracts are awarded to Māori businesses each year	Size and focus our procurement activity in a way that will attract more Māori owned businesses to participate.

To maximise the effects of these priorities, Government designates contracts or sectors where one or more of the priority outcomes must be implemented. For example, the All-of-Government motor vehicles contract is a designated contract for the priority: Support the transition to a net zero emissions economy. This means that agencies must take this priority into account when purchasing new vehicles. To view which contracts have been designated by Cabinet and Ministers of Finance and State Services for each priority outcome, visit www.procurement.govt.nz.

Sourcing Approaches, Approvals, Documentation and Due Diligence

In all instances, it is the responsibility of the *Financial Delegation Holder* for the Whole of Life Cost (WoLC) of the procurement to ensure they have sufficient confidence that due process has been followed, that the supplier is able to deliver the goods or services and that the purchase will deliver *Public Value*.

New Suppliers and Contracts

When sourcing a new supplier (i.e. not utilising an existing contract, Ministry supplier or All-of-Government arrangement) we will identify the preferred sourcing approach based on the table below:

Sourcing Approach Options	Sourcing Approach most suitable when Whole of Life Cost (NZ\$) of a contract opportunity is...	Documentation Required	Further Guidance on Process and Template Document Options
Purchase card	Less than \$1,000	N/A	See the Commercial Services JET page
Direct Source	Less than \$75,000	The need for the service/goods and the approach and justification for selecting the supplier must be recorded and kept on file to ensure transparency and accountability of the decision-making process	
Closed competitive process	Less than \$100,000	Light Procurement Plan or appropriate memo required	
Open competitive process	Any value, but required when \$100,000 or more	Procurement Plan required	
Purchasing off an existing panel / All-of-Government arrangement	Refer to table below in the <i>Existing Panel Contracts / All-of-Government Arrangements</i> section		

Existing Panel Contracts / All-of-Government Arrangements

Where the Ministry already has established panels or preferred suppliers, these should be utilised. Certain existing contracts and All-of-Government Arrangements have operating procedures that must be followed. A list of most frequently utilised existing arrangements is available at the intranet, JET. These operating procedures detail the sourcing approaches, thresholds and processes that must be followed. Operating procedures supersede the table below.

Where no operating procedures exist for an existing contract or All-of-Government arrangement, the table below outlines which sourcing approaches should be used:

Sourcing Approach Options	Sourcing Approach suitable when Whole of Life Cost (NZ\$ including potential variations or additional works/services) of a contract opportunity is...	Documentation Required
Direct Source	Less than \$150,000	The need for the service/goods and the approach and justification for selecting the supplier must be recorded and kept on file to ensure transparency and accountability of the decision-making process
Closed competitive process	Any value	Less than \$200,000: Light Procurement Plan required More than \$200,000: Procurement Plan required

Joining Collaborative or AOG arrangements

Endorsement from Commercial Services must be obtained prior to joining to any collaborative contract or All-of-Government arrangement that the Ministry is not currently participating in.

Contracting Suppliers

Regardless of the contract value, type or complexity, all contracts must be emailed to contractsregister@justice.govt.nz upon signing. This includes all contractor (Recruitment Services Orders (RSO) and consultant contracts (Consultancy Services Orders (CSO)).

Type	Value (NZ\$)	Contracting requirement
Goods	\$5,000 and over	There must be a contract in place between the Ministry and the supplier, which must also be registered in the Ministry's Contract Management System.
Services	Under \$5,000	Be documented and agreed between the Ministry and the Supplier
	\$5,000 and over	Have a formal contract between the Ministry and the Supplier. The Crown Government Model Contract (GMC) template is the Ministry's preferred contract format for low value purchases, when not on an AoG (or other) panel. Office of the Legal Counsel and Commercial Services can provide advice of what contract to use for higher value/risk engagements
*Office of Legal Counsel Review Unless otherwise stated in operating procedures or other guidelines, the Office of Legal Counsel (OLC) must review all contracts for \$25,000 or more prior to execution		

