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# Procurement Policy

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Buller District Council's rules for:

- planning procurement;
- approaching the market; and
- contracting.

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# Introduction

The Buller District Council (BDC) Procurement Policy was developed from the Ministry of Business Innovation and Employment – Government Rules of Sourcing and the Office of the Auditor General’s Procurement Guidelines for Public Entities.

BDC rules for planning procurement, approaching the market and contracting, represent the Council’s standards of good practice for the procurement of goods and services.

Council spends millions of dollars every year buying a wide range of things, from lawn mowing services to public convenience upgrades, stationery and IT services to roading maintenance works. Public services are widely delivered by private businesses as suppliers, so choosing and managing these relationships well is critical to achieving the best results.

Council needs to attract creative, clever and commercial suppliers to help deliver innovative and effective solutions to get the best value for the ratepayers of the Buller District - which isn’t always the cheapest price. To be an attractive customer, it is essential that Council fosters productive relationships with suppliers.

The BDC rules for planning procurement, approaching the market and contracting, provide the foundation of best practice procurement and will demonstrate that Council is open, transparent and accountable. The rules help to design processes that are robust, and build confidence in Council procurement practices. This will build greater public trust and confidence that Council spending is well-planned and well-executed.

Smart public procurement will deliver better public services and provide value for money to the ratepayers of the Buller District.

# Context

## What are the Rules?

Buller District Council (BDC) Procurement Policy 2019 replaces the BDC Procurement Policy 20/05/2010.

## Focus on procurement

The term 'procurement' covers all aspects of acquiring and delivering goods, services and works (eg renewal and new construction). 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 the asset. These Rules focus mainly on the process of procurement which covers planning the procurement, market research, approaching the market, evaluating responses, negotiating and awarding the contract.

## Changes

The purpose of the rules is to:

- Provide a plain English format that is easy for BDC and suppliers to use
- Modernise the BDC's approach to procurement to align with good national practice and provide better value for the ratepayers of the Buller District
- Ensure BDC uses more strategic approaches and commercial expertise when procuring
- Encourage BDC to engage early with the market to stimulate competition and innovation, and work with suppliers to develop better solutions

## Application to Council

BDC is required to apply the Rules and will be audited for its compliance with them. Suppliers have a right to complain if they think Council has not complied with them. The Rules are a compulsory requirement for Council when procuring goods or services unless varied by formal Council resolution.

## How to use the Rules

The Rules contain headers and boxes with more information, definitions, links to guides tools and templates and examples. Information in these boxes does not form part of the Rules. It is there to assist with interpretation and to give greater context for the reader.

## Icons

The following icons are used to show supplementary information:



### Example



### Definition



### More information



### Guides, tools and templates

# Chapter 1

## Getting Started

# What's so special about Council procurement?

Delivering good public services to the Buller District starts with good procurement.

How well money is spent has a direct impact on the quality of services ratepayers' experience. It also reflects the district council's efficiency and effectiveness. It can provide opportunities to increase competition and productivity that lead to innovation and contribute to greater economic growth.

## Why have rules?

### To strengthen accountability

Local authorities must account for how they spend ratepayers' money. The rules, along with the Office of the Auditor-General's (OAG's) Procurement Guidelines for Public Entities, provide a framework that promotes responsible spending when purchasing goods, services, and works. This framework supports proactively managing procurement process and delivery risks.

The rules also establish processes that are consistent and predictable, making it easier for the Council and suppliers to engage with each other. The Council must also be aware of, and comply with the common law of contract, public law and, where appropriate, commercial law obligations.



### Examples of commercial law legislation:

- Contract and Commercial Law Act 2017
- Commerce Act 1986
- Fair Trading Act 1986
- Minors' Contracts Act 1969
- Construction Contracts Act 2002
- Sale of Goods (United Nations Convention) Act 1994

### Examples of public law legislation:

- Public Finance Act 1989
- Public Audit Act 2001
- Public Records Act 2005
- Official Information Act 1982
- State Sector Act 1988
- Ombudsmen Act 1975
- Public Bodies Contracts Act 1959

# Why have rules?

To promote our values: We Care, Future Focussed, Integrity, Community Driven, One Team. Buller District Council is committed to open, transparent and competitive procurement that:

- delivers best value for money (which isn't necessarily the cheapest price)
- does not discriminate against suppliers (whether local, national or international),
- meets agreed OAG standards.

The Rules reflect these values and standards.

## To encourage commercial practice

Early market engagement and continued open dialogue with suppliers are essential to the results that can be achieved. There are sound commercial reasons why building stronger relationships with business is important. The Rules aim to encourage better commercial practice by promoting these types of behaviours and achieving greater value for money.



## Value for money over the whole-of-life

Council publishes a Request for Tender to supply steel mesh fencing. It does not specify any quality standards and accepts the lowest price bid.

The fencing is installed. Within 1 year it begins to rust, within 3 years it is beginning to fail, and by 6 years it needs to be replaced.

Had Council specified quality standards, it could have assessed bids based on best value for money over the whole of the life of the product. There was another supplier whose price was slightly higher, but whose fencing carried a 15-year warranty. Despite the higher initial cost, this supplier's product would have represented the best value for money over the whole of-life.

## To ensure maximum value for money expenditure

As a medium sized, rural local authority, BDC needs to ensure the best spend of every ratepayer dollar it is entrusted with. Following the Rules are essential:

- to provide open and fair competition that supports innovation and helps create a competitive, productive market place in the Buller District.
- for Council to be valued as a desirable principle / client organisation – that demonstrates professional practice and has a reputation for integrity.



It is important that the longer-term impacts of procurement decisions are considered and not just the immediate results (eg will the decision substantially reduce competition or create a monopoly in the future market place?).



## Definition - Value for money

Value for money isn't always the cheapest price. Value for money means using resources effectively, economically, and without waste, and taking into account:

- the total costs and benefits of a procurement (total cost of ownership), and
- its contribution to the results you are trying to achieve.

The principle of value for money is about getting the best possible outcome over the whole-of-life of the goods, services or works.

Selecting the most appropriate procurement process that is proportionate to the value, risk and complexity of the procurement will help achieve value for money.

Good procurement is about being risk aware, not necessarily risk averse.

# How do the rules fit with other guidance?

The Rules are only one part of what makes up good procurement practice. The framework that supports good practice consists of the Procurement Policy, the Rules contained therein and good practice Guidance.

## What's good procurement?

### Public value

Councils that maximise their return on spending will achieve the best possible results for ratepayers. Good procurement means better public value.

### Policy framework

Council procurement is based on Policy, Rules and good practice Guidance. Collectively, these provide a broad framework that supports accountability for spending, sound business practice and better results.

Good practice isn't just mechanically applying the rules. It's about developing a strong understanding of all of the aspects of the procurement lifecycle and skilfully applying these to deliver the best results. While compliance with the rules is still necessary, the process should be designed proportionate to the value, risk and complexity of the procurement. It's about applying sound commercial judgement to achieve the best value for money, which isn't always the cheapest price, and drive innovation and performance.

Understanding suppliers and the market is part of the careful planning essential to developing the right approach to market. All procurement covered by the rules should be for programmes of work and projects budgeted for in a Long Term Plan (LTP) or Annual Plan (AP). Unspecified or unbudgeted projects must be supported by a robust business case and

procurement plan that's level of detail reflects the size, value and complexity of the procurement.

Procurement also covers proactively managing supplier and other key stakeholder relationships throughout the sourcing process and for the duration of the contract. This embraces continuing to develop the supplier and driving value for money through on-going efficiency gains.

