

Title:	Procurement and Contracts
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Facilitator: <i>sign/date</i>	Sponsor: <i>sign/date</i>	Process Authorised: <i>sign/date</i>
Name and title: Alicia Lane Manager - Procurement	Name and title: Maureen Chrystall Executive Director - Corporate Services	Name and title: Mo Neville Director - Quality & Patient Safety

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Policy Review History

Version	Updated by	Date Updated	Summary of Changes
3.1	Alicia Lane	Sep 2016	Addition of s4.3 Supplier Payment Terms and s4.4 Automatic Recurring Payments (ARP)

1. Purpose and Scope:

The purpose of this policy is to set out the Waikato District Health Board (DHB) policy requirements for its procurement and contracting processes. Procurement covers all of the business processes associated with both purchasing and contracting, from the identification of needs through to the end of a contract or the disposal of an asset.

This policy applies to:

- All employees and Board Members of Waikato DHB;
- All External Personnel; and
- Any other designated person or organisation (including all independent contractors) dealing with procurement and contracts for or on behalf of Waikato DHB.

This policy applies to all Waikato DHB procurement by any contractual means (including through a purchase order). Its application includes:

- The purchase or hire purchase of goods, services, assets and utilities;
- The rental or lease of goods, equipment and assets, with or without an option to buy;
- Gifted equipment and assets;
- Build -operate-own type contracts (e.g. public private partnerships);
- Public works concessions contracts;
- Disposals and sales by tender;
- Investments, loans and guarantees; and
- Contracts accessed via third party commercial supplier or broker (e.g. GSB).

This policy does not apply to:

- Hiring of employees (refer to Recruitment and Selection Policy)
- Contracts for the possession, use or sale of real estate (land and adjoining buildings);
- Procurement and contracts undertaken by national procurement Shared Services such as healthAlliance, PHARMAC and All-of-Government (as they are governed by their own policies).

This policy is split into two parts:

- Section A – Principles and Rules for Procurement and Contracts
- Section B – Carrying Out a Procurement and Contract Process

2. Policy

The Waikato DHB Procurement and Contracts policy is that:

- Staff will take a principled approach in the procurement of goods and services, which means:
 - observing the responsibilities of spending public money;
 - having a detailed understanding of what is to be purchased, the value and risk of the procurement and how important the procurement is to achieving Waikato DHB's overall goals and business strategy;
 - procurement decisions will be based upon the “best value” for the money being spent over the total expected life of the goods or services. Best value may involve the consideration of a range of criteria, not only price;
 - considering national and regional health procurement initiatives and ‘All-of-Government’ contract arrangements;
 - using Waikato DHB's standard procurement processes and systems;
 - dealing with suppliers in a fair and consistent manner.
- Staff must consider the principles for Waikato DHB spending in [section 2.1](#) and meet the minimum standards for procurement, ethics, legal, sustainability and safety compliance as set out in this policy.
- The risk of a conflict of interest (actual, potential or perceived) during procurement applies to people involved in procurement at all levels, the Waikato DHB Board, contractors and designated entities. Conflicts of interest which are declared or identified during procurement must be managed in accordance with this policy.
- Procurement will be consistent with best practice guidelines and policy for procurement in the public sector, including:
 - Procurement Guidance for Public Entities (Good Practice Guide), June 2008, Office of the Controller and Auditor General;
 - Public Sector Purchases, Grants and Gifts: Managing Funding Arrangements with External Parties (Good Practice Guides), June 2008, Office of the Controller and Auditor General;
 - Guidelines for Contracting with Non-Government Organisations for Services sought by the Crown, December 2003, The Treasury;
- All procurements over \$100,000 must comply with the Government Rules of Sourcing, Ministry of Business, Innovation & Employment (endorsed by Cabinet CAB Min (13) 10/4A). These requirements have generally been incorporated into this policy.
- Purchases will only be made to meet a genuine need for goods or services that add value to Waikato DHB service delivery.
- The degree of planning and procurement methods used must be appropriate for the value and complexity of the procurement and comply with the Government Rules of Sourcing.
- Staff must engage key stakeholders in planning procurement, evaluating suppliers and authorising procurement decisions. Staff must maintain thorough and clear documentation of all key procurement decisions and processes to enable Waikato DHB to comply with relevant parts of the Government Rules of Sourcing, demonstrate probity and fairness and comply with audit requirements internal and external.

3. Authorisation

As signed above on behalf of the Executive.

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1. How to use this Policy

The first part of this policy sets out the overarching principles and rules for procurement at Waikato DHB.

2. Overarching Principles

2.1 Principles for Waikato DHB Spending

When Waikato DHB buys, use these five Principles of Government Procurement for guidance and to help make good procurement decisions. The bullet points show what the principles mean in practice. This policy and its associated processes aim to reflect these principles, however you should still actively consider them as you undertake DHB procurement.



1. Plan and manage for great results

- Identify what you need and then plan how to get it.
- Set up a team with the right mix of skills and experience.
- Involve suppliers early – let them know what you want and keep talking.
- Take the time to understand the market and your effect on it. Be open to new ideas and solutions.
- Choose the right process – proportional to the size, complexity and any risks involved.
- Encourage e-business (for example, tenders sent by email).



2. Be fair to all suppliers

- Create competition and encourage capable suppliers to respond.
- Treat all suppliers equally – we don't discriminate (this is part of our international obligations).
- Give NZ suppliers a full and fair opportunity to compete.
- Make it easy for all suppliers (small to large) to do business with us.
- Be open to subcontracting opportunities in big projects.
- Clearly explain how you will assess suppliers' proposals – so they know what to focus on.
- Talk to unsuccessful suppliers so they can learn and know how to improve next time.



3. Get the right supplier

- Be clear about what you need and fair in how you assess suppliers – don't string suppliers along.
- Choose the right supplier who can deliver what you need, at a fair price and on time.
- Build demanding, but fair and productive relationships with suppliers.
- Make it worthwhile for suppliers – encourage and reward them to deliver great results.
- Identify relevant risks and get the right person to manage them.



4. Get the best deal for everyone

- Get best value for money – account for all costs and benefits over the lifetime of the goods or services.
- Make balanced decisions – consider the social, environmental and economic effects of the deal.
- Encourage and be receptive to new ideas and ways of doing things – don't be too prescriptive.
- Take calculated risks and reward new ideas.
- Have clear performance measures – monitor and manage to make sure you get great results.
- Work together with suppliers to make ongoing savings and improvements.
- It's more than just agreeing the deal – be accountable for the results.



5. Play by the rules

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

2.2 Organisational Strategy Considerations

Procurement is an integral function of the Waikato DHB, as it supports key service delivery objectives. Accordingly, Purchasing and Distribution Services aims to understand:

- what goods and services Waikato DHB procures;
- how much Waikato DHB spends by category type and on individual procurements;
- Waikato DHB's main suppliers and the volume and value of the procurements; and
- the main markets Waikato DHB procures in.

Understanding this information at an organisational level helps Waikato DHB decide how to manage its procurement expenditure strategically and how to best approach markets.

2.3 Annual Procurement Plans

The Waikato DHB is responsible for providing an Annual Procurement Plan to Ministry of Business, Innovation & Employment for publication. This must be reviewed and updated at least once every six months due by 1 March and 1 October each year.

In addition, the Waikato DHB must also submit an Extended Procurement Forecast to assist with cross-government planning. This will include a list of forecast contract opportunities over the next 4 years which fall into one or more of the following categories:

- have an estimated total value over the whole-of-life of the contract of \$5million or more
- the nature or complexity of the procurement would expose the Waikato DHB or government to significant risks if it were not delivered to specification, within budget and on time.
- have the potential for cross-government collaboration or resource sharing.

The DHB must review and update the Extended Procurement Forecast at least once a year by 1 October each year.

3. Procurement – Key Rules and Considerations

3.1 General Procurement Rules

General

- Products or services must be fit for purpose, and not introduce unknown hazards or risks to the work environment.
- Seek advice from Purchasing and Distribution Services and/or Legal Services, if unsure about the appropriate course of action at any stage.
- Use Waikato DHB standard systems and processes for procurement unless there is a compelling reason not to and written approval has been granted by the Chief of Staff or Chief Executive Officer.
- Additional guidance can be found in the public sector procurement guides listed in [section 2 – Policy](#) located at the front of this document. Appropriate approvals and Delegations of Authority must be obtained, and consultation carried out with key stakeholders.
- Procurements must not be structured to avoid the application of this policy (e.g. splitting purchases to reduce value).

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

National and Regional Considerations

- Consider the opportunities and efficiencies of national and regional procurement and contract initiatives, such as All-of-Government, healthAlliance and PHARMAC.
- Check if an existing syndicated contract ('All-of-Government', syndicated, common capability) meets Waikato DHB's needs. Waikato DHB should purchase from 'All-of-Government' contracts, unless there is a good reason not to.
- Check if Waikato DHB is permitted to carry out the procurement. The procurement may be the responsibility of another health sector organisation such as All-of-Government, healthAlliance or PHARMAC. Seek advice from Purchasing and Distribution Services to determine this.

Procurement Method

- Choose the method that is likely to achieve the best outcome for the Waikato DHB.
- While market testing through competitive processes should generally be the norm for conventional purchases, there are considerations that may lead to a decision to use an alternative process. Information on these considerations is outlined in [section 3.4 – Exemptions from a Competitive Process](#).

Goods and Services on Catalogue

- Staff may procure goods and services which are catalogued in the Oracle purchasing system without consulting a Procurement Specialist. It is important to check that the goods or services are not already catalogued before starting a procurement process.

