

## Procurement and Contracts

### Policy Responsibilities and Authorisation

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### Policy Review History

Version	Updated by	Date Updated	Summary of Changes
3.1	Alicia Lane	Sep 2016	Addition of s4.3 Supplier Payment Terms and s4.4 Automatic Recurring Payments (ARP)
3.2	Alicia Lane	Nov 2018	Change health Alliance to New Zealand Health Partnerships
4.0	Garron Smith	Jan 2020	Refresh of Procurement Policy reflecting revised Oct 2019 Government Procurement Rules and fit with new Waikato DHB policy template
4.01	Garron Smith	April 2020	Updates to reflect feedback from Finance, Supply Chain and Procurement, and Quality and Patient Safety.
4.02	Garron Smith	July 2020	Updates to reflect feedback from the Policy Committee and Sustainability
4.03	Garron Smith	December 2020	Updates to reflect Te Tiriti o Waitangi feedback from the Finance and Risk Committee and the new procurement policy with a focus on Māori businesses.

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**1 Introduction**

**1.1 Purpose**

The purpose of this policy is to set out Waikato DHB’s policy and guidelines for its procurement, contracting and contract management processes. It is intended to:

- a. underpin good practice in procurement;
- b. improve management of procurement risk;
- c. strengthen accountability for how the DHB spends taxpayers’ money;
- d. support the DHB to deliver best value for money (which is not always the cheapest price) and deliver the best public health services;
- e. support the DHB’s commitment to robust and transparent decision-making;
- f. support the DHB in meeting all relevant statutory and other legal requirements, including compliance with the Government Procurement Rules (Rules) and Maori business targets; and
- g. meet our obligations under Te Tiriti o Waitangi; and
- h. ensure that the DHB’s procurement function is carried out within a clearly defined and transparent internal control framework that meets audit compliance with the policy against the 5 principles of procurement.
- i. To ensure sustainability principles and criteria are applied to the procurement process

**1.2 Background**

Procurement covers all the business processes associated with purchasing the goods, services and works Waikato DHB uses to run our business and deliver our public service objectives. It starts with identifying our needs, then planning the best way to meet them continues through sourcing the goods, services, works, then managing the contract; and ends with expiry of either the contract or the asset’s useful life. Waikato DHB, as a crown agency covered by the [Whole of Government Direction](#) has a mandate to apply the [Government Procurement Rules](#) when purchasing goods, services or works. These rules are underpinned by the following Principles of Government Procurement:

-  **1. Plan and manage for great results**
-  **2. Be fair to all suppliers**
-  **3. Get the right supplier**
-  **4. Get the best deal for everyone**
-  **5. Play by the rules**

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## Procurement and Contracts

### 1.3 Scope

This Policy applies to all Waikato DHB Staff.

This Policy applies when a decision has been made for Waikato DHB to purchase goods or services including all Provider and Funder arm service contracts.

### 1.4 Exclusions

This Policy does not cover needs determination or business case processes and budget approval that is required prior to a decision to purchase being made.

This Policy also does not cover the:

- a. Employment of personnel;
- b. Disposals and sales by tender;
- c. Investments, loans and guarantees;
- d. Gifts, donations and any form of unconditional grants prohibited when procuring or negotiating.
- e. Contracts for the possession, use or sale of real estate (land and adjoining buildings)

## 2 Definitions

<b>All-of-Government Contracts (AoG)</b>	A type of collaborative contract that has been approved by the Procurement Functional Leader (the Chief Executive of MBIE). AOGs are usually Panel Contracts established by MBIE or other agencies that are approved Centres of Expertise for common goods or services.
<b>Broader Outcomes</b>	Broader outcomes are the secondary benefits which are generated due to the way goods, services or works are produced or delivered. They include economic, environmental, social and cultural outcomes.
<b>Conflict of Interest</b>	A conflict of interest is where someone's personal interests or obligations conflict, or have the potential to conflict, with the responsibilities of their job or position or with their commercial interests. It means that their independence, objectivity or impartiality can be called into question.
<b>Delegation of Authority</b>	Refers to those persons given the authority to commit funds within specified financial and policy limits. For details and specific requirements refer to the Delegations of Authority policy.
<b>Evaluation Criteria</b>	The criteria that are used to evaluate responses. These include measures to assess the extent to which competing responses meet requirements and expectations.
<b>GETS</b>	An acronym for Government Electronic Tenders Service. GETS is a website managed by New Zealand Government Procurement. It is a free service that advertises New Zealand Government contract opportunities and is open to both domestic and international suppliers.

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	All tender information and documents are made freely available through GETS.
<b>Minimum Time Periods</b>	The least amount of time, set by the Rules, that the DHB must allow suppliers to respond to a particular contract opportunity.
<b>MBIE</b>	Means Ministry of Business, Innovation and Employment.
<b>Panel Contract</b>	A type of framework agreement that governs the relationship between the DHB and each Panel Supplier. It sets out the terms and conditions that the parties agree to contract on in the event that the Panel Supplier is allocated a contract to provide specific goods, services or works to meet our obligations under Te Tiriti o Waitangi and all Government Procurement Rules.
<b>Panel of Suppliers</b>	A list of suppliers the DHB has pre-approved to supply particular goods or services and who have agreed to the DHB's terms and conditions for supply as a requirement to meet our obligations under Te Tiriti o Waitangi and all Government Procurement Rules.
<b>Principles</b>	Short for the Principles of Government Procurement. The five Principles are: <ul style="list-style-type: none"> <li>• Plan and manage for great results</li> <li>• Be fair to all suppliers</li> <li>• Get the right supplier</li> <li>• Get the best deal for everyone</li> <li>• Play by the Rules</li> </ul>
<b>Procurement</b>	All aspects of acquiring and delivering goods, services and works. It starts with identifying the need and finishes with either the end of a service contract or the end of the useful life and disposal of an asset.
<b>Procurement Plan</b>	A plan to analyse the need for specific goods, services or works and the outcome the DHB wants to achieve. It identifies an appropriate strategy to approach the market, based on market research and analysis, and summarises the proposed procurement process. It usually includes the indicative costs (budget), specification of requirements, indicative timeline, evaluation criteria and weightings and an explanation of the Broader Outcomes an agency will seek to achieve through the procurement.
<b>Procurement Specialist</b>	A member of the DHB's Procurement Team
<b>Purchase Order</b>	A legally binding document placing an order for the delivery of goods and/or services to a supplier.
<b>RC Manager</b>	Responsibility Centre Manager
<b>Rules</b>	A short name for the Government Procurement Rules, which are the Rules 1 to 71.
<b>Staff</b>	This means personnel, including employees, contractors, consultants and, as applicable, Board members or Commissioners.
<b>Supplier</b>	A person, business, company or organisation that supplies or can supply goods or services or works to the DHB.

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<b>Syndicated Contracts</b>	<p>A type of collaborative contract that typically involves a group of agencies aggregating their needs and collectively going to market for common goods, services or works.</p> <p>If the contract includes a common use provision (CUP), to allow other agencies to contract with the supplier on the same terms later, it is an Open Syndicated Contract and needs to be approved by the Procurement Functional Leader (the Chief Executive of MBIE).</p> <p>If the contract is limited to a group of named agencies, it is a Closed Syndicated Contract.</p>
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**3 Policy Statements**

**3.1 Statutory Requirements**

All Procurement practices must comply with relevant statutory and legal requirements, including restrictions from anti-competitive behaviour, insider trading or misleading conduct in trade. A summary of some of the key statutory and legal requirements are set out in Section 8.

**3.2 The Rules**

The Government Procurement Rules (“Rules”) are mandatory for Waikato DHB. Staff involved in applicable procurement activity must comply with the Rules. The Rules apply to the following procurements:

Procurement of goods or services or refurbishment works (or a combination of goods or services or refurbishment works) - when the maximum total estimated value of the procurement meets or exceeds \$100,000; and

For new construction works – when the maximum total estimated value of the procurement exceeds \$9 million.