Staff must also take into account the Council Sensitive Expenditure Policy and act within the framework of the Delegations Policy at all times.

The council Fraud Policy sets a clear framework for staff to operate within to ensure the integrity of staff and the council when working within procurement activities.

### Principles

The principles of the OAG procurement guidelines apply to all local authorities and provide the overarching values. The Principles apply even if the rules do not. Council can use the principles for guidance and to help make good procurement decisions.



Examples of **guidance** on government procurement practice include:

- Office of the Auditor-General's Procurement Guidance for Public Entities [www.oag.govt.nz](http://www.oag.govt.nz)

# The five principles of Buller District Council procurement

The Council's five Principles are the foundations for good procurement. The Principles must be reflected in everyday practice. Everyone engaged in procurement must understand and know how to apply the Principles.

## **Principle 1: Plan and manage for great results**

- Identify what is needed 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 Council wants and keep talking.
- Take the time to understand the market and Councils' 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).

## **Principle 2: Be fair to all suppliers**

- Create competition and encourage capable suppliers to respond.
- Treat all suppliers equally - don't discriminate.
- Make it easy for all suppliers (small to large) to do business with Council. Be open to subcontracting opportunities in big projects.
- Clearly explain how Council 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.

## **Principle 3: Get the right supplier**

- Be clear about what Council needs and how suppliers are assessed - don't string suppliers along. Choose the right supplier who can deliver what is needed, 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.

## **Principle 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. Encourage and be receptive to new ideas and ways of doing things - do not be too prescriptive. Take calculated risks and reward new ideas.
- Have clear performance measures - monitor and manage to make sure Council delivers great results. Work together with suppliers to make on-going savings and improvements.
- It is more than just agreeing the deal - be accountable for the results.

## **Principle 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.

# What values underpin the rules?

The Council's five Principles are the foundations for good procurement. The Principles must be reflected in everyday practice. Everyone engaged in procurement must understand and know how to apply the Principles.

## Rule 1

### Principles

1. Council must have policies in place that incorporate the five Principles of local authority procurement. The Principles apply to all procurement.
2. Council must make sure that:
  - a. all staff engaged in procurement have been trained in the five Principles of procurement
  - b. its procurement practices reflect the five Principles
  - c. it is able to show how it has used sound research to plan an appropriate approach to market strategy that is proportionate to the nature, risk, value and complexity of each procurement.



### Procurement planning

Good procurement starts with good planning. Knowing what Council needs to buy and understanding the market makes Council a "smart buyer".

Before choosing a procurement process, think about the nature of the goods, services or works needed, and assess the best way to approach the market. Ensure that:

- all suppliers get fair notice of the contract opportunity
- the process encourages competition
- suppliers have enough time to respond.

Decisions should be based on a clear understanding of Council's needs and an appropriate level of market research. It's important that the process chosen reflects the value and complexity of the procurement. Don't overcomplicate a straightforward tender simply because the Rules apply.

# What values underpin the rules?

There is no discrimination and no favouritism in Council's procurement. This means treating all suppliers equally.

## Rule 2

### Integrity

1. Council must have in place policies that safeguard the integrity of its procurement activities and processes. The policies must require that:
  - a. Council and all staff involved in procurement can justify their procurement decisions
  - b. those involved in procurement decisions stay impartial
  - c. procurement processes are fair, transparent and reasonable
  - d. all staff involved in procurement act responsibly, lawfully and with integrity.
  - e. The council Purchase Order Policy must be followed when ordering work from a successful contractor following a procurement process.
2. Council must have policies in place that help all staff involved in procurement to identify, notify and manage conflicts of interest. Council must be able to show how it uses sound judgement to manage conflicts of interest.

## Rule 3

### Non-discrimination

1. All suppliers must be given an equal opportunity to bid for contracts. Council must treat suppliers from anywhere in the country no less favourably than local suppliers.
2. Procurement decisions must be based on the best value for money, which isn't always the cheapest price, over the whole-of-life of the goods, services or works.
3. Because of the geographical remoteness and cost of transport to the Buller District, Council must take into account the initial price difference and ongoing maintenance price differences associated with local suppliers when deciding what is the best value for money.
4. Suppliers must not be discriminated against because of:
  - a. the region the goods, services or works come from
  - b. their degree of foreign ownership or foreign business affiliations.

# Dealing with commercially sensitive information

Council often has access to sensitive information about a supplier's business. This could be new ideas or pricing structures. This information must be protected.

## Rule 4

### Protection of suppliers' information

1. Council must protect suppliers' confidential or commercially sensitive information. This includes information that could compromise fair competition between suppliers.
2. Council must not disclose confidential or commercially sensitive information unless:
  - a. the supplier has already agreed to it in writing, or
  - b. the disclosure is required by law (eg. under the Local Government Official Information and Meetings Act 1987), convention or Parliamentary or Cabinet Office practice, or
  - c. it is a limited disclosure expressly notified in a Notice of Procurement which suppliers have consented to by participating in the process.



**Commercially sensitive information** is information that, if disclosed, could prejudice a supplier's commercial interests. It includes:

- the design and content of a tender
- trade secrets and 'know how'
- new ideas
- innovative solutions
- intellectual property
- copyright
- pricing structures
- profit margins
- market strategies.

Council must understand what commercially sensitive information is and how to handle that information.

### Examples of prohibited disclosure of information include:

- disclosing commercially sensitive information to a supplier's competitor
- using or adopting an idea or solution without the supplier's agreement.

It is good practice to include instructions to suppliers to mark their responses, or the relevant parts of their responses, 'commercial in confidence'.

If, as part of the evaluation process, there is a need to share responses with other Councils or advisors, seek permission for such disclosure by making this a condition of participation in the Notice of Procurement.

# When do the rules apply?

The Rules apply for all Council procurement.

## Rule 5

### When the Rules apply - goods or services

1. The Rules apply:
  - a. to the procurement of all goods or services or renewal works, or a combination of goods or services or renewal works.
2. To estimate the maximum total estimated value (Rule 8) for goods or services or renewal works Council must take into account:
  - a. all related services (eg installation, training, servicing, management consultancy services)
  - b. all types of goods (eg operating consumables)
  - c. all subcontracted goods or services or works.
3. This Rule does not apply to goods, services or renewal works that are purchased for commercial resale



Disposals at the end of the useful life of a contract are not commercial goods, services or works purchased for resale. Disposals are not subject to these Rules.

## Rule 6

### When the Rules apply - new construction works

The Rules apply to the procurement of all goods or services or works for new construction works. 1 To estimate the maximum total estimated value (Rule 8) for new construction works Council must take into account:

- a. all related services (eg design, architecture, engineering, quantity surveying, and management consultancy services)
- b. all types of goods (eg construction material, health and safety equipment)
- c. all phases of the construction through to completion
- d. all subcontracted goods, services and works.



### No 'salami slicing'

When dealing with new construction works, individual contracts for goods, services or works are deemed to be part of the whole and should be openly advertised unless there is good reason to separate parts of the contract/project. Where this occurs, the reasoning must be documented in advance of any procurement with segregation of components approved by the Chief Executive or relevant Group Manager.



In the context of the Rules, renewal works relate to the refurbishment of an existing building, road, bridge or dam. It covers renovating, repairing or extending.

It does not include replacing an existing construction as this is deemed to be new construction works.



An example of goods purchased for commercial resale could be items that the NBS Theatre purchases for resale in its shop.

# How to estimate the value of a procurement?

The rules apply if the value of a procurement meets or exceeds a certain value threshold. There are several things you need to know when you estimate the value of your procurement.