Purchase Orders

- After the procurement process has been completed, goods and services must be ordered using Waikato DHB's purchase order process. Goods and services must not be ordered until a purchase order has been approved.
- Certain goods and services may be exempted from Waikato DHB's purchase order process. A list of exempted goods and services is available on the Purchasing and Distribution Services intranet page. Application for an exemption may be made to the Manager Procurement using the Request for Purchase Order Exemption template.

Consultants and Contractors

- Staff should not engage a consultant or contractor to resource core, ongoing functions or activities or to undertake tasks which Waikato DHB could more cost effectively and appropriately resource itself.
- Staff are reminded to follow Waikato DHB's process for managing the DHB's staffing numbers, which includes requirements for contractors and consultants (as per the Recruitment and Selection Policy).

Government Rules of Sourcing

This policy generally reflects the Government Rules of Sourcing. However, there are additional government rules/guides around the procurement of certain types and values of goods and services. Please check the Government Rules of Sourcing if you are procuring:

- Web development work;
- Timber and wood products;
- Property services;
- Goods or services which involve the supplier creating intellectual property;
- For a capital project where the total estimated value over whole of life is \$25 million or more;
- A capital asset which requires new Crown funding;
- For a project which is a potential public-private partnership;
- For high risk capital asset projects; or
- For projects which involve asset disposals with significant policy decisions.

3.2 Approved Templates and Guidelines

- Staff must use Waikato DHB approved templates for procurement and contracts. These templates have been developed to protect Waikato DHB's interests, and also contain further guidance on Waikato DHB procurement.
- Approved procurement templates (RFX templates, evaluation templates, standard letters etc.) are available from Purchasing and Distribution Services. Approved contract templates are available from Legal Services.
- If an approved template is not appropriate for a particular procurement or contract, you must seek advice from Purchasing and Distribution Services and Legal Services and work with Legal Services to develop an alternative document. This must be done prior to starting the procurement process.
- Forms and guidelines listed in Appendix G of this policy are available on the Purchasing and Distribution intranet homepage:
<https://intranet.sharepoint.waikato.health.govt.nz/Pages/Purchasing%20and%20Distribution/Purchasing%20and%20distribution%20forms%20and%20templates.aspx>

3.3 Rules by Value

Use the following rules to identify the minimum requirements for procurement.

Whole-of-Life Cost

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

Note that these rules do not apply where a contract is already in place for the required goods and services – ensure you check for existing contracts before you start a new procurement process.

Less than \$10,000 in Total Value

- Where possible, to be purchased from catalogues of goods and services within the Oracle purchasing system;
- If not available on catalogue, procurement may be undertaken without undertaking a competitive process. Products and suppliers must still be evaluated to ensure suitability, that they meet legislative requirements and that all required groups are consulted (Infection Control, Biomedical Engineering, Health and Safety, Information Services, Property and Infrastructure etc.). The price should be consistent with market rates. Records of decisions, including reasons for the final recommendation must be kept in an accessible manner.

From \$10,000 to \$100,000 in Total Value

- Staff must consult a Procurement Specialist before undertaking any procurement activity;
- Written quotations or proposals must be sought from at least three potential suppliers, unless an exemption is approved; and
- Records of decisions, including reasons for the final recommendation must be kept in an accessible manner. Record-keeping requirements are outlined in Section 3.

Over \$100,000 in Total Value or Complex, High Profile or High Risk

- Staff must consult a Procurement Specialist;
- The procurement process must be managed by a Procurement Specialist or a nominated Procurement Manager;
- A publicly advertised competitive process (an “open” RFX process) is required, unless an exemption is approved; and
- Records of decisions, including reasons for the final recommendation must be kept in an accessible manner. Record-keeping requirements are outlined in Section 3.

The Procurement Process Flowchart in an Appendix to this document shows these rules in a flowchart.

3.4 Exemptions from a Competitive Process

In certain circumstances, you may seek an exemption from the above rules. A procurement exemption must:

- Be well documented and properly justified, taking into account the basic principles for Waikato DHB spending set out in section 2.1
- Procurement Plan template to record the exemption (or the Procurement Exemption Form template for procurements less than \$100,000 in total value); and
- Be approved by the Manager Procurement and by the person holding the Delegation of Authority for the level and type of expenditure.

The types of exemptions available are outlined in the remainder of this section 3. For advice, contact Purchasing and Distribution Services.

3.5 Closed Procurement

Closed RFXs are issued to a limited predetermined group list of suppliers. For amounts over \$100,000 in total value, the use of a closed process must be limited to the exemptions set out in the Government Rules of Sourcing and which can be properly justified. This is because it does not allow equal access to all suppliers in the market and there is a risk that a superior source of supply may be missed. Advice should be sought from the Procurement Specialist or Legal Services before staff rely on Closed Procurement. The circumstances where a closed process may be used are also listed in 3.6 below.

3.6 Direct Source

For amounts over \$100,000 in total value, the use of Direct Source (selective procurement) must be limited to the exemptions set out in the Government Rules of Sourcing and which can be properly justified. This is because it does not allow equal access to all suppliers in the market and there is a risk that a superior source of supply may be missed. Advice should be sought from the Procurement Specialist or Legal Services before staff rely on Direct Source. The circumstances where Direct Source may be used includes:

- **Emergency:** there is a genuine emergency (not urgency due to poor management);
- **One source:** there is only one source of supply of the goods or services;
- **Capacity:** only one supplier has the capacity to deliver at the time required;
- **Technical:** for technical reasons, there is no real competition. E.g.:
 - a need to match with existing equipment, software or services;
 - where the DHB has a bespoke IT system that was custom designed for it and only the supplier who designed it fully understands the code base;
 - where one supplier has, over a period of time, developed such an intimate knowledge of an outdated or complex system that the DHB can reasonably claim that other suppliers would not have a similar level of readily available knowledge;
- the procurement relates to the acquisition of intellectual property or rights to intellectual property, or other exclusive rights. E.g.:
 - the purchase of an online subscription to content or services with unique characteristics; or
 - to purchase of software licences from a proprietary supplier for software that is embedded in its operating environment;
- **Additional need:** goods, works or services additional to the original requirements are necessary for complete delivery. This exception applies only where:
 - The original contract was openly advertised, a change of supplier cannot be made for economic or technical reasons and a change would cause significant inconvenience or substantial duplication of costs for the DHB. E.g. additional ground works discovered only after excavating the site, supplying replacement parts, additional consultancy services where an unexpected issue arises or an enhancement or change to an integrated IT system.

- **Prototype:** purchase of a prototype for research, experiment, study or original development. Once the contract for the prototype is complete, the DHB **must** openly advertise any subsequent procurement;
- **Exceptionally advantageous conditions:** purchases made in exceptionally advantageous conditions that only arise in the very short term (not routine purchases from regular suppliers). E.g.: sale by public auction or liquidation/receivership sale;
- **Panel of suppliers:** where the DHB has established a panel of suppliers in accordance with this policy, it does not need to openly advertise individual contract opportunities that are awarded through the panel;
- **Unsolicited unique proposal:** initiated by a supplier proposing a unique solution which is not available in the market place and is value for money. See MBIE's "Guide to Unsolicited Unique proposals" at www.business.govt.nz ; or
- **Art:** the procurement is for a work of art.

Waikato DHB should satisfy itself from time to time that direct source procurement remains justified under the Government Rules of Sourcing. Before awarding a contract, staff must take steps to ensure the supplier's suitability (e.g. reference checks) and document the information obtained.

3.7 Relational Procurement

Some Waikato DHB procurement and contracts do not fit a conventional market model, and a "relational procurement" approach is preferable – where the selection process is more likely to involve direct negotiation and other mechanisms than a competitive process.

A relational approach may be appropriate or more effective:

- where there is not an effective or meaningful market to provide the goods or services;
- where the strategic importance of the goods or services, or of the relationship with the supplier, is such that the objectives of the procurement may not be met through conventional procurement methods;
- due to the nature of the goods or services, e.g. highly specialised;
- due to the nature of the supplier, e.g. a non-commercial or public interest body such as a non-governmental organisation;
- due to the duration of the relationship between Waikato DHB and the supplier;
- due to the importance of the relationship between Waikato DHB, the supplier and an end user (e.g. a person receiving health care or social services); or
- where there are other relevant policy goals, e.g. a goal to support the development of a strong and stable non-government organisation or civil society sector, a goal to develop strategic relationships or build capacity.

Examples where relational procurement may be appropriate are:

- policy advice or peer review services from an advocacy group;
- specialist professional advice;
- research and major research programmes;
- minor health services;
- residential care services; and
- ongoing professional advice.

Relational procurement depends on the characteristics of the market and the desired relationship with the supplier. If either of these change, more conventional procurement may be appropriate.

3.8 Syndicated Procurement

Waikato DHB may join other public entities to approach the market collectively (with or without a “common use provision”, which allows other public agencies to later join the contract), or may join an existing contract arrangement for its remaining term (e.g. All-of-Government contract arrangements or approved common capability contracts).

Syndicated procurement can improve purchasing power and reduce procurement costs, however you must also ensure that the syndicated procurement offers best value for money and the contract will meet Waikato DHB needs.

Note that:

- Joining an existing contract constitutes an exemption from a competitive process and the appropriate approval for this must be obtained ([see section 3.4](#)).
- Usual Delegations of Authority apply to syndicated procurement.
- Ministry of Business, Innovations and Employment approval is required for syndicated procurements with a common use provision that allows any public agency to join a syndicated contract.
- Ministry of Business, Innovations and Employment approval is **not** required for syndicated procurement which only involves DHBs. This is considered to be a ‘closed cluster’.
- Staff should check for existing syndicated contracts (Syndicated Common Use contracts, All-of-Government contracts or Common Capability contracts) for the same product or service. You can find a listing of existing contracts at www.procurement.govt.nz > All-of-Government Contracts tab
- Legal advice must be sought before commencing syndicated procurement to address legal issues, such as the effect on the market, the Commerce Act 1986 and the appropriate contract terms and conditions.

