

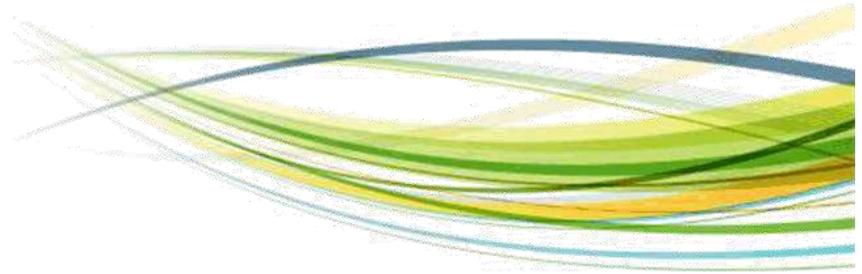


Meeting of the Finance Audit & Risk Sub-committee

Date: Wednesday 22 May 2019
Time: 9.00am
Venue: Council Chamber
Hawke's Bay Regional Council
159 Dalton Street
NAPIER

Attachments Excluded From Agenda

ITEM	SUBJECT	PAGE
8.	Draft 2019-20 Annual Plan	
	Attachment 1: First Draft 2019-20 Annual Plan <i>(provided to FARS members only)</i>	
10.	Procurement and Contract Management Update	
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Hawke's Bay Regional Council Procurement Policy

Updated May 2019



Item 10

Attachment 1

Document Control

Purpose of this document

The Procurement Policy is a formal statement of principles that outline how the Hawke's Bay Regional Council (HBRC) will manage the procurement life cycle.

The Procurement Policy is supported by the Procurement Manual which details how to apply the policy principles. The revised procurement policy and procurement manual are consistent with national procurement principles and guidelines and are compliant with relevant legislation. The Policy details what HBRC is required to do to meet national guidelines and the Manual details of how to apply the policy principles to deliver benefits of best practice procurement.

Intended Audience

This document is intended for internal HBRC staff who administer and manage procurement. Communications information will be developed and made publicly available for external audiences, anticipating a launch following policy approval, in July 2019. Following the relaunch, this policy may be refined in the light of experience over time with any changes to be approved by Council before implementation. The next scheduled review is 2022.

Document Information

Name	Position
Document Owner	Jessica Ellerm – Group Manager
Issue Date	14.5.19
File Name	Procurement Policy – Revised May 2019

Document History

Version	Issue Date	Changes
VO1	13.5.19	Add environmental principle

Document Review

Name	Role	Review Status
Mark Heaney	Manager, Client Services	Draft Complete

Document Sign-off

Name	Role	Sign-off date
Jessica Ellerm	Group Manager – Corporate Services	15.5.19

Contents

To be added

Item 10

Attachment 1

1. Introduction

The HBRC procurement policy was last reviewed in 2015 with the intent to review within three years. In September 2018 OAG and MBIE made new recommendations for best practice in procurement. HBRC commissioned a review in 2018 by Crowe Horwath to evaluate our existing policy and make recommendations to align with current best practice guidelines. This policy and the accompanying procurement manual reflect HBRC progress to adopt those and other recommendations to achieve best practice.

1.1 Context and alignment

Procurement covers all the business processes associated with buying the goods, services and works we use to run our business, and deliver our organisational objectives. It starts with identifying our needs, then planning the best way to meet them, continues through sourcing the goods, services and works, then managing the contract, and ends with expiry and evaluation of the contract or the end of the assets life.

The purpose of this policy is to establish and document the principles and practices that should guide and inform Hawke's Bay Regional Council (HRBC) and its employees when making procurement decisions and undertaking processes for the purchasing of assets, goods, works and services.

This procurement policy gives a high level view of the rules and guidelines governing HBRC procurement. It is meant to be read in conjunction with HRBC's procurement manual and the approved list of financial delegations. Together, these documents will assist HBRC and its employees undertaking procurement activities in the following ways:

- **Procurement Policy** – provides the grounds and principles for making procurement decisions.
- **Procurement Manual** – provides direction on the processes to follow and tools to use when undertaking a procurement or purchase. **Insert link - when approved**
- **Financial Delegations** – list of those in the organisation with authority to make procurement decisions or approve expenditure and to what level. Please refer to: <https://herbi.hbrc.govt.nz/site/corpmgt/Lists/FinancialDelegations/AllItems.aspx>

2. Procurement governance, capability and oversight

Governance of the Hawke's Bay procurement policy is provided by the Corporate Services Group Manager, responsible for the oversight and high-level management. They will provide the strategic direction, resources and the decision making necessary to support and deliver the policy.

Monitoring will be reported through the Finance Audit and Risk Committee.

HBRC will assign appropriately experienced employees to manage its procurement activities. HBRC will provide training and supervision to employees to support good practice in procurement and purchasing activities. Where required for specific procurement activities, additional specialist expertise may also be employed by HBRC. Any specialist experts employed must also comply with the HBRC's procurement policy.

3. Policy Principles

The Office of the Auditor General (OAG) established a set of principles in September 2018 that provide guidance for the conduct of local government organisations and its employees while exercising procurement activities. HBRC recognises that these principles underpin best practice procurement. HBRC has adopted the principles as part of its procurement policy.

1. **Transparency** – *Procurement processes, from developing a procurement strategy to signing a contract, should be well defined and documented.* Without compromising commercial confidentiality, HBRC will be transparent in its administration of its external expenditure and supplier agreements. This supports HBRC's accountability to its ratepayers and community and ensures that the roles and obligations in agreements between HBRC and its suppliers are clear and well understood by all parties.
2. **Fairness and impartiality** – *All interested suppliers should be encouraged to participate in a tender, without advantage or disadvantage. Processes should be applied lawfully and consistently, without fear or favour. Unfair advantages, including those arising from incumbent arrangements, should be identified and addressed.* HBRC and its employees will act fairly and reasonably and will be visibly impartial in their decision-making.
3. **Honesty and integrity** – *Individuals and organisations should act appropriately and professionally. Public sector standards of conduct must be met.* HBRC will support, encourage and expect its employees to conduct themselves with the utmost integrity at all times. HBRC will act within the law, to meet its legal obligations when procuring assets, goods, works and services. When HBRC enters into any agreement with a supplier, it will communicate clearly the appropriate standard of integrity that is expected from the supplier. This standard will apply to both the supplier's transactions with HBRC and as a representative of HBRC in the public domain.
4. **Managing conflicts of interest** – *Expectations about conflicts of interest and how they are managed should be clearly understood by all parties. Conflicting interests and roles, and the associated perceptions, should be identified, declared, and managed effectively.* Suppliers affiliated in any way to elected members or employees of HBRC can still be considered for funding. Impacted elected members or HBRC employees are required to note any possible conflict of interest (or perception of a conflict of interest) and will not be involved in any assessment or decision making related to either funding or supplier selection where a conflict may exist.
5. **Confidentiality and security** – *Confidences should be respected and information should be held securely and safeguarded from wrongful or inadvertent disclosure.* HBRC will endeavour to keep commercially sensitive information confidential while undergoing procurement activities. (See 5.4 for more detail)
6. **Accountability** – *There should be strong, but proportionate, project governance and reporting system in place.* HBRC is accountable for its performance and will keep complete and accurate accounts of its external expenditure, including the reasons and justification for committing to the expenditure. Suitable governance and management arrangements will be in place to oversee procurement decisions, processes and the performance of any subsequent supplier agreements.
7. **Value for money** – HBRC will use its resources effectively, economically and without waste. HBRC will be focussed on the outcomes it is trying to achieve and will apply its resources in such a way to best achieve those outcomes, having due regard for the 'whole of life' costs of the purchase.
8. **Environmental considerations** – HBRC will as part of its product procurement and supplier selection give consideration to minimising the impact on the environment, reflecting the organisations role and responsibilities to the community it serves.

4. Practical Considerations

HBRC and its employees will refer to the following practical considerations when undertaking procurement activities:

1. Procurement decisions should reflect the HBRC's policies and objectives for the provision of services to its ratepayers and community.
2. Assets, goods, works and services to be purchased should be fit for purpose and meet HBRC's requirements.
3. HBRC should be flexible in its use of procurement processes and supplier agreements and those used should be appropriate to the type and scale of the procurement and specific requirements of HBRC.
4. Procurement strategies, planning and processes should aim to keep the process costs of procurement as low as possible for HBRC and its suppliers, without compromising the legality and thoroughness of the procurement.
5. As part of procurement planning, risks involved with the activities should be identified and measures put in place to manage the risks effectively.
6. HBRC's wider commitments and obligations must be considered, including purchasing locally, whole of life costs, environmental sustainability, health and safety and compliance with other HBRC agreements. Where practical and relevant, supplier agreements must align with and reflect HBRC's wider commitments and obligations.
7. Good practice should be followed, and HBRC employees should be aware of, and comply with current government and industry guidelines for purchasing (OAG, Ministry of Business, Innovation and Employment, NZ Construction Industry Council etc).
8. Procurement decisions should take into account section 17A of the Local Government Act 2002 which states that a local authority must review the cost-effectiveness of current arrangements for meeting the needs of communities within its district or region for good-quality local infrastructure, local public services, and performance of regulatory functions. A review of these arrangements must be undertaken when there are any significant changes to relevant services levels, within two years of the expiry of any contract or binding agreement relating to infrastructure, service or regulatory functions or at any other time the local authority considers desirable, but not later the 6 years from the last review. For more information refer directly to the Local Government Act 2002

5. Purchasing Ethics

5.1 Communications

HBRC will communicate information openly and fairly to all participants in HBRC procurement processes. An appropriate representative of HBRC will be appointed to be responsible for managing communications for each contract. All participants in any procurement that are unsuccessful in becoming a supplier will be given the opportunity to be briefed on the reasons why they were not successful.

5.2 Conflicts of interest

HBRC have procedures for managing conflicts of interests. HBRC will ensure its employees, suppliers and potential suppliers declare any conflict of interest and that appropriate action is taken when a conflict is identified.

Please refer to Staff Policy 28 – amended 2018

<https://herbi.hbrc.govt.nz/site/hr/pol/SP028%20Conflict%20of%20Interest.doc#search=conflict%20of%20interest%20policy>

5.3 Conflicted suppliers

In some cases it may be practical or beneficial if both HBRC and an applicant, submitter or adversary can purchase a specialty service or product from a single supplier. HBRC may in these circumstances agree to both parties using the services or product, notwithstanding the existence of any real or perceived conflict of interest of the supplier - e.g. *An engineering consultant has undertaken a significant study with respect to an issue. Both HBRC and an applicant wish to make use of the study for the purposes of a consent hearing and engage the consultant for that purpose.*

5.4 Confidentiality

Please note that all information collected and held by HBRC is public information under section 2 of the Local Government Official Information and Meetings Act 1987 (LGOIMA), as such any and all information may be requested by a third party. Access to information held by Council is administered in accordance with LOGIMA and the Privacy Act 1993. These Acts means that Council is not able to give suppliers comprehensive assurances about the protection of sensitive information.

All employees and consultants that may have access to confidential information will be required by HBRC to sign and abide by a confidentiality undertaking. Any breaches of confidentiality HBRC becomes aware should be dealt with immediately and appropriately.

5.5 Gifts or Inducements

HBRC employees must not accept gifts or inducements from suppliers or potential suppliers that might be perceived as influencing any purchase decision made by the employee in favour of the supplier or potential supplier. HBRC employees must advise their Group Manager of any gift received from an external organisation as to the appropriate course of action to take. Gifts or inducements include entertainment, travel, tickets to events and the like.

Please refer to Staff Policy 18 –Offer of Gifts or Winning Prizes

<https://herbi.hbrc.govt.nz/site/hr/layouts/15/WopiFrame.aspx?sourcedoc=%2Fsite%2Fhr%2Fpol%2FSP018%20Offer%20of%20Gifts%20or%20Winning%20Prizes%20Edoc&action=view>

5.6 Expert Advice

HBRC employees should ensure that professional advice from individuals or firms is procured on the basis of the expert nature of the advice. Individuals or firms should not be selected based on their willingness to advocate for HBRC's position on the matter in concern. This should include legal advice, where non-standard clauses could be introduced to contract terms and conditions.

5.7 Buying Local

HBRC supports purchasing from local suppliers based on the benefits this provides the local community and economy and HBRC employees will consider the availability and capability of suppliers in the local market. However, HBRC should always balance the benefits of buying locally with ensuring that HBRC and its ratepayers and the community will receive optimal value.

A decision to purchase goods, works or services from a supplier where the locality of the supplier is the determining factor (rather than price and/or quality factors) should give consideration to one or more of the following.

- The importance of the goods or service being available locally (due to factors such as time constraints or availability of key personnel to respond to requests for service from HBRC).
- The importance of local knowledge of the Hawke's Bay regional environment.
- The importance of supplier knowledge and understanding of HBRC's operational practices, processes and systems.

Where the locality of the supplier is the determining factor in a purchase, HBRC will document this and include the justification for approving the purchase on this basis.

In a Major Procurement that may include a number of interested suppliers (local and non-local) via a competitive process, the importance of local presence and/or knowledge should be clearly highlighted in HBRC's procurement documentation and submissions should be evaluated accordingly.

5.8 'Whole of Life' Costs

When planning for and undertaking a procurement activity, HBRC employees should consider the potential whole of life cost of the purchase, otherwise known as the total cost of ownership.

The whole of life cost includes costs that are not the direct acquisition costs of assets, goods, works or services. The whole of life cost might include maintenance costs, management costs and disposal costs. NZTA states additional costs for consideration as quality, design integrity, innovation, health and safety practices and capital invested as well as training and development opportunities. There might be other costs to consider in the whole of life cost, such as environmental, economic and social impacts.

HBRC will make procurement decisions based on the assessment of whole of life costs involved in a purchase. Appropriate analysis, planning and evaluation prior to and during procurement is necessary for HBRC to make the best procurement decisions based on the whole of life costs. Whole of life costs assessments should be in proportion to the potential size, value and duration of the investment by HBRC.

5.9 Sustainability and the living wage

Sustainability is about meeting the needs of today, without compromising the ability of future generations to meet their needs. HBRC encourages suppliers to consider adopting the living wage as an alternate to minimum wage were applicable, and HBRC may consider adoption of living wage as part of the supplier selection process.

HBRC is committed to purchasing goods, works and services that are environmentally sustainable. HBRC will endeavour to select suppliers that will promote sustainability and will commit to HBRC's sustainability principles. Where it is appropriate to do so, HBRC will ensure that its procurement and purchases serve to minimise the consumption of resources and energy, reduce waste and prevent pollution.

5.10 Health and Safety

Health and safety is an important consideration for HBRC and its suppliers must meet health and safety requirements as a part of any procurement. HBRC's health and safety expectations should be clearly communicated to suppliers and be appropriate for the type of goods, works or services being purchased and comply with the Health and Safety Reform Bill 2015. Suppliers of services are required to be SiteWise registered (or equivalent industry standard) and performing (as assessed by external audit) to appropriate Health and Safety standards and practice suited to the work environment.

HBRC will address health and safety through procurement by:

- Approving and inducting suppliers into HBRC's health and safety regime prior to engagements.
- Requiring suppliers to provide health and safety plans, where appropriate.
- Including the monitoring and auditing of health and safety practices as conditions of contracts and agreements.

5.11 Intellectual Property

HBRC will consider its position on intellectual property that might be provided or created out of any supplier agreement. Once it has considered its position, HBRC will agree with the supplier and document how intellectual property will be treated. HBRC will:

- Make every effort to ensure it values and protects its own intellectual property.
- Seek appropriate licences to use supplier intellectual property.
- Respect the intellectual property of its suppliers.
- Treat suppliers fairly with the use and protection of supplier provided intellectual property.

Where procurement involves the purchase of intellectual property rights, such as computer software development, staff need to determine whether the intellectual property rights should belong to Council or to the supplier. Relevant factors may include the effect on the price of the contract and the ongoing ability of the parties to develop innovations. Staff must:

- Identify all intellectual property likely to be developed or created in a project
- Determine who should own any intellectual property.