## Rule 7

### Estimating value

1. Council must estimate the total value of a procurement to determine whether it meets or exceeds the relevant value threshold. Council must act in good faith and use good judgement to estimate the value of a procurement. Council must include the estimated value in its business case or procurement plan. This estimate is referred to as the maximum total estimated value.
2. Council must consider the total value over the whole-of-life of the contract/s when estimating the procurement's maximum total estimated value. The estimate must include the value of all of the contracts that may result from the procurement.
3. The value is the total amount excluding GST.
4. Council cannot estimate the maximum total estimated value of a procurement without applying the Rules
5. When Council calculates the maximum total estimated value of a procurement, it must include everything required for the full delivery of the goods, services or works. This includes the value of:
  - a. options to purchase additional goods, services or works
  - b. options to extend the term of the contract
  - c. paying any premiums, fees or commissions to the supplier or a broker
  - d. any revenue streams a supplier receives e. any other form of remuneration or payment due to the supplier or to a third party or any interest payable.



### Estimating value

Even if the value of a procurement is less than the value threshold, Council is still expected to follow good procurement practice. This means applying the Principles and having regard to other good practice Guidance.

It is better to be cautious. If the estimated value is getting close to the value threshold (eg services valued at \$98,000), always consider using the next stage process i.e. three prices. After all, the calculation is only an estimate.



An example of revenue streams: a supplier receives tolls from a road built under a Public Private Partnership (PPP).

# Non-avoidance

Council must not intentionally avoid applying the Rules.

## Rule 8

### Non-avoidance

1. Council must not intentionally avoid applying the Rules when planning for, valuing or undertaking a procurement.
2. When calculating a procurement's maximum total estimated value (Rule 8), Council must not intentionally avoid applying the Rules by either:
  - a. deliberately dividing a procurement into separate parts without good reason
  - b. using a non-standard or alternative valuation method to lower the estimated value.

## Rule 9

### Types of contract

1. The Rules apply to all contract types, including:
  - a. when purchasing outright
  - b. purchasing through hire-purchase
  - c. when renting or leasing
  - d. where there is an option to buy
  - e. 'build-operate-own' type contracts (eg Public Private Partnerships (PPP))
  - f. contracts accessed through a third- party commercial supplier or broker.



### Third-party commercial supplier or broker

Council cannot avoid applying the Rules by purchasing through a third-party commercial supplier (eg GSB Supplycorp Ltd).

### Number of contracts

Council cannot split a procurement into smaller contracts to avoid applying the Rules. However, it may indicate in its Notice of Procurement the possibility, or its intention, that the procurement maybe let in separate lots. For example, having undertaken the evaluation of responses, it could consider 'chunking' the work into separate parts and awarding these to more than one supplier.

# Rule 10

## Opt-out of procurements

1. The following is the list of valid reasons to opt-out procurement rules:
  - a. Non-contractual arrangement: Any non-contractual arrangement (eg a Memorandum of Understanding between local authorities or with a government department) or any form of assistance including cooperative agreements.
  - b. Council to Council negotiated agreement: Any agreement negotiated directly with another local authority for the provision of goods or services. Where the agreement includes any component of externally sourced goods or services as part of the offering, Council must satisfy itself that the procurement policy, rules and principles of the partnering local authority are broadly in line with that of its own.
  - c. Technical / functional specialist: Where a supplier is deemed to provide a unique or specialist service that is specific to the needs of Council. This may include a service that is not available from any other supplier or a preferred service from a specific supplier based on Council's requirements e.g. a consultant to assist in a resource consent application process.
  - d. Proprietary technology: Where a supplier is the sole supplier and/or patent holder of a specific product that is required by Council. Council must be satisfied that the proprietary technology is the most appropriate for the needs of Council.
  - e. Land and buildings: Purchasing or renting land or existing buildings or other immovable property.
  - f. Conditional grant: Any form of conditional grant.  
  
However, Council must not design or structure a procurement as a form of conditional grant to avoid applying the Rules.
  - g. Internal business unit: Any form of internal business unit offering goods or services to another business unit. Notwithstanding this, each business unit must follow the rules for the procurement of externally sourced goods or services if it forms part of an internal offering ie consultancy services.

# Does Council have to openly advertise?

The default position for Council procurement is to openly advertise all contract opportunities exceeding \$500,000 in value. This gives all suppliers a fair chance to bid for the contract. It also encourages competition, which leads to better value for money and stimulates innovative new ideas and solutions.

## Rule 11

### Requirement to openly advertise

1. Wherever possible Council should use open competitive procurement processes to give all suppliers the opportunity to compete.
2. Council must openly advertise on the Tenderlink or GETS service:
  - a. if the maximum total estimated value of the procurement meets or exceeds \$500,000 and
  - b. there is no exemption from open advertising (Rule 12).
3. Council may advertise using other media, as well as Tenderlink or GETS.



### Open competitive process

Good procurement is about good process and good results.

Open competitive processes that comply with the Rules include:

- a. one-step processes such as Requests for Quote or Requests for Tender
- b. multi-step processes such as a Registration of Interest followed by a shortlisting and then a Request for Proposal or Request for Tender.

**Tenderlink** is a nationally recognised tendering service that is available to all commercial suppliers. It supplies information about tender opportunities and ensures open, transparent and fair competition. Tenderlink is accessible to all interested suppliers, both domestic and international. Throughout this document references to Tenderlink or GETs means any such online procurement system of a similar nature.

# When does Council not need to advertise?

There are some limited situations where the rules apply, but where Council does not need to openly advertise. These are called exemptions to open advertising. Where one of these exemptions arises, Council may choose not to openly advertise the contract opportunity, other requirements of the Rules.

## Rule 12

### Exemption from open advertising

1. Council can exempt a contract from open advertisement if the following processes apply:
  - a. Contracts with a value of \$100,000 to \$500,000 may be procured using a closed competitive process (with a minimum of three known suppliers)
  - b. Contracts with a value up to \$100,000 may be procured via a direct source process (with a single known supplier).
2. Council must not exempt a procurement from open advertising to:
  - a. avoid competition
  - b. protect local suppliers
  - c. discriminate against any local or national supplier.

### Document the rationale

3. If Council exempts a procurement from open advertising, it must:
  - a. document the rationale for the decision. This rationale may form part of the business case or procurement plan or may be a stand-alone document.
4. The rationale document must include:
  - a. the name of the supplier
  - b. a description of the goods, services or works
  - c. the maximum total estimated value (Rule 8) of the goods, services or works
  - d. the specific exemption/s that applies and an account of the facts and circumstances which justify the exemption.
5. The Chief Executive or a General Manager must endorse the rationale before the procurement is undertaken.

Council must retain the documented rationale on the contract file for audit purposes.

### Direct negotiation – subsequent stages of work

6. Council may negotiate a contract directly with a supplier provided that:
  - a. the supplier has won a Stage One contract via an openly advertised procurement or closed competitive process
  - b. the quoted price for the subsequent stage(s) of the project is reflective of the initial competitively tendered rates
  - c. the quality of the Stage One works was delivered at or above the required standard
  - d. the health and safety and environmental management of the Stage One works was delivered at or above the required standard.

Note: Council should declare its intention or willingness to negotiate a subsequent stage of works in the Notice of Procurement of the initial stage of the contract.



### Closed competitive and direct source

Processes that comply with the Rules where there is a valid exemption from open advertising are:

- Closed competitive: a Request for Quote, Request for Tender or Request for Proposal restricted to a minimum of three known suppliers.
- Direct source: a closed Request for Proposal or Request for Tender restricted to a single known supplier.