Includes the Government procurement policy with a focus on Māori businesses. This policy requires all government agencies that are subject to the Government Procurement Rules (the Rules)<sup>1</sup> to set and report against a target that at least 5% of the total number of their annual procurement contracts are awarded to Māori businesses.

For the purposes of this procurement policy consistent with advice from MIBE, a Māori business is defined as either a Māori authority as classified by the Inland Revenue Department (IRD) or one that has at least 50% Māori ownership.

The Rules must be read alongside the Principles of Government Procurement and the Government Procurement Charter. The Principles of Government Procurement and the Government Procurement Charter are set out in full in Schedule A

The five Principles which apply to all procurements regardless of value or whether any valid opt-outs are applied are:

1. Plan and manage for great results.
2. Be fair to all suppliers.
3. Get the right supplier.

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- 4. Get the best deal for everyone.
- 5. Play by the rules.

Rule 12 states that an agency can opt-out of applying some of the Rules. These circumstances are set out in Rule 12.3. Guidance on the application of the opt-out Rule is detailed in Section 9.

**3.3 Te Tiriti o Waitangi/ Treaty of Waitangi**

Te Tiriti o Waitangi procurement obligations are included in The Government Procurement Rules (“Rules”) which are mandatory for all Waikato DHB procurement.

New Zealand is party to International Agreements that include specific provisions preserving the pre-eminence of Te Tiriti o Waitangi. Te Tiriti o Waitangi exception provides flexibility for the Government to implement domestic policies in relation to Māori, including in fulfilment of the Crown’s obligations under the Treaty. Pursuant to this provision New Zealand may adopt measures it deems necessary to accord favourable treatment to Māori, provided that such measures are not used as a means of arbitrary or unjustified discrimination or as a disguised restriction on trade in goods, trade in services and investment.

Meeting our obligations under Te Tiriti o Waitangi is necessary if we are to respond effectively to the Wai 2575 Stage one report of findings from 2019 and realise the overall aims of He Korowai Oranga (Maori Health Strategy), the actions within Whakamaua: Māori Health Action Plan 2020-2025 and achieve outcomes for the health and disability system as a whole.

Where a business unit is considering the application of this provision in their procurement work, this should be discussed in the first instance with the procurement Team.

Further guidance can be found at:  
<https://www.health.govt.nz/publication/whakamaua-maori-health-action-plan-2020-2025>

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**4 Policy Processes**

**4.1 Roles and Responsibilities**

**4.1.1 Accounts Payable**

The Accounts Payable team are responsible for all supplier payments.

**4.1.2 Procurement Team**

Responsible for:

- the central management and oversight of all Waikato DHB procurement processes and systems;
- providing procurement process support and advice (including advice on use of All-of-Government panel contracts, and on who should manage the procurement process: Waikato DHB, , New Zealand Health Partnerships or PHARMAC);
- managing/co-ordinating competitive processes for the supply of goods and services expected to exceed \$100,000 in total value over the life of the contract;
- supporting RC managers with negotiation support; ongoing supplier relationship management, contract management and monitoring of implementation (unless an alternative manager is agreed by the Procurement team) for those suppliers identified using Waikato DHBs Supplier Management Segmentation Guidelines
- supporting RC managers with compliance and benefits tracking.
- supporting RC Managers by periodically publishing details from the contracts database to enable them to check their own records.

**4.1.3 Clinical Product Supply Services (Supply Chain)**

Responsible for

- Evaluation/approval of medical devices.

**4.1.4 Inventory Management (Supply Chain)**

Responsible for:

- Implementation of medical devices, equipment and pharmaceuticals
- Maintenance of records through item lifecycle

**4.1.5 Legal Services**

Responsible for:

- approval of deed format and execution;
- assistance with difficult negotiations;
- review and advice on procurement and contractual documents prior to issue and execution (involvement as per requirements of this policy);

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- maintaining a central repository and database of all signed Waikato DHB contracts;
- the development and maintenance of standard RFX, contract and contract related templates; and
- Legal advice and assistance with contractual enforcement and disputes.

**4.1.6 RC Managers**

Responsible for:

- appointing the person responsible for managing the procurement requirements in their RC (where a Procurement Specialist is not undertaking the role);
- ensuring that all procurement activity for their RC code is adequately planned and documented;
- managing the performance, operational and financial aspects of the contracts and arrangements they are accountable for;
- having a clear understanding of the goods and services to be supplied and be satisfied they represent value for Waikato DHB;
- ensuring that all key dates for contracts in their RC code are planned for and managed, including completion, renewal and review dates; and
- ensuring appropriate staff involvement and relevant representation/consultation of their areas in all other parts of the procurement process along with the Procurement Team.

**4.1.7 Contract Manager**

Refer to the responsibilities in Ref. 8.9 on page 15.

**5 Undertaking a Procurement**

**5.1 First considerations**

Before commencing any procurement process, Waikato DHB Staff must first consider the following:

- Consider the opportunities and efficiencies of national and regional procurement and contract initiatives, such as All-of-Government Contracts, Syndicated Contracts through New Zealand Health Partnerships and PHARMAC, and whether they could be utilised.
- Check if an existing Syndicated Contract meets Waikato DHB’s needs. Waikato DHB should purchase from ‘All-of-Government’ contracts, wherever possible.
- Check if Waikato DHB is permitted to carry out the procurement. The procurement may be the responsibility of another health sector organisation such as under an All-of-Government arrangement, New Zealand Health Partnerships or PHARMAC. Seek advice from the Procurement Team to determine this.
- Seek advice from the Procurement Team and/or Legal Services if you are unsure about the appropriate course of action at any stage.

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**6 Procurement Requirements: By Contract Value**

There are different Procurement requirements depending on the ‘total value’ of the proposed purchase.

When estimating ‘total value’ and deciding which of the Rules applies, consider the whole-of-life cost of the contract/s. Whole-of-life cost is the total cumulative cost of goods/services. It must include everything for the full delivery of the goods or services, including options to purchase additional goods or services, on-going consumables, maintenance, options for contract extensions, payment of premiums, fees or commissions, any revenue streams a supplier receives and any other form of remuneration, payment or interest due a supplier or third party.

**6.1 Over \$100K**

All purchases over \$100K (excluding GST) must be managed by a Procurement Specialist.

Under the Rules, all procurements with a *maximum total estimated value* over \$100k (excluding GST) must be openly advertised on GETS unless there is a valid exemption reason for not doing so (see below). The Procurement Specialist will arrange this.

Appendix A sets out the detailed processes and considerations for procurements of this value.

The Rules set out certain [exemptions](#) from the requirement to openly advertise. If a Procurement Specialist considers it appropriate to apply such an exemption from open advertisement under the Rules, Waikato DHB must complete a request for an exemption form which must clearly state the exemption from the Rules that is considered to apply. The Procurement Specialist will arrange this process. If the exemption is approved (by a Level 2 or 3 delegation), a Contract Award Notice must be published on GETS in accordance with the Rules.

Legal Services must review and advise on the competitive process/exemption documentation and proposed contract before issue. Review by Legal Services is required for all subsequent variations, assignments and novations of such contracts.

Clear records of decisions, including reasons for the final outcome must be retained. The Procurement Specialist will file these records, which must be held for a minimum of 3 years.

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**6.2 From \$10K to \$100K**

All purchases of value \$10K – \$100K must be managed by a Procurement Specialist. For this amount, written quotations or proposals must be sought from at least three potential suppliers, unless an exemption from this requirement is approved.

Schedule D also sets out the detailed processes and considerations for procurements of this value.

If a Procurement Specialist considers it appropriate to apply an exemption from this requirement, they must complete a request for an exemption form which must clearly state the reasons why an exemption is justified for the particular case.