The State Services Commission has developed guidelines around the approach to take with intellectual property in ICT contracts. Although intended for Central Government contracts staff should consult the following document when addressing Intellectual Property issues: Guidelines for Treatment of Intellectual Property Rights in ICT Contracts, State Services Commission, 2008.

5.12 Sensitive Expenditure

Sensitive expenditure is expenditure that might appear to convey a private benefit to an individual employee or elected representative over and above the benefit to HBRC. Expenditure on travel, accommodation, hospitality and vehicles are examples of sensitive expenditure.

HBRC must maintain a list of reasonable costs for the reimbursement of individual employees and elected representatives covering categories of sensitive expenditure and reimburse expenditure with reference to that list.

When making purchases that could be deemed sensitive expenditure, employees should consider whether the expenditure:

- Has a justifiable business purpose.
- Is moderate in terms of level of expenditure.
- Is accompanied by sufficient proof of purchase.
- Is appropriate in all other ways.

Please refer to Staff Policy 024 Controlling Sensitive Expenditure amended February 2019:

<https://hbrc.sharepoint.com/search/Pages/docresults.aspx?k=conflict%20of%20interest#k=sensitive%20expenditure#=1033>

5.13 All of Government (AoG) supply contracts

The Ministry of Business, Innovation and Employment is responsible for a programme of procurement of single supply agreements between the Crown and approved suppliers for the supply of selected common goods and services called All of Government (AoG) supply contracts. Local Government organisations are eligible to purchase goods or services under these AoG supply contracts.

HBRC has already committed to AoG supply contracts for some categories of expenditure and recognises the benefits that can be realised under AoG supply contracts. HBRC is committed to saving on transaction costs and will continue to review its requirements against the availability of goods or services under AoG contracts or similar bulk purchasing schemes.

HBRC employees must comply with the AoG supply requirements when purchasing goods or services in the categories where HBRC has committed to an AoG supply contract.

5.14 Reimbursements

HBRC may sometimes be required to cover costs of works or services that are procured by another party. In these circumstances, HBRC must approve and agree with the other party the scope of the works or services and the maximum cost HBRC will be incurring prior to any works or services commencing. The costs should be fair and reasonable giving regard to the nature and extent of work undertaken and the applicable market rates.

5.15 Loan/Subsidy Schemes

HBRC may take part in schemes where HBRC provides loans or subsidies to qualifying parties for purchasing goods or services. Where HBRC selects and provides a list of approved suppliers under those schemes, those suppliers will be included on the list based on pre-condition qualification criteria set by HBRC. The approved suppliers will be subject to audit to ensure that the standard of goods supplied or work being undertaken consistently meets those criteria.

6. Procurement Processes

6.1 Competitive Procurement Processes

A significant portion of HBRC's external expenditure will be with suppliers who have been selected via a competitive process. A competitive process will be the default for selecting a supplier, unless there is good justification for deviating from a competitive process for a particular purchase. HBRC will maintain a framework of competitive procurement processes through its procurement manual. This framework will provide guidance to employees on:

- The appropriate methods to employ when undertaking a competitive procurement process;
- The criteria for deciding which method to use given the specific purchase requirements.

6.2 Deviations from Competitive Processes

HBRC recognises that some of its requirements will be best met through a direct approach to existing suppliers or Niche Suppliers (a supplier of goods, works or services not readily available from a number of competitive suppliers in the market). Sometimes there will be a clear benefit to HBRC from procuring assets, goods, works or services in this way.

Where justification for a deviation from a competitive procurement process is documented and approved at the appropriate level within HBRC, it will be open for HBRC to directly negotiate with a supplier and not be bound by its competitive procurement processes and corresponding financial thresholds.

The procurement manual will provide guidance to HBRC employees on the appropriate considerations and methods to use when deviating from competitive processes.

6.3 Panels or List of Preferred Suppliers

For some types of purchases, HBRC will engage suppliers on a panel, or maintain a list of approved suppliers. HBRC favours this approach to help reduce the cost of procurement, particularly where:

- Suppliers provide goods or services of relatively small value on an 'as required' basis.
- Suppliers are Niche Suppliers and HBRC is not easily able to procure the specific goods or services elsewhere.

HBRC will regularly review its lists of approved suppliers (at least every three years), and in particular the prices and quality of the suppliers on the list. One of the primary objectives of these reviews will be for HBRC to consider the need for a fresh procurement process, or price negotiation with suppliers. Supplier agreements with suppliers should contain terms and conditions that permit regular reviews.

<https://herbi.hbrc.govt.nz/site/ContCent/Lists/Contractors/AllItems.aspx>

7. Procurement Manual

7.1 Purpose of Procurement Manual

HBRC will maintain a procurement manual to document HBRCs procurement processes and support employees responsible for managing procurement activities. The procurement manual will provide employees with guidance on:

- Procurement strategy and planning
- Procurement processes
- Supplier evaluation and selection
- Procurement documentation and forms of contract
- Negotiation.

The procurement manual will be consistent with HBRC's procurement policy and list of financial delegations.

7.2 Contents of Procurement Manual

The procurement manual will contain information to enable documentation, processes and methods to be selected that are in proportion to the value and risk involved with a particular purchase. Where there are a variety of options available, the procurement manual should provide detailed selection criteria that allow the employee to select the most appropriate option for the particular type of procurement.

The procurement manual will cover:

- Purpose of the Manual
- Procurement life cycle
- Procurement Strategy
- Procurement Planning
- Tender Administration and Probity including
 - Selection process
 - Supplier Evaluation and Selection
- Contract Forms and Types
- Managing contracts including
 - Mobilisation
 - Evaluation.

8. Financial Delegations

HBRC will maintain a list of financial delegations that clearly identifies:

- HBRC individual officers delegated with financial authorisation to commit HBRC to external expenditure
- The level of expenditure authorisation delegated to those officers
- Any definitions of expenditure required for council officers to understand their financial delegation (for example: how expenditure for services provided on an as required basis under an ongoing service agreement with a supplier should be treated)

The list of financial delegations should not limit or impede an HBRC employee from undertaking their role and responsibilities, particularly with respect to authorising payments under a supplier agreement or managing an emergency.

Note that delegations are GST exclusive.

Financial Delegations – where provision is made in the LTP / Annual Plan (Operating & Capital)	
CE	Authority to implement the LTP / Annual Plan as approved by Council
Group Manager – Office of the Chair and Chief Executive	Up to \$200,000 for any one commitment
All Other Group Managers	Up to \$150,000 for any one commitment
Emergency Management – Group and Local Controllers	Up to \$100,000 for any one commitment
All Other Staff	Delegations provided by their Group Manager up to a level of \$100,000 for any one commitment

Operating Expenditure – where no provision is made in the LTP / Annual Plan
Any material operating expenditure that is outside the provisions of the LTP / Annual Plan should be raised with Council as soon as practical to obtain their agreement to proceed with the expenditure and to confirm how this will be funded. If it is agreed to fund through reductions in other budgets this will be reported on to Council through the quarterly operations report. Other options may include loan borrowing or letting the cost hit the bottom line. The Regional Council contingency budget will only be used once confirmed by the Council. This will usually occur in the 9 month reforecast exercise each year

Capital Expenditure	
CE	Up to \$50,000 for any one commitment if funded via the asset replacement reserve.
Group Managers	Up to \$20,000 for any one commitment if funded via the asset replacement reserve.
Council	Any capital expenditure outside of these delegations must go to Council for approval.

The above delegations were adopted by Council resolution 27 March 2019 - Please refer to: <https://herbi.hbrc.govt.nz/site/corpmgt/Lists/FinancialDelegations/AllItems.aspx>

9. Emergency Procurement

An emergency is as defined under the Civil Defence Emergency Management Act 2002, as amended or superseded by other legislation. In an emergency, departures from normal procurement and payment process will be acceptable if it is necessary in order for HBRC and the Hawke’s Bay CDEM Group to respond the emergency effectively.

In an emergency, the following financial delegations will apply:

All CDEM related expenditure during an emergency is incurred by the territorial authority in which the expenditure occurs. Certain expenditure can then be claimed from central government, such as welfare related expenditure. During an emergency, controllers who are council employees may use the delegations that they hold for their local authority. However there may be occasions where controllers are not council employees or have been deployed from other local authorities. Financial delegations are therefore required

to cover this situation and provide for an effective response to an emergency. The following financial delegations shall apply for persons appointed to the position of group or local controller, where appropriate local authority delegations have not been approved previously for the area concerned.

Local Controllers: Empowered to enter into commitments up to \$100,000 for any one commitment within the area they are local controller.

Group Controllers: Empowered to enter into commitments up to \$100,000 for any one commitment.

The Group Controller has the authority to delegate this expenditure to any emergency response individual as is required to effectively respond to the emergency.

Where emergency expenditure is required above the emergency limit for single item or service, approval for emergency expenditure must be provided by either the Chair of the Joint Committee or the Chief Executive of the Hawke's Bay Regional Council or their respective Hawke's Bay CDEM Group delegates.

Where practicable to do so prior to expenditure being incurred, the Group Controller will seek assurance from the Ministry of Civil Defence and Emergency Management that expenditure by HBRC in an emergency situation will be eligible for reimbursement by Central Government.

For oil spill response the Maritime Transport Act 1994 should be followed and the On-Scene commander will have the authority to have delegated authority up to the level stated in our oil spill procedures.

Urgent Procurement may include when life, property, or equipment is immediately at risk; or standards of public health, welfare, or safety need to be re-established without delay, such as disaster relief.

10. Record Keeping

HBRC should be able to demonstrate that it has conducted procurement fairly and appropriately. It is essential that records are kept of procurement activities by HBRC describing the background and reasons for procurement decisions. Records should be maintained for each procurement that document:

- That HBRC's procurement processes have been followed.
- That sufficient budget has been allocated for the purchase.
- That approval has been given for the purchase from the relevant holder of delegated financial authority.
- Any conflicts of interest have been identified and managed.
- Any risks have been identified and managed.
- The supplier agreement(s) that have been entered into.

HBRC will maintain adequate systems and processes for managing its procurement documentation and supplier agreements. All employees responsible for purchasing activities and contract management should be trained in the correct processes for managing documentation.

Every new contract should be recorded under Contract Central in HerBi which will allocate a specific contract number and will enable the collation of all information under each contract.

Please refer to HerBi / <https://herbi.hbrc.govt.nz/site/ContCent/default.aspx>

11. Application of Policy

11.1 General Application

This procurement policy applies to HBRC and all of its employees, consultants and advisors undertaking procurement activities on behalf of HBRC.

11.2 Council Controlled Organisations

This procurement policy does not apply to any council controlled organisations in which HBRC has any interest.

11.3 Council Business Units

This procurement policy applies to HBRC business units with respect to the business units procuring assets, goods, works and services from suppliers.

Where an HBRC business unit is a supplier or potential supplier to HBRC:

HBRC will not invite any HBRC business unit to tender or submit for any work in any competitive process where it will be in direct competition with the open market.

Where HBRC has work which is able to be undertaken by a business unit and the Council wants the business unit to potentially undertake the work, it may either:

- Approach the business unit directly and solely to price the work as an alternative to engaging the market in a competitive process; or
- Having already undertaken a competitive process with the market and not being satisfied with the value it will receive, request the business unit to price and undertake the work.

12. Review

This procurement policy and the procurement manual will be reviewed in 2022. Changes may be made to the procurement policy and/or the procurement manual in the interim if there are significant developments in procurement best practice.

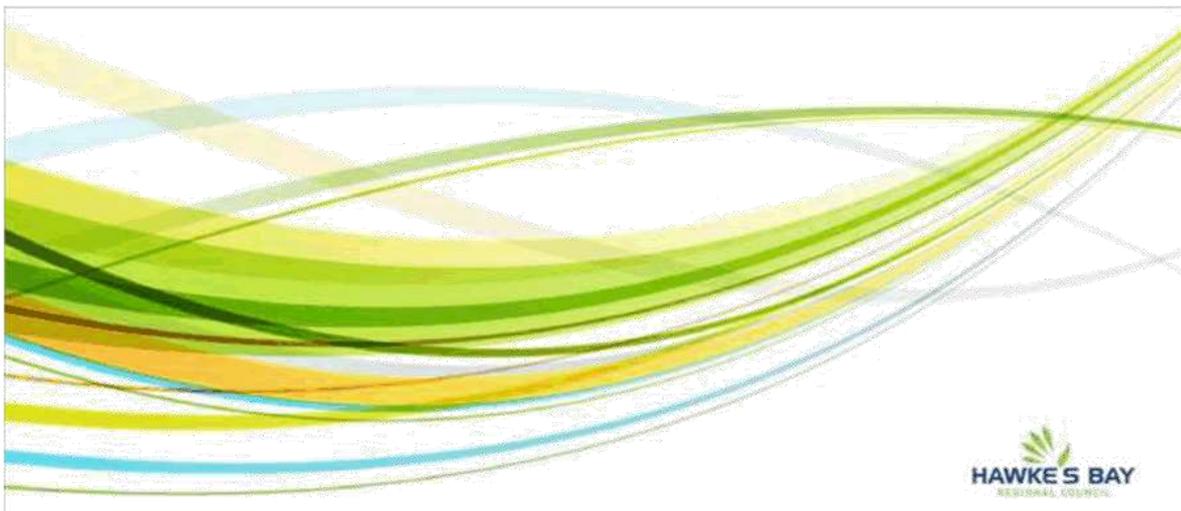
Hawke's Bay Regional Council

Procurement Manual

May 2019

Item 10

Attachment 2



Document Control

Purpose of this document:

The Procurement Manual supports the Procurement Policy and details how to apply the policy principles.

The revised procurement policy and procurement manual are consistent with national procurement principles and guidelines and are compliant with relevant legislation. The Policy details what HBRC is required to do to meet national guidelines and the Manual details of how to apply the policy principles to deliver benefits of best practice procurement.

Intended Audience:

This document is intended for internal HBRC staff who administer and manage procurement. Communications information will be developed and made publicly available for external audiences, anticipating a launch following policy approval, in July 2019.

Following the relaunch, this policy may be refined in the light of experience over time with any changes to be approved by Council before implementation. The next scheduled review is 2022.

Document Information

	Position
Document Owner	Jessica Ellerm – Group Manager
Issue Date	14.5.19
File Name	Procurement Manual – Revised May 2019

Document History

Version	Issue Date	Changes
VO1	13.5.19	

Document Review

Name	Role	Review Status
Mark Heaney	Manager, Client Services	Draft Complete

Document Sign-off

Name	Role	Sign-off date
Jessica Ellerm	Group Manager – Corporate Services	16.5.19

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Attachment 2

1 Purpose of the Manual

The purpose of this manual is to provide guidance for HBRC employees responsible for managing procurement activities.

The processes to follow, and the tools to use when undertaking procurement of goods, works or services to comply with Hawke’s Bay Regional Council’s procurement principles, policy and national guidelines.

This manual details how to apply policy principles that deliver the benefits of best procurement practice.

The manual provides guidance on the overall procurement process including:

- Purpose of the Manual.
- Procurement life cycle.
- Procurement Strategy.
- Procurement Planning.
- Tender Administration and Probity.
- Selection process.
- Supplier Evaluation and Selection.
- Contract Forms and Types.
- Managing contracts.
- Mobilisation.
- Evaluation.

The procurement manual aligns with HBRC’s procurement policy and financial delegations.

Every procurement activity is different and the considerations for sustainable procurement will vary depending on the goods, service or works HBRC is buying, the size, scale and, risks involved in the procurement, and the outcomes we want to achieve.

To do this well, HBRC needs people with the right skills to advise, manage, and make decisions about what to buy, how to buy it, and how to make sure they are getting what they have paid for. Resource is available to support those with procurement responsibilities to adopt a consistent approach to procurement across the organisation. This will be delivered using a hub and spoke model.



2 The procurement life cycle - plan, source, manage.



Effective procurement can save money and ensure that more projects are delivered on time and budget, with reduced exposure to commercial risk, and less cost in doing business. It can lead to productivity gains and support innovation by suppliers. For a procurement to be successful, it is important for HBRC to consider each of the eight stages in the procurement life cycle.

