

CONTRACTING IN THE PUBLIC SECTOR

Key steps in the procurement process

Step 1: Setting the scene: planning and needs analysis

- **Carefully** define the purpose of your actions and document the goods and services you want.
- **Define** and document clear quality measures which will help you to meet your desired objective or outcome.
- **Ensure** you comply with your organisation's processes and requirements on provider selection – document the reasons for your decisions.
- **Determine** how you will evaluate the performance of the provider that is selected.
- **Ensure** that the costs associated with using a contractor (including selection costs) are taken into account.

Step 2: Selecting a provider

- **Define** your selection criteria.
- **Determine** if a tender is mandatory.
- **If** you decide not to run a tender process – **document your reasons**.
- **If** you decide to run a tender then:
 - Get legal advice on how to run a tender.
 - Use your organisation's tender processes and standard tender documents.
 - Any questions? Consult the relevant rules and guidelines (see overleaf).

Step 3: Negotiating the contract

- **Document** all discussions.
- **Establish** a clear negotiating mandate.
- **Follow** your organisation's rules and procedures on negotiating contracts.
- **Prepare** a contract that sets out the clear obligations of the parties. The complexity of the contract will turn on issues such as price, risk and whether the service to be purchased is specialised eg, an IT contract.
- **Use** your organisation's applicable standard contracts as a starting point.
- **Link** payment to satisfactory completion of the services.
- **Get** legal advice as required (for example, on how to negotiate a contract).

Step 4: Managing the contract

- **Actively** monitor the provider's performance.
- **Schedule** regular meetings and ask for written progress reports.
- **Ensure** deliverables are met.
- **Seek** legal advice if there are problems.
- **Ensure** that you address any problems or issues as *early* as possible.

Step 5: Review and evaluation

- **Did** the provider meet your expectations.
 - Price?
 - Quality?
 - Timeframes?
- **Have** you met your objectives in entering this contract?
- **Assess** what went well and what did not.
- **Document** your conclusions.

Basic principles

- What is your outcome or objective?
- How/what will this project contribute to your outcome or objective?
- Is this project the best way to achieve the desired result?

Is contracting the best way of achieving the objective or attaining the outcome?

NO →

Stop and reassess options. For example, do the work in-house.

↓ YES

Decide what criteria a provider must meet

The key issue is: how do we find a provider that will help us meet our objective and provide value for the expenditure of public money?



Do we need to run a tender process?

Consider if a tender is required. See Ministry of Economic Development *Mandatory Rules for Procurement by Departments*.

NO →

Consider if a tender is still recommended. See Chapter 2 of the Treasury's *Guidelines on Contracting with Non-Government Organisations for services sought by the Crown* and the Auditor-General's *Principles to underpin management by public entities of funding to non-government organisations*. (Alternatives to a tender include selective procurement or seeking a quotation.)

↓ YES

Run a tender process to select the provider.

Options include:

- Open tendering (usually preferred, either with single or multiple stages)
- Closed tendering.

← YES



Evaluate the providers or tenders

Ensure they have the capability to meet the contract and will provide best value for money.

← NO



Enter contract negotiations with the preferred provider



Monitor the contract

Ensure that things are progressing as expected and provide or seek additional information, contact people or contingency plans as appropriate.



Evaluation and review of the contract

Did you achieve good results?
Would you use this provider again?
You may also need to review your organisation's contracting process as a result of lessons learnt.

Document everything!

Show: lawfulness, accountability, openness, value for money, fairness, integrity

CONTRACTING IN THE PUBLIC SECTOR

Contracts and contracting practices within the public sector have been the focus of inquiries and guidance in recent years. Due to the fact that public funds are involved in contracting in the public sector, effective and transparent contract management is essential. All public sector organisations should ensure that they have robust contract management processes and that these are subject to regular review.

Useful Resources

A number of guidelines have been developed to assist public sector organisations and local government in developing appropriate contract management processes. Public sector organisations should refer to these guidelines, and any future revisions, when developing or reviewing their own contracting practices.