Review by Legal Services is not required for procurements of this value, provided approved DHB templates are used without change and the RFX/contract is not assessed as high or extreme risk. If the RFX/contract is assessed as high or extreme risk or the DHB templates have not been used or have been changed, Legal Services review is required. Review by Legal Services is required for all variations, assignments and novations to such contracts.

High risk or extreme contracts or arrangements are likely to involve one or more of the following factors:

- a. complex specifications and terms;
- b. large volume of specifications and terms;
- c. short procurement timeframe relative to risk and care required;
- d. high level of public interest;
- e. significant risk of challenge by an unsuccessful submitter (for instance, procurement processes for the provision of substantial (by volume or price) goods or services or known litigious submitters;
- f. high novelty;
- g. Ministry of Health or Commissioner/Board involvement is required;
- h. the importance of concluding a contract or arrangement to Waikato DHB's business continuity and the continued delivery of essential services;
- i. significant potential risk to patient safety or patient services; or
- j. medico-legal risk, including patient privacy issues.

Clear records of decisions, including reasons for the final outcome must be retained. The Procurement Specialist will file these records, which must be held for a minimum of 3 years.

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**6.3 Less than \$10K**

Staff must purchase products or services under \$10K from the catalogues of goods and services within the DHB’s Oracle Purchasing System, where possible. If an item is not available on the national catalogue, then a non-catalogue requisition can be raised in the National Oracle System, subject to compliance with the other requirements of this Policy. This includes ensuring that all medical devices (i.e. clinical products and equipment) have pre-purchase approval and full acceptance by all relevant specialist staff (e.g. Biomedical Engineering, Health and Safety, Infection Control, Information Services) prior to purchase – see 6.9 below.

Clear records of decisions, including reasons for the final outcome must be retained. The Staff member purchasing the products or services is responsible for filing the records, which must be held for a minimum of 3 years.

**6.4 Contractor Engagement**

Procuring services from non-employees (“Contractors”), whether engaged personally or through a company to provide services, are subject to the requirements of this Policy (except where the individuals are engaged as employees). However, additional considerations also apply.

Contractors should not be engaged to resource core, ongoing functions or activities or to undertake tasks which Waikato DHB could more cost effectively and appropriately resource itself through its employees. Contractors should not hold any manager positions that required a delegation of authority.

Before considering whether to engage a Contractor, Staff must always seek advice from their HR Consultant to determine whether the functions would more appropriately be sourced through an employee. The steps to engaging a Contractor are available on MyPeople on the Waikato DHB Intranet. To avoid doubt, existing employees cannot also be engaged as Contractors (either directly or via a Company).

Before appointment, all Contractor engagements must have either:

- a. an approved position vacancy (i.e. a vacancy that has a personnel cost budget or outsourced personnel budget); or
- b. an approved project budget.

All Contractors are required to be assigned a Waikato DHB position number and recorded in the Waikato DHB Human Resource Information System (HRIS).

All Contractors are required to display an authorised Waikato DHB ID badge when representing Waikato DHB. The badge must be visible and worn in a manner that ensures employee/ patient safety. Managers must give Contractors access to all relevant policies, procedures, protocols and guidelines of Waikato DHB.

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**6.5 Additional Procurement Requirements**

For every procurement process, Staff must also comply with the following DHB-specific requirements.

**6.6 Approval of Procurement Exemptions or Contracts**

Procurement exemptions are required where procurements with a maximum total value over \$100k (see 6.1 above) are not openly advertised. [Rule 14 of the Government Procurement Rules](#) describes valid reasons for not advertising. As noted, all purchases over \$100k (excluding GST) must be managed by a Procurement Specialist.

A contract or procurement exemption can only be approved by the Staff member with the relevant Delegation of Authority for the value of the applicable contract (Level 2 or Level 3 delegation).

**6.7 Confidentiality**

Procurement and contracts involve commercially sensitive information, both from Waikato DHB and from submitters and suppliers. Confidentiality obligations apply throughout the entire procurement process and also after any contract has terminated or expired. Except to the extent required by law, individuals involved in procurement must:

- a. take care not to disclose Waikato DHB’s confidential information;
- b. take care not to disclose a submitter/supplier’s confidential information without the written authorisation of the submitter/supplier who provided the information;
- c. ensure that submitters/suppliers understand and accept the need to respect the confidentiality of information.

The nominated Procurement Specialist must ensure that confidentiality declarations are obtained at the start of the procurement process, and continue to be obtained as additional people become involved through the process. Completed declarations must be held on the procurement file. To help with obtaining declarations at different stages of the procurement process, key Waikato DHB procurement templates include confidentiality declarations as part of the sign-off.

**6.8 Broader Outcomes**

Staff must consider Broader Outcomes and incorporate where appropriate into procurement activity. Broader outcomes are secondary benefits that are generated from procurement activity; they can be environmental, social, economic or cultural benefits. This will include considering actions to improve Maori equity, sustainability; supporting suppliers who are good corporate citizens (ethical practices, fair to their workers, supporting community, fair to suppliers and sub-contractors); improving access for NZ business to government opportunities. Refer to [Rule 16](#) of Government Procurement Rules for further information. The DHB intends to include environmental criteria in tenders wherever possible and practical.

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**6.9 Product Standards**

All products purchased by Waikato DHB must comply with appropriate standards for sale and use in the New Zealand health industry. Products or services must be fit for purpose, and not introduce unknown hazards or risks to the work environment. Documented evidence of compliance must be supplied.

All pharmaceuticals purchased must be approved by the NZ Ministry of Health (Medsafe).

All medical devices (i.e. clinical products and equipment) must have pre-purchase approval and full acceptance by all relevant specialist staff (e.g. Biomedical Engineering, Health and Safety, Infection Control, Information Services) prior to purchase. The Clinical Product Specialist in Supply Chain will facilitate this as part of the procurement process. Requests should be logged via the Customer Portal accessible via the Waikato DHB Intranet.

All biomedical equipment must be tested and certified by Biomedical Engineering (or Property & Infrastructure Engineering) prior to entering service. Requests should be logged via the Customer Portal accessible via the Waikato DHB Intranet.

Any individual involved in procurement that receives a formal notification of a medical device fault must immediately notify the Clinical Product Advisor in Quality and Patient Safety.

Any Staff receiving a formal Medical Device or Pharmaceutical product recall or alert notification from external sources, must immediately notify the Clinical Product Advisor in Quality and Patient Safety.

**6.10 Conflicts of Interest**

As far as practicable, everyone involved in a procurement process must declare any personal interest or relationship that may affect, or be perceived to affect their impartiality in that process.

The Procurement Specialist should also remain generally alert to the risks of any conflicts of interest and promptly manage these in accordance with this policy.

The Procurement Specialist must ensure that conflict of interest declarations are obtained at the start of the procurement process, and continue to be obtained as additional individuals, contractors and advisers become involved as the process progresses (in particular, all evaluation team members prior to evaluating submissions and governance members prior to making any procurement decisions or awarding a contract). To help with obtaining declarations at different stages of the procurement process, key Waikato DHB procurement templates include a conflict of interest declaration as part of the sign-off. Completed declarations must be held on the procurement file, as well as records of all discussions on conflicts of interest.

All submitters to an RFX must declare any actual, potential or perceived conflict of interest to Waikato DHB in their submission. This is a term of Waikato DHB’s standard RFX templates.

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If an actual, perceived or potential conflict is declared or identified by any individual or adviser in any area of Waikato DHB, the Director of Procurement, in consultation with the Chief Executive Officer or their delegate, will determine and record in writing, whether the conflict can be managed and if so, what steps are necessary to manage the conflict, having regard to relevant statutory requirements. This involves careful judgement, and advice from Legal Services is recommended. Steps may include:

- a. noting the conflict in the procurement records and to appropriate individuals involved in the process; or
- b. excluding conflicted individuals from the procurement process, from the evaluation process, from voting on an item or at all during the evaluation process, and/or from participating in the award decision.

