



# A QUICK GUIDE TO PROCUREMENT IN THE PUBLIC SECTOR

Public sector contracts and government agencies' procurement practices are subjected to a range of checks and balances, including public scrutiny. As public funds are involved, effective and transparent procurement is essential in the public sector. In tougher economic times there is also a heightened need to maximise the value for money realised from expenditure of public funds.

## THE GOVERNMENT'S PROCUREMENT FRAMEWORK BROADLY CONSISTS OF:

- Procurement Principles – these Principles underpin how government goes about sourcing the products and services it needs, and how it engages with businesses. The Principles include: “Plan and manage for great results”; “Be fair to all suppliers”; “Get the right supplier”; “Get the best deal for everyone”; and “Play by the rules”.
- Government Rules of Sourcing (the Rules) – which are designed to strengthen accountability, promote our values, encourage commercial development, and support economic development.
- Guidance – a range of supporting guidance documents (the key ones are noted on the back page of this Guide).

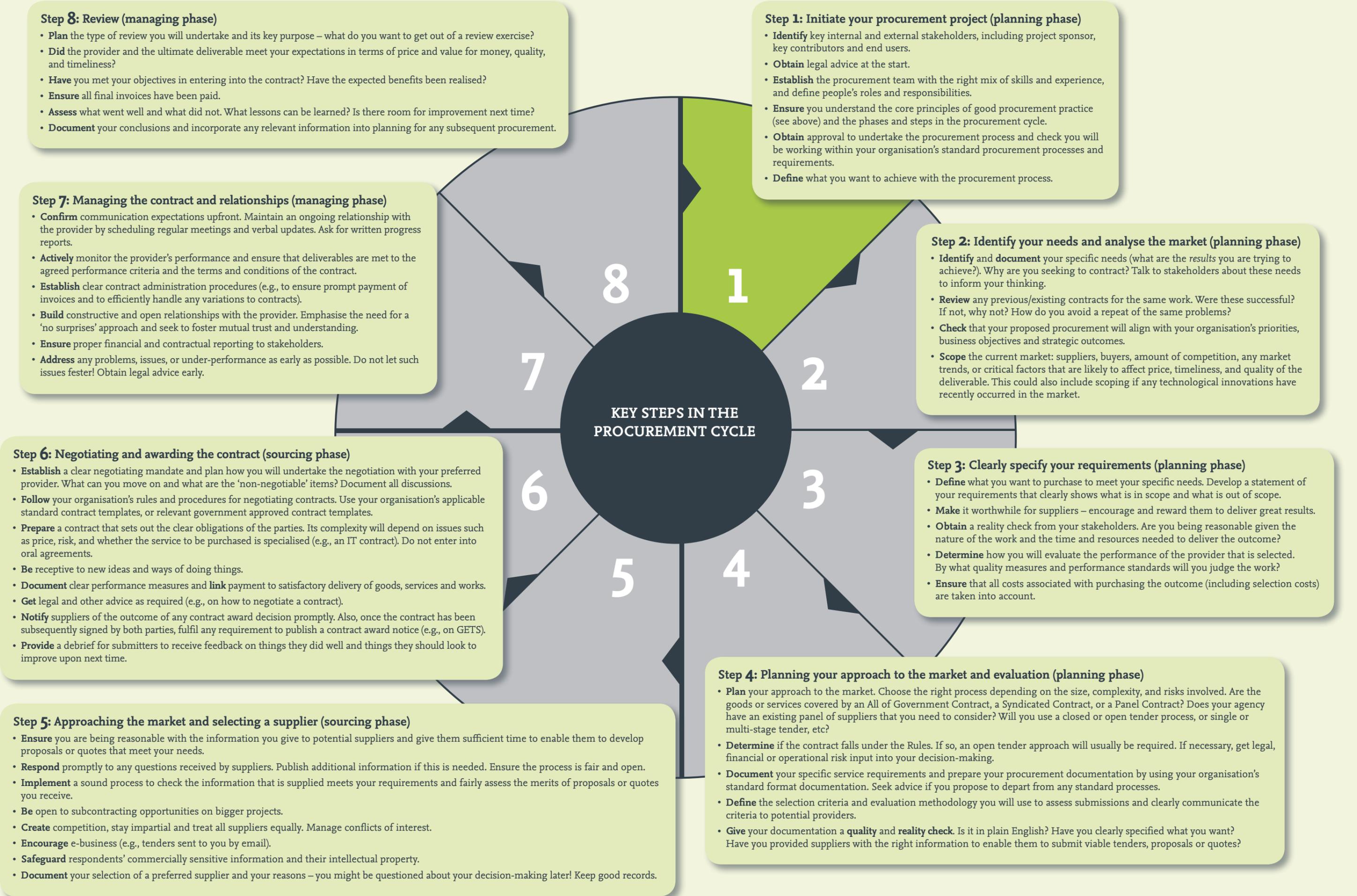
## THE PROCUREMENT CYCLE

Recent guidance for government agencies recommends a structured and strategic approach to procurement across three key phases: planning, sourcing and managing. Within these three phases, eight inter-linked steps in the procurement cycle exist as summarised in the diagram below<sup>1</sup> and expanded over the page.

Importantly, putting quality time and effort into your upfront procurement planning and needs analysis, and clearly defining what products or services you wish to procure to meet such needs, will add significant value and help you to meet your procurement objectives (see steps 1-4, below).



<sup>1</sup> This material has been adapted from the resource A Guide to Mastering Procurement (2011). The resource was published by the former Ministry of Economic Development (which is now part of the Ministry of Business, Innovation and Employment) after being developed as part of the New Zealand Government's Procurement Reform Programme. You should refer to this resource for comprehensive guidance on the steps in the procurement cycle. It is available at: [www.business.govt.nz/procurement/for-agencies/strategic-procurement/mastering-procurement-the-guide](http://www.business.govt.nz/procurement/for-agencies/strategic-procurement/mastering-procurement-the-guide)