Further guidance on Syndicated Procurement can be found at: <http://www.business.govt.nz/procurement/pdf-library/aog/collaborative-procurement/guide-to-syndicated-procurement-pdf>

3.9 Emergency Purchasing

Parts of the procurement process may be dispensed with in an emergency to allow Waikato DHB to react quickly to genuinely unforeseen urgent events. Procurement in an emergency must be limited to what is reasonably required at the time.

An emergency may include when:

- there is immediate risk to life, property or equipment;
- Waikato DHB’s service delivery would be significantly impaired if it failed to respond immediately; or
- standards of public health, welfare or safety need to be re-established without delay, such as disaster relief.

Justification for emergency purchases is to be fully documented and signed off by the person with the appropriate Delegated Authority. .

Emergency situations can include:

- natural or manmade disasters: such as earthquakes, cyclones, tsunamis, volcanic eruptions, flooding, fires or contamination
- failures of critical infrastructure or equipment: such as failure of a prison security system or critical hospital infrastructure
- critical health or environmental emergencies: such as a pandemic or food
- safety incident
- political emergencies: such as a war, coup, or civil insurrection in New Zealand or countries where the New Zealand government offers support
- critical security emergencies: such as a terrorist attack, serious crime or major cyber security emergency
- unanticipated events that make it impossible for an agency to perform a statutory or critical function in the necessary timeframe: for example the destruction of critical election supplies immediately prior to an election would be an emergency for the Electoral Commission

Urgent situations that are created by an agency through a lack of planning or risk mitigation do not constitute an emergency.

3.10 Following an Open RFX Process

Waikato DHB may use a closed procurement process or a selective procurement process to procure goods and services if:

- it has openly advertised the RFX opportunity in the last 12 months;
- it has not substantially changed the core procurement requirements; and
- the first time the RFX was advertised it:
 - did not receive any responses; or
 - did not receive any responses that complied with the pre-conditions of the RFX document or conformed with or met the requirements (including quantity); or
 - received responses from suppliers who it has reasonable grounds to believe have colluded, and this can be verified, and no other responses complied with the pre-conditions or conformed with or met the requirements.

4. Ethics – Key Rules and Considerations

4.1 Conflicts of Interest

Conflict of interest is an important issue in public sector procurement. It does not necessarily mean that a person has done something wrong, and it need not cause problems. It just needs to be identified and managed carefully.

There is the potential for conflicts of interest (perceived and actual) for any person or entity involved in procurement, consultants/contractors and advisers who are directly or indirectly involved in any aspect of a procurement process (including early discussions about a possible project and specification development). This includes governance, management and operational staff at all levels, the Waikato DHB Board and consultants/contractors. As far as practicable, all such persons must declare any personal interest or relationship that may affect, or be perceived to affect their impartiality. The person managing the procurement should also remain generally alert to the risks of conflict of interest and deal with them when they identify them.

It is important to note that these provisions apply to consultants/contractors and designated entities, as well as staff.

See also [section 4.4 – Consultants and Suppliers](#) for information about pre-procurement services and advice.

Declaration Process

The person managing the procurement must ensure that conflict of interest declarations are obtained at the start of the procurement process, and continue to be obtained as additional individuals, contractors and advisers become involved as the process progresses (in particular, all evaluation team members prior to evaluating submissions and governance members prior to making any procurement decisions or awarding a contract).

To help with obtaining declarations at different stages of the procurement process, key Waikato DHB procurement templates include a conflict of interest declaration as part of the sign-off. Complete the Conflict of Interest and Confidentiality Agreement template in full if a potential, perceived or actual conflict of interest is identified. Completed declarations must be held on the procurement file, as well as records of all discussions on conflicts of interest.

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

Managing a Conflict

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

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

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

<http://www.oag.govt.nz/2007/conflicts-public-entities/docs/oag-conflicts-public-entities.pdf>

4.2 Confidentiality

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

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

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

4.3 Gifts and Sponsorship

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

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

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

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

Staff must keep a written record of any approaches made to such staff or contractors of Waikato DHB and, if the gift, hospitality, or sponsorship was inadvertently accepted, the action taken to avoid any bias or perception of bias.

4.4 Using Consultants and Suppliers for Pre-procurement

Staff should not engage a consultant/contractor/supplier for pre-procurement services and advice, where that consultant/contractor/supplier has a commercial interest in the contract opportunity, and to do so would prejudice fair competition (e.g. a supplier is asked to write the contract requirements and then bids for the contract opportunity). This does not prevent Waikato DHB from using early market engagement to clarify needs or identify possible solutions. The person responsible should advise the consultant/contractor/supplier in writing and as a condition of their contract that they will not be permitted to participate in the later procurement process if they provide pre-procurement services and advice. An alternative supplier should be sought if the consultant/supplier does intend to make a submission.

It is recognised that this is a challenging situation, as Waikato DHB may require particular expertise and resources. Any exception to this rule must be approved in writing by the Manager Procurement and there must be a clear separation between the pre-procurement services and advice and the procurement process.

5. Legal – Key Rules and Considerations

5.1 Legal Services Involvement

Staff must seek legal advice when necessary, to assess and manage the legal risks which may exist in relation to procurement at Waikato DHB.

For any RFX or contract with a total value over \$100,000, Legal Services must review and approve the competitive process documentation and proposed contract before issue.

For any RFX or contract with a total value less than \$100,000, review by Legal Services is not required, provided approved DHB templates are used without change and the RFX/contract is not assessed as high or extreme risk.

Review by Legal Services is required for all variations, assignments and novations.

High/Extreme Risk Procurements/Contracts

Legal Services must also be notified, at the procurement planning stage, of all proposed contracts and arrangements which are assessed as carrying high or extreme risk using the Waikato DHB risk analysis tools.

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

- A high total value (as a guideline, greater than \$500,000);
- complex specifications and terms;
- large volume of specifications and terms;
- short procurement timeframe relative to risk and care required;
- high level of public interest;
- significant risk of challenge by an unsuccessful submitter (for instance, procurement processes for the provision of substantial (by volume or price) goods or services or known litigious submitters);
- high novelty;
- Ministry or Board involvement is required;
- the importance of concluding a contract or arrangement to Waikato DHB's business continuity and the continued delivery of essential services;
- significant potential risk to patient safety or patient services; or
- medico-legal risk, including patient privacy issues.

5.2 Creating Legal Obligations

It is possible to conclude a contract verbally or via written communications such as email. Staff must therefore take care not to inadvertently create a contractual obligation.

At the start of negotiations, it is important to advise the other party that Waikato DHB will not be legally bound until a formal contract is approved and signed by the appropriate DHB representative.

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

When arranging execution of a contract or deed, please note that there are specific signing and witness requirements – see the Delegations of Authority policy and seek advice from Legal Services.

5.3 Public Law Considerations

Waikato DHB has public law obligations in the way it conducts procurement. Staff must always take into account the risk that procurement actions and decisions could be subject to challenge, such as a judicial review or complaint to an Ombudsman, Auditor General or Ministry of Business, Innovation and Employment

Waikato DHB's fundamental public law obligation is to always act fairly and reasonably, and in keeping with the law. This gives rise to higher standards than in the private sector. This may include:

- when deciding whether or not to go to market, an obligation to consult affected or interested persons;
- ensuring a competitive process is fair to all prospective submitters and followed consistently; and
- communicating any change in a competitive process to all submitters. Any change to a process must not benefit one submitter over another.

The DHB's public law duties also mean that it must comply with the requirements of the Government Rules of Sourcing (these have generally been reflected in this policy). It must also generally follow the process that it has stipulated it will follow in any RFX document it has issued when undertaking a procurement exercise. This means, for example, if the DHB has specified in a particular RFX document that a contract will be awarded on the basis of a particular evaluation criteria, it must use that criteria when evaluating responses and award the contract to the supplier with the highest rating under that criteria - the DHB could be in breach of its public law duties if it awarded the contract on a different basis.

5.4 Official Information Act 1982

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

If you receive a request for commercial information under the Official Information Act, please notify the CEO's Personal Assistant and Legal Services.

5.5 Relevant Legislation

Staff must be aware of, and comply with, all relevant legislation, including:

- Waikato DHB's enabling legislation, the New Zealand Public Health and Disability Act 2000;
- Crown Entities Act 2004;
- Official Information Act 1982;
- Employment Relations Act 2000;

- Health & Safety at Work Act 2015;
- Commerce Act 1986;
- Fair Trading Act 1986;
- Sales of Goods Act 1908;
- Dumping and Countervailing Duties Act 1988; and
- Medicines (Database of Medical Devices) Regulations 2003.
- Resource Management Act 1991.

Guidance on some legislation is set out in Appendix F, however this is necessarily general and should not be relied on in place of specific legal advice.

5.6 Guarantees and Indemnities

As a general rule Waikato DHB does not give guarantees and indemnities because these create liabilities that may have significant and often unforeseen financial impacts. If a guarantee or indemnity is sought by a supplier, advice must be sought from Legal Services and approval obtained from a person holding an appropriate Delegation of Authority.

Approved guarantees and indemnities must be recorded in the Legal Services register. If the Waikato DHB has agreed to grant an indemnity/guarantee, the person responsible for the procurement is required to notify Legal Services.

