

PROCUREMENT POLICY

Introduction

- 1 The Panel is responsible and accountable for:
 - (a) performing its functions efficiently and effectively and in a manner consistent with the spirit of service to the community;¹ and
 - (b) acting in a manner that is consistent with the criteria for use of its litigation fund.
- 2 This policy takes account of the role of the Panel's Audit and Risk Committee, which is responsible for providing oversight of financial matters involving the Panel.

Definition

- 3 "Procurement" covers all aspects of acquiring and delivering goods, services and works (including refurbishment) necessary or desirable for the efficient and effective performance of the Panel's functions and powers.
- 4 It starts with identifying the need and finishes with the end of a service contract or the end of the useful life and disposal of the asset.

Statutory and other requirements

- 5 Sections 51 and 168 of the Crown Entities Act 2004 require, respectively, that the Panel ensures that it operates in a financially responsible manner and keeps accurate accounting records.
- 6 Section 18 of the Public Service Act 2020 requires the Panel, its members and its staff to comply with the Public Service Commission's *Code of Conduct for the Public Sector* (the **Code of Conduct**). The Code of Conduct requires the Panel, its members and its staff to, amongst other things:
 - (a) act lawfully and use public power fairly and reasonably;
 - (b) act objectively and not allow personal beliefs, interests, activities or relationships to impact their work;
 - (c) disclose relevant interests and manage all conflicts of interest appropriately;
 - (d) never misuse their position for personal gain or to benefit or disadvantage others;
 - (e) be open to scrutiny and account for what they do;
 - (f) treat the Panel's information and resources with care and use them only for proper purposes;
 - (g) aim to improve the performance and efficiency of the Panel; and

¹ Section 50, Crown Entities Act 2004 and the Public Service Commission's [Code of Conduct for the Public Sector](#).

(h) aim to make Panel decisions transparent, accessible and available.

7 The Panel must comply with:

- (a) the 6 Principles of Government Procurement (the **Principles**; set out at **Schedule 1**) at all times; and
- (b) the Government Procurement Rules (the **Rules**) where procurement is covered by the Rules (see paragraphs 10-11 below for when the Rules will apply).²

8 The Government Procurement Charter (the **Charter**; set out at **Schedule 2**) sets out the Government's expectations as to how the Panel should conduct its procurement activity to achieve public value. The Panel is expected to meet as many of these expectations as practical.

9 This policy should be read together with the Principles and, where applicable, the Rules and the Charter.

The Rules

10 The Rules apply to the procurement of goods, services and refurbishment works or any combination thereof where the whole of life cost meets or exceeds \$100,000.

11 Rule 7 sets out how this amount should be calculated and should be consulted if there is a possibility of a procurement crossing this threshold. The Panel must also apply the Rules to any procurement where it cannot estimate its maximum total estimated value.

12 However, the Panel is expected to follow good procurement practice even if the monetary value of a procurement is less than the value threshold. This means applying the Principles and having regard to other good practice guidance.

13 For the purposes of the Rules and as may be relevant to the Panel, the following activities are deemed not to be procurement activities:

- (a) employing staff (excluding the engagement of contractors and consultants);
- (b) statutory appointments;
- (c) public prosecutions;³ and
- (d) disposals at the end of the useful life of an asset.

14 While not a requirement, rule 8 of the Rules states that unless there is a good reason not to, agencies are expected to award procurements below the \$100,000 value threshold to New Zealand businesses that are capable and have capacity to deliver the contract.⁴

² The Rules are available [here](#).

³ Being proceedings in respect of an offence that is commenced by or on behalf of the Crown and including, in respect of an offence, proceedings commenced by or on behalf of a Crown entity; see section 5 of the Criminal Procedure Act 2011.

⁴ "New Zealand business" is defined in the Rules as a business that originated in New Zealand (not being a New Zealand subsidiary of an offshore business), is majority owned or controlled by New Zealanders and has its principal place of business in New Zealand.

All-of-Government procurement

- 15 All-of-Government contracts (**AoG Contracts**) establish a single supply agreement between the Crown and approved suppliers for the supply of selected common goods and services purchased across government.
- 16 The Panel must purchase goods and services through AoG Contracts unless there is a good reason not to.
- 17 Where goods and services are purchased through an AoG Contract, the Rules are generally less onerous. For example, there is no public advertising requirement.⁵ However, other requirements in the Rules may still apply. For example, the Panel may be required to publish a “contract award notice”.⁶

Public Service Commission guidance

- 18 In its 2022 review of agencies’ management of conflicts of interest, the Public Service Commission noted that, in order to appropriately manage procurements involving contracts with a value below \$100,000 in accordance with the Principles, agencies should robustly assess the options and document their rationale, particularly where providers are directly sourced.⁷
- 19 Accordingly, the Panel should document its procurement processes and rationale for all procurements, with the level of documentation proportionate to the value, risk and complexity of the procurement.

Policy

- 20 This policy provides overarching guidance for procurement commitments but is subject to the **Financial Delegations Policy**. All financial commitments made for or on behalf of the Panel must comply and be authorised in accordance with the **Financial Delegations Policy**.
- 21 Every procurement of goods or services to which the Panel is committed must be undertaken in accordance with the terms of this policy and the Rules (as applicable and as they are amended from time to time). Without limitation this shall include compliance with:
 - (a) the Principles set out in **Schedule 1**; and
 - (b) the Charter set out in **Schedule 2**,
 including as amended or replaced from time to time.
- 22 All staff engaged in procurement must be trained in the Principles and the Charter.
- 23 If the Panel is to undertake any procurement, the Chief Executive (or General Counsel where the Chief Executive is conflicted) must oversee the process. That person is responsible for ensuring that the procurement is conducted in accordance with the Rules.
- 24 The officer of the Panel executive responsible for the day-to-day management of any such contract must adopt sound contract management procedures. The responsible officer must report to the Chief Executive on the progress of the performance of the contract. As proportionate to the value, risk and complexity of the contract, regular meetings should be scheduled with the contractor in order to ensure

⁵ See rule 12 of the Rules.