Procurement guidance, such as *Government Rules of Sourcing* and the Office of the Auditor General (OAG) 2008 good practice guide, *Procurement guidance for public entities*, has been available to the public sector for the last 10 years. These documents are available at procurement.govt.nz.

There are three stages of the procurement life cycle that HBRC can improve: the strategic analysis, which should be done at the start of the procurement life cycle; contract management; and checking that intended benefits are realised.

Procurement begins with HBRC determining what goods and services it needs to achieve its goals. Procurement includes planning for the purchase, the purchase process itself, and any monitoring to ensure that the contract has been carried out and has achieved what it was meant to.



3 Initiation, needs identification and specification

The early stages of planning for a procurement are critical to success. The first stage of a procurement life cycle is initiating the project. In this stage, it is important that HBRC takes a strategic approach, with proposed procurement aligning with the organisation’s priorities and business objectives. For a procurement to be successful, HBRC needs to clarify roles, responsibilities, and processes for decision-making, ownership, and oversight, at the start of the procurement life cycle. At an early stage, HBRC needs to take a strategic view of their procurement and determine how it fits with their broader objectives.

The second stage in the procurement life cycle is identifying needs and analysing the market of suppliers that provide goods and services. It is important that HBRC consults stakeholders at an early stage, use the best possible information and understand the supplier market.

The third stage in the procurement life cycle is specifying requirements. HBRC needs to have a clear understanding of what it wants to purchase and a plan of how they will measure supplier performance, before agreeing to a contract.

The fourth stage in the procurement life cycle is planning how the procurement will be carried out and justifying these decisions. This is called the procurement plan. How much detail is needed in the plan will depend on the value and risk associated with a particular procurement. It can include project scope, the procurement method, whether the approach will be open or closed or multi-staged, how HBRC will work with the market, and the form of contract. Planning should also include selecting the evaluation model (including evaluation criteria) and process.

3.1 Purpose of the Procurement Plan

The procurement plan provides the means for HBRC to consider and decide upon the appropriate strategy for procuring services. The plan will also be a reference for staff throughout the process and provides an auditable record of how the procurement proceeded.

A procurement plan should only be developed if the business need for the procurement is established and approved and there is available budget for the supply or project to be undertaken. For routine purchases this will be a simple process as part of HBRC’s normal planning cycle. For one off, extraordinary purchases, a business case for the procurement will need to have been established and approved.

3.2 When is a Procurement Plan Required

The procurement plan should be to a level of detail that is suitable for the particular service taking in to account factors such as estimated value, complexity, risk, market capability and other service specific issues.

The following table indicates the expected requirements based on estimated value. Where services are complex and/or high risk a Detailed Procurement Plan should be considered even if the estimated value is below the \$50,000 threshold.

Estimated Value	Procurement Plan Requirements	Approved by
Up to \$10,000	Not required	Staff with Financial Delegation
\$10,001 to \$50,000	Basic Procurement Plan	Manager / Group Manager
> \$50,000	Detailed Procurement Plan	Manager / Group Manager / CEO

The procurement plan should be included with the other contract information in the contract library. If the procurement only requires a purchase order then the procurement plan should be attached to the final invoice and scanned into the accounts system.

3.3 Contents of Basic Procurement Plan [Link Appendix 2.1](#)

A basic procurement plan should contain appropriate information about the scope, process, risks and procurement team. The exact level of detail is determined by the Manager given the value and risks involved.

3.4 Contents of Detailed Procurement Plan [Link Appendix 2.2](#)

The Group Manager is responsible for ensuring a project or service specific procurement plan is developed and contains the appropriate level of detail for the services to be purchased. The detailed procurement plan should contain the following information:

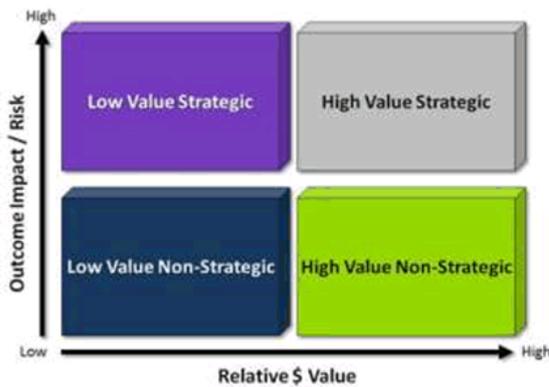
- The goods, works or services (“the services”) to be procured and any relevant background information including prior approvals.
- A brief statement of the scope of the services required and summarised special technical or performance requirements (including where relevant special requirements that minimise the whole of life costs of the services which may attract a price premium). This should be provided by a person expert in the specification of the particular services.
- The total budget including:
 - The expected full cost of the services (over the entire contract length for term contracts).
 - Any contingency allowances for risk.
 - The cost of the procurement process.
 - The cost of managing and administering the supply contract.
 - The cost of related or consequential commitments that are outside the cost of the service supply (e.g. the costs of a consent that HBRC must obtain to enable the service supplier to perform).
- Any risks that might impact on the procurement process or the services including the strength and number of potential suppliers in the market and how these may be mitigated.
- The term of the contract for repetitive services (e.g. bus services or asset maintenance) or for one off supply contracts.
- The type of contract and a summary of key contractual conditions that are intended to be used and why.
- The procurement strategy including how potential participants will be invited, the conditions of tender, the evaluation method and any proposed process deviations.
- The timeline to complete the process.
- The procurement team – including the procurement project manager, procurement administration manager, the evaluation team members, any probity personnel required and the authority responsible for approving the award of a contract.

For procurement of services that are less complex lower value judgment is required as to the level of detail required. This will be determined by the responsible Group Manager.

3.5 **Procurement Risk**

Risk can often be difficult to anticipate or describe however there are particular risks that are common to many procurement processes. These risks should be considered and measures taken to mitigate them through careful planning and good management of the procurement process. Some of the key procurement risks are:

- Participants in the process are not treated equally and fairly leaving the process open to challenge – mitigated by auditable and rigorous processes that ensure even handed dealings with all participants.
- A supplier is selected who is not suitably qualified, experienced or capable of delivering the goods, works or services – mitigated by a robust selection process.
- The tendered price of the goods, works or services is significantly more than expected or budgeted for. If significant, and there is no further funding available, there may be a need to review the technical specification, quantum of work, time for completion or amount of risk the tenderer is being expected to take. Minor changes can often be negotiated with the preferred tenderer but if changes are significant it may be prudent to go back to all tenderers and request a retender for the contract.
- The tendered price is significantly lower than expected. This can be due to the estimate being too high but can mean that the tenderer has misinterpreted the quantum or difficulty of supply to the quality standards required. Such cases need to be explored with care. A contract that is priced too low usually results in poor performance and at worst contractor default. The contract also becomes expensive and time consuming to administer and resolve disputes.



Low value strategic	A service that is relatively low cost, but that is likely to have a significant impact on the outcomes for which HBRC is responsible, the relationship with the provider is likely to be collaborative, open, and have a strong personal element. It will have a strategic focus, with risk management generally being one of the key drivers.
High value strategic	A service of a higher cost and likely to have a significant impact on HBRC outcomes. Such relationships should be very collaborative and open, with a strong strategic focus from both sides. You are likely to engage frequently and in depth, with correspondingly higher levels of trust in the relationship. There will be multiple levels of engagement, including operational and executive level. Considerable focus should be applied to the development and maintenance of relationships in this quadrant.
Low value non-strategic	A service that is relatively low cost and mostly transactional in nature, such as a single local provider offering a service; or a national subject matter expert producing a report. While such services contribute to outcomes, they tend to be lower impact and also lower risk. The relationship will be focussed on the service delivery. You and the provider will have less frequent communication and little, if any, discussion or engagement at a strategic level.
High value non-strategic	A service of a higher cost, but still mostly transactional in nature. Most relationships in this quadrant tend to be for more commercial services, such as air travel to all of government. While you will have more meetings and more contact than with relationships in the <i>lower value</i> non-strategic quadrant, your approach from a relationship perspective is more 'business' than 'personal'.

3.6 **Services Risk**

Once the contract is awarded both the contractor (supplier) and the client are legally bound to fulfil their respective obligations as set out in the contract documents. A successful contract is founded on good quality specifications and contract conditions. Some of these are specifically designed to limit the risk to the client of poor or non-performance by the contractor. Some common examples of risks that give rise to contract disputes that need to be responsibly managed are:

- The client does not fulfil its contract obligations or does so in an untimely manner e.g. slow responses to contractor queries.
- Unforeseen (by the client) variations arising from factors outside the contractors control or from actual quantities being more than that in the contract payment schedule.
- The contract does not contain suitable protection for the client in the event of failure or negligence of a supplier during the performance of contract.

3.7 *The Term of Contracts*

- In any supply situation consideration needs to be given to what is a reasonable time for the completion and delivery of the required goods, works or services. While every situation is different it is useful to consider the following.
- Are the goods available locally, off the shelf or must they be custom made elsewhere?
- Is there specialised equipment required.
- Will performance be affected by the seasons/weather.
- Is the delivery date critical to the client or can a more generous time be allowed (what is the likely cost to the client of a later delivery?).

It is noted here that often the time becomes critical purely because the client has been late in tendering the work. If so this is a pointer to improving the client's internal processes.

- Remember that as a rule delivery times that are too tight are likely to result in:
- Higher prices being tendered.
- Higher risk of contractor default.
- Higher risk of poor quality.

4 Procurement Strategy

The procurement plan / strategy should be about achieving the best value outcome for the client. Best value generally needs to balance the needs for fit for purpose quality, delivery time and cost. In order to obtain best value (assuming the deliverables are well specified) from the procurement process the following should be considered:

- Is there a competitive supplier market or is the service highly specialised with limited or possibly only one supplier?
- Is a local supplier able to match quality and cost criteria?
- For low value goods, works and services should the simplified (say) three verbal or written quotes be used?
- What procurement process is appropriate for the value or complexity for the goods, works or services required?
- How should potential participants be invited to tender?
- What conditions of tender should be used?
- What evaluation method should be used?
- When is the best time of the year to call for tenders?

Procurement decisions should take into account section 17A of the Local Government Act 2002 which states that a local authority must review the cost-effectiveness of current arrangements for meeting the needs of communities within its district or region for good-quality local infrastructure, local public services, and performance of regulatory functions. A review of these arrangements must be undertaken when there are any significant changes to relevant services levels, within two years of the expiry of any contract or binding agreement relating to infrastructure, service or regulatory functions or at any other time the local authority considers desirable, but not later than 6 years from the last review.

For more information refer directly to the Local Government Act 2002

5 Approaching the market, selecting a supplier, and awarding a contract



The fifth stage in the procurement life cycle involves initiating the procurement process in the supplier market, providing information to potential suppliers, answering any questions they might have, and selecting a preferred supplier.

The sixth stage in the procurement life cycle is negotiating the terms and conditions of a contract, establishing and agreeing to levels of service with the supplier, and providing feedback to both successful and unsuccessful suppliers

5.1 Competitive Procurement Processes

Competitive procurement provides the advantage of being able to compare and assess the relative quality and price of various suppliers. Because suppliers must compete to be successful, there is greater likelihood of achieving the best value for the goods, works or services being procured. Competitive processes also enhance the transparency of the procurement process and decision to select a particular supplier.

A competitive procurement process should be used wherever possible and practical and is consistent with good governance principles applying in the public sector. A competitive process will be appropriate when there are a number of potential suppliers with the right product or capability in the market.

Note: Where a prequalified supplier panel exists (either through an All of Government (AoG) contract or a panel or list of suppliers managed by HBRC) it is still possible to obtain competitive submissions from a number of the listed suitable suppliers. Depending on the nature of the deliverables their submissions may be expected to cover methodology, delivery time and cost. Caution should be exercised in selecting suppliers from a list that has not been the subject of a robust selection process.

There is a range of processes and associated documentation that can be used for a competitive procurement. The most appropriate process to use will depend on a number of factors such as

- The value of the service.
- The cost and resources required for the suppliers to take part in the process.
- The level of detail of HBRC’s requirements and technical specification of the goods, works and services.
- The urgency of the procurement.
- The number of available suppliers assessed through market research.

The following are the most common types of competitive process and when they should be used:

Type of Process	Type of Market Engagement	Used
Quotation Based	Verbal quotation	For simple procurements for low value and low risk goods, works or services. Verbal quotations should only be used when the value of the procurement is less than \$10,000.

Type of Process	Type of Market Engagement	Used
<p>Seeking quotations requires HBRC to effectively communicate its requirements. HBRC must take care to ensure all potential suppliers receive the same information regarding the requirements. Where there is a large market, three quotes should be sufficient for ensuring a competitive price. Quotations received and procurement decisions should be appropriately documented as with other procurement processes.</p>		
Quotation Based	Written Quotation	For simple procurements of low risk, but with a value below \$50,000.
<p>Best practice requires HBRC to document its requirements. A Request For Quotation (RFQ) document ensures that all potential suppliers are provided with the same information. Where there is a large market, at least three quotes should be obtained.</p>		
Proposal Based	Request for Proposal (RFP)	<p>To be used when HBRC knows <i>what</i> outcome it wants from the procurement but is not certain <i>how</i> this outcome is best achieved. Proposal processes are useful in the following scenarios:</p> <ul style="list-style-type: none"> • Goods, works or services are not able to be clearly defined • A detailed specification cannot be provided • Requires a solution to an existing problem where there is potentially a number of solution options <p>For procurement of medium to high value and risk. For procurement values above \$25,000 a proposal process should be considered*. Above \$50,000 a proposal or tender process is mandatory except where approved otherwise by the Chief Executive.</p>
<p>Proposal processes are useful if HBRC does not have a detailed scope and specification of the goods, works or services. However, wherever there are essential requirements, RFP documents should include enough detail of these for participants' to cover the requirements in their proposals. Proposal processes will likely involve negotiation with the preferred participant to confirm the exact scope and specification of the final contract and basis for payment. Often used for professional services contracts.</p>		
Tender Based	Request For Tender (RFT)	<p>Tender processes should be used when HBRC knows exactly what it requires for the goods, works or services and how it wants those goods, works or services delivered. Tender processes are useful in the following scenarios:</p> <ul style="list-style-type: none"> • Goods, works or services are clearly defined • Detailed specification, methodology or processes can be provided • For procurement of medium to high value and risk <p>For procurement values above \$25,000 a tender process should be considered*. Above \$50,000 a proposal or tender process is mandatory except where approved otherwise by the Chief Executive.</p>
<p>Tender processes are appropriate where there is a clear and defined scope and/or detailed specification for the goods, works or services being procured. Tender documents must provide tenderers with certainty and clarity of the requirements. Tender processes are focused on tenderer capability, resources and price and allows all of these to be compared to determine who will be the successful supplier. Tender processes may involve negotiation with the preferred participant to confirm the exact scope and specification of the final contract and the price. Often used for major supply, works or services contracts.</p>		

** The decision to use quotes over a proposal or tender process will be based on the analysis of requirements of HBRC in the preceding procurement plan. If factors such as well-defined requirements, lower risk procurement category, known and established suppliers favour a quotation process, there may be justification for pursuing this lower cost route of procurement.*

HBRC must comply with above procurement value thresholds when making decisions about the type of process to be used, with the exceptions of the following circumstances:

- Emergency procurement (competitive processes do not have to be complied with in an emergency situation).
- Transport procurement (to be undertaken in accordance with an approved NZTA procurement strategy).
- Approved deviations.

Note: It is very important that the conditions for any proposal or tender invitation are carefully prepared. Proposal and tender processes can create a contract between HBRC and a participant that meets the requirements set out in the proposal or tender documents. Proposal or tender documentation should be drafted to allow HBRC to alter the process or make procurement decisions where necessary to achieve the best outcome without the risk of HBRC acting unlawfully. For major procurements, professional and/or legal advice should be sought before proposal or tender documents are issued to the market.

5.2 *Multi Stage Processes*

In some circumstances, it may be appropriate for HBRC to undertake a multi stage procurement process. Multi stage processes usually consist of two stages:

An initial stage – where HBRC has identified a need for goods, works or services but is not clear about the availability or the capability of suppliers in the market. An initial stage can also be useful for HBRC to refine its requirements for goods, works or services based on the responses it receives.