Contract Variations	The rationale for a contract variation that increases the term or WoLC of a contract must also be documented and approved by the <i>Financial Delegation Holder</i> appropriate for the WoLC of the contract. Where a contract variation increases the WoLC in excess of any of the thresholds listed in this document or standard operating procedure, an approved exemption from this policy or the Government Procurement Rules is required.
Contract Management	All contracts must be managed in accordance with the Ministry's Contract Management Framework. This may mean agreeing a Contract Management or Outcome Agreement Management Plan for high risk or high value contracts. Copies of any management plans must be supplied to Commercial Services.
Conflicts of Interest	Conflicts of Interest must be actively identified and managed by all those involved in a procurement process or anyone who has influence over a purchasing decision in accordance with the Ministry's <i>Conflicts of Interest Policy</i>
Risk	Risk must be considered and managed throughout the procurement and contract management process. Risks should be identified at the planning stage, recorded, reviewed and updated throughout the lifecycle of the procurement, including the contract management phase.
Separation of Duties	At least two people must be involved in each purchasing decision over NZ\$1,000. The Financial Delegation Holder approving a purchasing decision should not be involved in identifying or sourcing a new supplier.
Period not to issue Tenders or Quotes	The Ministry will not issue any competitive sourcing process during the period starting 10 working days prior to Christmas Eve and 10 working days following the New Year public holidays.
Exemptions from this Policy and the Rules	<p>In some circumstances, the Rules allow the Ministry to exempt itself from certain obligations. Exemptions from this policy may also be appropriate from time to time.</p> <p>Exemptions can only be authorised by the applicable Level 2 Financial Delegation Holder funding the purchase (or Level 1 Financial Delegation Holder as appropriate), following consultation from Commercial Services.</p> <p>Details of the exemption, and the supporting rationale must be recorded, retained and sent to Commercial Services.</p>

ROLES AND RESPONSIBILITIES

All Staff	Applying our Procurement and Contract Management Policy and procedures.
Contract Manager	At a scale appropriate for the situation, develops and implements a contract management plan that ensures the Ministry receives quality goods or service delivery, ensures strong relationship management between the parties and manages the contractual administration.
Financial Delegation Holder	Accountable for ensuring that they do not exceed their financial delegation when applying this policy.
Level 2 Financial Delegation Holder	Accountable for decisions to exempt a purchase from aspects of either this policy or the Rules.
Commercial Services	Administer and support the application of this policy. Provide advice to a Level 2 Financial Delegation Holder on an exemption decision.

DEFINITIONS

All-of-Government Contracts (AoG)	A type of collaborative contract that has been established by the Government Procurement Group and are mandatory for the Ministry to use.
Broader Outcomes	The secondary benefits that are generated from the sourcing and contract management activity. Broader Outcomes can be environmental, social, economic or cultural benefits.
Closed competitive process	Where a limited number of suppliers are invited to respond to an opportunity directly, often through a Request for Proposal (RFP).
Collaborative Contracts	There are several types of collaborative contracts used by New Zealand government. Mandatory <i>All-of-Government contracts</i> established by the Government Procurement Group, optional <i>syndicated contracts</i> established by another government agency open for use by all of government, closed cluster contracts whose use is limited to a defined list of agencies or <i>Common Capability contracts</i> established by the Department of Internal Affairs.
Conflict of Interest	Where someone's personal interests or obligations could conflict with the integrity of a procurement process. A conflict can be actual, potential or perceived and must be suitably managed.

Contract Manager	A person assigned in the business who is responsible for the performance and delivery of the contractual outcomes for a particular contract.
Financial Delegation Holder	Authority to make decisions or approve purchases up to the financial limit set by the Financial Delegations Policy.
Direct Source	Approaching suppliers directly to provide goods or services, this could include buying directly from a supplier, a panel of suppliers or buying selectively from a specific supplier for a specialist service.
Government Model Contract	The Government's default contractual terms and conditions. A Government Model Contract (GMC) is appropriate to use when purchasing low-value, low-risk common goods and services.
Māori business	A Māori business for government procurement purposes is one that has at least 50% Māori ownership or a Māori Authority as defined by the Inland Revenue Department.
Open competitive process	An opportunity that is advertised publicly and any supplier can submit a proposal. An open competitive process can be run as a single-stage or a multi-stage process.
Principles	Short for the Principles of Government Procurement.
Progressive Procurement	A government policy designed to increase the diversity of suppliers engaging with government agencies in procurement opportunities, particularly with Māori owned businesses.
Rules	Short for the Government Procurement Rules.
Public Value	Means achieving the best possible result from a procurement activity through good outcomes, good price and good quality.
Whole of Life Cost (WoLC)	This is the value of a contract over its entire life and is measured by summing the per annum costs over the entire term of the contract. The value includes all costs including: purchase costs, support, one-off costs and disposal, as well as implementation, design and licensing fees.