## WHERE TO GO FOR MORE INFORMATION

There is a wealth of information and guidelines to assist public sector organisations and local government to develop and run sound procurement systems. The best place to start is to visit the Government's procurement website: [www.procurement.govt.nz](http://www.procurement.govt.nz), which contains a toolkit of resources and guidance. These include the key guidance documents on all aspects of contract management and the procurement process. Some of the key resources are flagged below:

### Guidance on procurement policy, processes and rules

- *A Guide to Mastering Procurement*, Ministry of Economic Development (2011). This Guide was developed for government agencies and supports good procurement practice. The Guide advocates a more strategic procurement approach, rather than the traditional approach where procurement has been seen as an administrative function for buying goods and services. A strategic approach involves understanding the importance of the procurement to the agency in achieving its outcomes, sourcing suppliers, and managing relationships to successfully deliver against public policy objectives and business needs, while delivering overall value for money. It provides detailed guidance on the steps mentioned above.
- *Government Rules of Sourcing*, Ministry of Business Innovation and Employment (2013). The Rules have been endorsed by Cabinet and replaced the Mandatory Rules for Procurement by Departments previously issued by the former Ministry of Economic Development in 2006. The Rules mainly focus on the sourcing phase of the procurement lifecycle and cover planning for procurement, approaching the market, and contracting. They are compulsory for Public Service departments, New Zealand Police, and the New Zealand Defence Force. Other agencies in the wider Public Sector are encouraged to apply them as good practice. The Rules are also intended to help agencies meet their obligations under the 2005 Trans-Pacific Strategic Economic Partnership and other international commitments.
- *Procurement Guidance for Public Entities*, Office of the Auditor-General (2008). This Guide encourages public sector agencies to focus on the strategic management of their procurement function in a way that adds value to service delivery. It also expands on the different methods that public entities can use in the procurement process. Guidance is provided for each stage in the procurement process, from planning, to choosing the appropriate procurement method, and managing the contract.
- *The Quick Guide to Completing an Annual Procurement Plan* and the *Guide to Completing a Strategic Procurement Outlook* provide advice about two procurement planning documents that are required by all public service agencies.