Registration of Interest (ROI), Expressions of Interest (EOI), and Requests for Information (RFI) are all options for undertaking this initial stage. The most appropriate procurement documentation will depend on the outcome HBRC is looking for from the process. Essentially the different document types will all service the purpose of indicating who is interested in supplying the goods works or services. What differentiates them is the amount of additional information that is requested about:

- The capability of the supplier.
- The possible services or solutions that could be provided by the supplier.

Price is generally not considered at this stage of a multi-stage process.

This initial stage may be used to shortlist preferred participants who are then invited to submit a proposal or tender in the second stage.

A second stage – where HBRC is certain enough of its requirements and the market based on the initial stage to undertake a more detailed procurement process of the goods, works or services. The second stage will involve issuing Request for Proposal (RFP) or Request for Tender (RFT) documents to participants short listed in the initial phase.

Because multi stage processes can be expensive and time consuming, HBRC should only use a multi stage process for higher value procurement.

Short listing in the initial stage can be a useful aspect of a multi stage process. Where there might be numerous participants in a procurement process, the cost of pricing a full tender in a single stage process may discourage some parties from participating. An initial stage that clearly states the intention to short list may increase the level of interest in the market. This will provide HBRC with a greater understanding of the capability of suppliers in the market before having to make a decision on the final supplier.

5.3 *Open and Closed Procurement*

An open procurement process is when offers from potential suppliers are requested from the market by public advertisement of the procurement. Open procurement processes will usually be conducted when HBRC wants as many high quality participants to take part in the process as possible.

Open procurement processes should be used wherever possible by HBRC as this increases the likelihood of HBRC receiving offers from all potential suppliers. This means that:

- No supplier is disadvantaged by being excluded from the process.
- HBRC has more opportunity to receive an offer from a participant that represents the best possible value.

A closed procurement process is when a select number of suppliers are identified by HBRC prior to the procurement and only those suppliers are approached to take part in the process. A closed procurement process will often benefit

HBRC by decreasing the time and cost to undertake the procurement process. However, there is the risk in a closed process that HBRC will not be provided with the best possible offer and that it could be challenged by a party that was not invited to take part in the process.

Closed procurement processes should only be used when:

- HBRC has adequately assessed the market with respect to its requirements and will invite all the suppliers to participate it believes can meet its requirements.
- HBRC is conducting a multi stage process and has short-listed a number of participants through an open process to proceed to a subsequent closed stage of the procurement.

The following table provides an indication of when it is appropriate to use open or closed processes:

Contract Value	Process	Open or Closed
Up to \$10,000	Verbal or written quotations	Closed
\$10,001 < \$50,000	Written quotations	Closed or Open
>\$50,000	Written quotations, Proposal or Tender	Closed * or Open

*Where a closed tender is proposed for procurement over \$50,000, this must first be approved by the Tenders Committee.

5.4 **Deviations from Competitive Processes**

There will be circumstances where it is appropriate for HBRC to deviate from a conventional competitive process and procure goods, works or services directly from a supplier. Direct purchasing will likely result in significant cost savings to HBRC with respect to the procurement process.

The type of situations where direct purchasing may be considered are:

- The number of suppliers in the market is extremely limited.
- A particular supplier has knowledge of HBRC’s environment and/or requirements that other suppliers do not have (Note: This may be open to challenge by other suppliers).
- The goods, works or services being procured are of a specialist type or nature or must match existing service or assets.
- The goods, works or services are associated with or dependent on other goods, works or services already purchased from a current supplier (e.g. a software upgrade to an existing HBRC system).
- HBRC can and must purchase the goods, works or services under an AoG contract.

HBRC must in the first instance undertake sufficient investigation and analysis to determine that a direct purchase is appropriate.

If the goods, works or services are able to be purchased under an AoG supply contract, then HBRC will be required to use that channel. HBRC must follow the correct process for this type of purchase as dictated by the Ministry of Business, Innovation and Employment (MBIE) on the following website www.procurement.govt.nz

If the goods, works or services are to be purchased directly because of the limited market, speciality type and/or are from a supplier with which HBRC has an existing relationship, then the reasons for purchasing directly must be documented appropriately and approved by the delegated financial authority for the purchase. Procurement of middle to high value should have an approved procurement plan, as outlined in Section 3.2, which sets out the justification for this procurement approach.

The plan for direct procurement should confirm that:

- The rates are reasonable and consistent with the market rates for items of a similar nature;
- HBRC does regular reviews to ensure the reasonableness of prices, including randomly inviting quotations at appropriate time intervals;
- The required goods or services are not split into components or a succession of orders to enable orders to be placed without seeking competitive prices;
- and fairness and equity are assured

5.5 *Panels/Supplier Lists*

5.5.1 **Panels**

A Supplier Panel allows HBRC to set up contracts for a defined term with a group of preferred suppliers to deliver goods, works or services as and when required during the term of the contract. All of the Supplier Panel members should have been selected for their capability. Supplier Panel contracts limit the cost of the procurement process to that required to set up the panel. Individual purchases of goods, works or services are simply made through the panel with simple documentation. This makes panels more efficient for some goods, works or services.

HBRC should consider setting up panel contracts for particular types of goods, works or services when:

- HBRC cannot be certain of the amount of the goods, works or services it will require.
- The goods, skills or knowledge being purchased are specialist.
- Suppliers have limited capacity, so a panel ensures a number of suppliers can be called upon at short notice.
- Suppliers might have a conflict of interest in acting for HBRC from time to time.

Panel contracts are most commonly used for professional services where there is an ongoing need for services to be supplied on an ad hoc basis. An important aspect of panel contracts is that no one supplier is guaranteed a certain amount of work. HBRC is open to instruct any supplier on the panel on whatever basis it decides.

Panel contracts are set up via a competitive process where participants are asked:

- To demonstrate their capability to provide the services.
- Provide a schedule of rates for providing the services.

When a panel of suppliers is set up, HBRC needs to consider and implement methods and processes for:

- Allocating work to different panel suppliers – This should be on an equitable basis taking in to account availability, specialist skills and knowledge, performance, cost or division of work across the suppliers (or a combination of these criteria). Often suppliers on a panel can be required to provide a competitive estimate/quote for each project based on the rates already tendered or otherwise.
- Managing the performance of suppliers – this includes methods for reviewing and comparing the quality of work received from different panel suppliers and removing suppliers from a panel (if necessary).

Panels should be reviewed on a regular basis according to HBRC's procurement policy and from time to time, a new competitive process should be undertaken to re-establish the panel. This will ensure that suppliers in the market receive a fair opportunity to supply HBRC and that prices are tested on a regular basis so HBRC can be assured they are receiving good value for money.

5.5.2 **Supplier Lists**

A supplier list is a register of suppliers that HBRC has determined are suitable for providing particular goods, works or services. Suppliers on the list must be assessed on standard criteria for their inclusion on the list. Criteria such as specialist skills and knowledge, track record of supply, financial stability and health and safety record can be used to include suppliers on the list.

Because suppliers on a list do not have a contract with HBRC, a procurement process will need to be undertaken every time goods, works or services are required. However, the list may make it more efficient for HBRC to seek quotes from suitable suppliers or undertake more complex procurements, because the suppliers on the list have already met criteria that they would be required to demonstrate and be evaluated on through a competitive procurement process.

6 **Contract Forms and Types**

6.1 *Contract Terms and Conditions*

There are many forms of contract that HBRC can use to contract with a supplier. There are a number of appropriate standard forms of contract to use for different types of goods, works and services. The form of contract to use for a particular procurement will depend on the nature of the deliverable, value of the contract and the risk involved. In general HBRC must use the following type of contract based on contract value.

Contract Value	Contract
Up to \$10,000	Purchase order or short form contract link
\$10,001 < \$50,000	Purchase order or short form contract
>\$50,000	Detailed contract link

When HBRC is undertaking a competitive proposal or tender process, the intended contract terms and conditions should be specified as part of procurement documentation. For smaller quotation based procurement, the supplier’s terms of trade may be sufficient, provided HBRC reviews these prior to committing to the purchase and the level of risk is determined to be low.

6.2 **Standard Forms of Contracts**

There are a number of standard forms of contract that can be used by HBRC. These are generally well understood by suppliers who use them regularly and should be used to save the cost of drafting bespoke terms and conditions. Some examples of standard forms of contract are:

Contract Name	Used
Physical Works Contract (NZS3910)	For construction contracts, physical works contracts or on-going maintenance contracts.
	A standard form of contract that is well understood in the contract industry, particularly the payment process, risk allocation and dispute resolution provisions. Uses a third party ‘Engineer to the Contract’ (typically a consultant professional engineer) to oversee the contract on behalf of the Principal. Primarily designed for construction projects, but can be adapted easily for other operations or maintenance contracts.
Physical Works / Maintenance Contract (NZS3915)	Also used for construction contracts, physical works contracts or on-going maintenance contracts where the relationship is directly between the Principal and the Contractor.
	Similar to 3910 but uses a technical “expert” to determine disputes and does not use an Engineer to the Contract Requires a sound contract management experience and capability within HBRC.
New Engineering Contracts (NEC)	Also used for construction contracts, physical works contracts or on-going maintenance contracts where the relationship is collaborative in nature and usually addresses risk sharing.
	Based on a UK model. Not yet as widely used in New Zealand as NZS3910 or NZS3915 and therefore lacks market familiarity but is an international standard contract that can be a viable alternative and that has some desirable features.
Conditions of Contract for Consultancy Services (CCCS)	Used for consultancy and professional services contracts.
	Widely used by councils and NZTA across a number of professions and covers important conditions such as intellectual property ownership, professional standards and duty of care.

Contract Name	Used
Conditions of Contract for Provision of Transport Services	HBRC Standard conditions used for the purchase of public transport services.
Widely used by regional councils in NZ.	

Whatever form of contract is used in procurement, HBRC should ensure that the conditions of contract, particularly any amendments or confidentiality provisions (refer 6.4 of the Procurement Policy), are adequately reviewed for contract risks by HBRC legal advisors before the contract is tendered.

6.3 Pricing Models for Contracts

There are a number of different pricing models of contract that can be used. The appropriate contract model for a particular circumstance will depend on:

- What the nature of the goods, works or services are; and
- The size of the contract; and
- The outcome sought by HBRC

Some examples of contract models and when they should be used are set out below.

Model	Description	When used
Purchase Order (generally with a lump sum price)	An order for goods, works or services with the quoted price issued to the supplier.	For simple low value quotation based purchases where there is limited on-going risk to HBRC.
Lump Sum Contracts	A higher value contract where the contract price is agreed and fixed prior to the contract being undertaken.	Used for works or services contract where the scope and specification are well defined. The overall contract costs can therefore be estimated by the supplier and the supplier takes the risk. Useful where HBRC has a defined budget and wants cost certainty for the duration of the contract.
Unit Price Contracts	A contract where the supplier prices a defined unit of work or good supplied and is paid a variable amount depending on quantity.	Used where the volume of quantity of work or goods required cannot be accurately specified prior to the contract. Is applicable where the contract is for a repetitive unit of work.
Cost Plus Contracts	A contract where HBRC and the supplier have an open book arrangement with respect to direct costs and agree and additional fee for overheads and profits. Often used with a pain/gain sharing of financial risk. Often used in alliance type contracts.	Used for works or services contract where the scope and specification could be variable. Useful where the quality of work or services is more important than overall cost. The supplier does not take on the price risk of a lump sum contract so standards or resource levels are less likely to decline. Requires a high level of contract management/participation by the client.

Model	Description	When used
Performance Based Contracts	A contract where the supplier is provided with incentives to perform to a particular standard.	Useful where HBRC can define targets to be set and measured for the costs and quality of works or services provided. Providing costs savings to HBRC can be incentivised by sharing those savings with the supplier, once the amount of savings has been determined or by offer of an available extension of the contract term (if provided for in the contract).

It is important to note that a combination of the above pricing models can be used in larger contracts for different portions of the contract. For example, a lump sum maintenance contract could contain some works that have unit prices attached to them while other routine maintenance activities are lump sum.

6.4 **Contract Models**

For major procurements involving significant amounts of management and/or design as well as large expenditure, HBRC should consider what the best management model for the contract will be. The traditional model is most commonly used and is where HBRC instructs and manages the supplier and provides all inputs required by the supplier in order for the supplier to undertake the works or services. However, this requires HBRC to clearly communicate its requirements and expectations to the supplier and means HBRC takes a lot of the risk if its instructions or inputs are unclear or incorrect.

Other models to consider for major procurements, depending on the works or services, are:

Collaborative model – this is where a supplier is selected as per the Procurement Plan based on capability and then HBRC and the supplier jointly share the setting of outcomes and the management of resources to achieve the outcomes. The contract is undertaken co-operatively and requires a high level of input from both HBRC and the supplier. For this reason it is generally only useful for long term contracts. This is the basis of most alliance type contracts. This is a specialist area and professional advice should be sought.

Design and build model – this model is often used where for capital construction works which are likely to benefit from contractor innovation in construction methods and final design. For significant works a professional peer review of the design is normal practice. Design and build contracts allow HBRC to require the supplier to organise and provide all design as well as the works, meaning the supplier is ultimately responsible for the adequacy of the design. This is also a specialist area and professional advice should be sought.



7 Managing contracts and relationships

The seventh stage in the procurement life cycle is actively managing the supplier’s performance, including contract management planning and supplier relationship management; involving senior management in overseeing contracts; and ensuring that risks are managed.

Outcome agreement management plans (OAMP) see Appendix 5.

Outcome agreements benefit from a documented approach to contract management, particularly when they are of long duration, high value or complexity (e.g. multiple stakeholders and relationships).

It supports the planned, effective and efficient management of outcome agreements by HBRC and helps to ensure good practice, even if contract managers change.

HBRC should be able to demonstrate that it has conducted procurement fairly and appropriately. It is essential that records are kept of procurement activities by HBRC describing the background and reasons for procurement decisions. Records should be maintained for each procurement that demonstrate :

- That HBRC’s procurement processes have been followed.
- That sufficient budget has been allocated for the purchase.
- That approval has been given for the purchase from the relevant holder of delegated financial authority.
- Any conflicts of interest have been identified and managed.
- Any risks have been identified and managed.
- The supplier agreement(s) that have been entered into.

HBRC will maintain adequate systems and processes for managing its procurement documentation and supplier agreements in the contracts hub.

WELCOME TO THE CONTRACTS HUB

The image shows a grid of seven icons representing different functions in the Contracts Hub. The icons are arranged in two rows. The first row contains four icons: a hand pointing to a 'REGISTER' button on a tablet, a notepad with a pencil, a clipboard with a magnifying glass, and a clipboard with a pen. The second row contains three icons: a person icon with a plus sign, a green speech bubble with 'NEED HELP?', and a document icon with a pen.

Register My Contract View My Contracts View Active Contracts Contractors H&S Guidelines & Workbook

Add a Contractor Click above to contact Tania Contractor Evaluation Form

Every new contract should be set up under Contract HUB in HerBi which will allocate a specific contract number and will enable the collation of all information under each contract. Processes will be automated wherever possible, from contractor registration, to evaluation.

Please refer to HerBi / Contract hub : <https://herbi.hbrc.govt.nz/site/contracts/default.aspx>

7.1 Protecting against Contract Risks

HBRC must protect itself against the risks of a supplier not performing under its contract or causing damage while performing its contract.

The table below outlines some of the key types of protection HBRC can specify as a requirement in its contracts to protect against loss or damage caused by a supplier of goods, works or services. HBRC should specify or use the forms of protection that are appropriate to the size of the contract, the type of goods, works or services and the risk that the contract represents.

Sometimes it will be more cost effective for HBRC to take out its own cover, such as for some contract works, as the supplier will need to build in the costs of the cover in its tender price. For local government the marginal change in the cost of it covering the contract works is usually insignificant. If concerned about the cost, HBRC can ask for the cost to be separately itemised in the procurement documents.

