

8. CHRISTCHURCH CITY COUNCIL PROCUREMENT POLICY

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**PURPOSE OF REPORT**

1. The purpose of this report is to:
  - (a) seek Council approval for adoption of the Procurement Policy
  - (b) to rescind three existing policies relating to:
    - Tendering – preference of local firms (25 June 1990)
    - Tendering – preference for New Zealand produced goods (19 November 1990)
    - Tendering – sustainability consideration Timber from Tropical Rainforests Policy (1991).
  - (c) to seek Council agreement that staff should report to the Council's Audit and Risk Subcommittee on a quarterly basis on:
    - Contracts greater than \$50,000 which have not gone to market and the reasons for this
    - Quarterly expenditure against each supplier within each Panel.

**EXECUTIVE SUMMARY**

**Purpose of the Procurement Policy (Appendix 1)**

2. Procurement plays an important role in the delivery of Council outcomes. It is important for Council to have a clear set of governing principles to be used alongside relevant legislation and current delegated financial authority. A Procurement Policy document has been developed which is externally facing and incorporates the standards and recommendations of relevant legislation and central government guidelines and policies. The Procurement Policy will provide:
  - Christchurch residents with visibility and transparency of the purchasing and procurement policies and principles that Councillors expect Council staff to operate within
  - a clear direction and common understanding to management and staff in relation to Council's procurement and purchasing function
  - a set of guiding principles when considering a funding arrangement with a third party
  - a decision framework within which Council staff can set robust procurement strategies and detailed procedures.
  - a key foundation to governing the use of public funds when procuring goods or services.

**Why is the Procurement Policy Required?**

3. The Council requires the ability to procure goods, services and works to deliver the levels of service and capital projects in the Long Term Plan.
4. Procurement and contract management is a significant activity of the Council. Pre-earthquake, the Council spent approximately \$350-\$400 million per annum on external goods, services and works. Estimated spend for this financial year is \$700-\$800 million. Since 2009, procurement and contract management has been recognised as a key lever in driving value for money and has been an area of focus for management. Before 2009, Council's procurement function had been assessed by Internal Audit and areas for improvement identified, including the establishment of a Council-agreed policy and clarifying the internal business rules for procurement.

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5. Council procures a wide range of goods and services from an array of different markets. Given the value, size, complexity and opportunities for improvement in procurement within the Council, it is important for Council to have a robust governance and framework to work within. This will allow staff to also make well considered value and risk decisions.

**What is the Current State?**

8. Responsibility for procurement and contracting activities is shared between individual business units and budget holders, and the shared services of Procurement and Purchasing, Finance and Legal Services units. Following Council approval, responsibility for budgets rests with individual business units (e.g. City Water and Waste, Transport and Greenspace). When a service renewal or new contract for services is required, the Procurement and Purchasing unit (alongside the business unit), manages the procurement process, in accordance with delegated authority, legislative and best procurement practice protocols.
9. Under the Activity Management Plan for 2011/12 the Council has an agreed level of service for procurement. The agreed level is 90 per cent of goods and services greater than \$50,000 are to be put to the market through an RFP/RFT (excluding purchases associated with emergency response and recovery activities where justification is approved within delegated authority). The agreed level is achieved with current performance being 90 per cent.
10. Since 2009, staff have focused on raising awareness of good practice procurement and the benefits it can return, providing training and coaching to business units, and establishing new best-practice contracts for our larger areas of spend (such as roading and greenspace maintenance).
11. Utilisation of good practices in Council's purchasing and procurement have seen improvements in the following areas:
  - earlier and greater engagement with business units as to their forecasted and planned procurement needs
  - an agreed phased implementation of a new, automated Contract Management System (BIW) that will dramatically improve contract management and administration workflow, compliance with contractual parameters and the facilitation of the new Panel Agreements
  - more strategic approach to procurement across Council leveraging off better scale and scope economies and efficiencies
  - more emphasis of Total Cost of Ownership where the initial capital costs are considered alongside the ongoing operational costs
  - alignment and provision of procurement leadership with Stronger Christchurch Infrastructure Rebuild Team.
12. However, plans to introduce a full strategic approach plus a 'Corporate Framework' of guidelines, processes and templates have been hampered by the earthquakes and are yet to be fully progressed in a co-ordinated manner.
13. A key part of the co-ordinated approach is having an overarching policy document within which supporting documentation can be produced and within which Council staff will operate. On this basis, the tendering policies as listed in paragraph two above have been incorporated into the Procurement Policy and are no longer required as separate policies.