Further guidance on conflicts of interest for public entities can be found at:

<https://oag.parliament.nz/2020/conflicts>

**6.11 Gifts and Sponsorship**

When a procurement process is in progress (including early discussions about a possible project), people involved in the process (including governance, management, operational staff and DHB Board members) must not accept any gifts, hospitality or sponsorship from any current or potential suppliers or related parties who may participate in the procurement process.. This is to avoid any bias or perception of bias.

After the conclusion of the procurement process, individuals involved in the process must not accept any gifts, hospitality or sponsorship from the successful supplier or related parties so as to not create the perception of bias in the evaluation of the successful supplier and/or the recommendation and decision to award the contract to that supplier.

The terms of Waikato DHB’s RFX templates include conditions reminding submitters to not provide gifts, hospitality or sponsorship during the procurement process.

In addition to the terms of Waikato DHB’s RFX templates, it is noted that medical technology supply companies who are members of the Medical Trade Association in NZ (MTANZ) are subject to a Code of Practice which formalises ethical business practices, including the provision of gifts and sponsorship.

The policy on the Receiving and Giving of Gifts sets the standards for dealing with gifts within Waikato District Health Board (Waikato DHB) and defines what is, and what is not a gift. These are easily tracked through a centrally administered register via [giftregister@waikatodhb.health.nz](mailto:giftregister@waikatodhb.health.nz)

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**6.12 Purchase Orders**

After the procurement process has been completed, goods and services must be ordered using Waikato DHB’s purchase order process. Goods and services must not be ordered until a purchase order has been approved.

Certain goods and services may be exempted from Waikato DHB’s purchase order process. Application for an exemption may be made to the Director of Procurement using the Request for Purchase Order Exemption template. This form and [a list of exempted goods and services](#) is available on the [Purchasing and Distribution Services intranet page](#).

If procurement is solely by purchase order, it must be made clear that Waikato DHB will not be bound until the supplier receives its purchase order.

**6.13 The Contract**

**Form of Contract**

Waikato DHB approved templates for procurement processes and contracts must be used. These templates have been developed to protect Waikato DHB’s interests. If an approved template is not appropriate for a particular procurement or contract, advice must be sought from the Procurement Team and Legal Services to develop an alternative document. This must be done prior to starting the procurement process.

Advice must be sought from Legal Services on contracts in accordance with this Policy.

As a general rule Waikato DHB does not give contractual guarantees and indemnities in contracts because these create liabilities that may have significant and often unforeseen financial impacts. If a guarantee or indemnity is sought by a supplier, advice must be sought from Legal Services and approval obtained from a person holding an appropriate Delegation of Authority. Approved guarantees and indemnities must be recorded in the Legal Services register. If the Waikato DHB has agreed to grant an indemnity/guarantee, the person responsible for the procurement is required to notify Legal Services.

Waikato DHBs standard payment term in its contracts is the 20th of the month following invoice date. Waikato DHBs preferred payment method is direct credit into a New Zealand bank account. From time to time, other payment terms will need to be considered. Exceptions to this may be authorised by the account payable Manager.

It is possible to conclude a contract verbally or via written communications such as email. Care must be exercised to ensure the DHB does not to inadvertently create a contractual obligation during the procurement process. At the start of negotiations of a procurement process, it is mandatory to notify the other party that Waikato DHB will not be legally bound until a formal contract is approved and signed by the appropriate DHB representative.

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**6.14 Arrangements For Transition to New Contract**

The Procurement Specialist should consider whether an implementation/transition plan is required to transition to a new Supplier. In straightforward matters, no implementation/transition planning may be required or it may be simply covered by a contract management plan. In complex procurements, a detailed implementation/transition plan and advanced change management may be required, possibly with a team comprising a mix of specialists with the right skills to implement the contract successfully.

At a minimum, and even for straightforward contracts, it is important to:

- a. Communicate the change in supplier and any changed requirements to users or stakeholders;
- b. Provide training as required;
- c. Follow up to ensure new processes are being followed;
- d. Ensure contact information and financial information system information is updated across the organisation; and
- e. Check that the contract’s context, complexities and dependencies are understood by appropriate stakeholders, (and especially by the supplier!)

During contract start-up, reliability, accuracy and other aspects might fluctuate, so it’s important to stipulate an appropriate timeframe for services to be bedded down and in which you won’t strictly enforce the service levels. In doing so, remember that too short a timeframe might give an unfair picture, and too long a timeframe might be similarly misleading.

Potential issues with unsuccessful incumbent suppliers should also be considered, such as confidentiality, impartiality, access to information and return of equipment and information.

**6.15 Contract Management**

To achieve good contract performance, Waikato DHB needs to ensure that the terms of the contract are adhered to by monitoring and actively managing the contract.

It is the responsibility of the Contract Manager to:

- a. Ensure the supplier delivers as required by the contract (on time, correct volumes, at the agreed cost, to the required quality, reporting).
- b. Ensure the effective management of relationships between Waikato DHB and the supplier, such as an appropriate frequency and type of meetings, levels of communication and processes for handling issues;
- c. Identify and manage risks and issues including seeking advice from legal service on contractual performance, enforcement issues and disputes;
- d. Undertake regular reviews of the contract, appropriate to the contract’s value, nature and duration;
- e. Carry out business continuity planning appropriate to the contract.

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- f. Manage changes to the contract (variations);
- g. Monitor charges and costs;
- h. Ensure ordering and payment processes are in place and follow Waikato DHB standard processes;
- i. Report to management as required;
- j. Keep well organised and complete records of the monitoring and contract management carried out, as well as any decisions made and the reasons supporting them.

The approach to managing a contract will vary depending on the type and value of the contract and the risks associated with it. For example, a relational procurement with a non-government organisation or a significant IS service provider may require close relationships.

A formal contract management plan is recommended for significant procurements that are higher value, high risk, complex, novel or likely to attract specific media attention or come under significant public scrutiny. In developing your plan, make sure you tailor it to the individual contract; the contents and amount of detail will depend on the nature of the procurement.

As a general guide, 'higher value' is considered to be greater than \$500,000 in total value.

Contract managers should read the guidance on contract management available at: <http://www.business.govt.nz/procurement/pdf-library/agencies/contract-relationship-management.pdf>

A Supplier Management Plan template is available from the Procurement Team.

**6.16 Automatic Recurring Payments (ARP)**

ARPs may be set up by Accounts Payable in the Financial Information System for regular payments (fixed amounts) under contract, such as equipment and leases.

To facilitate the ARP set up, approval must be sought from the Finance Manager. Accounts Payable must be provided with appropriate vendor and payment documentation, in addition to appropriate documentation being completed for Accounts Payable to action from. Appropriate vendor documentation will include a tax invoice for the initial payment under the automatic payment authority. The tax invoice should be clearly identifiable as a 'perpetual' invoice.

**6.17 Assignments, Novations and Variations**

These arrangements and the documents that record them create changes to Waikato DHBs contractual position and obligations. Because these arrangements may create significant risks, they must be approved by Legal Services.

The person who approves and signs such a document must:

- a. Hold the appropriate Delegation of Authority for the level and type of expenditure;

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- b. Be provided sufficient information to understand the rationale for the change to the contract, and
- c. If they reject the recommendation, document the reason and ensure the reason is legitimate.

Signed originals must be provided to Legal Services for secure storage and update in the Waikato DHB contracts database.