If an exemption from open advertising applies, Council must still comply with all the other Rules. If Council uses a direct source process (with one known supplier) it does not necessarily mean that it can instantly contract that supplier. It should request a formal proposal from the supplier and evaluate the proposal, assess its value for money, which isn't always the cheapest price, and undertake due diligence before deciding to negotiate a contract. It must not simply approach one supplier and award a contract without proper evaluation of capacity, capability, risk, value for money and due diligence.

# What happens when there is an exemption from open advertising?

Where one of the exemptions arises, Council may choose not to openly advertise the contract opportunity, but must still meet all of the other requirements of the Rules.

## Exemption from open advertising

### Valid exemptions

7. Valid exemptions from open advertising are:
  - a. Emergency: A genuine emergency such as a civil defence declared emergency. Urgent situations that are created by Council, such as lack of advance planning, do not constitute an emergency.
  - b. Following an open tender: Council may use a closed competitive process or direct source process to procure goods, services and works if:
    - i. it has openly advertised the contract opportunity in the last 12 months, and
    - ii. it has not substantially changed the core procurement requirements, and
    - iii. the first time the opportunity was advertised it:
      - a) did not receive any responses, or
      - b) did not receive any responses that conformed with or met the requirements (including quantity), or
      - c) received responses from suppliers who it has reasonable grounds to believe have colluded, and no other responses conformed with or met the requirements.



### Guides, tools & templates

Read the Quick Guide to Emergency Procurement at: [www.procurement.govt.nz](http://www.procurement.govt.nz)

Read more about collusion and bid rigging in the Commerce Commission's Guidelines, How to recognise and deter bid rigging at: [www.comcom.govt.nz](http://www.comcom.govt.nz)

Collaboration is not necessarily unlawful. In certain types of procurement you may want suppliers to collaborate (eg to form a joint venture). This can be allowed for in the Notice of Procurement and include conditions that suppliers must be transparent about their collaboration (eg suppliers must state who they have collaborated with to prepare their response).

If there are reasonable grounds to believe that suppliers have colluded, the Commerce Commission may be alerted given its role of investigating this kind of conduct. For more information: [www.comcom.govt.nz](http://www.comcom.govt.nz).

- c. Only one supplier: If the goods, services or works can only be supplied by one supplier and there is no reasonable alternative or substitute because:
  - i. for technical reasons there is no real competition, or
  - ii. the procurement relates to the acquisition of intellectual property or rights to intellectual property, (including patents or copyrights) or other exclusive rights, or
  - iii. the procurement is for a work of public art.



### **A technical reason could be:**

- a need to match with existing equipment, software or services
- where Council has a bespoke IT system that was custom designed for it and only the supplier that designed it fully understands the code base
- where one supplier has, over a period of time, developed such an intimate knowledge of an outdated or complex system that the Council can reasonably claim that other suppliers would not have a similar level of readily available knowledge
- where a spare part or component is only available from one supplier.

### **A procurement relating to intellectual property rights could be:**

- where Council is purchasing an online subscription to content or other services with unique characteristics
- where Council is purchasing software licences from a proprietary supplier for software that is embedded in its operating environment
- a unique piece of art that is protected by copyright and not available elsewhere.

- d. **Additional goods, services or works:** Goods, services or works additional to the original requirements that are necessary for complete delivery of a project. This Rule applies where all three of the following conditions are met:
- i. the original contract was openly advertised, and
  - ii. a change of supplier cannot be made for economic or technical reasons, and
  - iii. a change of supplier would cause significant inconvenience or substantial duplication of costs for Council.



Examples of **additional goods**, services or works include:

- in a construction contract, additional ground works that were only discovered on excavating the site
- supplying replacement parts
- additional consultancy services where an unexpected issue arises
- an enhancement or change to an integrated IT system.

e. **Exceptionally advantageous conditions:**

For purchases made in exceptionally advantageous conditions that only arise in the very short term and at the discretion of the Chief Executive. This exemption does not cover routine purchases from regular suppliers.



Exceptionally advantageous conditions include a sale by public auction or a sale resulting from liquidation, bankruptcy or receivership.

# Chapter 2

## Planning your procurement

# Preparing to approach the market

An external supplier may be engaged to manage a procurement process, but there are some Rules that must be taken into account.

## Rule 13

### Third-party agents

1. Council may purchase the services of a third-party agent, (e.g. All of Government Procurement), to advise, arrange or manage a procurement or part of a procurement on its behalf.
2. If Council uses a third-party agent to manage a procurement, Council, through the agent, must still comply with the Rules.

## Rule 14

### Procurement advice

1. Council should not purchase procurement advice from a supplier that has a commercial interest in the contract opportunity. To do so would prejudice fair competition (eg a supplier is asked to write the contract requirements and then bids for the contract opportunity).

## Rule 15

### Subcontracting

1. Once a supplier has been awarded the contract, any subsequent subcontracting that the supplier does is not subject to the Rules.
2. However, Council may ask that a main contractor meets certain procurement standards in its subcontracting at the time of tender. The standards should be consistent with good procurement practice, as outlined in the Principles, the Rules and other procurement Guidelines.



### Procurement advice

Rule 14 does not prevent Council from using early market engagement to clarify needs or identify possible solutions.

What Rules apply to technical specifications?

If detailed technical specifications are included in a procurement process, there are some restrictions on how these may be written.

## Rule 16

### Delivery date

1. When identifying or estimating the delivery date for the goods, services or works, Council should take into account any of the following factors that apply:
  - a. the complexity of the procurement
  - b. how much subcontracting there might be
  - c. a realistic time to produce, stock and transport goods from the point of supply to the delivery address
  - d. a realistic time to deliver services given their nature and scope.

## Rule 17

### Technical specifications

1. Council must not apply technical specifications or prescribe conformance requirements in a way that creates unnecessary obstacles for suppliers.
2. Where appropriate, technical specifications must be based on:
  - a. performance and functional requirements, not on design or a prescribed licensing model or a description of their characteristics
  - b. international standards where they exist, or the appropriate New Zealand or Australian standards, technical regulations or building codes.
3. When Council describes technical specifications, it must not (except under Rule 17.4):
  - a. require or refer to a particular trademark or trade name, patent, design or type
  - b. refer to the specific origin of the goods, services or works or the name of the producer or supplier.
4. The exception to Rule 17.3 is when it is the only way to make the requirements understood. In this case, Council must include words like 'or equivalent' in the specification and make it clear that it will consider equivalent goods, services or works that can be demonstrated to fulfil the requirement.

## Rule 18

### Pre-conditions

1. Council may include essential conditions about capacity or capability in its Notice of Procurement. These are called pre-conditions.
2. Suppliers must meet all of the pre-conditions to be considered for the contract opportunity.
3. Council must limit pre-conditions to the following critical areas:
  - a. legal capacity and financial capacity
  - b. commercial or operational capacity or capability to deliver
  - c. appropriate technical skills or expertise or relevant experience.
4. Council must not make it a pre-condition that a supplier has been previously awarded a contract by a named buyer or another New Zealand Local Authority.
5. To assess whether a supplier meets the pre-conditions, Council must:
  - a. evaluate responses against the pre-conditions that it published in its Notice of Procurement, and
  - b. take into account the supplier's business activities in New Zealand and overseas.



### Pre-conditions

Pre-conditions allow Council to do a 'first cut' and eliminate suppliers who do not have the minimum capacity or capability to deliver the contract.

Pre-conditions are usually answered by 'yes' or 'no', or 'meets' or 'does not meet'.