HBRC should also be careful to ensure that contract terms and conditions indemnify HBRC against the acts or omissions of a supplier.

Where HBRC is unsure what protection it should have in place for a specific contract, legal advice should be obtained prior to the contract being tendered.

Type of Protection Required in the Contract	Description	Type of Contract
Public Liability Insurance	Protects HBRC against liability for damage or injury caused to a third party by the contractor.	All works or services contracts.
Motor Vehicle Liability Insurance	Protects HBRC against liability for damage or injury caused to a third party by the contractor operating a licensed motor vehicle.	All works or services contracts involving the use of licensed motor vehicles.
Product Liability Insurance	Protects HBRC against liability for damage or injury caused to a third party by a faulty product.	Supply of goods and products.
Professional Indemnity Insurance	Protects HBRC from liability for damage caused by negligent design or advice.	<ul style="list-style-type: none"> Professional services contracts, including engineering, architectural, science, specialist Professional advisory contracts including legal and financial advice Design and build contracts where contractor is responsible for designing the works
Contract Work's Insurance	Protects HBRC from loss or liability for damage caused to built or partially built structures. This is sometimes insured by the Client.	Contracts involving capital works construction.
Contractor's All Risk Insurance	Protects the Contractor from loss or liability for damage caused to plant and equipment thereby enabling the contractor to continue to fulfil its contract obligations.	Maintenance and capital works contracts.
Warranties	Provide HBRC with assurance that goods, works or services are fit for purpose for a defined period and will be rectified or replaced if not.	Generally only used for specialised or proprietary products (e.g. the performance of a waterproof membrane) or installed machinery.

Type of Protection Required in the Contract	Description	Type of Contract
Performance Bonds	A bond provided by a third party that is payable to HBRC on demand if supplier does not fulfil its obligations under the contract. Protects HBRC from the additional cost of procuring a replacement supplier if a supplier is unable to perform its responsibilities under the contract. The bond could be a cash bond lodged with the Council and held on trust however this is not usually favoured as it impacts the contractor's cash position.	Maintenance and capital works contracts and some service contracts. For maintenance and capital works contracts over \$100,000, bonds must be for 10% of contract value. For maintenance and capital works contracts over \$1,000,000, bonds must be for \$100,000 + 5% of value over \$1,000,000. The bond must be formally released once substantial completion is achieved.
Bonds in Lieu of Retentions	A bond that replaces contractual requirement for maintenance retention. This is very seldom used as it is expensive and the existence of the bond can limit the contractor's overdraft facility with its bank.	Capital works contracts. Usually 5% of contract fee withheld at each payment. Often 50% of retentions is released to the contractor at substantial completion of the works and the remaining 50% is paid at the end of the defects liability period.
Maintenance Retentions	Retention by HBRC of a percentage of contractor's payments. The requirement can be forgiven if a suitable bond in lieu of retentions is allowed and provided. Ensures that the works are properly maintained and problems rectified during the defects liability period. If not the client can use the available monies to engage another contractor to remediate any defects and deduct the actual cost of this up to the limit of the funds held.	Capital works contracts. Usually 5% of contract fee withheld at each payment. Often 50% of retentions is released to the contractor at substantial completion of the works and the remaining 50% is paid at the end of the defects liability period.
Liquidated Damages	Protects HBRC from the loss incurred if a supplier does not complete its responsibilities within a specified timeframe under the contract. Liquidated Damages do not protect against actual loss. The damages amount (usually \$\$ per day) is predetermined based on a realistic assessment prior to tendering.	Capital works contracts.
Defects Liability Period	Protects HBRC from defective works that arise within a specified timeframe under the contract (can vary widely depending on the works but often for one year). The contractor is required to make good any defects that are found in the defects liability period (or forgo any part of their retention monies use to engage another contractor to remedy defects).	Capital works contracts. Difficult to use with maintenance contracts without special provisions relating to major rehabilitation works.

8 Evaluation Methodologies and Procedures

The outcome of the procurement supplier selection process is determined by the evaluation of the submissions or offers received from the participants. Using the appropriate evaluation model will assist HBRC in making the right decision about who to select as a supplier. In order to achieve the best outcome, it is essential that the qualities HBRC are looking for in a supplier and a supplier's offer are reflected in the evaluation model used.

8.1 Evaluation Planning

It is essential that HBRC consider the evaluation model it will use prior to going out to the market and include it in:

- The procurement plan (summarised); and
- The procurement documents issued to the market.

This ensures that HBRC is clear about what criteria it will evaluate and participants can understand how they will be assessed. Participants can then provide the appropriate information to allow HBRC to make meaningful comparisons between potential suppliers.

For more complex procurement processes, it is recommended that HBRC document the evaluation methodology in more detail in an evaluation plan that is issued to each member of the evaluation team with clear guidance on how to mark submissions and how the team will arrive at a decision to recommend a preferred supplier. Evaluation plans are also useful for audit purposes, as they provide documented detail on the decision making process.

The evaluation plan must contain:

- The names and positions of the evaluation panel members
- Detail of the evaluation method
- A full description of the evaluation process on a step by step basis

Note: As best practice, procurement documentation provided to the market should make it clear to participants that HBRC reserves the right to depart from the stated evaluation process. Often clauses in procurement documentation will state that HBRC reserves the right to select the supplier that represents the best value for money for HBRC, irrespective of the evaluation process. This is important because it may become evident during the process that the evaluation model proposed will not result in an acceptable outcome for HBRC and the process needs to be modified. HBRC will need the flexibility to modify the evaluation process without taking the risk of acting unlawfully.

8.2 Evaluation Methods

Evaluating proposals and offers from potential suppliers is essentially about assessing two core aspects – the prospect of receiving the right quality of goods, works and services and the price.

Depending on the circumstances of the purchase, the emphasis for HBRC may be on either the quality or the price or a balanced combination of both. The first step in deciding upon the method of evaluation will be to establish which of the quality aspects or price of the purchase is more important to HBRC. This assessment must happen at the procurement planning stage.

8.2.1 Types of Evaluation Methods

There are number of methods and variations of those for evaluating submissions in a procurement process:

Focus	Example Evaluation method	When used	Key Aspects of Process
Price	Lowest Price Conforming	Minimum set of requirements in terms of the quality of goods, works or services to satisfy HBRC needs and conform. Price is then considered when quality conforms. Good process for non-specialised goods and low complexity physical works contracts.	Minimum requirements documented and included in procurement documentation. Non-price criteria marked as conforming or non-conforming according to whether they meet HBRC requirements or not. Lowest price of conforming submissions is awarded the contract so participants (who comply with basic requirements) are only competing on the basis of price.

Focus	Example Evaluation method	When used	Key Aspects of Process
<p>This method works particularly well for procurement projects where the goods, works or services are well specified and capable of being provided adequately by a number of suppliers. (e.g. fleet vehicles).</p>			
Quality and Price	Weighted Attributes	<p>HBRC is looking for high contractor and quality attributes in the delivery of goods, works or services. Likely to be a range of quality attributes across the participants.</p> <p>Price HBRC will pay is important but only one of the considerations.</p> <p>Good process for professional services, service contracts, high complexity physical works contracts and specialised goods</p>	<p>HBRC determines the important non-price attributes and relative weightings of nonprice and price attributes and includes this in detail in procurement documentation.</p> <p>Non-price attributes are scored and have a weighting applied.</p> <p>Once all non-price evaluation is complete, price scores are then calculated using a formula and weighting applied.</p> <p>The weighted price and non-price scores are added together and the participant with highest overall score selected as preferred supplier.</p>
<p>It is important that weightings reflect the importance of each attribute to HBRC in order for the right outcome to be achieved. For example, where it is important how works or services will be performed, greater weighting should be given to methodology attributes.</p> <p>HBRC can and should set a minimum score required for each attribute (usually 35%) and any participant scoring under this threshold may be excluded from further evaluation.</p> <p>Price should not be weighted too heavily or price will become the only determining factor between the participants.</p> <p>A further refinement of this is the Price/Quality method developed by NZTA and being quite widely used for larger professional services and maintenance contracts.</p>			
Quality	Quality Attributes Method	<p>HBRC is primarily looking for the best quality of works or services it can procure.</p> <p>Generally only a process used for professional services.</p>	<p>Process is generally similar to weighted attributes, but price is not scored as part of the process.</p> <p>Participants are asked to provide a separate price. Only the price of the participant with the highest quality score is opened and used as the basis for negotiating a final price.</p>
<p>Because participants are only competing on quality, there is risk that HBRC will not receive the best value for money. Having said that it should be borne in mind that for design work most of the cost is in the construction and getting the best design will deliver better value overall than getting a cheaper price on the design.</p>			

The two most used methods above are the ‘lowest price conforming’ method and ‘weighted attributes’ method. It is more than likely that one or other of these two methods will be applicable in almost all HBRC procurement evaluations. For this reason, using other methods should be considered carefully before being used for an evaluation process.

Health and Safety should be considered with the upmost importance for all of these methods. HBRC’s health and safety expectations should be clearly communicated to suppliers and be appropriate for the type of goods, works or services being purchased and comply with the Health and Safety Reform Bill 2015.

HBRC will address health and safety through procurement by:

- Approving and inducting suppliers into HBRC’s health and safety regime prior to engagements.
- Requiring suppliers to provide health and safety plans, where appropriate.
- Including the monitoring and auditing of health and safety practices as conditions of contracts and agreements.

In New Zealand local government, the NZTA procurement manual is often referenced when prescribing evaluation processes for procurement. HBRC staff seeking more detailed explanations of different evaluation processes should refer to the latest version of the NZTA procurement manual. The evaluation processes described in that document are not unique to transport procurement and will be able to be successfully followed and/or modified for any competitive procurement evaluation.

8.3 Evaluation Criteria

Selecting evaluation criteria should be based on what attributes are most important to HBRC in the given circumstances. This will differ depending on whether HBRC is purchasing goods, works or services and what the characteristic requirements of those goods, works or services are.

However, there are standard evaluation criteria that are consistently used in competitive procurement evaluation. These criteria consist of two types:

Compliance based – where the participant must meet the criteria or provide mandatory information but will not be scored on this relative to other participants in the evaluation process but is a go/no go gateway e.g. adequate insurance, Health and Safety.

Attribute based – where the participant will be scored on the attributes relative to other participants in the evaluation process.

HBRC should detail what information participants are required to provide in the procurement documentation that will be assessed under each evaluation attribute. Ideally, the information requested for participants should relate directly to a specific attribute. This will mean that participants focus on providing relevant information and the evaluation team will have no trouble scoring each attribute. It is often a good idea to ask participants to structure their submission in accordance with the list of evaluation attributes for this purpose.

Although there are no rules around evaluation criteria, commonly used criteria are:

Compliance	Attributes - For goods/products	Attributes - For works and services
<ul style="list-style-type: none"> Company structure Company financials and solvency Insurance cover Health and Safety information References 	<ul style="list-style-type: none"> The level of compliance with technical specifications and ability to meet operational requirements The post purchase technical support and maintenance provision Warranties and guarantees offered 	<ul style="list-style-type: none"> Management skills and capability The technical skills and experience of key personnel The relevant experience and track record of the supplier performing similar contracts The resources available for application to the contract The methodology for how the works or services will be performed

In a multi stage process, all required compliance criteria should be requested as part of the initial stage of the process so as to not waste the time of participants who do not meet these criteria.

It is also good practice not to duplicate the attributes participants are scored on in subsequent stages of a multistage process. This can lead to inconsistencies and provides grounds for HBRC to be questioned on the fairness of the process. It is reasonable however to require higher level attributes of the participants capability in the initial stage and then if shortlisted request more project specific attribute information (e.g. specific methodology). Where HBRC wants to consider scores of attributes in a preliminary stage in subsequent stages, it can carry those scores over from the preliminary stage.

8.4 Evaluation Team

Evaluation panels comprising at least three individual evaluators should be used for more complex evaluations over \$50,000 procured through a proposal or tender process. It is not necessary for an evaluation panel to be used for evaluating quotation based procurements.

The Tenders committee is mandatory to be the evaluation panel for procurement over \$400,000.

The evaluation panel must consist of:

For all proposal or tender processes	
At least two of:	CE A Group Manager Works Group Business Unit Manager
And including one of the appropriate:	Second or Third Tier Manager Technically qualified Staff Member

For lowest price conforming evaluations, it is sufficient for the evaluation panel to review the prices and an Assessment Report prepared by an appropriate staff member or consultant confirming those submissions that have met the requisite non-price criteria.

For other quality based evaluations it might be appropriate to consider the inclusion of an independent technical expert on the evaluation panel who has experience/expertise in the goods, works or services being procured.

For NZTA subsidised transport contracts an Accredited NZTA Evaluator needs to be on the evaluation panel.

9 Tender Administration and Probity

9.1 Advertising

Advertising of the procurement should be appropriate to the goods, work or services being procured. Advertising channels should include newspaper advertising and the Government Electronic Tendering System (GETS). For more specialist procurement, it is also appropriate to approach industry specific associations and organisations who can alert their members to the procurement. For access to GETS please contact the Corporate Accountant or IT Manager.

Once the procurement has been advertised, HBRC is open to alert prospective participants that the procurement documents are available. It is best to direct these participants to GETS for them to download the documents themselves rather than issuing them directly.

An important principle is that procurement information is disseminated to all interested parties at the same time and that there is no early release of documentation.

9.2 Tender Administration Personnel

The Group Manager is responsible for nominating a single contact person as the tender administrator for the tender or negotiation process. All enquiries from potential participants must be directed to that person during the procurement process, and responses appropriately documented. Informal contact with participants during the process is discouraged and should be avoided.

The tender administrator should also be present at any group evaluation to keep records of the evaluation process.

9.3 Probity Auditor

For more complex evaluations over \$50,000, HBRC should consider appointing an independent probity auditor to oversee the evaluation process. The probity auditor will ensure the process it is undertaken correctly and any risks are managed appropriately. The probity auditor will be available to any tender participant with concerns about the tender or evaluation process.

9.4 Confidentiality and Conflicts of Interest

The tender administrator will be responsible for managing the conflict of interest and confidentiality documentation for the procurement process. Every staff member involved in the procurement and evaluation panel member must sign relevant confidentiality and conflict of interest documentation.

The information provided by participants in a proposal or tender process must be kept confidential at all times during and after the process. Any breaches of confidentiality must be reported to the probity auditor and / or the Group Manager immediately upon an HBRC staff member becoming aware of the breach.

9.5 *Tender Communications*

Communications to and from participants involved in a tender or proposal process must be through the named tender administrator.

Where information or clarification is requested by a participant that in any way modifies or clarifies information contained within the RFP or RFT documents, then HBRC through the tender administrator must issue a notice with the modification or clarification to **all** participants. This notice then becomes part of the RFP or RFT documentation to be included in the eventual contract.

Notices that are issued to participants should be consecutively numbered (so participants can record which notices they have received in their submission).

9.6 *Closing and Opening Tenders*

All proposals and tenders are to be deposited either in the Tenders Box at Council's Napier Office or, if specified as an electronic process, by uploading into the specified electronic tender box (e.g. via GETS). Any proposal or tender received after the prescribed closing time must be excluded from the process. It is advisable that all proposal or tender processes require both hard copies and soft copies of tenders or proposals to be submitted. The procurement documentation must be extremely clear about the closing details of the tender or proposal.

Where proposals or tenders are called for where a two envelope process will be conducted (with a non-price and price envelope) HBRC must instruct participants to separate both the information into the respective envelopes and clearly indicate on each envelope the following:

- The contract name and number to which the proposal or tender refers.
- The participant organisation's name.
- The contents of the envelope (price or non-price).

All proposals or tenders are to be opened in the presence of at least two senior management staff, one of whom must be one of Council's Executive. All proposals or tenders received are to be identified and recorded to be kept on file, which must be signed by all those present at the opening of the proposal/tender box.

Where the proposal or tender is a two envelope process, envelopes containing the price must be separated and held by the Executive Team Member attending the opening.

In any process:

- Where selection is made on quality based attributes alone; or
- A participant or participants submissions do not conform with the non-price attribute requirements, the Executive Team Member must return the price envelope of unsuccessful participant(s) unopened.