• Treasury

In 2003, Treasury reviewed and updated the *Guidelines for Contracting with Non-Government Organisations for Services Sought by the Crown (2001)*. These Guidelines are designed to assist government and public sector organisations to manage their contracting and other funding arrangements with NGOs. The Guidelines outline overarching principles for good contract management and provide advice on all stages of the contract lifecycle. The Guidelines stress the importance of thoroughly vetting a potential provider, of closely monitoring the use of public monies and implementing processes to manage areas of risk.

<http://www.treasury.govt.nz/publications/guidance/finmgmt-reporting/ngo/02.htm>

• Controller and Auditor-General

In 2008, the Auditor-General released *Procurement guidance for public entities*. This good practice guide updates and replaces the 2001 publication *Procurement: A Statement of Good Practice*. The guide expands on the different methods that public entities can use in the procurement process. Guidance information is provided for each stage of the procurement process, from planning, to choosing the appropriate procurement method and managing the contract. This is complemented by *Principles to underpin management by public entities of funding to non-government organisations (2006)*. A risk based approach to contracting with NGOs and other organisations is recommended, considering the resources available and the context. Basic principles include lawfulness, accountability, openness, value for money, fairness and integrity in decision-making. While these good practice guides do not give a prescriptive list of rules, the Auditor-General expects that the procurement policies of public sector organisations will align with the principles and guidance contained in these documents.

Public sector purchases, grants, and gifts: Managing funding arrangements with external parties is an overarching guide which helps public entities select the appropriate type of funding arrangement. This should be used in conjunction with these and other procurement related publications available on the Auditor-General's Office's website.

<http://www.oag.govt.nz/2008/procurement-guide/>

<http://www.oag.govt.nz/2006/funding-ngos/>

<http://www.oag.govt.nz/2008/funding-arrangements/>

• Ministry of Economic Development

The Ministry of Economic Development has produced the *Mandatory Rules for Procurement by Departments* to ensure that Government departments meet their obligations under the 2005 Trans-Pacific Strategic Economic Partnership. The Rules

reflect and reinforce New Zealand's established policy of openness and transparency in government procurement. These rules apply to all contracts for goods or services with a value at or above \$100,000 and construction contracts at or above \$10million (with some exceptions) and include the requirement to publish notices on GETS inviting tenders or application for contracts. The rules include requirements for government departments to utilise open tender procedures and publish annual rolling procurement plans that are updated at least every six months. Departments may also develop publicly available pre-registered or qualified supplier lists that all firms meeting selection criteria are eligible to join. The Ministry has also produced *Government Procurement Advisory Notes* on the audit of compliance with the Procurement Rules, along with a range of other documents on public sector procurement.

For copies of these and other related documents please visit:

www.procurement.govt.nz

• Office for the Community & Voluntary Sector

The Office for the Community & Voluntary Sector (OCVS) provides good practice information for funding of NGOs. This site contains a number of useful perspectives and links.

<http://www.goodpracticefunding.govt.nz/>

• Legislation relevant to the public sector contracting process

There are a number of pieces of legislation relevant to the public sector contracting process. In addition to the guidance documents outlined above, public sector organisations should consider the following legislation when drafting their own contracting guidelines:

- Public Finance Act 1989
- Financial Reporting Act 1993 and amendments
- Fair Trading Act 1986
- Commerce Act 1986
- Official Information Act 1982
- Public Audit Act 2001

This legislation can be accessed on <http://www.legislation.govt.nz/>

SERVICES PROVIDED BY ALLEN & CLARKE POLICY AND REGULATORY SPECIALISTS

Allen & Clarke is available to help with your contracting practices. We can provide training as well as practical advice on contracting. We are also able to draft in-house guides on contract processes, contract templates and request for proposal documents.

Allen & Clarke specialises in the development, implementation and evaluation of public policy. We support our clients by providing in-house analysts or through undertaking work on a project basis.

We work in the following areas:

- Policy development, analysis and implementation
- Literature reviews and research
- Regulatory system design and implementation
- Project management
- Reviews and evaluation of agencies, programmes, systems and processes.

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