Suppliers who meet all of the pre-conditions are then eligible to be assessed against the scored evaluation criteria.

# How much time should suppliers be given to respond?

When going out to the market, it is essential to set a realistic time period for responses.

Unrealistic time periods introduce unnecessary risk. If insufficient time is allowed, it can impact on the quality of the results achieved, compromise the integrity of the process and affect Council's reputation as a credible buyer.

## Rule 19

### Sufficient time

1. Council must allow sufficient time for suppliers to respond to a Notice of Procurement. It must act in good faith and use sound judgement when calculating sufficient time.
2. The key factors to take into account when calculating sufficient time include:
  - a. the nature and complexity of the procurement
  - b. the type of information and level of detail suppliers need to provide in their responses
  - c. the nature of the goods, services or works
  - d. how simple or difficult it is to describe the deliverables
  - e. the level of risk
  - f. the extent of any anticipated subcontracting or the likelihood of any joint bids
  - g. how critical the procurement is to Council's success
  - h. the time it takes for domestic and foreign suppliers to submit tenders, particularly if Council asked suppliers to deliver hard copies.



**Don't jeopardise the results that could be achieved with a rushed process. If insufficient time is allowed, it may limit the:**

- number of suppliers that can respond and the quality of their responses
- level of competition and Council's ability to get the best value for money
- choice of solutions offered and Council's ability to purchase the right one.

**Consider the suppliers' perspective and calculate how much time is sufficient time. How long will it take to:**

- obtain, read and analyse all tender documents
- ask questions to clarify the requirements and get answers
- develop a meaningful response that includes accurate pricing information
- prepare, check and submit the response and deliver it on time, and...
- carry on with 'business as usual'!

**To decide how much is sufficient time:**

- Be realistic, set timelines that are fair to all suppliers and reflect the nature and complexity of the information you are seeking.
- Take weekends and national New Zealand statutory holidays into account.
- Avoid publishing contract opportunities right before Christmas or in early January. Most of New Zealand is on holiday for a good part of January.
- Make sure your sufficient time is not less than the minimum time period set out in Rule 31.
- Where there is the possibility of joint bids, consortiums or subcontracting, allow at least 27 business days. This gives suppliers time to consult and collaborate. It means, for example, small and medium sized businesses (SMEs) have the opportunity to put together a joint bid, where one SME may not have the full capability to deliver on its own.

# What is a business day?

When the sufficient time is calculated, business days must be used not calendar days.

## Rule 20

### Business day

1. Council must calculate time periods in 'clear' business days.
2. A business day is a day when the Council is normally open.
3. Business days exclude Saturdays and Sundays, New Zealand (national) public holidays and all days between Boxing Day and the day after New Year's Day.
4. A 'clear' business day is a full day from 8am to 5pm. The day a Notice of Procurement is submitted for publication is not a clear business day. The time starts on the next business day at 8am.

## Rule 21

### Fair application of time

1. The time period Council sets for submitting responses must apply to all interested suppliers.
2. Other than in exceptional circumstances, no supplier can be given more or less time than any other supplier.
3. Council may reserve the right to accept a late response in exceptional circumstances if there is no material prejudice to any other interested supplier. Best practice guideline to be added  
Council must not accept a late response if:
  - a. there is any risk of collusion on the part of the supplier
  - b. the supplier may have knowledge of the content of any other response
  - c. it would be unfair to any other supplier to accept the late response because the late supplier is given additional time to prepare its response.



### New Zealand national public holidays

New Zealand national public holidays are:

- New Year's Day and the day after New Year's Day (1 and 2 January)
- Waitangi Day (6 February)
- Good Friday, Easter Monday (dates vary)
- ANZAC Day (25 April)
- Queen's Birthday (the first Monday in June)
- Labour Day (the fourth Monday in October)
- Christmas Day and Boxing Day (25 and 26 December).



### 'Clear' business day

- A Notice of Procurement is published on Tenderlink at 11am on Friday, 1 July. The time period for submissions begins at 9am on Monday, 4 July.
- Suppliers have 20 clear business days to respond. This means the deadline for submissions is 5pm on Friday, 29 July.
- If Council wants the responses at noon and not the end of a business day, the deadline will be noon Monday, 1 August.



Competitive Dialogue is a technical term for a type of open procurement process often used where there is no known solution in the market place. It involves a structured dialogue phase with each shortlisted supplier who invents a possible solution to meet Council's needs. It is not the same as market engagement which is a generic term for any time you talk to suppliers.

**Key features of Competitive Dialogue include:**

- openly advertising an Invitation to Participate which states that it is a Competitive Dialogue process
- shortlisted suppliers are often paid for their participation in the dialogue phase
- Council writes its specification of requirements during or at the end of the dialogue phase
- Council then issues a Request for Tender or Request for Proposal to all shortlisted suppliers.

See the Guide to Competitive Dialogue at: [www.procurement.govt.nz](http://www.procurement.govt.nz)

# Chapter 3

## Approaching the market

# How to openly advertise?

When Council is ready to approach the market, it must list the contract opportunity on Tenderlink or GETS.

## Rule 22

### Open advertising

1. Under Rule 11 an Council must openly advertise a contract opportunity unless an exemption under Rule 12 applies.
2. To openly advertise, Council must list the contract opportunity on Tenderlink or GETS.

## Rule 23

### Tenderlink or GETS listing online

1. The listing must attach the Notice of Procurement and contain the following information:
  - a. the Council's name
  - b. the name of the contract opportunity
  - c. the type of procurement process (eg Request for Tender)
  - d. the deadline for responses from suppliers e. the address for enquiries and the name of the contact person

## Rule 24

### Notice of Procurement

1. The Notice of Procurement must:
  - a. be published on Tenderlink or GETS
  - b. be available on Tenderlink or GETS until the deadline for supplier responses.



### Examples of a Notice of Procurement include:

- Request for Quote
- Registration of Interest
- Request for Tender
- Request for Proposal
- Invitation to Participate in a Competitive Dialogue process
- Invitation to Qualify for a Pre-qualified Supplier List.

### A response from a supplier is a supplier's reply to a Notice of Procurement.

Examples include:

- Registrations of Interest
- Quotes
- Tenders
- Proposals
- Applications to Participate in a Competitive Dialogue process
- Applications to Qualify for a Pre-qualified Supplier List.

# What should be included in a notice of procurement?

Everything that suppliers need to know about the contract opportunity in order to prepare meaningful responses must be included.

## Rule 25

### Content of Notice of Procurement

1. Each Notice of Procurement must contain all of the information that suppliers need to prepare and submit meaningful responses.
2. Each Notice of Procurement must clearly identify which procurement process is being used (eg Request for Quote or Registration of Interest followed by a Request for Tender).
3. Subject to Rule 35.4, each Notice of Procurement must contain the following information:
  - a. the Council's name and address
  - b. the name and contact details for the Council's contact person
  - c. a description of the goods, services or works and any technical specifications, plans, drawings or instructions, or a description of the outcomes the supplier is expected to deliver
  - d. the quantity (if known) or estimated quantity of the goods, services or works
  - e. the estimated timeframe for delivering the goods, services or works, or the estimated length of the contract and any options relating to the length of the contract (eg 3 + 2 + 1)
  - f. any service levels, response times or other performance measures suppliers will need to meet
  - g. any conditions for participating in the procurement process including any pre-conditions (Rule 25) or certificates or standards the supplier must meet
  - h. any limitations on the number of suppliers that may be shortlisted
  - i. all evaluation criteria Council will use to assess responses
  - j. unless the price is the only criterion, an indication of the relative importance of each evaluation criterion
  - k. the deadline and address for submitting responses
  - l. any restrictions or instructions on how suppliers are to submit responses (eg faxes will not be accepted) or details of how responses are to be submitted through an e-procurement system
  - m. any other terms or conditions relating to the procurement or the procurement process
  - n. if the procurement will be conducted electronically (eg using e-tender software), all the information suppliers will need to participate electronically



### It is good practice to include additional information in the Notice of Procurement, such as:

- details of how additional information will be communicated or changes to the process
- the contract terms and conditions that will apply
- the indicative timeframe for the procurement process, eg the:
  - deadline for suppliers' questions
  - date/s for shortlisted supplier presentations
  - date when suppliers will be notified if they have been successful or not
  - date/s debriefs will be held
  - anticipated contract start date.