RELATED POLICIES, PROCEDURES AND LEGISLATION

- Ministry Contract Management Framework
- Contractor Engagement Policy
- Business and Sensitive Expenditure Policy
- Ministry Conflict of Interest Policy
- Ministry Code of Conduct
- Financial Delegations Policy
- Gifts Policy
- Koha Policy
- Government Procurement Rules, Procurement Charter, and Procurement Principles (New Zealand Government Procurement)
- Risk Management Policy
- Supplier Code of Conduct

CONTACT	Procurement and Commercial	OWNER(S)	Manager, Commercial Services
LAST REVIEWED	May 2023	NEXT REVIEW	June 2024
LAST UPDATED	May 2023	APPROVED BY	Deputy Secretary, Corporate and Digital Services

APPENDIX 1: DEFINITIONS OF SERVICE CATEGORIES

A **contractor or temporary worker** (out of scope of this policy – see *contractor engagement* policy) meets *all* of the following:

- is engaged on a contract either directly (self-employed) or via a third party (recruitment agency), and is not an employee; and
- is providing backfill or extra capacity in a role that exists within the Ministry or acts as an additional resource for a time-limited piece of work (project work); and
- Charge on a time unit basis (e.g. By the hour or day); and
- is under the direct supervision of the Ministry and the Ministry assumes the risk for the quality of the work product (e.g. If the deliverables are not up to standard, the Ministry has to pay for the time for the work to be rectified).

A **consultant**:

- Does not meet the definition of a contractor or temporary worker;
- Is a company or individual engaged in a contract to provide **professional advice** or **information** to the Ministry on its activities and/or operations
- Provides expertise in a particular field not readily available from within the Ministry;
- Is engaged to perform a specific piece of work or outcome with a defined scope and often invoice for delivering certain milestones;
- Operates independently from the Ministry and is responsible for all the resources and managing the risks associated with delivering the piece of work
- Generally, works offsite, but may be required to work onsite from time to time.
- Generally, carry the risk of payment being withheld if the piece of work they are engaged to complete is not delivered or is not fit-for-purpose.

Professional or Outsourced Services:

- Do not meet the definition of a *Contractor* or *Consultant*
- Are provided by an organisation that has been engaged to provide all or part of a **business function** or **activity** (for example, implementing and supporting a new ICT system into the Ministry or the delivery of community-based justice services).
- Operates independently of the Ministry and is responsible for all the resources and managing the risks associated with delivering the services.

Non-Professional Services are:

- Services that support the operation of the Ministry but are outside of our core business (for example, cleaning services and catering).

Registered Trades:

- Are building- and property- related services that are required to be carried out by individuals holding appropriate qualifications (for example, plumbers, structural engineers and qualified builders).

Audit, Actuarial and Legal Services:

- Services directly associated with the provision of external audits of the Ministry's activities
- Legal fees paid to a firm of solicitors for legal advice or representation (note that a lawyer engaged by the Ministry to backfill or provide additional resource to the Ministry's internal legal teams would be considered a contractor)
- Services directly associated with the provision of actuarial services to the Ministry.

APPENDIX 2: THE FIVE PRINCIPLES OF GOVERNMENT PROCUREMENT

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

The Government Procurement Charter sets out government's expectations of how agencies should conduct their procurement activity to achieve public value.

We need to ensure that government procurement delivers public value for all New Zealanders while supporting the delivery of better public services throughout New Zealand.

In all of our procurement activities, the Ministry will seek to meet as many of these expectations as practical.

The New Zealand government directs agencies to:

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| 1. Seek opportunities to include New Zealand businesses. | Openly work to create opportunities for local businesses and small-to-medium enterprises to participate in your procurement processes. |
| 2. Look for new and innovative solutions. | Make sure you don't overprescribe the technical requirements of a procurement, give businesses the opportunity to demonstrate their expertise |
| 3. Undertake initiatives to contribute to a low emissions economy and promote greater environmental responsibility. | Ensure that economic and social development can be implemented on a sustainable basis with respect for the protection and preservation of the environment, reducing waste, carbon emissions and pollution. |
| 4. Engage with businesses with good employment practices. | Ensure that the businesses you contract with operate with integrity, transparency and accountability, and respect international standards relating to human and labour rights. For businesses operating within New Zealand, ensure that they comply with all New Zealand employment standards and health and safety requirements. |
| 5. Promote inclusive economic development within New Zealand. | Engage with Māori, Pasifika, and regional businesses and social enterprises in order to actively contribute to our local economy. Openly working to include and support these businesses and enterprises through procurement will promote both skills development and a diverse and inclusive workforce. |
| 6. Manage risk appropriately. | Responsibility for managing risks should be with the party – either the agency or the supplier – that is best placed to manage the risk. Agencies and suppliers should work together on risk mitigation strategies. |
| 7. Encourage collaboration for collective impact. | Look to support greater collaboration, both across-agency and across-businesses to give likeminded groups the opportunity to find common solutions within your procurement opportunities. |
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