10 Supplier Evaluation and Selection

10.1 *Evaluation Process*

The evaluation process will be dependent on the number of evaluation team members and the complexity of the particular process being undertaken. However, the outcome of any evaluation process should be an evaluation team consensus score for each participant.

For simple proposals or tender processes the evaluation team may be able to meet and evaluate proposals or tenders together. More typically, individual team members will initially score proposals or tenders separately initially. The team will then meet to discuss the individual scores and agree on a group consensus score.

It is important to keep a complete record of the group consensus scores on to demonstrate that a robust process has been followed. The tender administrator should be present at any evaluation team meetings to record the scoring. At the end of the scoring process, all evaluation team members should sign the final group scoring.

Any personal notes and individual score sheets created by evaluation team members must not be kept, as they may not reflect the final consensus of the evaluation team. The tender administrator should be responsible for collecting individual scores and destroying these following the evaluation meeting. This applies equally to personal and individual electronic notes.

10.2 *Interviews/Presentations*

As part of a proposal or tender evaluation, participants can be invited to attend an interview or deliver a presentation to provide additional information or clarify any outstanding questions or issues. For interviews, the HBRC evaluation team must:

- Prepare questions in advance and provide to participants.
- Allocate the same amount of time to each participant.

The evaluation team might wish to revise a participant's score after an interview or presentation. All participants' scores must be reviewed and any adjustments to the total score made that the evaluation team think are necessary.

If scores are adjusted following an interview or presentation, the final consensus result is the only copy to be retained and signed.

10.3 *Supplier Recommendation*

The conclusion of any procurement process should be a supplier recommendation. The purpose of a supplier recommendation is to achieve approval for a contract with the preferred supplier from the appropriate delegated financial authority. For simple quotation based procurement up to \$25,000, a memo will be sufficient for approval by the appropriate manager.

For tender and proposal processes, once evaluation is complete, the tender administrator must compile a supplier recommendation that, as a minimum:

- Summarises the evaluation.
- Identifies and recommends the preferred supplier.
- Indicates the budget and the price of the successful bid.

For lowest price conforming evaluations, it is sufficient for the supplier recommendation that the Assessment Report to be used for this purpose with an appended preferred supplier and price.

The supplier recommendation must be forwarded to the appropriate level of delegated financial authority for approval.

If the price of the preferred supplier exceeds the level of delegated authority anticipated during the planning of the procurement, then the Manager responsible approving the procurement process and / or procurement plan must review and approve the supplier recommendation in the first instance. It should then go to the Manager or Council Executive Committee with delegated financial authority for final financial approval.

10.4 *Negotiation*

Following the evaluation and supplier recommendation process, HBRC may have an opportunity to negotiate with the preferred supplier before it enters any contract. Some contracts provide specifically for this and some do not. In the majority of procurement situations, HBRC should consider negotiating with the preferred supplier to achieve the best value possible. However, negotiation must be considered if:

- The proposed price is substantially more than expected.
- Some aspects of the proposal or tender could be changed or improved to better meet HBRC's requirements.
- The preferred supplier is offering (or have tagged) contractual terms and conditions that are not acceptable to HBRC (note that there are established protocols for dealing with the acceptance or removal of tags and these normally are documented in the conditions of Tendering).

The HBRC Manager(s) or staff member responsible for negotiation must have knowledge of the procurement and the goods, works or services being procured and have negotiating experience. Care should be taken at this stage to ensure that the preferred supplier is aware that the negotiations do not obligate either party to enter into a contract with one another.

10.5 *Awarding and Finalising the Contract*

HBRC will only award a contract to a preferred supplier once the supplier recommendation has been approved. Under most contracts an award letter will form a binding legal agreement. A letter to award a contract should therefore only be sent when HBRC is absolutely certain that it intends to enter into a contract with the preferred supplier and all terms and conditions have been agreed.

The award letter must specify the tender sum and state who the HBRC's representative will be in the administration of the contract and advise the name and qualification of the Engineer to the Contract if one is being appointed.

All details of a procurement process must remain confidential until this stage.

In order to record the detail of the contract two original and identical copies of the documents should be prepared for signing by the parties. Signees must have the authority to execute the contract agreement. For Major Procurements requiring the approval of Council, the contracts should be signed by the Chief Executive and an elected member representative under the HBRC seal.

The final documents should then be provided to the supplier for signature. The supplier should be requested to sign both copies and return one copy to HBRC. HBRC must keep an original copy on file and must scan a copy of the contract and file this electronically.

10.6 *Post Process Feedback*

After a successful supplier's offer has been formally accepted the unsuccessful participants must be notified in writing of the outcome of the procurement process. Unsuccessful participants should be given the opportunity to receive feedback on their tender submission. Feedback in the form a debrief helps participants to improve their offers and ensures that participants will continue to bid in the future. Constructive feedback also demonstrates that a fair process has been undertaken and should prevent participants from challenging HBRC on the process and decision.

In feedback sessions, HBRC must not provide information on other participants' submissions. All information provided should be consistent with the evaluation and should cover the following:

- A recap of the evaluation process and criteria.
- Explanation of why the participant was not successful.
- Areas of demonstrated strengths and weaknesses and how the submission might have been improved.

A template letter for unsuccessful suppliers can be found at:

www.business.govt.nz/procurement/pdf-library/agencies/ltrunsuccessfulafterevaluation.DOC/view

11 Mobilisation

The activities will vary depending on the type of contract, but HBRC must ensure that appropriate actions are undertaken prior to the commencement of supply of goods, works or services:

- Pre-start meeting(s) are held. In this meeting HBRC must discuss with the supplier its performance expectations and agree how the contract will be managed and performance will be measured. Minutes of these meetings must be documented.
- Where relevant, the supplier is allowed access to sites and has appropriate security clearance and access
- HBRC must confirm all insurance arrangements are in place.
- Ensure the supplier's health and safety measures are in place.
- Any transition activities from an outgoing supplier are overseen by HBRC.



12 Evaluating and reviewing the procurement

The final stage in the procurement life cycle is assessing whether the intended benefits from a procurement have been realised and whether any lessons can be learnt from the process.

Contractor performance evaluation has been included in an automated process (utilising nintex workflow), to coincide with the expiry date of the contract. This automated process will ensure contract manager feedback is captured and stored in the contract file. The contracts administrator will notify Accounts Payable monthly with a report of expiring contracts, reducing the risk of

Benefits are the reason procurement is carried out and to successfully deliver any procurement, it is essential that the project managers and governors focus on realising the benefits of the procurement from the start of the procurement process.

Showing the benefits that resulted from a project is a way to show accountability. Reporting on what was achieved from a procurement is a way of being transparent about the procurement process and accountable for how the money was spent.

Learning lessons

Staff contract management performance will be audited internally on a regular basis, as part of the planning, sourcing and managing procurement practice.

- Were the staff used in the procurement process appropriately trained?
- Were the prescribed criteria and procedures followed?
- Was the outcome satisfactory, and what lessons can be learned?

For significant procurements, it is particularly important that any lessons are recorded and shared. HBRC should not wait until the end of a procurement to learn from the process because by then, it might be too late.

Those staff in a role where procurement of goods or services is significant, will have it reflected as a requirement of that particular role and included as a performance measurement tool / metric. A one page manual summary is available to those staff with procurement responsibilities.

HBRC should be willing to learn "along the way" and improve the procurement process when they can.

This Manual will be amended to capture any improved processes, and formally reviewed in 2022 with the Procurement Policy, and financial delegations

Appendices

1. Contractor registration
2. Procurement plan template; basic and detailed
3. Contract template
4. Evaluation template
5. Contract performance monitoring - Outcome agreement management plan(OAMP)
6. Other relevant Policy and legislation



Contractor Online Application

Supplier Type * Contact Name *
Company Name * Trading Name
Sitewise Score (if applicable)
Contact Email *

Physical Address

Address One *
Address Two
Suburb * Town *
Postcode *
Mailing address different to physical address? * Yes No

Account Details

Accounts Contact Number *
Accounts Email Address *
Bank Account *
Bank Account Confirmation * [+ Add Attachment](#)

Attach a copy of your bank deposit slip or proof of bank account details.

GST/IRD Number *

Additional Comments

Confirmation

Full Name *

I confirm that the information supplied in this form is true and correct.

Basic Procurement template

Between \$10,000 to \$50,000

HBRC instructions

- This template is intended for procurements valued between \$10,000 to NZ\$50,000.
- You may customise this template to reflect practice and requirements – especially the approvals section.
- When customising, consider including user instructions like the example given below. Note that the yellow highlighted areas specify where to customise.

Example of user instructions

- A procurement plan describes the process used to approach the market, evaluate bids and identify the recommended supplier. This template is designed to be used for very low-value low-risk procurements between \$10,000 to NZ\$50,000. Procurements valued less than \$10,000 do not need a procurement plan. However, you must ensure that you have written approval of the scope, delivery date, and budget.
- This template covers the common elements usually included in a procurement. However, you will need to tailor it to your needs. Keep it simple – the level of analysis and detail you include should be proportionate to the nature, scope, value, complexity and risk of the procurement.
- A procurement plan should / must be completed and approved before initiating your tender process (e.g. advertising on GETS). You will need approvals from:
 - project sponsor, for authority to proceed to market
 - delegated financial authority holder , for authority to spend (if different from sponsor).
- If you would like assistance in preparing your plan, or a constructive peer review of your draft, please contact [enter contact details for the procurement team].



Procurement Plan

[Name of project]

What we are buying and why

Key information	Detail
Background:	Provide a short description of the context for this procurement, including any previous contract arrangement.
Short description of goods/services:	Provide a short succinct description of the goods or services to be purchased. What are the key deliverables? What are the key milestones? What's in scope and out of scope? Describe any minimum standards or mandatory criteria. Confirm basis of payment e.g. on invoice or on completion of milestones. List key risks and how these will be mitigated and managed.
Dates:	<ul style="list-style-type: none"> Contract start date: dd mm year. Contract end date: dd mm year.
Contract type:	<ul style="list-style-type: none"> [Choose: Government Model Contract / Government Model Contract Lite / Purchase Order].
Estimated whole-of-life cost:	<ul style="list-style-type: none"> \$x,xxx (excluding GST).
Expense category:	<ul style="list-style-type: none"> Opex: \$x,xxx. Capex: \$x,xxx. Cost centre code: xxxx.
Budget approved by delegated financial authority holder:	<ul style="list-style-type: none"> Yes /no. Name.

Procurement method

Three phone quotes	Three written quotes	Closed tender	Direct source supplier	Extension of contract	Select panel supplier
✓	✓	✓	✓	✓	✓

Tender evaluation panel members

Role	Voting	Name	Organisation
Chair of evaluation panel:	✗		
Business group / owner:	✓		
User group / beneficiary:	✓		

Subject matter expert:	✓		
Any conflicts of interest? Yes / No	x		Mitigation measures:

Evaluation methodology

The evaluation model that will be used is weighted attribute as per the table below. Price will not be a weighted criterion. Instead price will be taken into account in determining overall value for money over the whole-of-life of the contract. A two envelope process will be used and suppliers' pricing will only be opened once the criteria scoring is completed.

Evaluation criteria examples

Criterion – (variable and selected by the evaluation panel)	Weighting
Technical merit (fit for purpose)	
E.g. Degree to which good/services meet or exceed required deliverables	30%
E.g. Quality of goods/services, covering whole of life cost	10%
Capability of the supplier to deliver	
E.g. Supplier's size, structure and location	5%
E.g. Track record in delivering similar goods/services	15%
E.g. Understanding of the requirements	25%
E.g. Operational and financial systems to manage delivery	15%
Total weightings	100%

Indicative timeline

Please note that the following example is for a single-stage tender.

Action	Indicative date
Tender release date:	
Tender closing date:	
Tender panel recommendation date:	
Negotiations completed:	
Advise unsuccessful suppliers:	
Supplier debriefs:	

Approvals

Project sponsor	
Approval:	Approval to proceed to tender and identify the preferred supplier.
Name:	
Position:	
Date:	

Holder of delegated financial authority	
Total budget approved:	[Insert: total cost over whole-of-life NZ\$]
Cost code:	
Name:	
Position:	
Date:	

Item 10

Attachment 4

Detailed Procurement Plan template

Between \$50,000 and \$100,000 and above

HBRC instructions

- This template is intended for procurements valued over \$50,000.
- You may customise this template to reflect practice and requirements – especially the approvals section.
- When customising, consider including user instructions like the example given below. Note that the yellow highlighted areas specify where to customise.

Example of user instructions

- A procurement plan describes the process used to approach the market, evaluate bids and identify the recommended supplier. This template is designed to be used for low-value low-risk procurements over \$50,000. For procurements valued between \$10,000 to \$50,000, use the *Basic Procurement Plan template*. Procurements valued less than \$10,000 do not need a procurement plan. However, you must ensure that you have written approval for the scope, delivery date and budget.
- This template covers the common elements usually included in procurement. However, you will need to tailor it to your needs. Keep it simple – the level of analysis and detail you include should be proportionate to the nature, scope, value, complexity and risk of the procurement.
- A procurement plan [choose: should / must] be completed and approved before initiating your tender process (e.g. advertising on GETS). You will need approvals from:
 - e.g. project sponsor gives authority to proceed to market
 - e.g. delegated financial authority holder gives authority to spend (if different from sponsor).
- If you would like assistance in preparing the agency's plan or a constructive peer review of the draft, please contact [enter contact details for the procurement team].



Detailed Procurement Plan

[Name of procurement project]

Approvals

Project sponsor	
Approval to:	Proceed to tender and identify the preferred supplier.
Name:	
Position / title:	
Date:	

Holder of delegated financial authority	
Total budget approved:	[insert: total cost over whole-of-life \$]
Budget type:	Opex / Capex
Budget code:	
Name:	
Position / title:	
Date:	

What this agency is buying and why

- This plan relates to the purchase of [insert]. A summary of our requirements is [insert]. The key objective of this procurement is [insert].
- An estimate of the total cost over the whole-of-life of the contract, exclusive of GST is [\$ insert]. We require the contract to commence by [insert date].

Tendering process

There is currently no All-of-Government, syndicated or other collaborative contract that can meet this requirement. The recommended approach to market is a [choose: one-step open competitive tender / two-step open competitive tender / one-step closed competitive tender / two-step closed competitive tender]. The tender team will comprise non-voting and voting members.

Tender team: non-voting members

Role	Name	Organisation
Chair of evaluation panel:		
Administrative support:		

Tender team: voting members

Representative/s	Name	Organisation
Business group/owner:		
User group/beneficiary:		
Subject matter expert:		

Indicative timeline (single-stage tender)

Action	Indicative date
Pre-procurement	
Procurement plan approved	
Tender documents developed utilizing legal advice where appropriate for complex or high risk procurements	
Tender documents approved	
Pre-procurement market engagement	
Advance notice published on GETS	
Tender	
Tender advertised on GETS	
Supplier briefing/s	
Last date for supplier questions	
Last date for agency to answer questions	
Tender closing date	
Evaluation	
Panel confidentiality & conflict of interest declarations signed	
Evaluation panel meets – short lists suppliers	
Panel minutes and recommendation	
Recommendation accepted / rejected	
Post-evaluation	
Advise bidders of outcome	
Debrief unsuccessful suppliers	
Due diligence & contract negotiation	
Contract Award Notice published on GETS	
Contract start date	

Evaluation methodology

The evaluation model that will be used is weighted attribute as per the table below. Price will not be a weighted criterion. Instead price will be taken into account in determining overall value for money over the whole-of-life of the contract. A two-envelope process will be used and suppliers' pricing will only be opened once the criterion scoring is completed.

Evaluation criteria

Criterion– (variable and selected by the evaluation panel)	Weighting
Technical merit (fit for purpose)	
E.g. Degree to which good/services meet or exceed requirements	30%
E.g. Quality of goods/services covering whole of life cost	10%
Capability of the supplier to deliver	
E.g. Supplier's size, structure and location	5%
E.g. Track record in delivering similar goods/services	15%
E.g. Understanding of the requirements	25%
E.g. Operational and financial systems to manage delivery	15%
Total weightings	100%

Rating scale

The panel will use this rating scale to evaluate suppliers' bids against the criteria.