Rule 35.4 recognises that sometimes in multi-step procurements detailed information can be made available only after shortlisting suppliers.

# Evaluation Criteria

Types of scored evaluation criteria include but not limited to:

- Lowest price confirming
- Weighted attributes
- Price quality method



## **Evaluation criteria**

The form of the evaluation criteria (Rule 35.3.i.) that you include in the Notice of Procurement will depend on the type of process, eg:

- for a one-step Request for Tender, you would usually list the criteria you will use to award the contract
- for a multi-step process, you would usually list in the Registration of Interest the criteria you will use to shortlist suppliers. In the subsequent Request for Tender or Request for Proposal you would list the criteria that you will use to award the contract.

## **Relative importance**

When listing the evaluation criteria (either in the Notice of Procurement or subsequent RFP or RFT), you must, unless price is the only criterion, indicate the relative importance of each criterion (Rule 35.3.j.). You can achieve this by ranking the criteria in priority order or adding individual weightings to each criterion.

# What does 'other tender documents' mean?

Other tender documents are normally attachments to the Notice of Procurement. They are usually standalone documents that provide additional information for suppliers.

## Rule 26

### Other tender documents

1. Other tender documents are documents that are relevant and essential to the procurement.
2. These documents may be included in the Notice of Procurement as annexes. If they are standalone documents, they may also be referred to in the Notice of Procurement.
3. Council should make other tender documents available to suppliers at the same time the Tenderlink or GETS listing and the Notice of Procurement are published. Where possible, they should be uploaded as attachments to the Tenderlink or GETS listing.
4. If other tender documents can't be made available on Tenderlink or GETS, Council must state in the Tenderlink or GETS listing how suppliers can obtain a copy (eg by requesting a hard copy or by referencing an e-procurement system where the document is freely available). Council must promptly provide a copy, to any supplier who requests one, or provide instructions on how to obtain one from an e-procurement system.



### Examples of other tender documents include:

- architectural drawings
- engineering plans
- detailed technical specifications
- reports
- extensive specifications in an electronic file that is too large to upload to Tenderlink or GETS.

# Managing the procurement process

The following rules help Council manage the procurement process fairly.

## Rule 27

### Responding to queries

1. Suppliers may ask questions about any Notice of Procurement.
2. Council must promptly reply to all questions and reasonable requests for information from suppliers. If Council is unable to promptly reply to a question, it should consider extending the deadline for responses.
3. When Council responds to a supplier's question, it must not give information that might give that supplier an unfair advantage over the other suppliers. If Council wishes to disclose advantageous information, it must make it available to all suppliers at the same time.
4. When Council responds to a supplier's question, it must not discuss or disclose another supplier's confidential or commercially sensitive information.

## Rule 28

### Additional information

1. Council may make additional information available to all participating suppliers after a Notice of Procurement is published on Tenderlink or GETS and before the deadline for responses closes.
2. Council may publish additional information on Tenderlink or GETS or, following a shortlisting, send copies to all participating suppliers.
3. Council must make additional information available to all participating suppliers at the same time.



An example of when all participating suppliers are known to Council could be the second stage of a multistep tender.

This is where Council has published a Registration of Interest, and after receiving and evaluating the responses has shortlisted suppliers. Council then invites the shortlisted suppliers to submit full tenders. These suppliers are all participating suppliers known to Council.

# What if more information needs to be given to suppliers or the requirements change?

It's possible to provide additional information and change requirements after a tender has been advertised. However, there are Rules that apply to these processes.

## Rule 29

### Changes to process or requirements

1. Council may make changes to its procurement process or its requirements after a Notice of Procurement has been published on Tenderlink or GETS and before the deadline for responses closes.
2. Council must notify all participating suppliers of any changes to the procurement process or requirements. Council must publish all changes on Tenderlink or GETS or, following a shortlisting, send them to all participating suppliers.
3. Council must make all changes available to all participating suppliers at the same time.
4. Council must give suppliers enough time to respond to the changes. This may mean extending the deadline for responses, or allowing suppliers who have already submitted their responses a fair opportunity to change their responses.



Changes to procurement processes or requirements may include changing:

- any essential aspect of the specification of requirements or technical specifications
- a pre-condition (Rule 25) or evaluation criterion
- the ranking or weightings of the evaluation criteria
- the deadline for responses or critical dates in the procurement process
- the rules or conditions that apply to the procurement process.

# Evaluating Responses

## Rule 30

### Treatment of responses

1. Council must have in place procedures that guarantee all suppliers' responses are treated fairly. This includes receiving, opening and evaluating responses.
2. To be considered for an award of contract, a supplier must:
  - a. submit its response in writing (this can be through electronic means such as email if specifically allowed for in the Notice of Procurement)
  - b. comply with all pre-conditions (Rule 25) if any, or other conditions for participating in the contract opportunity.
3. Council must not penalise a supplier who submits a late response, if the delay is solely the Council's fault.
4. If, after opening the responses but before evaluating them, Council offers a supplier the opportunity to correct unintentional errors, it must offer the same opportunity to all participating suppliers.

## Rule 31

### Reasons to exclude a supplier

1. Council may exclude a supplier from participating in a contract opportunity if there is a good reason for exclusion. Reasons for exclusion include:
  - a. bankruptcy, receivership or liquidation
  - b. making a false declaration
  - c. a serious performance issue in a previous contract
  - d. a conviction for a serious crime or offence
  - e. professional misconduct
  - f. an act or omission which adversely reflects on the commercial integrity of the supplier
2. Council must not exclude a supplier before it has evidence supporting the reason for the exclusion.



If it is discovered that the same errors appear in responses from different suppliers (eg misspelled words or the same mathematical mistakes), this may indicate that these suppliers have shared information (eg cut and paste from each other's responses) and may be acting anti-competitively.

For more examples, see the Commerce Commission fact sheet, How to recognise bid rigging, at: [www.comcom.govt.nz](http://www.comcom.govt.nz)

# Chapter 4

## Awarding the contract

# Awarding the contract

## Rule 32

### **Awarding the contract**

1. Council must, unless there is a legitimate reason to cancel the procurement, award the contract to the supplier/s that has both:
  - a. demonstrated that it fully understands and has the capability to deliver the requirements and meet the contract conditions, and
  - b. offered either the:
    - i. best value for money over the whole of the life of the goods, services or works (which isn't always the cheapest price), or
    - ii. lowest price, if price is the only criterion.
2. If a supplier offers a price that is substantially lower than other responses (an abnormally low bid), Council may seek to verify with the supplier that the supplier is capable of both:
  - a. satisfying all of the conditions for participation, if any, and
  - b. fully delivering all of the contract requirements (eg quality, quantity, time and location) and meeting all of the contract conditions for the price quoted.