⁶ See rule 32 of the Rules.

⁷ Public Service Commission *Memorandum on Conflicts of Interest – Review of agency practices* (13 December 2022; available [here](#)) at page 8.

early identification of performance issues. Any such issues should be reported to the Chief Executive as soon as possible.

- 25 Appropriate written records must be maintained for all contracts for services. These should:
- (a) be adequate to demonstrate that the procurement was properly authorised and that the procurement is necessary or desirable to enable the Panel to perform its statutory functions and powers;
 - (b) record the reason for not openly advertising the contract (if that is the case); and
 - (c) document any possible conflicts of interest in the procurement process and how these were managed, even if it was ultimately assessed that there are no conflicts.

Management of legal services procurements

- 26 In the case of procurement of legal services in taking or defending eligible cases within the criteria of the [Litigation Fund Guidelines](#), the Panel must apply the criteria set out in the Litigation Fund Guidelines for use of its litigation fund. Procurement of such services must be authorised in accordance with the Litigation Fund Guidelines (except in exceptional circumstances, this will involve approval by the Panel).
- 27 When procuring legal services (under the litigation fund or otherwise), the Panel has a responsibility to manage its resources in an effective and efficient manner.
- 28 Procurement of legal services must take into account the need to obtain advice from non-conflicted, suitably experienced and capable legal counsel with the capacity to meet the Panel's needs, including delivery of services within appropriate timeframes.
- 29 When choosing a legal services provider, the Panel's choice is generally constrained by a narrow base of suitably experienced practitioners, timing pressures under the Code's timing rules which may impact on the availability of suitable practitioners, practitioners' conflicts of interest in Code-regulated transactions and the confidential nature of much of the case matter.
- 30 Accordingly, while the Panel acknowledges the importance of the principle of open and effective competition when procuring goods or services, it may not generally be possible or prudent to openly advertise or run a competitive procurement process for the Panel's procurement of legal services, particularly for enforcement matters.

Procurement in emergencies

- 31 In an emergency, the Panel may need to depart from usual procurement processes to respond effectively. The Panel, its members and its staff will still follow best practices for emergency situations, including:
- (a) documenting emergency procurements during the event, or as soon as possible afterwards;
 - (b) acting within existing delegated authority, where possible;
 - (c) if there is no existing delegated authority and no time to obtain an approval, exercising good judgement and being prepared to provide a rationale for procurements; and
 - (d) if a procurement involves a major expense, obtaining verbal approval, at the very least, from a person with sufficient delegated financial authority, followed up in writing, before making a commitment.

Publication

32 The Panel must make this policy publicly available.⁸

11 August 2026

Next review due: August 2029

⁸ Rule 1 of the Rules.

SCHEDULE 1: THE SIX PRINCIPLES OF GOVERNMENT PROCUREMENT

1 The six principles of government procurement are as follows:⁹

(a) **Plan and manage for great results**

- Identify what you need 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.
- Encourage e-business.

(b) **Be proportionate and right-size the procurement**

- Make it easy to do business with government.
- Design and run an efficient end-to-end process that is proportional to the value, complexity and risk.
- Reduce the time, cost and complexity for suppliers participating in procurement processes.
- Make documentation and communication clear and concise to minimise impacts on resources and only ask for information from suppliers that is essential and relevant.

(c) **Be fair to all suppliers**

- 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.
- Be open to subcontracting opportunities in big projects.
- Clearly explain how you will assess proposals – so suppliers know what to focus on.
- Talk to unsuccessful suppliers so they can learn and know how to improve next time.

(d) **Get the right supplier**

- 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.

⁹ The Government Procurement Principles are maintained by New Zealand Government Procurement (an entity sitting under MBIE) and can also be found [here](#).

- Choose suppliers that comply with the Government's Supplier Code of Conduct.¹⁰
- 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.

(e) **Get the best deal for everyone**

- Get best public value – account for all costs and benefits over the lifetime of the goods or services.
- Make balanced decisions – consider the possible economic benefits to New Zealand.
- 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.

(f) **Play by the rules**

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

¹⁰ The Supplier Code of Conduct can be found [here](#). In summary, the Supplier Code of Conduct sets out the Government's expectation that its suppliers adhere to ethical behaviours, including regarding labour and human rights, health, safety and security, and environmental sustainability. It also encourages its suppliers to be good corporate citizens and contribute positively to their communities.

SCHEDULE 2: GOVERNMENT PROCUREMENT CHARTER

The Charter sets out government's expectations of how agencies should conduct their procurement activity to achieve public value.¹¹

- 1 Government agencies spend approximately \$51 billion a year on a wide range of goods and services from third party suppliers. 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.
- 2 Agencies should identify their key priorities and seek to meet as many of these expectations as practical.
- 3 The New Zealand government directs agencies to:
 - (a) **Deliver economic benefits to New Zealand.** Work to create opportunities for local businesses and small-to-medium enterprises to participate in your procurement processes. Consider if your procurement offers opportunities for delivering social, environmental and cultural outcomes.
 - (b) **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.
 - (c) **Engage with businesses with responsible business 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.
 - (d) **Promote inclusive economic development within New Zealand.** Engage with Māori, Pacific Peoples, 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.
 - (e) **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.
 - (f) **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.

¹¹ The Charter is maintained by New Zealand Government Procurement and can also be found [here](#).