Description	Definition	Rating
Excellent	Exceeds the requirement. Exceptional demonstration by the supplier of the relevant ability, understanding, experience, skills, resource and quality measures required to provide the goods/services. Response identifies factors that will offer potential added value, with supporting evidence.	9-10
Good	Satisfies the requirement with minor additional benefits. Above average demonstration by the supplier of the relevant ability, understanding, experience, skills, resource and quality measures required to provide the goods/services. Response identifies factors that will offer potential added value, with supporting evidence.	7-8
Acceptable	Satisfies the requirement. Demonstration by the supplier of the relevant ability, understanding, experience, skills, resource and quality measures required to provide the goods/services, with supporting evidence.	5-6
Minor reservations	Satisfies the requirement with minor reservations. Some minor reservations of the supplier's relevant ability, understanding, experience, skills, resource and quality measures required to provide the goods/services, with little or no supporting evidence.	3-4
Serious reservations	Satisfies the requirement with major reservations. Considerable reservations of the supplier's relevant ability, understanding, experience, skills, resource and quality measures required to provide the goods/services, with little or no supporting evidence.	1-2
Unacceptable	Does not meet the requirement. Does not comply and/or insufficient	0

Page 4 of 5

	information provided to demonstrate that the supplier has the ability, understanding, experience, skills, resource and quality measures required to provide the goods/services, with little or no supporting evidence.	
--	--	--

Contract

The short listed supplier will be offered a [choose: contract for services / supply agreement / contract for goods and services] based on HBRC standard terms and conditions. The proposed contract term is variable with options to extend [insert: i.e. 3+1+1]. The [choose: quality standards/key performance indicators] for measuring the supplier’s performance are [insert]. The timeframes for delivery are [insert]. Specific reporting requirements are [insert]. Payment will be based on the supplier’s successful completion of milestones as detailed in the contract. New intellectual property arising as a result of the contract will be the property of [insert].

Risk

Overall this procurement is deemed low-value, low-risk.

Key risks to be managed

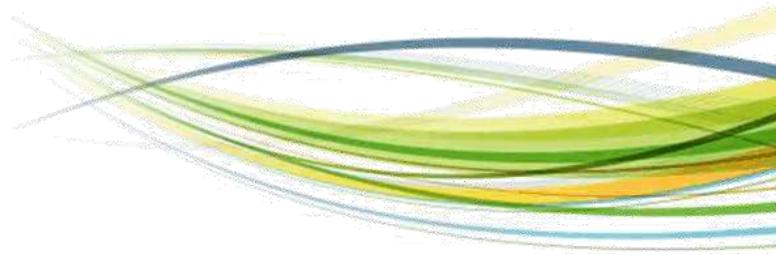
Risk	Mitigation action	Responsible
1.		
2.		

Probity

Probity in this procurement will be managed by:

- acting fairly, impartially and with integrity, acting lawfully, and being accountable and transparent
- ensuring compliance with the agency’s code of conduct is complied with
- ensuring that financial authority for the procurement is approved before proceeding to tender
- identifying and effectively managing all conflicts of interest
- protecting the supplier’s commercially sensitive and confidential information
- providing each supplier with a comprehensive debrief at the end of the tender process.

[Type here]



Item 10

CONTRACT FOR PROVISION OF SERVICES

to the [SECTION NAME] section of
HAWKE'S BAY REGIONAL COUNCIL

Attachment 5

Contract Number: [CONTRACT NO]
Version Number:

Enhancing our environment together | Te whakapakari taki o tō tātau taiao

06 835 9200 | info@hbrc.govt.nz | 159 Dalton Street, Napier 4110 | Private Bag 6006, Region 4142

hbrc.govt.nz



PARTIES

This Contract is made between:

Hawke's Bay Regional Council ("the Council")

and

[NAME] ("the Contractor").

TERMS AND CONDITIONS

1. Purpose of Contract and Contractor Status

- 1.1. The Contractor and Council have entered this Contract for Service for the purposes of carrying out the Contract duties as listed in the attached **Schedule 1** ("the Services").
- 1.2. The person the Contractor reports to and reporting requirements are set out in **Schedule 1**.
- 1.3. The Contractor is liable for all their own taxes, levies and insurances.
- 1.4. Nothing contained or implied herein shall create the relationship of master and servant or employer and employee between the Principal and the Contractor.
- 1.5. The parties agree that nothing herein contained or implied will indicate that the Contractor is an agent of, or in any joint venture with, or in any partnership with, the Council.
- 1.6. The Contractor is not precluded from carrying out other interests or work outside that specified in **Schedule 1**, provided that these other interests do not prevent the Contractor from completing the Services the Contractor has agreed to provide or compete with the services the Council provides or work it undertakes.

2. Term of Agreement

- 2.1. The Contract comes into force and expires as outlined in **Schedule 1**.

3. Health and Safety

- 3.1. The Contractor, as a Person Conducting a Business or Undertaking (**PCBU**) under the Health and Safety at Work Act 2016, agrees to consult cooperate and coordinate with the Council regarding health and safety in the workplace.
- 3.2. The Contractor will be responsible for ensuring that it is complying with the relevant legislation, while delivering the Services under this Contract.
- 3.3. The Contractor will also be required to abide by the health and safety requirements and policies of Council when delivering the services under this contract.
- 3.4. On request, the Contractor will furnish the Council with appropriate health and safety documentation.
- 3.5. The Council reserves the right to immediately exclude the Contractor from its workplace and suspend payments, if it is not satisfied the Contractor is complying with this clause. The Council can implement termination of the Contract pursuant to the termination clause in this Contract.



4. Payment

- 4.1. The Council agrees to pay the Contractor, the contract fee set out in **Schedule 1**, such fee shall cover all costs associated with the delivery of this Contract.
- 4.2. The Contractor will be reimbursed disbursements, which are incurred at the express instruction of the person set out in **Schedule 1**, such disbursements being related to the business of the Contractor in carrying out this Contract.
- 4.3. The Contractor will invoice the Council detailing the disbursements incurred and work completed within the specified period. Payment will be in arrears by the 20th of the month following the date of the invoice.
- 4.4. The Contractor agrees to accept full responsibility for the deduction of all Inland Revenue payments, accident compensation levies, GST and any other work-related deductions.

5. Confidential Information

- 5.1. "Confidential Information" means any advice or other information of a sensitive nature, whether or not specifically identified as confidential.
- 5.2. Any Confidential Information disclosed by the Council to the Contractor will be held by the Contractor in confidence during the Term of this Contract and after it ends.
- 5.3. The Contractor must not disclose any Confidential Information relating to the Council or the Council's project or the works without the Council's prior written approval, unless it is required for the purpose of the Services to disclose it to any appropriate third party, or as required by law.
- 5.4. Should the Contractor make any unauthorised release of any Confidential Information the Council may terminate the Contract immediately.
- 5.5. Should the Council suffer any loss or damage of whatever nature due to the unauthorised release by the Contractor of Confidential Information, the Council will be entitled to recover such loss or damage from the Contractor.

6. Council Marks and Names

- 6.1. The Contractor will not use any of the Council's trademarks, trade names or corporate slogans in any advertising, promotional material signs or any other written printed materials.

7. Intellectual Property

- 7.1. The parties agree that new intellectual property prepared or created by the Contractor in carrying out the Services under this Contract and all New Intellectual Property Rights that arise, will be owned by the Council.
- 7.2. As required the Contractor will, upon request from the Council deliver up all media (including source code) and documents in respect of such New Intellectual Property Rights.
- 7.3. All Pre-existing Intellectual Property Rights of a party or any of its licensors will continue to be owned by that party or the relevant licensor.
- 7.4. The Contractor makes no representations or warranty as to the suitability of the Materials for any purpose, other than the purpose for which they were delivered under this Contract.

Definitions:

- 7.5. "Material" means any property (including intangible property), report, advice, information, documentation, source code, specialist software or other material in any form, and anything that is the subject matter of any category of Intellectual Property Rights, which is delivered under this Contract.
- 7.6. "Intellectual Property Rights" include copyright, and all rights conferred under statute, common law or equity in relation to inventions (including patents), registered or unregistered trademarks and



designs, circuit layouts, data and databases, confidential information, know how, and all other rights resulting from intellectual activity.

7.7. "New Intellectual Property Rights" means any Intellectual Property Rights (other than Pre-existing Intellectual Property Rights) arising in connection with the development, commissioning or creation of the Materials created for or on behalf of the Council at any time in connection with the Services, including data and factual information collected by the Contractor under the Contract.

7.8. "Pre-existing Intellectual Property Rights" means any Intellectual Property Rights of the Contractor or its licensor relating to property (including intangible property), report, advice, information, documentation, source code, specialist software or other material in any form included in the Materials where such Intellectual Property Rights of the Contractor or its licensor existed prior to the provision of the Services and are not New Intellectual Property Rights.

8. **Liability**

8.1. The Contractor shall be liable for any loss, damage, liabilities or costs suffered or incurred by the Council or any other party (in contract or tort) arising directly from the negligent acts or omissions of the Contractor pursuant to this Contract.

8.2. The maximum liability of the Contractor under this Clause shall be limited to five times (5x) the total value of the contract fees paid to the Contractor under this Contract.

9. **Non-Performance**

9.1. No liability will result from the delay in performance or non-performance beyond the control of the party affected, including but not limited to, acts of God, fire, flood, terrorism, war embargo, accident, labour trouble or shortage of material or equipment, any New Zealand government law, regulations, direction or request or any other New Zealand or foreign court ruling.

10. **Assignability and Sub-Contracting**

10.1. The Contractor will not assign or sub-contract all or part of its obligations under this Contract without the prior written consent of the Council.

11. **Variations to the Services**

11.1. The Council may make variations to the Services or may request the Contractor to submit proposals for variation to the Services.

12. **Termination of Contract**

12.1. Either party may terminate this Contract, without reason, by providing **4 weeks'** notice to terminate to the other party.

12.2. The Contractor undertakes to perform their obligations under this Contract in a thorough, professional and safe manner. If, in the opinion of the Council the Contractor defaults under this Contract; fails to perform the Contract details to the required standard or within the deadlines established; is deemed by the Council to be detrimental or have the potential to be detrimental to the good name of the Council or the safety of workers and the public, then the Council may give 14 days' notice in writing for the Contractor to remedy the default or immediately rectify their behaviour. If the Contractor fails to remedy any default within 14 days (or such other time period not being less than 14 days as the Council may in its absolute discretion adopt) the Council may terminate this Contract immediately.

12.3. Where a breach of committed by either party is so serious as to amount to a repudiation of the contract, the other party may terminate the Contract immediately, without notice.

13. **Arbitration**

13.1. Either the Council or the Contractor may by notice require that any matter in dispute be referred to arbitration or conciliation. This process will be followed in accordance with the Arbitration Act 1996.



14. **Media Statements**

14.1. The Contractor will not release information to, make statements on any platform, or speak to the media relating to the Services or Contract, without the express prior approval of the person the Contractor reports to or their authorised representative.

15. **Conditions**

15.1. Any other terms and conditions or modifications or release will not be effective unless agreed in writing signed by the Contractor and the Council.

Signed by:

Contractors Name

CONTRACTOR

DATE

In the presence of:

Name:

Address:

[GROUP MANAGER'S NAME]

For and on behalf of

HAWKE'S BAY REGIONAL COUNCIL

DATE

In the presence of:

Name:

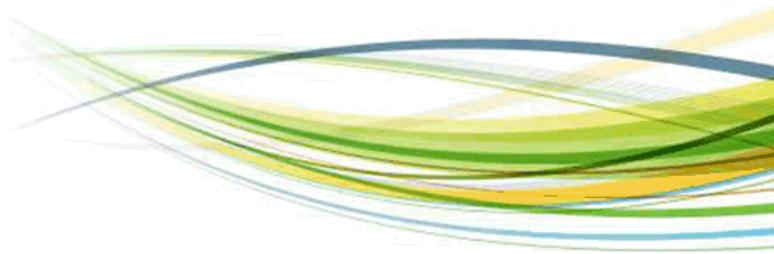
Address:



SCHEDULE 1

Project Brief

Contract No:	[CONTRACT NO]
Contractor	[CONTRACTOR]
Project Title:	[TITLE]
Start Date:	[DATE]
Projected Completion Date:	[DATE]
Contract Fee:	\$(AMOUNT) plus GST
Hours Required:	[INSERT HOURS]
Reporting Requirements:	Briefing meetings will be held with [NAME] on an ‘as required’ basis. Reports on work achieved will be submitted by the Contractor to [NAME] as requested.
Person who can authorise expense claims:	[NAME]
Scope and Nature of the Services:	[SET OUT SERVICES]
Expected Outcomes:	[INSERT EXPECTED OUTCOMES]



Contractor Performance Review

Contract	
Contract Number	
Contractor	
Contract Duration	

1	2	3
Did not meet expectations	Met Expectations	Exceeded Expectations

Item	Score <small>(Scale above)</small>	Comment
Goods / Services were delivered in a timely manner		
Goods / Services were of good quality		
Business transactions with contractor / supplier were easy		
Contract / Supplier responded to questions / concerns quickly		
Professionalism of contractor / supplier staff was courteous		
Estimate of goods / services was accurate to final contract expense		

Please answer the following questions by circling "Yes" or "No"		
Overall, did the contractor / supplier meet expectation?	Yes	No
Would you recommend this contractor / supplier in the future?	Yes	No
ADDITIONAL COMMENTS: Please provide, or give examples of any failure of the contractor to meet expectations that are circled above 		



Template: Outcome Agreement Management Plan (OAMP)

Introduction and Instructions (delete this page before you distribute the plan)

- Outcome agreements benefit from a documented approach to contract management, particularly when they are of long duration, high value or complexity (e.g. multiple stakeholders and relationships). This template will help.
- It supports the planned, effective and efficient management of outcome agreements by government agencies and providers. It helps to ensure good practice, even if contract managers change.
- It does not contain any contract obligations and is not legally binding.
- The OAMP is your tool. Edit the document and insert or remove content or sections. However, keeping the structure of relationship management, service delivery management and contract administration will mean the document will look familiar to all users.

Delete this box when drafting.



Outcome Agreement Management Plan

Contract name	
Contract number	
Provider name	
Name of purchasing agency (ies)	
Commencement date	
Term	
Expiry date	
Estimate of annual contract value (excl GST), if applicable	
Estimate of total contract value (excl GST) (if applicable)	

OAMP owner(s)

	Name	Role/title	Signature
HBRC			
Provider			

Last Updated:

Table of contents

to be added

Item 10

Attachment 7



What the OAMP is for

1. Purpose of this document

- 1.1. In this OAMP we outline how we will work together to deliver [service description]. A summary of the services is at Appendix 1.
- 1.2. This OAMP is not legally binding.

2. Summary of services and outcomes

Include here a short summary of the services and the outcomes we are working towards. This might be the executive summary from the business case or contract approval memo, which gives useful background and context for those who are new to the contract and/or need to understand it quickly.

Delete this box when drafting.

3. Summary of key events and activities

[In this table, enter key events and activities such as contractual milestones and deliverables, meetings, audits, reviews with other agencies (if this is an integrated OA), decision points (around renewal or extension of an agreement) etc. If this table is longer than one page, make it an appendix.]

Delete this box when drafting.

Activity/Event	Date/Duration/Frequency	Outcome agreement reference

Relationship Management

This section is about how the HBRC and Provider will work together, and how the relationship between them will be managed.

Delete this box when drafting.