# Cancelling the contract

## **A legitimate reason to cancel a procurement could include a:**

- Change of policy
- Change to an appropriation that affects funding for the initiative
- Council direction Look out for abnormally low bids.

## **Look out for abnormally low bids**

An abnormally low bid may reflect a more efficient supplier or one that is willing to make an investment in the relationship by taking a lower margin on the contract. Such competitive responses should be encouraged but ensure a robust evaluation process to ensure that a low bid will not impact negatively on service delivery? Council should check an abnormally low bid with the supplier to make sure that the price is realistic and that the supplier can fully deliver the contract for that amount. If the supplier is unable to demonstrate this, Council may consider rejecting the bid. First, make sure the conditions have stated that the lowest price bid will not necessarily be accepted. An abnormally low bid could also be the result of the supplier taking advantage of its market power in breach of section 36 of the Commerce Act 1986. Report any such concerns to the Commerce Commission at: [www.comcom.govt.nz](http://www.comcom.govt.nz)

A bid that is substantially lower than other bids can sometimes be a sign that a cartel may be operating in the market. For examples see the Commerce Commission's fact sheet, How to recognise bid rigging, at: [www.comcom.govt.nz](http://www.comcom.govt.nz)

# How are suppliers informed of procurement outcomes?

It's good practice to set out an indicative timeline for the procurement process in the Notice of Procurement. This should include the date that the evaluation process is expected to be completed. Suppliers then know when to expect to be notified of the outcome. Suppliers must be kept informed of any changes to key dates. When the successful supplier is selected, the unsuccessful suppliers must be informed.

## Rule 33

Informing suppliers of the decision

1. After evaluating the responses and making the decision to award the contract to a particular supplier/s Council must promptly inform all of the unsuccessful suppliers in writing of this decision.

# Chapter 5

## Types of supply lists

# Supplier lists

There are a number of different types of supplier lists.

## Rule 35

### Types of supplier lists

1. If Council regularly purchases a specific type of good, service or works, it may establish a list of suppliers. Common types of lists include:
  - a. Registered Suppliers List (Rule 35)
  - b. Pre-qualified Suppliers List (Rule 36)
  - c. Panel of Suppliers (Rule 37)



Where a supplier list has been established, do individual contract opportunities still need to be openly advertised?

Where Council establishes a Registered Suppliers List or Pre-qualified Suppliers List, it must still openly advertise (Rules 11 and 22) individual contract opportunities that meet or exceed the appropriate value threshold.

# What is a Registered Suppliers List?

A Registered Suppliers List is a list of suppliers who have registered an interest in supplying specific goods, services or works. When buying from a Registered Suppliers List where the estimated value of the contract meets or exceeds the relevant value threshold the contract opportunity must still be openly advertised on Tenderlink or GETS.

## Rule 36

### Registered Suppliers List

1. A Registered Suppliers List is a list of suppliers who have registered an interest in supplying specific types of goods, services or works.
2. A Registered Suppliers List is appropriate where Council wants to know which suppliers are active in the market supplying the specific type of good or service.
3. Where Council establishes a Registered Suppliers List it is not exempt from open advertising where a contract opportunity meets or exceeds the relevant value threshold (Rules 7 and 8). Council must openly advertise each such contract opportunity on Tenderlink or GETS.

### Establishing a Registered Suppliers List

4. To establish a Registered Suppliers List, Council must:
  - a. publish an Invitation to Register on Tenderlink or GETS (this is a type of Notice of Procurement)
  - b. clearly describe the specific type of goods, services or works Council is interested in procuring
  - c. make the Invitation to Register available on Tenderlink or GETS and allow suppliers to respond at specific deadline/s – typically annually.
  - d. notify unsuccessful applicants promptly and, if requested, provide the reason/s why.

### Operating a Registered Suppliers List

5. To operate a Registered Suppliers List Council must:
  - a. keep an updated list of Registered Suppliers and make this publicly available on request, and
  - b. notify Registered Suppliers if the list is terminated or they are removed from the list. If Council removes a supplier from a list, it must explain why.



When a supplier is added to a Registered Suppliers List it does not result in a contractual or legal relationship between Council and the Registered Supplier.

Registered Suppliers have the potential to win contracts over time, but they are not guaranteed any work.

# What is a Pre-qualified Suppliers List?

A Pre-qualified Suppliers List is a list of suppliers that Council agrees have the capacity to deliver specific goods, services or works. When procuring from a Pre-qualified Suppliers List, where the estimated value of the contract meets or exceeds the value threshold, the contract opportunity must still be openly advertised on Tenderlink or GETS. However, Pre-qualified Suppliers do not need to provide their non-price and non-contract specific attribute information for each new contract opportunity.

## Rule 36

### Pre-qualified Suppliers List

1. A Pre-qualified Suppliers List is a list of suppliers who Council has pre-approved as capable of delivering specific types of goods, services or works.
2. A Pre-qualified Suppliers List is appropriate if Council wants to:
  - a. verify which suppliers can deliver specific goods, services or works
  - b. make it easier for suppliers to respond to contract opportunities by only asking for qualifying information once.
3. Where Council establishes a Pre-qualified Suppliers List it is not exempt from open advertising where a contract opportunity meets or exceeds the relevant value threshold (Rules 7 and 8). Council must openly advertise each contract opportunity on Tenderlink or GETS. Pre-qualified Suppliers should make sure that they are listed on Tenderlink or GETS under the correct Tender

### Establishing a Pre-qualified Suppliers List

4. To establish a Pre-qualified Suppliers List Council must:
  - a. publish an Invitation to Qualify on Tenderlink or GETS and make it available for suppliers to respond by specific annual deadline/s. The Invitation to Qualify must include:
    - i. Council's name and address and contact details for the person managing the process
    - ii. a clear description of the specific goods, services or works potential suppliers must be capable of delivering
    - iii. a list of any conditions and attributes that each supplier must meet to participate and explain how Council will check each

supplier meets the conditions

- iv. state how long the list will be active for and how it will be refreshed or terminated
- b. assess applicants within a reasonable timeframe and add qualifying suppliers at the end of each annual cycle
- c. notify unsuccessful applicants promptly and, if requested, provide the reason/s why.

### Operating a Pre-qualified Suppliers List

5. To operate a Pre-qualified Suppliers List Council must:
  - a. keep an updated list and make this publicly available on request
  - b. notify Pre-qualified Suppliers if the list is terminated or they are removed from the list. If Council removes a supplier from a list it must explain why.



When a supplier is added to a Pre-qualified Suppliers List it does not result in a contractual or legal relationship between Council and the Pre-qualified Supplier.

To qualify as Pre-qualified Supplier, the supplier must demonstrate that it can meet the criteria for delivering the goods, services or works. A Pre-qualified Supplier may still need to meet other evaluation criteria each time Council wishes to purchase goods, services or works the supplier has qualified to deliver.

Pre-qualification is not the same as multi-step procurement (eg Registration of Interest followed by a Request for Proposal). There is no specific contract in mind when suppliers pre-qualify. Pre-qualified Suppliers have the potential to win contracts over time, but are not guaranteed any work.