6. Sustainability – Key Rules and Considerations

6.1 What is Sustainability?

Sustainability involves thinking broadly about objectives, considering long-term as well as short-term effects, assessing indirect as well as direct effects, considering economic, social and environmental aspects, and taking extra care when procurement causes changes that might be irreversible or uncertain.

Sustainability is relevant at all stages of procurement. Staff are encouraged, where practicable, to apply sustainable principles in the procurement.

This may include:

- avoiding unnecessary consumption and managing demand;
- selecting products and services that have lower environmental impacts throughout their lifecycle compared with competing products and services;
- fostering a market for sustainable products and services by supporting those businesses that show innovation in sustainability;
- supporting suppliers who are socially responsible and adopt ethical practices.

Actions to assist sustainability may include:

- specifying products and services considered sustainable;
- verifying suppliers' sustainable management standards;
- including a sustainability clause in contracts;
- rating supplier performance against sustainability criteria;
- insisting on sustainability improvement targets for suppliers;
- supporting suppliers where Waikato DHB has a long-term interest in the viability of the supplier or the sector or market it operates in;
- assisting suppliers to improve their sustainability performance; and
- encouraging sustainable innovation in the supply of goods.

7. Safety

7.1 Safety Requirements

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

All products purchased by Waikato DHB must comply with appropriate standards for sale and use in the New Zealand health industry. Documented evidence of compliance must be supplied.

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

7.2 Clinical Approval Process

All clinical products and equipment must have pre-purchase approval and full acceptance by all relevant specialist staff (e.g. Biomedical Engineering, Health and Safety, Infection Control, Information Services) prior to purchase. The Clinical Product Co-ordinator in Purchasing and Distribution Services will facilitate this as part of the procurement process.

All biomedical equipment must be tested and certified by Biomedical Engineering (or Property & Infrastructure Engineering) prior to entering service.

Requests should be logged via the Customer Portal accessible via the Waikato DHB Intranet.

Contact the Clinical Product Co-ordinator via the Purchasing Helpdesk for more information.

7.3 Product Recall

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

8. Methods for Requesting Offers (RFX)

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

8.1 Request for Information (RFI)

A request for information (RFI) is a formal request for information to gain a more detailed understanding of the supplier market and the range of solutions and technologies that are available. It may precede any of the following RFX methods, but cannot be used to award a contract.

8.2 Request for Quotations (RFQ)

A request for written quotations (RFQ) is an efficient means of procuring goods or services of set or standard specification of low value and low risk. It allows quick determination of availability, price and terms of supply. There must be a clear understanding of the goods or services to be procured.

Generally RFQ should only be sought where the Waikato DHB has an established panel of suppliers.

8.3 Registration of Interest (ROI)

A registration of interest (ROI) is generally used to request information from suppliers that may be used to identify and shortlist potential suppliers before seeking tenders or proposals. Usually the information sought is high level and specific. It may be appropriate where:

- the cost of market testing and establishing a contract are high; or
- there are large or uncertain numbers of suppliers.

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

8.4 Request for Proposals (RFP)

A request for proposals (RFP) is a formal means of seeking proposals for goods or services where the outputs and outcomes are important, not the process the supplier follows to deliver them. Usually the RFP allows scope for variety and innovation, and this method is often used to seek a solution to a problem or a process.

Further negotiation with the preferred submitter is usually anticipated before entering into a formal contract.

8.5 Request for Tenders (RFT)

A request for tenders (RFT) is a formal means of seeking tenders to provide goods or services. It must contain highly prescribed specifications of what is required and the manner in which it will be achieved, with little room for flexibility or innovation.

PART 2 - CARRYING OUT A PROCUREMENT AND CONTRACT PROCESS

1. Introduction

This section contains key steps and rules to follow when carrying out a procurement process at Waikato DHB.

2. Procurement Planning

A flowchart showing the high level process for planning and carrying out a procurement is set out below in 3.1:

2.1 Determining the Need

The need for any proposed procurement (capital or operational) must be assessed. The degree of assessment and planning will depend on the size, complexity and the risks associated with the proposed procurement. Any procurement must contribute to:

- the ongoing effective and efficient use of Waikato DHB's resources; and
- its production of outputs.

Waikato DHB's Procurement Plan template contains a section to assist with assessing the need.

2.2 Preparing a Business Case

The area of Waikato DHB which requires the procurement should develop a business case for any procurement that:

- relates to a substantial asset that is 'business critical';
- is of higher value. As a general guide, 'higher value' is considered to be greater than \$500,000 in total value for operational expenditure and \$50,000 for capital expenditure. However, whether or not a business case is appropriate should be considered in the overall context of the procurement, such as the risk and complexity of the procurement and the requirements of other Waikato DHB policies (e.g. Capital Expenditure policy);
- relates to 'free' capital on the condition that a volume of consumables is purchased
- is complex;
- has significant strategic implications;
- will require the approval of the Minister, Cabinet, or Waikato DHB's Board; or
- carries significant risk for other reasons. The level of risk may be assessed by using the Waikato DHB Risk Analysis Tools available on the Waikato DHB Intranet, Quality and Patient Safety Page.

The size of the business case should be relative to the value and risk of the procurement. Consider a preliminary or short-form business case in the early stages of a particularly large or complex procurement (to be refined into a full business case if the project obtains initial approval). Waikato DHB's Procurement Plan for Significant Procurement template contains a business case section, which provides guidance on the content of a business case.

The business case must be approved as per Delegations of Authority for the level and type of expenditure and include Finance review.

2.3 Ministry of Business Innovations & Employment Review

Where a procurement is valued at \$5 million or more, a detailed business case must be prepared.

Business cases should be submitted to Ministry of Business, Innovation and Employment for review where:

- The value is greater than \$5 million.
- There is a significant risk profile; or
- There is potential for cross-government collaboration or resource sharing.

2.4 Next Steps

Once it is established that the procurement is necessary, the following steps should to occur:

- consult with Purchasing and Distribution Services;
- appoint the person responsible for managing the procurement;
- prepare a procurement plan;
- establish the procurement team (if scale warrants a team);
- create a procurement file; and
- obtain conflict of interest and confidentiality declarations from **any** people involved in the process at all levels of Waikato DHB, including consultants/contractors.

2.5 Selecting a Procurement Strategy

The strategy for a procurement must assess market conditions and Waikato DHB's business needs in the short and long term, and clearly document the rationale for the proposed procurement approach. This forms a key part of the procurement planning phase of a procurement project.

When deciding on a strategy, you should consider:

- the value and risk of the goods and services,
 - including supply continuity risk;
- the availability of the goods and services;
- any hazards or risks that the goods or services can introduce to the work environment;
- the importance of the goods and services to Waikato DHB (fit with strategic and business planning goals);

- the characteristics of the market and whether Waikato DHB wants to develop or influence the market, such as
 - requirement to ensure the existence of a viable supply market, both now and in the future;
 - size, number of players, monopoly, nothing in NZ yet; and
 - Waikato DHB's strength in the marketplace
- the costs (both of the initial procurement and of ongoing transactions);
- any existing regional or national arrangements (e.g. consider All-of-Government, healthAlliance and PHARMAC 'contracts); and
- any relevant government policy objectives.

The strategy may include the establishment of a panel of suppliers. See Rule 54 of the [Government Rules of Sourcing](#) for detailed guidance on panel contracts.

2.6 Risk Management

As with any project, risk identification and management is a key part of the entire procurement lifecycle, from the procurement process to contract management. It should start early in the planning phase and be actively considered until the end of the contract.

The level of risk (and the value of the procurement) will also determine the levels of effort, formality, documentation and approval that are required.

Risks and how they are to be managed must be documented. Use the Waikato DHB's Risk Analysis Tools (available on the Quality and Patient Safety page of the intranet) to assist with this.

Contact Purchasing and Distribution Services for assistance with assessing procurement- and contract –related risks. A risk register template, which has useful examples of procurement specific risks, is available at http://www.business.govt.nz/procurement/pdf-library/agencies/TEMPLATE_%20Risk%20Register.XLS/view

The completed risk register or a summary of the identified risks should be included in the procurement plan.

2.7 Preparing a Procurement Plan

Procurement planning brings together the strategy for the procurement and prior analysis into an operational plan to carry out the procurement.

A procurement plan is required for procurements which are over \$100,000 in total value. For procurements under \$100,000 in total value, the requirement to complete a procurement plan is discretionary, however, records of the procurement process must be kept.

Use Waikato DHB's Procurement Plan template to record your procurement planning. Consider using Waikato DHB's Procurement Plan for Significant Procurement template for procurement which is complex, of higher value (generally over \$500,000 in total value), high risk or high profile.

The procurement plan must be approved as per Delegations of Authority for the level of expenditure before any approach to the market commences. Waikato DHB's Procurement Plan templates contain guidance on the appropriate content of a procurement plan.

2.8 Independent Oversight

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

2.9 Specifications

Specifications must be clearly defined before the procurement process commences. A specification must contain a clear, concise, logical, accurate and sufficiently detailed description of what is being purchased. When developing specifications, also consider compatibility with existing goods or services.

There are different types of specifications including:

- **Functional specifications:** These describe what is to be achieved from the process or the desired outcome under any contract;
- **Performance-orientated specifications:** These describe the performance parameters required of the goods or services but not the methods used to achieve them;
- **Technical specifications:** These describe the physical characteristics of the goods in a prescriptive manner. See Rule 24 of the [Government Rules of Sourcing](#) for detailed guidance on technical specifications; and
- Combinations of the above.