**Proposed Changes to Procurement Delegated Authority and Level of Service**

14. Whilst developing the draft Procurement Policy, it became evident that the delegations for procurement may require amendment to better support the intent of the Procurement Policy.
15. Staff identified that there is currently a lack of clarity regarding delegations where Panel Agreements are entered into and where the overall value of these may exceed \$500,000 over time. Staff therefore recommend that all Panel Agreements are presented to Council for approval. Note that any individual contracts/statements of work within Panel Agreements must still comply with agreed delegated authority. E.g. greater than \$500,000 is approved by Council.

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16. Staff also identified that there are currently no explicit levels of service which require capital works to go to market through RFP/RFT. A recommendation will go into the Long Term Plan for "90 per cent of capital goods and services procurement greater than \$500,000 put to market through RFP/RFT". This will allow minor capital works (largely renewals) to be completed under existing supply contracts.
17. To provide surety and visibility around compliance to delegations, staff recommend that the following is reported to the Council Audit and Risk Committee on a quarterly basis:
  - contracts greater than \$50,000 which have not gone to market and the reasons for this
  - quarterly expenditure against each supplier within each Panel.

**FINANCIAL IMPLICATIONS**

18. None.

**Do the Recommendations of this Report Align with 2009-19 LTCCP budgets?**

19. Not Applicable.

**LEGAL CONSIDERATIONS**

**Have you considered the legal implications of the issue under consideration?**

21. Any Council procurement policy must align with all relevant legislation (i.e. Local Government Act 2002, Fair Trading Act 1986) and government policies (i.e. Policy Guide for Purchasers issued by the Ministry of Economic Development) in particular those which relate to local government bodies. The Procurement Policy attached as **Appendix 1** incorporates the above standards as well as the recommendations of the Office of the Auditor General procurement guidelines and the recommendations of the Commerce Commission.
22. The Procurement Policy requires Council staff and management to act in a fair, open and unbiased manner and encourages an open tender process which reduces the risk of fraud, impropriety and judicial review.

**ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS**

23. Aligns with Activity Management Plan 2011/12.

**Do the recommendations of this report support a level of service or project in the 2009-19 LTCCP?**

24. Level of Service: 13.4.4 Procurement is managed as a shared service delivery. Target: per cent of goods and services greater than \$50,000 put to market through RFP/RFT 2011/12: 90 per cent, excluding purchases associated with emergency response and recovery activities when justification approved within delegated authority.

**ALIGNMENT WITH STRATEGIES**

25. Not applicable.

**Do the recommendations align with the Council's strategies?**

26. Not applicable.

**CONSULTATION FULFILMENT**

27. Not Applicable.

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STAFF RECOMMENDATION

It is recommended that the Council:

- (a) Adopt the Procurement Policy as attached in **Appendix 1**.
- (b) Agree that staff should report to the Council Audit and Risk Committee on a quarterly basis on:
  - Contracts greater than \$50,000 which have not gone to market and the reasons for this.
  - Quarterly expenditure against each supplier within each Panel.
- (c) Rescind the following Council policies:
  - Tendering – preference of local firms (25 June 1990).
  - Tendering – preference for New Zealand produced goods (19 November 1990).
  - Tendering – sustainability consideration Timber from Tropical Rainforests Policy (1991).

# CHRISTCHURCH CITY COUNCIL - PROCUREMENT POLICY

## 1. Introduction

The Christchurch City Council (the Council) is a territorial local authority with obligations to its ratepayers and the public as defined under the Local Government Act 2002.

Procurement plays an important role in the delivery of Council outcomes, with a wide variety of goods, services and works being purchased from third party suppliers.

The Council recognises that it is a significant user of public money, and that the expenditure of this money has a significant impact on the local and domestic economy and the overall performance of the Council.

## 2. Purpose

This Procurement Policy states the procurement principles of the Council, and aims to:

- Inform Council staff, and those acting on behalf of the Council, of the objectives, behaviours and principles appropriate when conducting procurement
- Encourage a common understanding and consistent management practice across the Council organisation to realise procurement-related benefits
- Promote transparency in how the Council manages its procurement
- Ensure procurement practices are always consistent with legislation
- Provide a framework for common understanding of Council procurement practices for potential vendors

## 3. Definitions and Scope

The Council requires the procurement function to procure goods, services and works to deliver the levels of service and capital projects in the Long Term Plan.

Procurement and contract management is a significant activity of the Council. The Council procures a wide range of goods, services and works from an array of different markets. The requirements are diverse and complex, ranging from major and minor contracts with long term partnerships (i.e roading, facilities management, recruitment and travel) to one off purchases.