**6.18 Contract Renewals and Extensions**

A contract may allow for an extension for a further period. However, the decision to renew, extend or ‘roll over’ a contract should be exercised carefully and consider relevant factors such as:

- a. supplier performance;
- b. intellectual property and confidentiality constraints;
- c. user satisfaction;
- d. the effectiveness of the contract and whether any improvements could be negotiated;
- e. developments in the market;
- f. competitiveness of the current pricing – does it still offer best value for money?;
- g. costs associated with new service provision and transition;
- h. does the contract meet current and future needs?;
- i. does the supplier’s performance (on levels of service, contract management, reporting) meet current and future needs?
- j. are alternative goods and services now available?
- k. where can improvements be made?
- l. what are the costs, risk and benefits of going back to the market?
- m. quality of items being supplied is sustained, in particular Medical Device quality

The review and its recommendations should be summarised in a report to key stakeholders and the person holding the appropriate delegated authority.

The person who approves and signs a contract renewal or extension must:

- a. hold the appropriate Delegation of Authority for the level and type of expenditure;
- b. be provided sufficient information to understand the rationale for the renewal/extension recommendation. Waikato DHB’s Renewal Recommendation Report template must be used and the amount of detail provided must be commensurate with the size, complexity of the procurement and the level of risk involved;
- c. complete a conflict of interest and confidentiality declaration; and
- d. if they reject the recommendation, document the reason and ensure the reason is legitimate.

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**6.19 Contract Completion**

The review and its recommendations should be summarised in a report to key stakeholders and the person holding the appropriate delegated authority.

The person who approves and signs a contract renewal or extension is responsible for:

- a. ensuring the supplier has honoured all its obligations;
- b. ongoing monitoring after the end of the contract of confidentiality, intellectual property and insurance obligations;
- c. issuing a certificate of completion;
- d. complying with instructions relating to bank guarantees and retention monies;
- e. conducting the transition and handover to an incoming supplier;
- f. ensuring that all loaned items are returned;
- g. returning unused material; and
- h. preparing and considering final reports on supplier performance.

**7 Audit**

**7.1 The Five Principles of Government Procurement**

**The five principles are:**

**1. 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, ensuring stakeholder/user representation.
- 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**

- 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 with a particular emphasis on enhancing the volume and value provided by Maori, Pasifika and regional businesses and social enterprises.
- Make it easy for all suppliers (small to large) to do business with us.

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- 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**

- 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.
- 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.
- Consider suppliers environmental sustainability progress and values

**4. Get the best deal for everyone**

- 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. Consider the life-cycle of products
- 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**

- 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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**7.2 Government Procurement Charter**

The New Zealand government directs agencies to:

- a. 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.
- b. 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.
- c. Look for new and innovative solutions. Make sure you don't overprescribe the technical requirements of a procurement and give businesses the opportunity to demonstrate their expertise.
- d. 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.
- e. 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.
- f. 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.
- g. 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.
- h. [Rule 12 Opt Out](#)
- i. Waikato DHB (and other public sector agencies) has been **directed** by the Minister of State Services and Minister of Finance under section 107 of the Crown Entities Act 2004 to comply with the Rules. The funding agreement between the Ministry of Health and Waikato DHB also requires compliance with the Rules.
- j. The Rules apply to any goods or services purchased by Waikato DHB if the value of those goods/services over the life of the contract is \$100,000 or more.
- k. Rule 12 of the Rules enables agencies to opt-out of applying some of the Rules in certain circumstances, except for Rules 12.4 and 12.5.

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- l. The “opt-out” circumstances are set out in Rule 12.3. The most relevant “opt-out” for Waikato DHB is set out in Rule 12.3(k). This allows the DHB to ‘opt-out’ of applying the Rules when it is purchasing “health” and “welfare” services.
- m. Specific definitions and examples of “health” and “welfare” services are provided in the Rules - but they do not include an exhaustive list.
- n. If it is unclear in any case whether an activity falls within the scope of Rule 12.3(k), it is helpful to refer to the following references in the [UN provisional central product classification](#):
- o. Procurement of public health services (CPC Prov. 931, including 9311, 9312 and 9319);
- p. Procurement of welfare services (CPC Prov. 933 and 913).
- q. This is because many of the terms of the Rules are based on the [WTO Agreement on Government Procurement 2012](#). New Zealand has agreed a specific [annex](#) to this agreement where it exempted the above services from its requirements by reference to the above CPC Prov. numbers.
- r. Generally speaking services purchased through the Ministry of Health’s Sector Services will fall within the scope of “opt-out” services.
- s. The decision to apply the “opt-out” in Rule 12 in any case should be made for sound reasons in an open and transparent basis. The decision should be recorded in a procurement exemption.
- t. Even where relying on a valid opt-out, the Rules require that the procurement should be conducted in accordance with the Principles of Government Procurement and other good practice guidance. It should also aim to achieve the best value for money over the life of the contract, which isn’t always the cheapest price. Furthermore, Rules 12.4 and 12.5 provide that the following provisions of the Rules still apply:
  - o Rule 4 – Protection of Suppliers’ information
  - o Rule 16 – Broader Outcomes
  - o Rule 22 – Significant Procurement Plans (if relevant)
  - o Rule 49 – Debriefing suppliers (if (where relevant))
  - o Rule 50 – Supplier complaints
  - o Rule 51 – Prompt payment
  - o Rule 52 – Maintaining records
  - o Rule 54 – Audit
  - o Rule 58 – All of Government contracts (if relevant)
  - o Rule 59 – Syndicated contracts (if relevant)
  - o Rule 60 – Common capability contracts (if relevant)
  - o Rule 63 – Intellectual property (where relevant)
  - o Rule 64 – Infrastructure (where relevant)

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- Rule 65 - Business cases and investment decisions (where relevant)
- Rule 66 – Investment Reviews (where relevant)
- Rule 67 – Timber and wood products (where relevant)
- Rule 68 – Employee transfer costs (where relevant).

**8 Legislative Requirements**

Relevant laws include, and are not limited to, Public Finance Act 1989, Commerce Act 1986, State Sector Act 1989, Crown Entities Act 2004. Specific considerations are now detailed. In addition, this policy has outlined where procurements require legal advice/input.

**8.1 State Services Commission Code of Conduct**

All Staff must comply with the State Services Commission’s Standards of Integrity and Conduct when employed by Waikato DHB, including when conducting any activities relating to a Procurement exercise. This code of conduct issued under the State Sector Act 1988 requires, in summary, Staff to be fair, impartial, responsible and trustworthy when working for the DHB.

**8.2 Commerce Act Considerations**

In order to promote competition, the Commerce Act 1986 prohibits a number of anti-competitive practices. Entering into various contracts or arrangements may, without any intention, cause Waikato DHB to behave in one or more ways the Act regards as anti-competitive. Particular care shall be taken where Waikato DHB is directly involved in regional and national procurement activities.

When entering into contractual and other arrangements, Waikato DHB must ensure that it does not:

- a. Taking advantage of market power (section 36)
  - i) Where Waikato DHB has a substantial degree of market power it cannot take advantage of that power for the purposes of:
  - ii) restricting the entry of a person or entity into a market; or
  - iii) preventing or deterring a person or entity from engaging in competitive conduct in a market; or
  - iv) eliminating a person or entity from a market.

- b. Substantially lessen competition (section 27)

Waikato DHB cannot enter into contracts or arrangements or arrive at an understanding that has the purpose or is likely to have the effect of substantially lessening competition in a market.

- c. Exclude competitors (section 29)

Waikato DHB cannot:

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- i) enter a contract or arrangement or come to an understanding with another party or parties, where two or more of the parties (including the Waikato DHB) are in competition with each other, for the purpose of preventing or restricting the supply of goods or services to, or the acquisition of goods or services from, any person or entity or class of persons or entities (target person or entity); and
- ii) the target person or entity is in competition with at least one or more of the parties to the contract, arrangement or understanding.

d. Price fixing (section 30)

Waikato DHB cannot enter into a contract, arrangement or understanding with a person or entity for the purpose of, or having the effect or likely effect of, fixing, controlling or maintaining the price for goods or services or any discount, allowance, rebate or credit in relation to goods and services that are:

- i) supplied or acquired by the parties to the contract, arrangement or understanding; or
- ii) resupplied by persons to whom the goods are supplied by those parties.

e. Resale price maintenance (sections 37 and 38)

Waikato DHB cannot supply goods for on sale on the condition that they are on sold for a specific price, or sold for no less than a particular price or with a discount requirement or prohibition.