Care should be taken not to over or under specify the attributes and performance required to accomplish objectives as these actions may affect the quality or value for money achieved. A focus on objectives and outcomes encourages innovative solutions.

2.10 Evaluation Planning

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

Evaluation Model

An evaluation model is a tool to help the evaluation panel decide which submitter has the best capability to deliver the goods or services and provides the best value for money. There are a range of evaluation models, such as weighted attribute and lowest price conforming, each suited to different circumstances.

Waikato DHB may also include essential conditions (“pre-conditions”) about capacity or capability in its RFX. These are a tool to allow the DHB to do a “first cut” to eliminate suppliers who do not have the minimum capacity or capability to deliver the contract. Pre-conditions should be limited to critical areas such as legal capacity, financial capacity, commercial or operational capacity or capability to deliver, appropriate technical skills or expertise or relevant experience.

Contact Purchasing and Distribution Services for advice on which evaluation model is appropriate, tips and techniques and developing evaluation criteria and pre-conditions.

The evaluation model must be selected and approved at the procurement planning stage and the reason for choosing that particular model documented. The evaluation model (including an indication of the relative importance of the evaluation criteria) must then be set out in the competitive process documents, so submitters know how the submission will be evaluated.

Evaluation Panel

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

Evaluation Plan

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

Clinical Evaluation

If the procurement is for clinical equipment or consumable product, a clinical evaluation must occur before the product proceeds any further in the procurement process. Approval from all relevant specialist staff will be required (e.g. Biomedical Engineering, Infection Control, Health and Safety, Information Services). Depending on the product and number of submitters, the clinical evaluation process can take some months – it is important to allow for this time in your procurement planning. Contact the Clinical Product Co-ordinator for information on this process.

Further information on evaluation can be found in Waikato DHB’s Evaluation Guide located on the Waikato DHB Intranet.

2.11 Planning the Contract

Planning of the contract should start early in the procurement process, as the proposed contract will be provided to submitters as part of the competitive process documents.

Waikato DHB's approved contract templates are available from Legal Services. These contain standard terms and conditions to protect Waikato DHB's contractual position.

Review and approval by Legal Services is required for:

- any contract with a total value over \$100,000 or which is considered high or extreme risk; and
- the use of any other form of contract and any changes to standard terms and conditions.
 - Factors to consider when selecting and planning the contract include:
 - the nature of the goods and services;
 - the type and complexity of the procurement;
 - the intended role and risk exposure of each party;
 - likely administrative costs of both parties;
 - the intended duration of the contract;
 - the type of relationship Waikato DHB wishes to have with the supplier;
 - external requirements as to the form of contract;
 - issues which will need to be addressed in the contract, such as intellectual property, extended or limited liability or insurance requirements; and
 - the impact on relevant existing contracts.

Contract Insurances

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

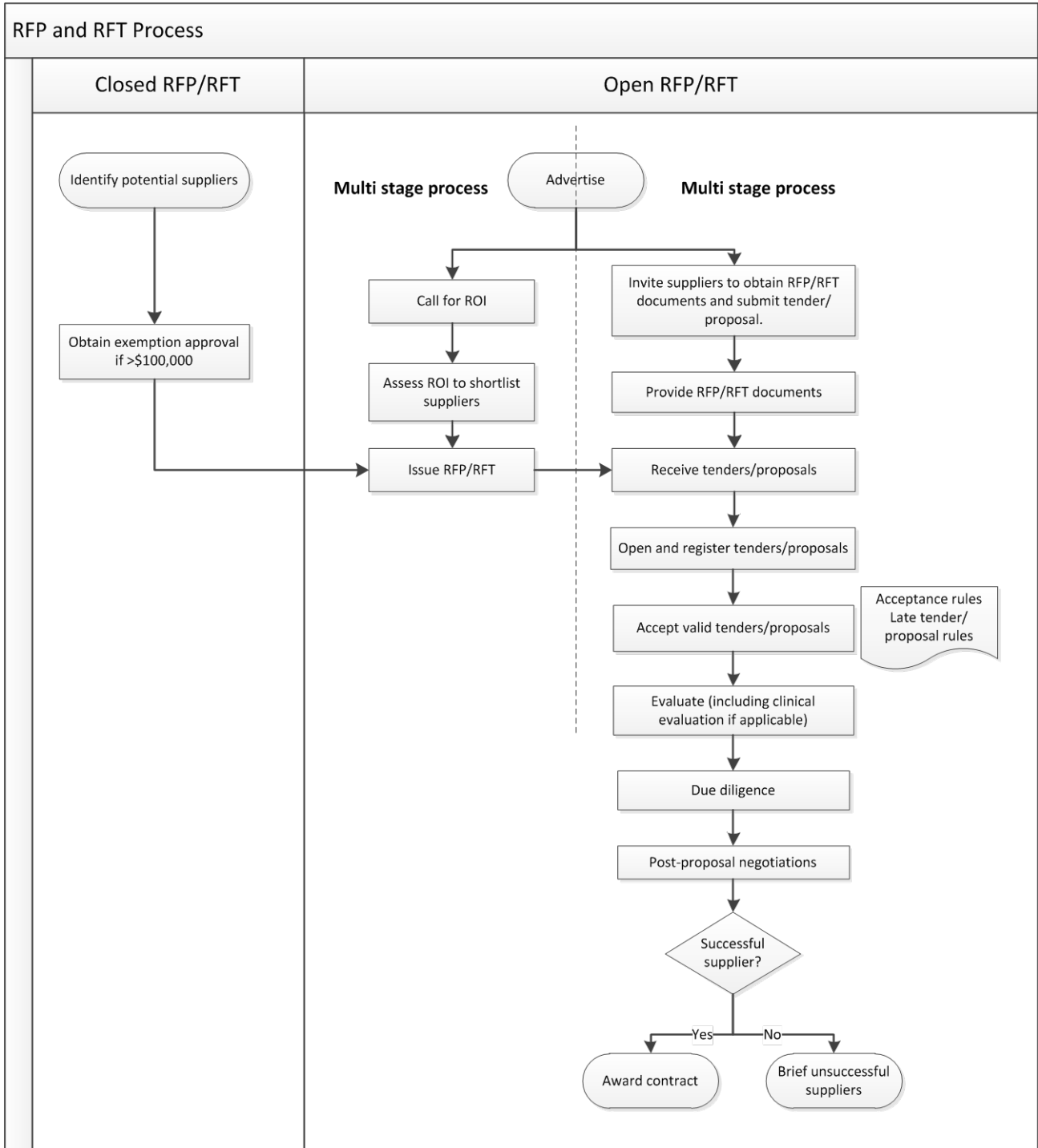
Rebates

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

3. Conducting a Procurement Process

A diagram illustrating the competitive process for RFPs and RFTs is shown below. A flowchart showing the high level process for planning and carrying out a procurement can be found on page 43.

3.1 Diagram of RFP and RFT Process



3.2 Preparing and Issuing the Competitive Process Documents

The structure and content of the competitive process documents will depend on the complexity of goods or services being procured. At a minimum the competitive process documents will include:

- the main RFQ/ROI/RFP/RFT document containing the terms under which the process will operate, the evaluation model and other key details. These must be followed;
- the specifications, quantities, timeframes for delivery and performance measures;
- the indicative timeframe for the procurement process; and
- the proposed contract or at a minimum the key contractual and commercial terms.

For procurements with a total value over \$100,000 or which are complex, high risk or high profile, Purchasing and Distribution Services and Legal Services review and approval is required prior to issue.

A register (Waikato DHB's Register of RFX Issued and Offers Received template) must be kept of all suppliers who request a copy of the competitive process documents. Suppliers who intend to make a submission must provide a nominated contact person, email address, fax, phone number and address for formal communications to be sent to during the competitive process.

3.3 Public Advertising

Where a publicly advertised competitive process (an "open" process) is required, the type and extent of advertising should be appropriate for the target market and in keeping with the value and risk associated with the goods or services. Costs should not outweigh any expected benefits.

All open processes **must** be advertised on the Government Electronic Tendering Service (GETS) for a minimum of 13 working days before the closing date for RFQ and a minimum of 25 working days for RFT/RFP. The submission period must be appropriate to the nature and complexity of the procurement and give interested suppliers enough time to prepare a submission. See Rule 28 of the [Government Rules of Sourcing](#) for allowable exceptions.

3.4 Changes, Communication and Dealing with Submitters

One contact person should be identified for submitters to request additional information from or to clarify conflicts with.

Any changes or clarifications must be communicated to all submitters at the same time, with enough time to enable all submitters to benefit. If Waikato DHB is unable to promptly reply to a question, it should consider extending the deadline for responses.

Changes to process or specifications (i.e. the content of the RFX document) should also be published on the Government Electronic Tender Service (GETS). A change in the process or the specifications must not benefit one submitter over another and Waikato DHB must ensure there is no actual or perceived bias towards a submitter.

Any information given to one submitter must be given to all other submitters, unless the question is considered:

- purely administrative in nature and relates only to the submitter who has made the request (e.g. clarification on how to complete the pricing schedule). Consideration should still be given as to whether all submitters need to be provided the information; or
- commercial in confidence to the submitter who has made the request for information. Commercial in confidence is confidential information which is provided for a particular purpose that is not to be used for any other purpose. If Waikato DHB disagrees that the request is commercial in confidence, Waikato DHB must advise the submitter and give them the opportunity to withdraw the request before the question and answer is circulated to all submitters.

All submitters must be treated equally and have the same access to information. For example, if one submitter requests a site visit, all submitters must be given the opportunity for a site visit within the same timeframe.