This Procurement Policy will allow staff, whilst working within legislation, to also make well considered value and risk decisions by working to the Procurement Policy guidelines.

#### **4. Alignment**

The Procurement Policy is aligned to the following policies and legislation:

- Christchurch City Council Code of Conduct
- Christchurch City Council Supply Chain Sustainability Policy (2003)
- Christchurch City Council Corporate Environmental Policy statement (1997)
- Christchurch City Council Sustainability Policy framework (2008)
- Christchurch City Council Conflicts of Interest – Template (used in evaluation processes)
- Controller and Auditor-General's Procurement Guidance for Public Entities, June 2008
- Mandatory Rules for Procurement by Departments (Endorsed by Cabinet 18/04/06)
- Policy Guide for Purchasers issued by the Ministry of Economic Development
- Principles of Best Practice: Construction Procurement in New Zealand issued by the New Zealand Construction Industry Council
- Any such other government policies on procurement which are applicable to local government bodies
- Applicable legislation, including the Local Government Act 2002, the Fair Trading Act 1986, the Official Information Act 1982, Local Government Official Information and Meetings Act 1987

#### **5. Procurement Policy Parameters, Objectives and Application**

The objectives of the Procurement Policy are to provide clear direction to management and staff in relation to the procurement and purchasing function and establishes a decision framework that:

- Ensures purchases are made in a transparent and accountable manner
- Delivers best value through the most appropriate service provider
- Ensures open and effective competition
- Supports sustainability
- Appropriately manages risk e.g. contractual, financial and sustainability
- Promotes efficient purchasing practices and their continuous improvement
- Encourages local suppliers and manufacturers
- Ensures Council's purchasing activities are in accordance with its legal responsibilities

The Council expects all staff and business units to be guided in their procurement of goods, services and works by the sensible application of the following principles and procurement policies.

### **5.1 Transparency and accountability**

The Council is accountable for the use of public money through procurement, and must be able to give complete and accurate accounts of how public funds have been used and contracts awarded. This will be achieved by:

- Following consistent processes and procedures that are in line with accepted good practice for public sector organisations and allow for transparency of decision-making
- Maintaining appropriate records and minutes relating to procurement activities that allow for subsequent review of the decision making process
- Conducting all procurement in a fair, consistent, accurate and unbiased manner, acting in good faith
- Ensuring Council is only involved in the procurement of goods, works or services where budget provision has been made through the LTP / Annual Plan process, or by specific Council resolution
- Ensuring that where Council is procuring goods, works or services which require non-budgeted expenditure the rationale is clearly documented and the expenditure is approved by the appropriate delegated authority
- All procurement decisions and commitments being made in accordance with delegations recorded in the Delegations Register
- Not accepting gifts or gratuities from prospective suppliers who are actively tendering or negotiating for Council contracts
- Declaring all personal interests that may affect (or could be perceived to affect) their impartiality, consistent with the Conflict of Interest Policy and Procedure (a disclosure is used in evaluation processes)

### **5.2 Value for Money**

The Council has a responsibility to manage its resources in an effective and efficient manner. This will be achieved by:

- Basing procurement decisions on whole-of-life costs (or total cost of ownership) rather than just consideration of the lowest price
- Including an appropriate balance of financial and non-financial (eg. functional, technical, environmental, quality, performance, risk etc) selection criteria in procurement decision making
- Subjecting proposals and tenders received by suppliers to robust evaluation processes, including benchmarking, and / or comparison of value between proposals or bids
- Periodically reviewing and benchmarking Council's supply arrangements, to ensure best value is being achieved
- Selecting procurement methods and forms of contract that are appropriate to the scale (value risk and complexity) of the Council's requirements
- Ensuring that suppliers acknowledge and agree that any disbursements, surcharges or margins invoiced to Council must be an identifiable cost relating to the respective project and pre-approved by Council in writing.

### **5.3 Thinking strategically and acting as one organisation**

When making procurement decisions the Council will consider long term benefits and implications to the whole organisation and wider community. Council business units are expected to act collaboratively, to leverage supply requirements and achieve best value. This will be supported by:

- Forward planning procurement activities and contract expiries to ensure sufficient time is allowed and appropriate resources are available
- Ensuring that staff with the responsibility for managing and overseeing procurement activities are suitably skilled and experienced, and external advice and capability is utilised when appropriate
- Ensuring that suppliers enter into Council's standard terms and conditions at all times. Any terms and conditions proposed by suppliers and any variations to Council's standard terms and conditions shall be reviewed and approved by Legal Services before Council execution.
- Ensuring that if Council engages a third party to procure goods, services or works on Council's behalf, that third party adheres to this Procurement Policy.