**8.3 Financial Markets Conduct Act**

Individuals involved in procurement may deal with companies that are listed on the New Zealand Stock Exchange. If individuals involved in procurement receive information in confidence from a listed company during a procurement process that would be likely to materially affect the price of the securities if it were publicly known, those individuals involved in procurement become insiders for the purposes of the Financial Markets Conduct Act 2013. As an “insider” individuals involved in procurement will then be prohibited from buying securities or obtaining other benefits where the inside information gives them an advantage.

**8.4 Fair Trading Act**

Misrepresentation or deceptive conduct in trade is prohibited by the Fair Trading Act 1986. Staff must ensure that all information to potential suppliers in a procurement process is accurate and not misleading.

**8.5 Record Keeping**

Clear records of a procurement process must be kept on file to comply with the Public Records Act 2005 and to provide a clear audit trail so that staff, audit and legal advisors are able to understand the background and rationale of procurement decisions to ensure transparency and accountability.

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### 8.6 Health and Safety

Staff must take all reasonably practicable steps to ensure contractors/consultants and their employees are not harmed while doing work on behalf of Waikato DHB. All contractors/consultants/suppliers must also comply with the requirements of the Health and Safety at Work Act 2015 when doing work for Waikato DHB.

### 8.7 Official Information Act

Waikato DHB is subject to the Official Information Act. In a procurement context, be aware that all records of the procurement and contract (including email communications, meeting records, etc.) could be subject to an Official Information Act request and made publicly available. Confidentiality and commercial sensitivity will not always prevent the release of information under the Official Information Act. See the Legal Services page on the Intranet for more information.

## 9 Associated Documents

### 9.1 Associated Waikato DHB Documents

- Waikato DHB [Assets and Equipment](#) policy (1839)
- Waikato DHB [Capital Expenditure](#) policy (0034)
- Waikato DHB [Conflict of Interest](#) policy (0006)
- Waikato DHB [Corporate Records Management](#) policy (0905)
- Waikato DHB [Delegations of Authority](#) policy (2175)
- Waikato DHB [Fraud](#) policy (3274)
- Waikato DHB [Gifts, Giving and Receiving](#) policy (1829)
- Waikato DHB [Recruitment and Selection](#) policy (0021)
- Waikato DHB [Risk Management](#) policy (0118)
- Waikato DHB [Sponsorship](#) policy (0122)

### 9.2 References

- Ministry of Health Operational Policy Framework

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**Appendix A – Steps and Rules for Conducting a Competitive Procurement**

1. This Appendix contains key steps and rules to follow when carrying out a competitive procurement process at Waikato DHB (whether open advertisement or obtaining three or more bids/quotes).

**Key Steps**

2. Once it is established that a competitive Procurement is necessary, the following steps should occur:
  - a. consult with the Procurement team;
  - b. Procurement Strategy Selection
  - c. appoint the person responsible for managing the procurement;
  - d. prepare a procurement plan;
  - e. establish the procurement team (if scale warrants a team). Consideration will be given to Te Puna Oranga involvement an upholding Waikato DHB’s commitment to be fair to all suppliers, and seek opportunities to involve New Zealand businesses, including Maori, Pasifika and regional businesses and social enterprises ;
  - f. create a procurement file; and
  - g. obtain conflict of interest and confidentiality declarations from **any** people involved in the process at all levels of Waikato DHB, including consultants/contractors.

**Selecting a Procurement Strategy**

3. The strategy for a Procurement must assess market conditions and Waikato DHB’s business needs in the short and long term, and clearly document the rationale for the proposed procurement approach. This forms a key part of the procurement planning phase of a procurement project.
4. When deciding on a strategy, the Procurement Specialist will consider:
  - a. the value and risk of the goods and services, including supply continuity risk;
  - b. the availability of the goods and services;
  - c. any hazards or risks that the goods or services can introduce to the work environment;
  - d. the importance of the goods and services to Waikato DHB (fit with strategic and business planning goals);
  - e. the characteristics of the market and whether Waikato DHB wants to develop or influence the market, such as
    - i. requirement to ensure the existence of a viable supply market, both now and in the future;
    - ii. size, number of players, monopoly, nothing in NZ yet; and
    - iii. Waikato DHB’s strength in the marketplace
  - f. the costs (both of the initial procurement and of ongoing transactions);
  - g. any existing regional or national arrangements (e.g. consider All-of-Government, New Zealand Health Partnerships and PHARMAC ‘contracts); and
  - h. any relevant government policy objectives.
5. The strategy may include the establishment of a panel of suppliers. See Rule 57 of the Rules for detailed guidance on panel contracts.

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**Risk Management**

6. As with any project, risk identification and management is a key part of the entire procurement lifecycle, from the procurement process to contract management. It should start early in the planning phase and be actively considered until the end of the contract.
7. The level of risk (and the value of the procurement) will also determine the levels of effort, formality, documentation and approval that are required.
8. Risks and how they are to be managed must be documented. Use the Waikato DHB’s Risk Analysis Tools (available on the Quality and Patient Safety page of the intranet) to assist with this.
9. Contact the Procurement Team for assistance with assessing procurement- and contract –related risks. A risk register template, which has useful examples of procurement specific risks, is available at on [www.procurement.govt.nz](http://www.procurement.govt.nz)
10. The completed risk register or a summary of the identified risks should be included in the procurement plan.

**Preparing a Procurement Plan**

11. Procurement planning brings together the strategy for the procurement and prior analysis into an operational plan to carry out the procurement. This must consider Maori equity and Maori preference.
12. A procurement plan is required for Procurements which are over \$100,000 in total value. For Procurements under \$100,000 in total value, the requirement to complete a procurement plan is discretionary. However, records of the procurement process must be kept.
13. Use Waikato DHB’s Procurement Plan template to record the procurement planning. Consider using Waikato DHB’s Procurement Plan for Significant Procurement template for procurement which is complex, of higher value (generally over \$500,000 in total value), high risk or high profile.
14. The procurement plan must be approved as per Delegations of Authority for the level of expenditure before any approach to the market commences. Waikato DHB’s Procurement Plan templates contain guidance on the appropriate content of a procurement plan.

**Independent Oversight**

15. For particularly high value, high risk procurement, consider engaging an independent adviser (probity auditor) to ensure it is in line with accepted standards. An independent adviser should be engaged early in the process.

**Specifications**

16. Specifications must be clearly defined before the procurement process commences. A specification must contain a clear, concise, logical, accurate and sufficiently detailed description of what is being purchased. When developing specifications, also consider compatibility with existing goods or services.
17. There are different types of specifications including:
  - a. **Functional specifications:** These describe what is to be achieved from the process or the desired outcome under any contract;
  - b. **Performance-orientated specifications:** These describe the performance parameters required of the goods or services but not the methods used to achieve them;
  - c. **Technical specifications:** These describe the physical characteristics of the goods in a prescriptive manner. See [Rule 27](#) of the Rules for detailed guidance on technical specifications; and
  - d. **Combination of the above.**
18. Care should be taken not to over or under specify the attributes and performance required to accomplish objectives as these actions may affect the quality or value for money achieved. A focus on objectives and outcomes encourages innovative solutions.

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**Evaluation Planning**

- 19. It is critical to carefully plan and document the evaluation approach before approaching the market, as this approach must be followed to select the preferred supplier. Be sure that the process, evaluation model and evaluation criteria suit the procurement at hand and the outcome will be acceptable to the DHB.