Be conscious that all communications (whether to submitters or sent internally) are subject to the Official Information Act 1982 and could be made publicly available. Confidentiality and commercial sensitivity will not necessarily prevent the release of information under the Official Information Act.

3.5 Current Suppliers

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

3.6 Receipt of Submissions

Submissions for RFXs may be received in hardcopy and/or softcopy.

The RFXs must be opened with at least two Waikato DHB staff present, with one acting as a witness. The date and time of receipt must be recorded and Waikato DHB's Register of RFX Issued and Offers Received template must be completed and witnessed.

Submissions must be securely stored until opened and throughout the process.

Two Envelope RFX Processes

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

3.7 Late Submissions

The Waikato DHB may at its discretion consider late submissions, where there is no possibility of unfair advantage and the late submitter has no knowledge of other submissions.

For submissions received after the closing date and time, the date and time of receipt must be noted on the envelope and marked as late. Late submissions which are not accepted must be returned unopened to the submitter with a letter advising that the late submission is not accepted.

3.8 Evaluation

The evaluation process ensures that:

- Waikato DHB carefully considers each submission on an equal basis against the evaluation criteria;
- the preferred submitter has the capacity and capability to meet the requirements of the proposed contract; and
- the cost of change is considered as per 4.1.

Copies of submissions, scoring scale and evaluation forms must be distributed to each evaluation panel member. It is important to re-confirm conflict of interest declarations at this stage, now that panel members are aware of the submitters involved.

Staff must keep a record of the evaluation process – at a minimum the panel's recommendation and the scores awarded to each submitter and the reasons for the scores. This information can be recorded on Waikato DHB's Evaluation Template and evaluation spreadsheets developed for this purpose. For very small and less complex RFQ processes, the reasons for the selection may be noted on the relevant procurement documents.

Before recommending the preferred submitter and before an agreement being negotiated, the evaluation panel must also consider any conflicts of interest (potential, actual or perceived) declared in the submission provided. This involves careful judgement, and it may be useful to contact Legal Services for advice.

No preferences based on Location

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

3.9 Presentations

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

3.10 Due Diligence

Due diligence, as a minimum, confirms the financial ability, technical ability, and capacity of the submitter and its subcontractors to fulfil the contract. Professional legal and financial input is often required.

Due diligence is generally necessary only for high risk, high value or complex procurement, where the expected benefits outweigh the costs and the risks of performance failure are high. It helps ensure the submitter has the capacity and stability to fulfil the contract.

Submitters should be informed of the due diligence process in the competitive process documents and a record kept of the due diligence carried out.

3.11 Negotiations

Negotiations may be appropriate to clarify the contractual obligations and how the contract will operate, and to achieve a reduction in costs. It is important not to focus solely on price in negotiations, as **all** aspects of the contract must be agreed. E.g. a supplier may offer a good price but also ask for an indemnity which Waikato DHB is unlikely to accept.

As a general rule, negotiations first occur with the highest ranked submitter, and if unsuccessful, then with the next ranked submitter and so on.

Negotiations should be well planned and roles and tasks assigned to those people who will participate in the negotiation. The final outcome of negotiations should be recorded in writing and be included in the contract.

3.12 Awarding the Contract

The person who awards contract must:

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

3.13 Signing the Contract

After the contract has been awarded, you must ensure the contract is signed by a person holding the appropriate Delegation of Authority. Waikato DHBs Request Contract Approval Form must be signed by the relevant DHB staff before the contract can be signed by the DHB or the supplier.

Note that Legal Services sign off as required for:

- Any contract with a total value over \$100,000 or which is considered high or extreme risk; and

- The use of any other form of contract and any changes to standard terms and conditions.

3.14 Contract Database and Storage

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

3.15 Procurement Records

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

3.16 Submitter Notifications and Debriefs

Unsuccessful submitters must be formally notified in writing of the outcome of the process and offered a debrief.

You must carefully manage debriefs to ensure:

- only competent people carry out debriefs;
- commercially sensitive information that relates to other submissions is not disclosed;
- the sensitivity of any information likely to be communicated (such as the identity of other submitters) is carefully assessed prior to the debrief;
- the submitter does not use the debrief process to try to change the decision or re-open the process;
- submitters are informed that only their submission will be discussed; and
- a balanced view is provided of the strengths and weaknesses of the submission against the evaluation criteria or any pre-conditions and how the submitter can improve future responses.

The debrief should also explain the relative advantages of the successful proposal and address the supplier's concerns and questions. You can debrief suppliers by phone, email, letter or at a meeting. The method you choose should reflect the nature and complexity of the procurement.

3.17 Supplier Complaints

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

4. Managing the Contract

4.1 Implementation and Transition to a New Supplier

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

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

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

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

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

4.2 Contract Management

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

It is the responsibility of the contract manager to:

- Ensure the supplier delivers as required by the contract (on time, correct volumes, at the agreed cost, to the required quality, reporting).
 - Ensure the effective management of relationships between Waikato DHB and the supplier, such as an appropriate frequency and type of meetings, levels of communication and processes for handling issues;
 - Identify and manage risks and issues;
 - Undertake regular reviews of the contract, appropriate to the contract's value, nature and duration;
 - Carry out business continuity planning appropriate to the contract.
 - Manage changes to the contract (variations);
 - Monitor charges and costs;
 - Ensure ordering and payment processes are in place and follow Waikato DHB standard processes;
 - Report to management as required; and
- Keep well organised and complete records of the monitoring and contract

management carried out, as well as any decisions made and the reasons supporting them.

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

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

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

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

A Supplier Management Plan template is available from Purchasing and Distribution Services.

4.3 Supplier Payment Terms

Waikato DHBs standard payment term is the 20th of the month following invoice date.

Waikato DHBs preferred payment method is direct credit into a New Zealand bank account.

From time to time, other payment terms will need to be considered. Exceptions to this may be authorized by the Finance Manager.

4.4 Automatic Recurring Payments (ARP)

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

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

The original contract must be provided to Procurement and Contracts for entering into the contract database for monitoring and then sent to Legal Services for safe keeping.

4.5 Reviews

Reviews can occur at different stages in the procurement and contract, and even after the contract has been completed. Deciding what to review and when to review should be part of your procurement plan. The type and depth of review will depend on the nature, scope, value, level of risk and complexity of the procurement and contract.

Different types of review include options such as:

- On award of the contract;
- During the contract implementation; and
- Post implementation, undertaken when there has been time to demonstrate the business benefits of a new procurement initiative.

Useful guidance on the different types of review and what to consider can be found in Stage 8 – Review of MBIE guide ‘Mastering Procurement’:

<https://www.business.govt.nz/procurement/pdf-library/agencies/GUIDEMasteringProcurement.pdf>

4.6 Assignments, Novations and Variations

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

The person who approves and signs such a document must:

- Hold the appropriate Delegation of Authority for the level and type of expenditure;
- Be provided sufficient information to understand the rationale for the change to the contract, and
- If they reject the recommendation, document the reason and ensure the reason is legitimate.

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

4.7 Contract Renewals and Extensions

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

- supplier performance;
- intellectual property and confidentiality constraints;
- user satisfaction;
- the effectiveness of the contract and whether any improvements could be negotiated;
- developments in the market;
- competitiveness of the current pricing – does it still offer best value for money?; and
- costs associated with new service provision and transition.

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

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

4.8 Contract Completion

Contract managers must remain aware of a contract's expiry date and decide well in advance what they wish to do at the end of the contract term. This may include, extending the contract or market testing before the expiry date.

Review

To assist with this decision, the contract manager should review the contract to assess:

- does the contract meet current and future needs?
- does the supplier's performance (on levels of service, contract management, reporting) meet current and future needs?
- are alternative goods and services now available?
- where can improvements be made?
- what options are there under the contract – is there a renewal term?
- what are the costs, risk and benefits of going back to the market?

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

Completion

Completion of a contract may involve:

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

5. Success Indicators

- All procurements with a total value over \$100,000 are supported by a procurement plan;
- All procurements with a total value over \$100,000 are managed by a Procurement Specialist or a nominated Procurement Manager as part of a formal project;
- Internal customers consult a Procurement Specialist for all procurement activity over \$10,000 in total value;

- In the event of legal challenge or official external review of Waikato DHB procurements or contracts, the Waikato DHB is in a robust position;
- All procurement decisions are based on achieving best value for money over the total expected life of the goods or services;
- An increasing proportion of Waikato DHB expenditure is managed by formal contract;
- Where there is a continuing need for goods or services at the completion of a contract, the contract is renewed or a new contract is put in place before the existing contract expires; and
- The Government Rules of Sourcing are complied with.

DEFINITIONS**All-of-Government Contracts (AOG)**

A type of collaborative contract. AOGs are usually Panel Contracts approved by Ministry of Business, Innovation and Employment or other approved Centres of Expertise for common goods and services (i.e. vehicles, laptops, print devices).

Best Value for Money

Best value for money is the optimum combination of whole-of-life cost and quality (or fitness for purpose) to meet the user's requirements. It is not always the cheapest price.

Clinical Product Co-Ordinator

Is a person in Purchasing and Distribution Services whose primary role within Waikato DHB is to co-ordinate the clinical evaluation and acceptance of clinical equipment and consumables, as well as to confirm their compliance with safety and legislative requirements and Waikato DHB policies.

Consultant or Contractor

A person who provides services for a particular project or specified service, and is contracted to Waikato DHB as an individual or through another entity (e.g. a company). Such persons usually manage themselves independently.

Contract

An agreement between two or more persons or legal entities which is intended to be enforceable. Both parties must have capacity to contract. The essential elements of a contract are:

- agreement between the parties as to the essential terms of their bargain;
- an intention by the parties to create a legally binding relationship; and
- the existence of consideration which means that each party gives the other something and each party gets something in return.