### Contracting with non-governmental organisations (NGOs)

- *Principles to Underpin Management by Public Entities of Funding to Non-government Organisations*, Office of the Auditor-General (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 principles do not present a prescriptive list of rules, the Auditor-General expects that the procurement policies of public sector organisations will align with the principles and guidance produced for the public sector.
- *Guidelines for Contracting with Non-government Organisations for Services Sought by the Crown*, the Treasury (2009). 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 of implementing processes to manage areas of risk.
- The Office for the Community and Voluntary Sector also provides good practice information for funding of NGOs. The site contains a number of useful perspectives and links, including the *Code of Funding Practice* (2010) ([www.goodpracticefunding.govt.nz](http://www.goodpracticefunding.govt.nz)).

### Procurement ethics and standards

A number of guidance documents exist that set out requirements under the Public Finance Act and other standards of behaviour and ethics expected of government officials. Your own agency's code of conduct may be a good starting point. Other guidance includes:

- *A Guide to the Public Finance Act*, the Treasury (2005).
- *Managing Conflicts of Interest*, Office of the Auditor-General (2007).
- *Guidance on Gifts, Benefits and Gratuities*, State Services Commission (2002).
- *Standards of Integrity and Conduct*, State Services Commission (2007).

## WHAT LEGISLATION IS RELEVANT?

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
- Sale of Goods Act 1908
- Frustrated Contracts Act 1944
- Public Bodies Contracts Act 1959
- Minor's Contracts Act 1969
- Illegal Contracts Act 1970
- Commerce Act 1986
- Contracts (Privity) Act 1982
- Contractual Mistakes Act 1977
- Contractual Remedies Act 1979
- Sale of Goods (UN Convention) Act 1994
- Construction Contracts Act 2002
- Official Information Act 1982.
- Public Audit Act 2001.

This legislation can be accessed on [www.legislation.govt.nz](http://www.legislation.govt.nz)

## THE GOVERNMENT ELECTRONIC TENDERS SERVICE (GETS)

To ensure transparency of the procurement market, the Government requires departments and encourages other public sector agencies to use GETS for publication of all open tenders, including invitations to tender for costs at or above \$100,000. For departments, key rules include:

- Tenders must be posted for a sufficient time, but no less than the minimum time period.
- You must publish contract award notices and offer de-briefs to unsuccessful applicants.
- Any preferred or pre-qualified supplier lists must be published and open for application via GETS.
- Agencies are to prepare and publish indicative annual procurement plans on GETS.

For more information refer to the *Government Rules of Sourcing* (2013), via the Government's procurement website: [www.procurement.govt.nz](http://www.procurement.govt.nz)

To log onto GETS you will need to register (which is free). Visit: [www.gets.govt.nz](http://www.gets.govt.nz)

## ALLEN + CLARKE

Allen + Clarke is a New Zealand consultancy, and proud of our Wellington roots. This is reflected in the way we work – always as your partner. We have proven expertise across all steps in the procurement lifecycle. We are also experts at policy development; analysis and implementation; regulatory system design and implementation; project management; machinery of government; and undertaking reviews and evaluations of policies and programmes.

For more information, visit our website: [www.allenandclarke.co.nz](http://www.allenandclarke.co.nz)

## MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT (MBIE)

MBIE's purpose is to be a catalyst for a high-performing economy to ensure New Zealand's lasting prosperity and wellbeing. We play a central role in shaping and delivering a strong New Zealand economy. We are working to support the Government's Business Growth Agenda and are leading initiatives to deliver Better Public Services for Business. Our Government Procurement Branch is working with other agencies to reform the New Zealand procurement framework.

For more information, visit [www.mbie.govt.nz](http://www.mbie.govt.nz) or [www.procurement.govt.nz](http://www.procurement.govt.nz)