## **Method of allocation of contracts**

6. The Notice of Procurement must outline the method/s that Council will use to select suppliers when a contract opportunity arises. The method/s should be appropriate for the nature of the goods, services or works and the anticipated volume of work.
7. Accepted selection methods for secondary procurement processes include:
  - a. Lowest Price Conforming: Ask for quotes from suppliers and award the opportunity to the supplier who offers the lowest price
  - b. competitive quotes based on the supplier's expertise, proposed solution and best value for money: Ask for quotes from some or all Panel Suppliers and award the opportunity to the supplier who has the right level of expertise, can offer the best value for money, which isn't always the cheapest price, and deliver on time
  - c. Direct source, based on the best fit for purpose: Fair evaluation of all Suppliers and selection of the supplier who has the right capacity and capability to fulfil the contract opportunity and offers the best value for money, which isn't always the cheapest price, at the time of the purchase

# Panel of suppliers and the method of allocation of contracts

## Rule 37

### Panel of suppliers

1. A Panel of Suppliers (Panel) is a list of suppliers who have been pre-approved by an agency and who have agreed to the terms and conditions for supply.
2. A Panel of Suppliers is appropriate when an agency wants to:
  - a. verify which suppliers are capable of delivering specific goods, services or works
  - b. agree in advance with each supplier the terms and conditions of supply of the goods, services or works, including the pricing (eg agreed hourly fee) or the pricing mechanism that will apply.
3. Once a Panel has been established through an open process under the Rules, an agency does not need to openly advertise individual contract opportunities. It may purchase directly from the panel. This is called secondary procurement.
4. When purchasing from the Panel the agency must use the specified method (Rule 54.10) to select a supplier.



### Who can establish a panel?

A Panel of Suppliers may be established by:

- a single agency for its exclusive use
- a lead agency on behalf of a group of agencies with common needs (eg for a Syndicated or All-of-Government contract).

### No guarantee of work

Although suppliers from a Panel are not guaranteed any work, they will have some expectation of getting work. So the size of the Panel should be proportionate to the anticipated demand. Ideally, all suppliers should get some work while the Panel is in existence.

### Open and closed panels

A Panel is 'open' if other suppliers can apply to be on the Panel during the period it is established for.

A Panel is 'closed' if other suppliers can't apply to be on the Panel during the period the Panel is established for.

## Establishing a panel of suppliers

5. An agency must openly advertise the opportunity to be selected for the Panel of Suppliers in accordance with Rule 14 and Rule 32.
6. The Notice of Procurement must comply with Rule 34 and include the content specified in Rule 35. It must also include the following information:
  - a. the terms and conditions of supply that will apply (eg the framework agreement)
  - b. the method/s the agency will use to award contracts to suppliers on the Panel (ie the secondary procurement process (Rule 54.10))
  - c. how the agency will contract with a supplier who agrees to deliver a specific goods or service or works
  - d. the period of time the Panel will be established for
  - e. whether or not the Panel is 'open' or 'closed'
  - f. any circumstances that may lead to a supplier being removed from the Panel.
7. The Notice of Procurement (Notice) can be:
  - a. a one-off Notice to establish the Panel
  - b. a standing Notice which is made available continuously on GETS that allows interested suppliers to respond on an ongoing basis
  - c. an occasional Notice that is published from time to time when an agency wants to refresh or expand the Panel.
8. It is expected that an agency will appoint more than one supplier to a Panel.



### Contract Award Notice

On establishing the Panel, an agency must publish the names of all of the suppliers that have been appointed to the Panel in its Contract Award Notice.

Where a Panel Supplier is given a specific contract through a secondary procurement process, the agency does not need to publish a Contract Award Notice.

However, it is good practice to be transparent and publish summary details of contracts awarded as a result of secondary procurement from a panel (eg an agency may publish these on GETS or its own website).

### Secondary procurement process

Agencies can use more than one method for secondary procurement as long as this is explained in the Notice of Procurement (for example, the notice may say the agency will either direct source from one panel member or request quotes from some or all panel members).

A **Panel of Suppliers** is normally established with a set number of suppliers for a specific time period. The number of suppliers will depend on the:

- nature of the goods, services or works
- maturity of the supply market
- anticipated volume of work.

## Method of allocation of contracts

9. The Notice of Procurement used to establish the Panel must outline the method/s that the agency will use to select suppliers when a contract opportunity arises (secondary procurement process). The method/s should be appropriate for the nature of the goods, services or works and the anticipated volume of work.
10. Accepted selection methods for secondary procurement processes include:
  - a. competitive quotes based on the lowest price: Ask for quotes from some or all of the Panel Suppliers and award the opportunity to the supplier who offers the lowest price
  - b. competitive quotes based on the supplier's expertise, proposed solution and best value for money: Ask for quotes from some or all Panel Suppliers and award the opportunity to the supplier who has the right level of expertise, can offer the best value for money, which isn't always the cheapest price, and deliver on time
  - c. direct source, based on the best fit for purpose: Fair evaluation of all Panel Suppliers and selection of the supplier who has the right capacity and capability to fulfil the opportunity and offers the best value for money, which isn't always the cheapest price, at the time of the purchase
  - d. rotation: Award opportunities to each supplier in turn regardless of their expertise, value for money, which isn't always the cheapest price, or delivery time
  - e. equal division of the work: Fix an upper limit for the amount of work that can be awarded to each supplier and award opportunities on a rotational basis. When a supplier reaches the upper limit, the agency chooses the next supplier from the Panel
  - f. preferred supplier basis: Identify a preferred supplier from the Panel. This supplier receives most of the opportunities unless it has a conflict of interest or is unable to supply. If this happens, the agency will award the opportunity to the next-ranked supplier from the Panel
  - g. location: Award opportunities to the supplier who is best able to deliver based on their location and the location of the work.

# Chapter 6

## Other rules you need to know

# There are other requirements that Council should consider:

## Rule 38

### All-of-Government Contracts (AoGs)

1. An All-of-Government contract (AoG) is a type of approved collaborative contract. AoGs establish supply agreements with approved suppliers for selected common goods or services purchased across a wide range of government and quasi government agencies. AoGs are developed under the oversight of the Procurement Functional Leader (Chief Executive of MBIE) and managed by appointed procurement Centres of Expertise.
2. Council may purchase from the AoGs, if it is commercial advantageous to do so.
3. Before approaching the market, Council should check if there is an existing AoG which is available.



For more information about Syndicated Contracts and the process of obtaining approval, see MBIE's Guide to Syndicated Procurement, at: [www.procurement.govt.nz](http://www.procurement.govt.nz)

## Rule 40

### Intellectual Property

1. If Council's procurement of goods, services or works involves the supplier creating new Intellectual Property, Council must set out, in its Notice of Procurement, its intentions regarding ownership, licensing, and future commercialisation of that Intellectual Property.



For more information on the categories of goods and services available and how to buy from AoG contracts, see: [www.procurement.govt.nz](http://www.procurement.govt.nz)

## Rule 39

### Syndicated Contracts

1. A Syndicated Contract (SC) is a type of approved collaborative contract. SCs typically involve a cluster of Councils aggregating their respective needs and collectively going to market for common goods, services or works. It may involve Councils anticipating collaboration and including a Common Use Provision (CUP) clause within the resulting contract, that allows other Councils to contract with the supplier on the same terms later.

The Buller Local Authority Shared Service (MW LASS) is one local example of a cluster of Councils which is active in seeking opportunities for collaborative procurement. The purchase of goods and services that have been negotiated by the MW LASS are treated in the same way as an All of Government Contract and Council may purchase through an MWLASS procurement opportunity if it is commercially advantageous to do so.



It's important to consider if new Intellectual Property will arise in a contract and to explicitly set out Council's expectations about ownership and licensing in your Notice of Procurement. This provides clarity for suppliers at an early stage and potentially reduces expense and time later on negotiating ownership and licensing.

Alternatively, suppliers can be asked to state in their responses their assumptions about any anticipate new IP.