Currency

All dollar values in this policy are New Zealand Dollars

Deed

A written document in a prescribed form. A deed, properly entered into, creates legally binding obligations on all parties to it. The primary difference between a Contract and a deed is that a deed does not require consideration for it to be effective provided the deed is signed and attested in a manner required by law.

All deeds must be approved by Waikato DHB Legal Services.

External Personnel

Means:

- authorised paid individuals or individuals from paid companies or other entities (non-employees) working within Waikato DHB to meet staffing/service/project needs, e.g. external agency staff, locums, consultants and contractors; and
- authorised unpaid individuals or groups to observe (including clinical observers), gain experience, teach or provide support within agreed boundaries.

Financial Authority/Delegation of Authority

Refers to those persons given the authority to commit funds within specified financial and policy limits. For details and specific requirement refer to the Delegations of Authority policy.

Goods and Services

Includes assets, equipment and utilities

healthAlliance (hA) Procurement

healthAlliance Procurement has been appointed by Cabinet to support the national shared procurement service for Medical Devices and works alongside PHARMAC. The national contracts are optional for DHBs to use, but may offer significant benefits to the DHBs and where appropriate should be applied.

Manager Procurement

Is the person appointed to manage Procurement Services (within the Purchasing and Distribution department).

MBIE

Means Ministry of Business, Innovation and Employment.

PDS

Means Purchasing & Distribution Services

PHARMAC

The Pharmaceutical Management Agency (PHARMAC) is the New Zealand Crown agency that decides, on behalf of District Health Boards, which medicines and related products are subsidised for us in the hospitals.

More recently, PHARMAC been appointed by Cabinet to be the future national shared procurement service for Medical Devices and will gradually begin to work on national contracts. The national contracts are optional for DHBs to use, but may offer significant benefits to the DHBs and where appropriate should be applied.

Procurement Authority/Delegation

Refers to those persons given the authority to commit the Waikato DHB to procure an item/service of supply within a specified financial limit. Refer to the Delegations of Authority policy.

Procurement and Purchasing Procedures and Templates

Various subordinate documents to this policy. Procedures prescribe various operational processes and specific functional roles in accordance with this policy. Templates are procurement-related documents with an approved format and content that must be used in DHB procurement.

Procurement

Is all of the business processes associated with acquisition of goods and services, spanning the whole cycle from the identification of needs to the end of a service contract or the end of the useful life and subsequent disposal of an asset.

Procurement Specialist

Is a person in Purchasing and Distribution Services whose primary role within Waikato DHB is to manage the acquisition of goods and services and to provide advice and procurement expertise to enable other members of staff to achieve the objectives of the Procurement Policy. A Procurement Specialist will often manage a particular procurement.

Procurement Strategy

Is a coherent proactive approach to interacting with and managing the supply market with the objective of obtaining optimum value from supplier relationships.

Purchase Order

A legally binding document placing an order for the delivery of goods and/or services to a purchaser.

Purchase

A transaction in which goods or services are acquired in exchange for payment

RFX

Means any one of the competitive processes that may be used to shortlist or select suppliers: request for expressions of interest or registration of interest, request for proposals and request for tenders.

Staff

Means generally all people to whom this policy applies and who are involved in some capacity during a procurement process; and also

Means the person nominated to directly manage and be accountable for a particular procurement. Responsibilities include:

- planning and documenting the procurement activity adequately;
- engaging key stakeholders (including Purchasing and Distribution, Legal Services, Infection Control, Biomedical Engineering, Information Services, Pharmacy, Health and Safety Services, Quality & Risk where necessary);
- development of requirements and specifications;
- obtaining necessary approvals and authorisation;
- providing originals of signed contracts to Legal Services; and
- complying with regulatory requirements and relevant Waikato DHB policies.

ROLES AND RESPONSIBILITIES

Appropriate person must be involved in the procurement process.

Accounts Payable

The Accounts Payable team are responsible for all supplier payments.

Purchasing and Distribution Services

Responsible for:

- the central management and oversight of all Waikato DHB procurement processes and systems;
- providing procurement process support and advice (including advice on who should manage the procurement process: Waikato DHB, All-of-Government, healthAlliance or PHARMAC);

- managing/co-ordinating competitive processes for the supply of goods and services expected to exceed \$100,000 in total value over the life of the contract;
- negotiation support;
ongoing supplier relationship management, contract management and monitoring of implementation (unless an alternative manager is agreed by Purchasing and Distribution Services) for those suppliers identified using Waikato DHBs Supplier Management Segmentation Guidelines, and
- compliance and benefits tracking.
- supporting RC Managers by periodically publishing details from the contracts database to enable them to check their own records.

Legal Services

Responsible for:

- providing legal advice and assistance in preparation and review of documents;
- approval of deed format and execution;
- assistance with difficult negotiations;
- review and sign off of procurement and contractual documents prior to issue and execution (involvement as per requirements of this policy);
- maintaining a central repository and database of all signed Waikato DHB contracts;
- the development and maintenance of standard RFX, contract and contract related templates; and
- facilitating external legal review of procurement and contract processes and related documents where required.

RC Managers

Are responsible for

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

LEGISLATIVE REQUIREMENTS

Waikato DHB must comply with the following legislation (this list is not exclusive):

- Waikato DHB's enabling legislation, the New Zealand Public Health and Disability Act 2000;
- Commerce Act 1986;
- Dumping and Countervailing Duties Act 1988;
- Employment Relations Act 2000;
- Fair Trading Act 1986;
- Health and Safety at Work Act 2015;
- Human Rights Act 1993;
- Medicines (Database of Medical Devices) Regulations 2003
- Official Information Act 1982;
- Privacy Act 1993;
- Sale of Goods Act 1908 as amended by the Contractual Remedies Act 1979; and
- Treaty of Waitangi Act 1992
- Resource Management Act 1991.

ASSOCIATED DOCUMENTS

- Waikato DHB [Delegations of Authority policy](#) (2175)
- Waikato DHB [Conflict of Interest policy](#) (0006)
- Waikato DHB Capital Expenditure policy (0034)
- Waikato DHB Asset and Equipment management policy (1839)
- Waikato DHB [Gifts, Giving and Receiving policy](#) (1829)
- Waikato DHB Sponsorship policy (0122)
- Waikato DHB [Fraud policy](#) (3274)
- Waikato DHB [Risk Management policy](#) (0118)
- Waikato DHB [Corporate Records Management policy](#) (0905)
- Waikato DHB [Non-Employee Engagement policy](#) (1042)
- Waikato DHB [Recruitment and Selection policy](#) (0021)
- Ministry of Health Operational Policy Framework