**Evaluation Model**

- 20. An evaluation model is a tool to help the evaluation panel decide which submitter has the best capability to deliver the goods or services and provides the best value for money. There are a range of evaluation models, such as weighted attribute, Maori equity and lowest price conforming, each suited to different circumstances.
- 21. Waikato DHB may also include essential conditions (“pre-conditions”) about capacity or capability in its RFX. These are a tool to allow the DHB to do a “first cut” to eliminate suppliers who do not have the minimum capacity or capability to deliver the contract. Pre-conditions should be limited to critical areas such as legal capacity, Maori equity, financial capacity, commercial or operational capacity or capability to deliver, appropriate technical skills or expertise or relevant experience.
- 22. The Procurement Team will advise on which evaluation model is appropriate, tips and techniques and developing evaluation criteria and pre-conditions.
- 23. The evaluation model must be selected and approved at the procurement planning stage and the reason for choosing that particular model documented. The evaluation model (including an indication of the relative importance of the evaluation criteria, such as Maori business) must then be set out in the competitive process documents, so submitters know how the submission will be evaluated.

**Evaluation Panel**

- 24. Select the evaluation panel at the procurement planning stage. Panel members should collectively provide the necessary expertise to assess the submissions. It is recommended that the minimum number of members is three. However, the size and membership of the team will depend on the value, complexity and risk of the procurement. Remember to obtain conflict of interest and confidentiality declarations as soon as the panel is selected and keep these on the procurement file.

**Evaluation Plan**

- 25. An evaluation plan records the above information, as well as the process to be used for evaluation and how the evaluation panel will operate. The evaluation plan forms part of Waikato DHB’s Procurement Plan templates, and is approved as part of the procurement plan approval process.

**Clinical Evaluation**

- 26. If the Procurement is for Medical Devices, a clinical assessment and acceptance process must occur before the product proceeds any further in the procurement process. Approval and confirmation of Standards and Regulatory compliance including from all relevant specialist staff, will be required (e.g. Biomedical Engineering, Infection Control, Health and Safety, Information Services). Depending on the device concerned and number of submitters, the clinical evaluation process can take some months – it is important to allow for this time in your procurement planning. Contact the Clinical Product Supply Specialist for information on this process.
- 27. Further information on evaluation can be found in Waikato DHB’s Evaluation Guide located on the Waikato DHB Intranet.

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## Procurement and Contracts

### Planning the Contract

28. Planning of the contract should start early in the procurement process, as the proposed contract will be provided to submitters as part of the competitive process documents.
29. Waikato DHB's approved contract templates are available from Legal Services. These contain standard terms and conditions to protect Waikato DHB's contractual position.
30. Review and approval by Legal Services is required for:
  - a. any contract with a total value over \$100,000 or which is considered high or extreme risk; and
  - b. the use of any other form of contract and any changes to standard terms and conditions.

### Contract Insurances

31. Consider whether the standard insurance requirements in the contract template you plan to use are appropriate. Additional types or increased levels of insurance may be required. Consult with Legal Services, Finance or a Procurement Specialists and they will liaise with Waikato DHB's insurance broker can provide advice.

### Rebates

32. Note that when identifying the commercial terms for a particular contract, Waikato DHB policy is to avoid agreeing to rebates (e.g. refunds for purchasing certain volumes). This is primarily due to the difficulties in administering them when other more efficient mechanisms are available to achieve savings, such as agreeing to a discounted rate from the outset. If there is no other option to obtain the discounted rates, the Executive Director Finance, Procurement and Supply Chain must be consulted and approve.

## Conducting a Competitive Procurement Process

### Methods for Requesting Offers (RFX)

33. RFX is a term commonly used in procurement, and throughout this document, to mean any one of the competitive processes that may be used to shortlist or select suppliers

#### *Request for Information (RFI)*

34. A 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 are available. It may precede any of the following RFX methods, but cannot be used to award a contract.

#### *Request for Quotations (RFQ)*

35. A request for written quotations (RFQ) is an efficient means of procuring goods or services of set or standard specification of low value and low risk. It allows quick determination of availability, price and terms of supply. There must be a clear understanding of the goods or services to be procured.
36. Generally RFQ should only be sought where the Waikato DHB has an established panel of suppliers.

#### *Registration of Interest (ROI)*

37. A registration of interest (ROI) is generally used to request information from suppliers that may be used to identify and shortlist potential suppliers before seeking tenders or proposals. Usually the information sought is high level and specific. It may be appropriate where:
  - a. the cost of market testing and establishing a contract are high; or
  - b. there are large or uncertain numbers of suppliers.

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38. As multi-stage processes are time consuming and expensive for all parties, they should only be used for high value, complex and/or high risk procurement.

### *Request for Proposals (RFP)*

39. A request for proposals (RFP) is a formal means of seeking proposals for goods or services where the outputs and outcomes are important, not the process the supplier follows to deliver them. Usually the RFP allows scope for variety and innovation, and this method is often used to seek a solution to a problem or a process.
40. Further negotiation with the preferred submitter is usually anticipated before entering into a formal contract.

### *Request for Tenders (RFT)*

41. A request for tenders (RFT) is a formal means of seeking tenders to provide goods or services. It must contain highly prescribed specifications of what is required and the manner in which it will be achieved, with little room for flexibility or innovation.
42. The structure and content of the competitive process documents will depend on the complexity of goods or services being procured. At a minimum the competitive process documents will include:
- the main RFQ/ROI/RFP/RFT document containing the terms under which the process will operate, the evaluation model and other key details. These must be followed;
  - the specifications, quantities, timeframes for delivery and performance measures;
  - the indicative timeframe for the procurement process; and
  - the proposed contract or at a minimum the key contractual and commercial terms.
43. Procurement Team and Legal Services review and approval is required prior to issue for all complex, high risk or high profile procurements with a total value over \$100,000. For procurements that are low risk with a value of below \$100,000 the Procurement Team will seek Legal Services input if required.
44. A register (Waikato DHB's Register of RFX Issued and Offers Received template) must be kept of all suppliers who request a copy of the competitive process documents. Suppliers who intend to make a submission must provide a nominated contact person, email address, fax, phone number and address for formal communications to be sent to during the competitive process.

### **Open Advertising**

45. Where a publicly advertised competitive process (an "open" process) is required, the type and extent of advertising should be appropriate for the target market and in keeping with the value and risk associated with the goods or services. Costs should not outweigh any expected benefits.
46. All open processes **must** be advertised on the Government Electronic Tendering Service (GETS) for a minimum of 13 working days before the closing date for RFQ and a minimum of 25 working days for RFT/RFP. The submission period must be appropriate to the nature and complexity of the procurement and give interested suppliers enough time to prepare a submission. See [Rule 34](#) of the Rules for allowable exceptions.

### **Changes, Communication and Dealing with Submitters**

47. One contact person should be identified for submitters to request additional information from or to clarify conflicts with.
48. Any changes or clarifications must be communicated to all submitters at the same time, with enough time to enable all submitters to benefit. If Waikato DHB is unable to promptly reply to a question, it should consider extending the deadline for responses.
49. Changes to process or specifications (i.e. the content of the RFX document) should also be published on GETS. A change in the process or the specifications must not benefit one submitter over another and Waikato DHB must ensure there is no actual or perceived bias towards a submitter.

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50. Any information given to one submitter must be given to all other submitters, unless the question is considered:
- purely administrative in nature and relates only to the submitter who has made the request (e.g. clarification on how to complete the pricing schedule). Consideration should still be given as to whether all submitters need to be provided the information; or
  - commercial in confidence to the submitter who has made the request for information. Commercial in confidence is confidential information which is provided for a particular purpose that is not to be used for any other purpose. If Waikato DHB disagrees that the request is commercial in confidence, Waikato DHB must advise the submitter and give them the opportunity to withdraw the request before the question and answer is circulated to all submitters.
51. All submitters must be treated equally and have the same access to information. For example, if one submitter requests a site visit, all submitters must be given the opportunity for a site visit within the same timeframe.