### **5.4 Effective market competition**

The Council recognises that the development of competitive supply markets will ensure sustainable sources of supply, and where mature markets exist a competitive procurement process is likely to result in a better procurement outcome for Council. Therefore, all qualified suppliers must have a reasonable opportunity to participate in all Council procurements. This will be achieved by:

- Ensuring that Council's default position is to engage suppliers by way of an open tender unless there is good reason to do otherwise and such rationale is clearly recorded.
- Ensuring that at the expiry of the contract term, the goods, services or works required by Council are re-tendered and the contract is not automatically rolled over unless there is good reason to do so and such rationale is clearly recorded.

### **5.5 Emergency Procurement**

In an emergency, it may not be possible to satisfy the principle of open and effective competition throughout the procurement process. Parts of the procurement process may therefore be dispensed with to react quickly to genuinely unforeseen urgent circumstances. Relevant criteria are:

- Life, property or equipment is immediately at risk; or
- Standards of public health, welfare or safety need to be re-established without delay (such as disaster relief)

The Council must still act lawfully and with integrity, be prepared to account for all emergency procurements and act within delegated authority.

The Council acknowledges that in emergency situations there can be a higher risk of fraud, bribery, corruption and inflated prices. Council will seek to take action to safeguard against these possibilities.



## **5.6 Local Supply**

The Council will seek to promote the Christchurch economy through providing full and fair opportunity to compete for Council business. This will be achieved by:

- Ensuring local suppliers are included within invitations to tender and quote whenever practical
- Publishing a schedule of planned procurement opportunities on the Council website, and publicly advertising tender opportunities when appropriate
- Considering local economic implications when planning major procurement activities and packaging work for contracts

## **5.7 Sustainability**

The Council will seek to use its procurement activity to promote sustainable and viable business practices that balance the delivery of economic, environmental, social and cultural outcomes. This will be achieved by:

- Giving preference, where it is practicable and affordable and can be appropriately assessed, to suppliers or contractors who can show that they are actively working towards the preferences set out in the Council's Supply Chain Sustainability Policy
- Asking suppliers to apply innovative thinking and provide advice to Council to ensure continuous improvement of goods, services and works procured.

## **5.8 The Value of Relationships**

The Council recognises the value of effective and honest relationships with suppliers and other stakeholders involved in procurement activities. Developing long term and mutually beneficial relationships with key suppliers and commercial partners will support Council in achieving best value. Council will actively manage contracts and relationships, to sustain and increase supplier performance through the full contract term.

## **5.9 Fairness and Lawfulness**

As a public entity, the Council's overriding and fundamental public law obligation is always to act fairly and reasonably. The Council must at all times comply with all relevant and applicable legislation.

The Council must not, except to the extent required by law (Official Information Act 1982 and Local Government Official Information and Meetings Act 1987), disclose confidential information that would prejudice legitimate commercial interests of a particular supplier or might prejudice fair competition between suppliers, without the written authorisation of the supplier that provided the information.

Staff should seek legal advice on how to reconcile duties of this nature with Council's contractual or common law obligations to maintain commercial confidentiality.

### **5.10 Practical Considerations**

When deciding how to give effect to this Procurement Policy the Council will consider the following:

- The procurement requirements and resulting contractual arrangements should be as simple and practical as possible, considering the amounts involved, the complexity, and the level of risk. It is appropriate to consider compliance costs for both parties, and seek to reduce them where possible
- The contractual arrangements may need to fit with the overall context of a more general relationship the external party may have with the Council or other relevant local government and government organisations
- The Council will identify the risks of the procurement process and contractual agreement and consider how to manage those risks. The key is to get the right balance between risk and expected benefit, and to do so consciously
- Where a significant risk is identified or there are other issues regarding contract terms and conditions, staff are required to obtain guidance and approval from the Risk Committee (comprising the Legal Services Manager, Corporate Services Manager and Corporate Finance Manager) before proceeding with procurement.

## **6. References**

- New Zealand Transport Agency's Procurement Manual
  - Auckland Council Draft Procurement Policy July 2011
  - Wellington City Council Draft Procurement Policy March 2010
  - All policies and documents referred to in paragraph '4. Alignment'
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Proposed Procurement Policy, June 2012.

**Approval Date:** Council Meeting - xx/xx/2012

**Review Date:** 5 years or earlier if required

**Next review date:** xx/xx/2017

**Owning Unit:** Corporate Support

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