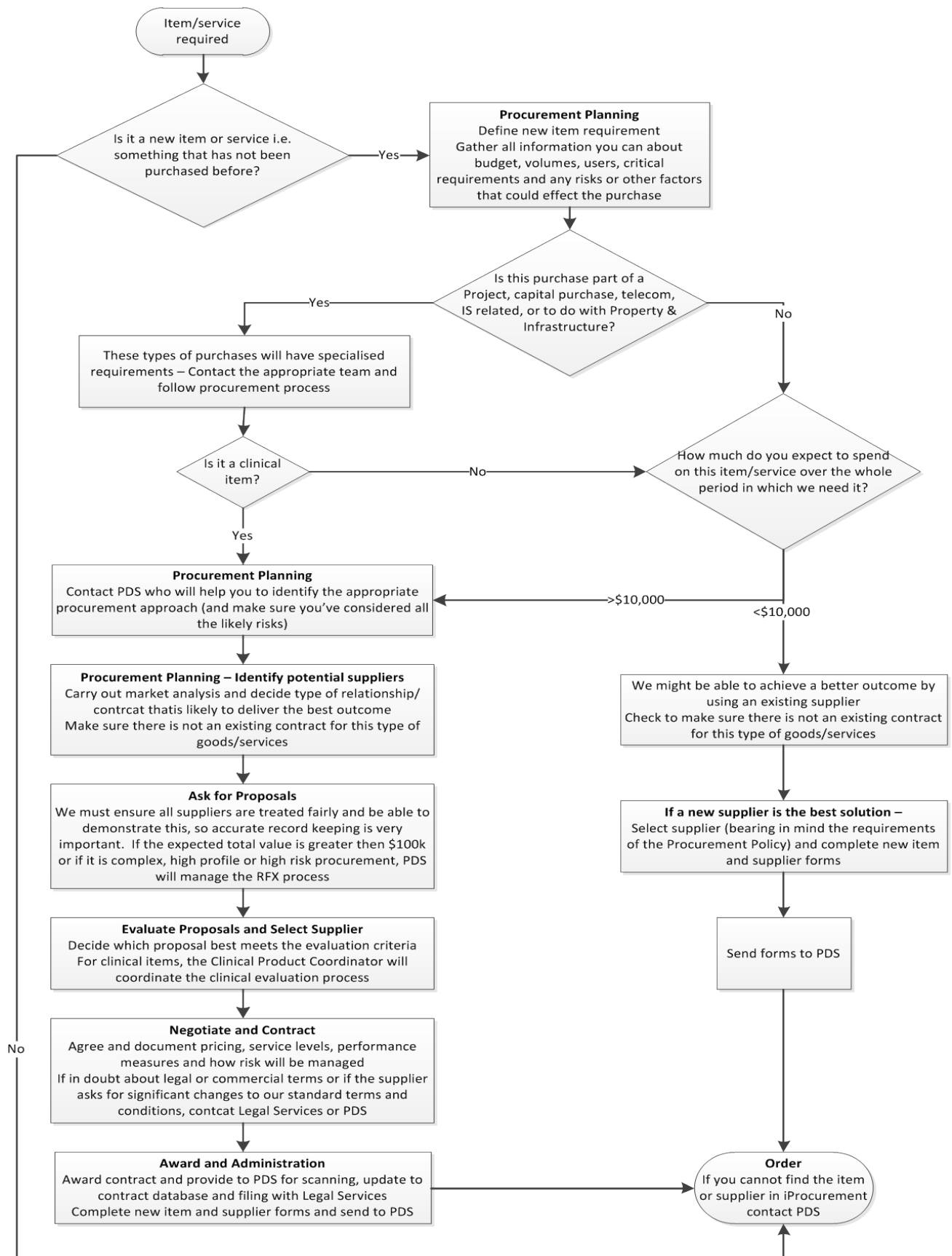
PROCUREMENT TEMPLATES AND GUIDELINES

- Procurement templates:
<https://intranet.sharepoint.waikato.health.govt.nz/Pages/Purchasing%20and%20Distribution/Purchasing%20and%20distribution%20forms%20and%20templates.aspx>
- Procurement guidelines:
<https://intranet.sharepoint.waikato.health.govt.nz/Pages/Purchasing%20and%20Distribution/Guides.aspx>
- Other related procurement information can be found on the Purchasing & Distribution Services intranet page:
<https://intranet.sharepoint.waikato.health.govt.nz/Pages/Purchasing%20and%20Distribution/Purchasing%20and%20distribution.aspx>

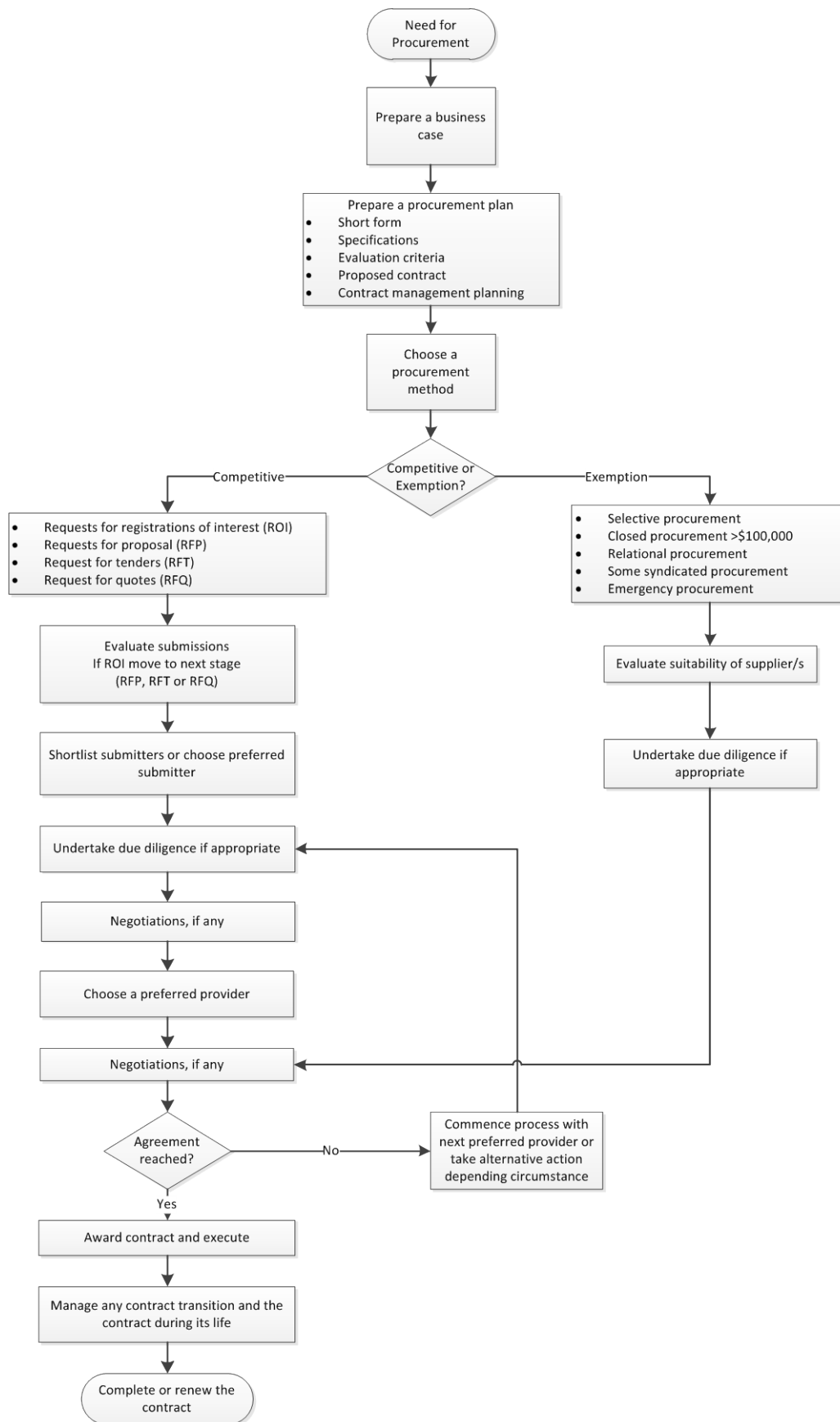
REFERENCES

- Government Electronic Tendering Service (GETS) Website: www.gets.govt.nz
- Principles of Government Procurement, Ministry of Business, Innovation and Employment: <http://www.business.govt.nz/procurement/pdf-library/a3-principles-of-government-procurement-final.pdf>
- Government Rules of Sourcing Ministry of Business, Innovation and Employment: <http://www.business.govt.nz/procurement/pdf-library/agencies/rules-of-sourcing/government-rules-of-sourcing-April-2013.pdf>
- Mastering Procurement
Ministry of Business, Innovation and Employment:
<http://www.business.govt.nz/procurement/for-agencies/strategic-procurement/mastering-procurement-the-guide>
- Procurement Guidance for Public Entities June 2008 - Office of the Auditor General: http://www.oag.govt.nz/2008/procurement-guide/docs/procurement_guide.pdt

PROCUREMENT AND ORDER PROCESS FLOWCHART



KEY STEPS OF PROCUREMENT PROCESS FLOWCHART



COMPLYING WITH THE COMMERCE ACT 1986

In order to promote competition the Commerce Act 1986 prohibits a number of anti-competitive practices. Entering into various contracts or arrangements may, without any intention, cause Waikato DHB to behave in one or more ways the Act regards as anti-competitive.

Particular care shall be taken where Waikato DHB is directly involved in regional and national procurement activities.

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

- **Taking advantage of market power** (section 36)
Where Waikato DHB has a substantial degree of market power it cannot take advantage of that power for the purposes of:
 - restricting the entry of a person or entity into a market; or
 - preventing or deterring a person or entity from engaging in competitive conduct in a market; or
 - eliminating a person or entity from a market.
- **Substantially lessen competition** (section 27)
Waikato DHB cannot enter into contracts or arrangements or arrive at an understanding that has the purpose or is likely to have the effect of substantially lessening competition in a market.
- **Excluding competitors** (section 29)
Waikato DHB cannot:
 - enter a contract or arrangement or come to an understanding with another party or parties, where two or more of the parties (including the Waikato DHB) are in competition with each other, for the purpose of preventing or restricting the supply of goods or services to, or the acquisition of goods or services from, any person or entity or class of persons or entities (target person or entity); and
 - the target person or entity is in competition with at least one or more of the parties to the contract, arrangement or understanding.
- **Price fixing** (section 30)
Waikato DHB cannot enter into a contract, arrangement or understanding with a person or entity for the purpose of, or having the effect or likely effect of, fixing, controlling or maintaining the price for goods or services or any discount, allowance, rebate or credit in relation to goods and services that are:
 - supplied or acquired by the parties to the contract, arrangement or understanding; or
 - resupplied by persons to whom the goods are supplied by those parties.
- **Resale price maintenance** (sections 37 and 38)
Waikato DHB cannot supply goods for on sale on the condition that they are on sold for a specific price, or sold for no less than a particular price or with a discount requirement or prohibition.

REQUIREMENTS RELATING TO PROCUREMENT UNDER THE EMPLOYMENT RELATIONS ACT 2000

Pursuant to the Employment Relations Act 2000 Waikato DHB is required to:

- comply with the Code of good faith for the public health sector (Code) contained in the Employment Relations Act; and
- before entering into any contractual or other arrangement for the supply of services (except building construction services and services supplied under funding contracts), notify the other party;
 - that the Code will apply in relation to its provision of those services to the District Health Board; and
 - of the provisions of clause 19 and 20 of the Code, whichever applies in the circumstances.
- in certain situations, disclose the costs relating to the transfer of employees due to restructuring. Disclosure of costs must be made available to prospective suppliers (new employers) on request when the restructuring is the subject of a tender and the type of employee affected falls within a category listed in the Act. This provision is designed to protect vulnerable employees in areas such as cleaning, food catering, orderly and laundry services.

THE SECURITIES MARKETS ACT 1988 AND INSIDER TRADING

Individuals involved in procurement may deal with companies that are listed on the New Zealand Stock Exchange. If individuals involved in procurement receive information in confidence from a listed company during a procurement process that would be likely to materially affect the price of the securities if it were publicly known, those individuals involved in procurement become insiders for the purposes of the Securities Markets Act 1988. As an "insider" individuals involved in procurement will then be prohibited from buying securities or obtaining other benefits where the inside information gives them an advantage.