### Current Suppliers

52. Current suppliers may be perceived to have an advantage with their knowledge of Waikato DHB and its staff. You should not discuss the procurement with current suppliers unless the discussion is part of the formal procurement process.

### Receipt of Submissions

53. Submissions for RFXs may be received in hardcopy and/or softcopy.
54. The RFXs must be opened with at least two Waikato DHB staff present, with one acting as a witness. The date and time of receipt must be recorded and Waikato DHB's Register of RFX Issued and Offers Received template must be completed and witnessed.
55. Submissions must be securely stored until opened and throughout the process.

### Two Envelope RFX Processes

56. If the RFX requires price and non-price submissions to be delivered in separate envelopes, a person who is not an evaluator must check the non-price submissions for pricing information and remove any pricing information found. This must occur before distribution of the non-price submissions to the evaluation panel. The price submissions must be stored securely and unopened until the completion of the non-price evaluation.

### Late Submissions

57. The Waikato DHB may at its discretion consider late submissions, where there is no possibility of unfair advantage and the late submitter has no knowledge of other submissions.
58. For submissions received after the closing date and time, the date and time of receipt must be noted on the envelope and marked as late. Late submissions which are not accepted must be returned unopened to the submitter with a letter advising that the late submission is not accepted.

### Evaluation

59. The evaluation process ensures that:
- Waikato DHB carefully considers each submission on an equal basis against the evaluation criteria;
  - the preferred submitter has the capacity and capability to meet the requirements of the proposed contract; and

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- c. the cost of change is considered.
- 60. Copies of submissions, scoring scale and evaluation forms must be distributed to each evaluation panel member. It is important to re-confirm conflict of interest declarations at this stage, now that panel members are aware of the submitters involved.
- 61. Staff must keep a record of the evaluation process – at a minimum the panel’s recommendation and the scores awarded to each submitter and the reasons for the scores. This information can be recorded on Waikato DHB’s Evaluation Template and evaluation spreadsheets developed for this purpose. For very small and less complex RFQ processes, the reasons for the selection may be noted on the relevant procurement documents.
- 62. Before recommending the preferred submitter and before an agreement being negotiated, the evaluation panel must also consider any conflicts of interest (potential, actual or perceived) declared in the submission provided. This involves careful judgement, and it may be useful to contact Legal Services for advice.

**No preferences based on Location**

- 63. The Rules are clear that no preference should be granted to any supplier based on their place of business or location.

**Presentations**

- 64. Waikato DHB may, as part of the evaluation process, invite some or all submitters to make presentations to expand or clarify their submissions. The process for this, who will be invited (that is - all submitters or short-listed submitters only) and the impact on evaluation scoring must be set out in the competitive process documents. All submitters making a presentation must be treated equally, such as the same preparation time and length of time for presentation.

**Due Diligence**

- 65. Due diligence, as a minimum, confirms the financial ability, technical ability, and capacity of the submitter and its subcontractors to fulfil the contract. Professional legal and financial input is often required.
- 66. Due diligence is generally necessary only for high risk, high value or complex procurement, where the expected benefits outweigh the costs and the risks of performance failure are high. It helps ensure the submitter has the capacity and stability to fulfil the contract.
- 67. Submitters should be informed of the due diligence process in the competitive process documents and which activities we want to complete and when you want to complete them, this must be specified in our tender documents.
- 68. If you uncover information that might influence the outcome of the evaluation process, provide this information to the evaluation panel so they can update scoring for the applicable supplier. If the issues identified are serious, you must consider excluding the supplier under Rule 44 of the Government Procurement Rules, or not awarding the contract to the supplier.
- 69. If you identify issues but you think they aren’t serious, consider:
  - what additional information you need to confirm whether or not the issues are serious
  - what you can do to avoid or mitigate any issues being realised and impacting your procurement.

All due diligence actions should be documented.

**Negotiations**

- 70. Negotiations may be appropriate to clarify the contractual obligations and how the contract will operate, and to achieve a reduction in costs. It is important not to focus solely on price in negotiations, as **all**

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aspects of the contract must be agreed. E.g. a supplier may offer a good price but also ask for an indemnity which Waikato DHB is unlikely to accept.

- 71. As a general rule, negotiations first occur with the highest ranked submitter, and if unsuccessful, then with the next ranked submitter and so on.
- 72. Negotiations should be well planned and roles and tasks assigned to those people who will participate in the negotiation. The final outcome of negotiations should be recorded in writing and be included in the contract.

**Awarding the Contract**

- 73. The person who awards contract must:
  - a. hold the appropriate Delegation of Authority for the level and type of expenditure;
  - b. be provided sufficient information to understand the evaluation process and the rationale for the recommendation of the preferred submitter. Waikato DHB’s Recommendation Report template must be used and the amount of detail provided must be commensurate with the size, complexity of the procurement and the level of risk involved;
  - c. complete a conflict of interest and confidentiality declaration; and
  - d. if they reject the recommendation, document the reason and ensure the reason is legitimate.

**Signing the Contract**

- 74. After the contract has been awarded, you must ensure the contract is signed by a person holding the appropriate Delegation of Authority. Waikato DHBs Request Contract Approval Form must be signed by the relevant DHB staff before the contract can be signed by the DHB or the supplier.
- 75. Note that Legal Services review is required for:
  - a. Any contract with a total value over \$100,000 or which is considered high or extreme risk; and
  - b. The use of any other form of contract and any changes to standard terms and conditions.

**Contract Database and Storage**

- 76. Signed original contracts and the signed Recommendation Report for the contract must be provided to Procurement Team for scanning and to update the Waikato DHB contracts database. Originals will then be passed to Legal Services for secure storage. It is recommended that contract managers make a photocopy and electronic scan for their own records.

**Procurement Records**

- 77. Soft and hard copies of the RFX process, including successful and unsuccessful submissions, must be kept for at least three years from the date the contract was signed. Refer to Waikato DHB’s Corporate Records Management Policy and General Disposal Authority for guidance on how long to keep different types of procurement records and how to dispose of them.

**Submitter Notifications and Debriefs**

- 78. Unsuccessful submitters must be formally notified in writing of the outcome of the process and offered a debrief.
- 79. The nominated Procurement Specialist must carefully manage debriefs to ensure:
  - a. only competent people carry out debriefs;

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- b. commercially sensitive information that relates to other submissions is not disclosed;
  - c. the sensitivity of any information likely to be communicated (such as the identity of other submitters) is carefully assessed prior to the debrief;
  - d. the submitter does not use the debrief process to try to change the decision or re-open the process;
  - e. submitters are informed that only their submission will be discussed; and
  - f. a balanced view is provided of the strengths and weaknesses of the submission against the evaluation criteria or any pre-conditions and how the submitter can improve future responses.
80. The debrief should also explain the relative advantages of the successful proposal and address the supplier's concerns and questions. You can debrief suppliers by phone, email, letter or at a meeting. The method you choose should reflect the nature and complexity of the procurement.

**Supplier Complaints**

81. Suppliers have the right to complain if they have concerns about a procurement process or feel they have been treated unfairly. The nominated Procurement Specialist must treat supplier complaints seriously, promptly and impartially, and try to resolve them in good faith.

**Reviews**

82. Reviews can occur at different stages in the procurement and contract, and even after the contract has been completed. Deciding what to review and when to review should be part of your procurement plan. The type and depth of review will depend on the nature, scope, value, level of risk and complexity of the procurement and contract.
83. Different types of review include options such as:
- a. On award of the contract;
  - b. During the contract implementation; and
  - c. Post implementation, undertaken when there has been time to demonstrate the business benefits of a new procurement initiative.
84. Useful guidance on the different types of review and what to consider can be found in the [MBIE Guide on Conducting Reviews](#).