4. Categorisation

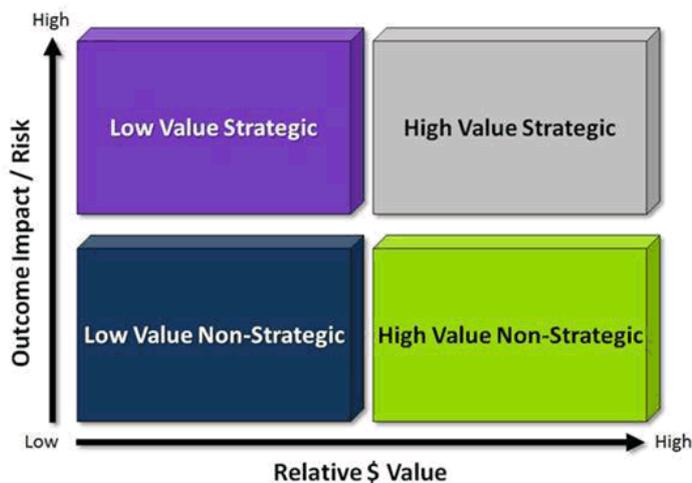
The type of relationship we have with providers will vary from provider to provider and from service to service. It is important to recognise this is both normal and necessary.

The relationship categorisation matrix below provides a pictorial view of the risk, and or strategic importance of the OA to the agency and its relative cost. This matrix provides a quick pictorial view of how we have categories the relationship and is a useful tool to inform our planning on:

- the approach to the relationship – level of openness and strategic focus
- meetings – agenda, frequency and attendees
- monitoring – frequency and scope
- other interactions – type and frequency e.g. workshops, support/participation the other parties planning sessions etc.

Move the star into the appropriate quadrant of the box below.

Delete this box when drafting.



Move (click, hold and drag) the red star to the relevant quadrant in the matrix and delete

Low value strategic	A service that is relatively low cost, but that is likely to have a significant impact on the outcomes for which the agency is responsible, or be working with a highly vulnerable client group; such as a high-health-needs residential programme. Your relationship with the provider is likely to be collaborative and open, and have a
----------------------------	--

	strong personal element. It will have a strategic focus, with risk management generally being one of the agency’s key drivers.
High value strategic	A service of a higher cost and likely to have a significant impact on outcomes. Such relationships should be very collaborative and open, with a strong strategic focus from both sides. You are likely to engage frequently and in depth, with correspondingly higher levels of trust in the relationship. There will be multiple levels of engagement, including operational and executive level. Considerable focus should be applied to the development and maintenance of relationships in this quadrant.
Low value non-strategic	A service that is relatively low cost and mostly transactional in nature; such as a single local provider; or a national provider providing an expert report. While such services contribute to outcomes, they tend to be lower impact and also lower risk. The relationship will be focussed on the service delivery. You and the provider will have less frequent communication and little, if any, discussion or engagement at a strategic level.
High value non-strategic	A service of a higher cost, but still mostly transactional in nature. Most relationships in this quadrant tend to be for more commercial services. While you will have more meetings and more contact than with relationships in the <i>lower value</i> non-strategic quadrant, your approach from a relationship perspective is more ‘business’ than ‘personal’.

5. Principles we will follow

Document the principles that underpin how you work together (provider and agency) to set expectations and avoid misunderstandings.

We have included example principles below and you are welcome to alter them based on your discussion with your provider.

Delete this box when drafting.

- 5.1. Our relationship recognises the [Kia Tutahi Relationship Accord](#) (The Relationship Accord between the Communities of Aotearoa New Zealand and the Government of New Zealand) and the [Code of Funding Practice](#).
- 5.2. We will:
 - act honestly and in good faith
 - practice open and timely communication
 - work collaboratively and constructively – including to resolve problems and issues
 - recognise each other’s responsibilities
 - encourage quality and innovation to achieve positive outcomes.

6. Organisation / relationship manager contact details

6.1. Our contact details are listed below:

If there are multiple relationship managers (e.g. multiple funding agencies involved) or numerous contact people you may prefer to put these in an Appendix where they can be more readily updated.
 Delete this box when drafting.

[HBRC] <i>[Replicate if multiple Agencies party to the Outcome Agreement this OAMP relates to]</i>	
Relationship Manager	Name and title
Phone:	
Email:	

[Provider]	
Relationship Manager:	Name and title
Phone:	
Email:	

7. Other key contacts

7.1. Other key personnel are listed below:

Organisation	Name	Contact details	Role
HBRC			
Provider			

8. When we will meet, and why

In this section the template contains two examples of approaches you might find useful for capturing your meeting arrangements, including suggestions on levels of detail related to meetings such as; types, agenda items, attendees, frequency and ground rules. It is important the approach you take to meetings and other interactions matches the relationship category. For example, if the outcome agreement is categorised as *High Value Strategic* then you would expect your meetings to be:

- be more frequent
- include discussion on strategic direction and alignment
- involve senior personnel from both organisations for at least some of the strategic level discussions.

Delete this box when drafting.



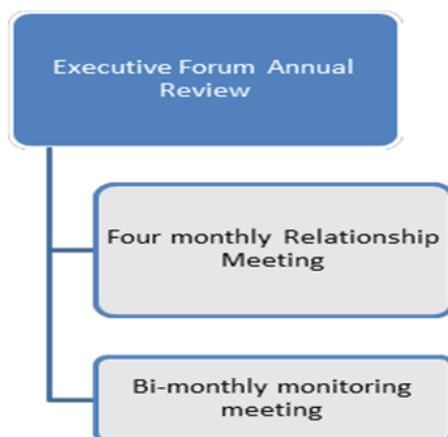
[OPTION 1]

8.1. We will meet at least [six] monthly to:

- review and discuss what has been achieved for clients
- explore the factors and the story behind the performance measurement data
- discuss priorities and decide actions
- review services
- review and confirm performance measures.

[OPTION 2]

8.2. We have agreed to hold the meetings listed in the diagram below, which also summaries the meeting hierarchy. E.g



Ground rules to ensure meetings are productive

8.3. We have agreed to ground rules for open discussion:

- openly express ideas and questions
- practice active listening at all times
- speak honestly and avoid surprises
- only one person should speak at a time
- keep an open mind.

We have agreed to ground rules for decision-making:

- focus on constructive solutions aimed at achieving the specified outcomes
- achieve a group consensus; silence is taken as consent.

Description of scheduled meetings

8.4. Meeting Name [e.g. Executive Forum]

Meeting Owner	[HBRC's representative]
Frequency & expected Duration	Annual – 1 hour
Attendees	[Purchasing Agency]: – [Provider]: –
Objectives	
Input	
Outcomes	
Responsibility (to coordinate)	
Administration	
Agenda	

8.5. Meeting Name [you can replicate the table above for each meeting forum]

9. Mechanisms for developing and implementing innovative ideas

Enhancements to service delivery and better value for money often comes from developing and implementing innovative ideas and ways of delivering services. A useful way to ensure these ideas are not lost is to create a forum or specific meeting agenda point, for identifying and discussing them.

If you wish insert in this section any mechanisms you decide on to develop and implement innovation.

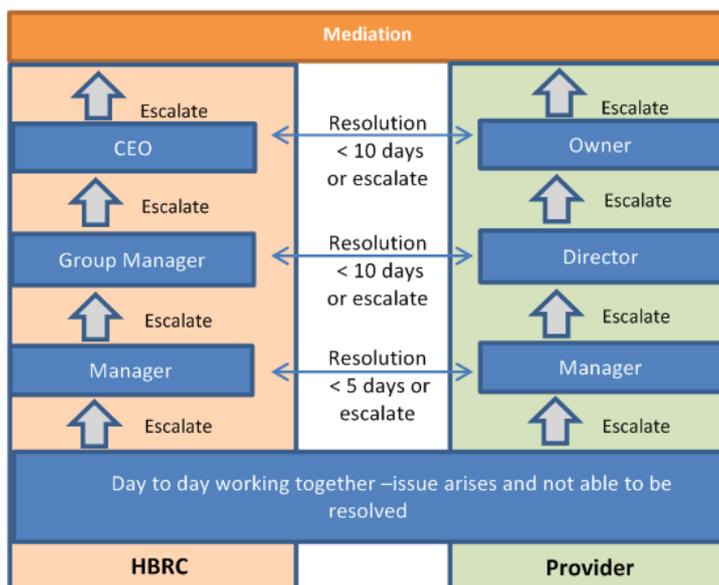
Delete this box when drafting.

10. Resolving disputes and issues, including establishing a remedy plan

The Framework Terms and Conditions detail the contractual process for dispute resolution. Namely, the parties should attempt to resolve the matter themselves before escalating it to mediation. This section of the OAMP is intended as a placeholder for developing further detail. Details about how the agreement partners will attempt to resolve the matter themselves, including development of a remedy plan (see clause 12.2b of the framework terms and conditions).

The diagram below can be edited to personalise the escalation model for resolution of an issue or dispute before the contractual mechanisms are applied.

Delete this box when drafting.



11. How we will communicate with stakeholders

Successful contract management includes the appropriate management of stakeholders throughout the lifetime of the outcome agreement. This section is a placeholder for a stakeholder engagement framework, which you can use for recording stakeholder’s details and the requirements for managing communications to those stakeholders (we have included an example table below).

Delete this box when drafting.

Stakeholder Name	Interested in	Concerns	Communication objectives (Outputs)	Targeted key messages (Rational & emotional)	Comms Channels How?
[Develop as a landscape table]					

Managing service delivery

This section is focussed on the service delivery aspects of the outcome agreement including, reporting, monitoring, accreditation (auditing) and risk management.

Delete this box when drafting.

12. Evolving the service to improve outcomes

You may wish to copy the outcome measures from the contract to this space. The table below sets out some questions to discuss regularly to monitor and improve progress towards outcomes.

Delete this box when drafting.

How are we doing on the most important of the outcome measures?
What is working well or not working for customers, for the provider and for the agency?
How are we working together and with other partners?
What do we need to change or do more of, including no-cost and low-cost ideas?
Are there any opportunities for innovation?
Are there any process improvements which might free up resource for service delivery?
What do we propose to do?

13. Managing confidential information

Detail how confidential information will be managed on a daily basis including:

- agreement to mark confidential information
- agreement on support to HBRC when it is responding to an Official Information Act (OIA) request
- HBRC agreement to pay reasonable costs associated with that OIA support (where they can recover them).

As with all parts of the OAMP, these areas can be expanded or modified for the particular engagement.

Delete this box when drafting.

14. Monitoring and reporting

Reporting: Capture any administrative details associated with the reporting, e.g. how to access on-line reporting tools, etc.

Monitoring: Capture the logistical and administration details associated with the monitoring activity (visits etc), including details of any coordinated monitoring. The scheduling of the monitoring is captured in the Outcome Agreement.

Delete this box when drafting.

14.1. Reporting:

14.2. Monitoring:

15. Audit coordination

Capture the logistical and administration details associated with any coordinated audit

Delete this box when drafting.

16. How we will manage risk

16.1. The risk analysis and risk register is contained at Appendix 2. The parties will use the risk analysis and risk register to guide their consideration and management of identified risks.

17. Actions register

17.1. The actions register is contained at Appendix 3 to record the action items identified and agreed in the course of the management of the Outcome Agreement.

Administering the contract

This section covers administrative matters for HBRC to manage. These matters are important to the effective operation of the OA but need not be shared with the provider. These include areas such as:

- management of contract variations
- budget management
- approval and processing of invoices and payments
- maintenance of the OAMP itself.

Delete this box when drafting.

18. Payment approvals and processing

19. Detail information

19.1 Detail information about delegation holders and procedures for payment approval and processing that is not standardised or immediately clear for any in-coming contract manager.

20. Future year budget planning

20.1. If the OAMP supports a multi-year agreement or there is a likelihood the OA will be extended into a new financial year, record any details of future year budget planning processes and applicable timelines that may not immediately be clear for an in-coming contract manager. Any applicable dates could also be included in the Summary of key events and activities schedule.

21. Management reporting (by the Purchasing Agency)

21.1. The table below records details of HBRC management or other internal reporting related to the OA. It is also useful to include links or file locations for these reports and any relevant templates.

Report name / Description	Report owner	Audience (Distributed to)	Frequency

22. Contract variations agreed/in progress

22.1. The following table lists all the agreed / in progress contract variations

Contract number	Variation description	Date raised	Status	Date Agreed/Rejected	Additional Comments

Appendix One – Summary of Services

Where there are multiple service lines under an outcome agreement it can be helpful to have a single page summary view of all the services. If the outcome agreement does not contain such a summary you may find value in using the example form below.

Delete this box when drafting.

Purchasing Agency	HBRC contact (name/ DOI)	Contract Start Date	Contract End Date	Service Description	Practice Guidelines/ Service Specifications	Monitoring Frequency	Payment Frequency	Reporting Frequency	Audit Freq	Approval Freq	Volume	Rate if applicable	FY18/19 Contract Amount	FY19/20 Proposed Funding	FY20/21 Proposed Funding	Comment
HBRC	Anna Smith 09-202-0202	1/07/14	30/06/16	Resettlement Services	www.mso.govt.nz/the-guidelines/resettlement	Monthly	Monthly	Quarterly	Annual	Annually	150		\$500,000	\$500,000	\$500,000	

Appendix Two – Risk Register

If you do not have a centralised or on-line project risk register you may find value in keeping your risk register in the OAMP.

The Risk Register will be managed by the Purchasing Agency. The Register should be reviewed on a regular basis, including being reviewed as part of relationship meetings between the parties.

Risk Area	Risk Description	Likelihood	Impact	Risk Rating	Mitigation/Management	Closed

Appendix Three – Actions Register

The actions register is a place to record those actions agreed by the parties during various meetings and interactions. This is a useful tool that can be pulled out at formal meetings and reviews to keep track and monitor progress on miscellaneous agreed actions. This Appendix is a placeholder for the actions register.

#	Action	Allocated to	Expected Completion Date	Closed

Other relevant policy and legislation

HBRC related policies, procedures and guidance

- i. Privacy Act Policy
<https://herbi.hbrc.govt.nz/site/hr/pol/SP014%20Policy%20on%20Privacy%20Act%201993.doc>
- ii. Private staff purchases
<https://herbi.hbrc.govt.nz/site/hr/pol/SP015%20Private%20Staff%20Purchases.doc>
- iii. Gifts Policy
<https://herbi.hbrc.govt.nz/site/hr/pol/SP018%20Offer%20of%20Gifts%20or%20Winning%20Prizes.doc>
- iv. Sensitive expenditure Policy
<https://herbi.hbrc.govt.nz/site/hr/pol/SP024%20Controlling%20Sensitive%20Expenditure.doc>
- v. Conflict of Interest Policy <https://herbi.hbrc.govt.nz/site/hr/pol/SP028%20Conflict%20of%20Interest.doc>
- vi. HBRC Financial delegations
<https://herbi.hbrc.govt.nz/site/corpmgt/Lists/FinancialDelegations/AllItems.aspx>
- vii. Fraud Policy
<https://herbi.hbrc.govt.nz/site/hbrcpolicy/finance/HBRC%20Fraud%20Policy%20-%20March%202016.pdf>
- viii. Vehicle Purchasing Policy
https://herbi.hbrc.govt.nz/site/hr/_layouts/15/WopiFrame.aspx?sourcedoc=%2Fsite%2Fhr%2Fpol%2FSP042%20Vehicle%20Purchasing%20Policy%2Edocx&action=view
- ix. Flexicard Policy
https://herbi.hbrc.govt.nz/site/hr/_layouts/15/WopiFrame.aspx?sourcedoc=%2Fsite%2Fhr%2Fpol%2FSP041%20Flexi%20Purchase%20Card%20Use%2Edocx&action=view
- x. Koha policy
https://herbi.hbrc.govt.nz/site/hr/_layouts/15/WopiFrame.aspx?sourcedoc=%2Fsite%2Fhr%2Fpol%2FSP038%20Koha%2Edocx&action=view

Legislation

- xi. Health and Safety at Work Act 2015
- xii. Local Government (Auckland Council) Act 2009
- xiii. Public Records Act 2005
- xiv. Construction Contracts Act 2002
- xv. Electronic Transactions Act 2002
- xvi. Local Government Act 2002
- xvii. Public Audit Act 2001
- xviii. Public Finance Act 1989
- xix. Local Government Official Information and Meetings Act 1987
- xx. Commerce Act 1986
- xxi. Fair Trading Act 1986
- xxii. Official Information Act 1982
- xxiii. Sale of Goods Act 1908