



Review of the Government's engagement with the Lanaco Group

Date: 12 May 2022

Security Level: IN CONFIDENCE

Report No: 2022/0087

Contact: Hugo Vitalis, Acting Deputy Commissioner - Integrity, Ethics and Standards

Telephone: 9(2)(a)

	Actions Sought	Due Date
	Consider the Government Engagement with Lanaco final report (attached)	
Hon Chris Hipkins, Minister for COVID-19 Response	Agree your Office send the report to Lanaco and advise whether it should be proactively released based on the options provided	20 May 2022
	Advise whether you'd like to meet with the Reviewer	

Enclosure: Yes

Government Engagement with Lanaco final report

Te Kawa Mataaho Report: Review of the Government’s engagement with the Lanaco Group

Purpose of Report

- 1 This briefing attaches the final report from KPMG on Government Engagement with Lanaco, for your consideration.

Background and process

- 2 In early February 2022 you requested that Te Kawa Mataaho work alongside Ministry of Health (MoH) to facilitate the independent review of the government’s engagement with the Lanaco Group and oversee the process. The purpose of the review was to report on whether government agencies’ processes for engaging with the Lanaco Group during the COVID-19 pandemic were carried out appropriately and to identify any lessons learned and process improvements.
- 3 The Commission oversaw the development of the terms of reference (TOR), which you approved in late February (briefing ref 2022/0033). We also arranged the appointment of Souella Cumming at KPMG to undertake the review (the Reviewer). The Reviewer has now provided the Commission with a final report, which incorporates feedback from the agencies involved and Lanaco.

Key insights

- 4 In answer to the core question in the TOR, the Reviewer was “... satisfied that the process and approach adopted by the government agencies in their engagement with Lanaco was consistent with the Five Principles of Government Procurement, and generally appropriate...”
- 5 However, the Reviewer identified that there were differing expectations between Lanaco and the government agencies, in terms of Lanaco’s readiness and ability to develop and supply a product that would meet the relevant health sector standards. When this was recognised by the agencies, they provided additional support to Lanaco. Nonetheless, the Reviewer identified managing expectations as a key lesson to be learned for future engagements.
- 6 The findings are set out in more detail in the attached report and the Reviewer is available to discuss them with you in more detail, if you would like.

Proactive release – legally privileged

- 7 9(2)(h) legal privilege
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- 8 [Redacted text block]
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9(2)(h) legal privilege

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Recommended Action

We recommend that you:

- a **consider** the attached report from KPMG regarding Government Engagement with Lanaco,
- b **agree** that your Office send the report to Lanaco and either:
 - i. advise Lanaco that you intend to proactively release the report and seek their feedback;

agree disagree

OR

- ii. advise Lanaco that you *do not intend to* proactively release the report, but that you will consult with Lanaco about any OIA requests

agree disagree

- c **advise** whether you'd like to meet with the Reviewer to discuss the report

yes no



Hon Chris Hipkins
Minister for the Public Service



Government engagement with Lanaco

May 2022

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Disclaimer

Our report was prepared solely in accordance with the specific terms of reference set out in the Consultancy Services Order dated 10/3/22 agreed between ourselves and the Ministry of Health (“MoH”) and for no other purpose. Other than our responsibility to MoH, neither KPMG nor any member or employee of KPMG undertakes responsibility arising in any way from reliance placed by a third party on this report. Any reliance placed is that party’s sole responsibility. KPMG expressly disclaim any and all liability for any loss or damage of whatever kind to any person acting on information contained in this report, other than MoH.

The report is based upon qualitative information provided by MoH, MBIE, NZHPL and PSC. KPMG have considered and relied upon this information. KPMG believe that the information provided was reliable, complete and not misleading and has no reason to believe that any material facts have been withheld. The information provided has been evaluated through analysis, enquiry and review for the purpose of this report. However, KPMG does not warrant that these enquiries have identified or verified all of the matters which an audit, extensive examination or due diligence investigation might disclose.

The statements and opinions expressed in this report have been made in good faith and on the basis that all relevant information for the purpose of preparing this report has been provided by MoH, MBIE, NZHPL and PSC and that all such information is true and accurate in all material aspects and not misleading by reason of omission or otherwise. Accordingly, neither KPMG nor their partners, directors, employees or agents, accept any responsibility or liability for any such information being inaccurate, incomplete, unreliable or not soundly based, or for any errors in the analysis, statements and opinions provided in this report resulting directly or indirectly from any such circumstances or from any assumptions upon which this report is based proving unjustified.

The report dated 12 May 2022 was prepared based on the information available at the time. KPMG have no obligation to update our report or revise the information contained therein due to events and transactions occurring subsequent to the date of the report.

Executive summary

Background

The Minister for COVID-19 Response has requested an independent review of the government's engagement with Lanaco Group (Lanaco Limited, Lanaco Trading Limited, hereafter Lanaco).

The key government agencies involved were the Ministry of Health (MoH), New Zealand Health Partnerships Limited (NZHPL) and the Ministry of Business, Innovation and Employment (MBIE).

With the onset of the pandemic the government's emergency response team (the National Crisis Management Centre's COVID-19 Operations Command Centre (OCC) was looking to address shortages of PPE, including masks, that were appropriate for the health sector. Lanaco, a private company, expressed interest in developing and supplying masks to the health sector, and first engaged with government agencies in April 2020.

Objectives and scope

The objectives of this review were to:

- consider whether the government's process of engaging with Lanaco during the COVID-19 pandemic was carried out appropriately, that is, in accordance with the Five Principles of Government Procurement
- identify any lessons learned and improvements to processes that would increase the effectiveness of government purchasing from similar recipients of grant funding in the future.

This review covered the activities of the government agencies outlined above from April 2020 to October 2021.

The scope of the review did not include obtaining documents or interviewing representatives from Lanaco. A copy of the draft report was shared with Lanaco who provided feedback on various aspects. That feedback is acknowledged by the review team, however most of the feedback related to matters that were outside of the scope of this review.

Matters relating to the MBIE decision to award grant funding to Lanaco, considering or making findings relating to whether a legally binding commitment was made, or performing a legal review of contractual arrangements between the MoH, NZHPL and Lanaco, were also out of scope.

Key insights

The events and interactions that were the subject of this engagement occurred during the unique, pandemic response environment, commencing at the beginning of the pandemic in early April 2020 through to October 2021. Agencies were operating in a rapidly changing environment, especially in the first twelve months of the pandemic.

Based on the work undertaken, we are satisfied that the process and approach adopted by the government agencies in their engagement with Lanaco was consistent with the Five Principles of Government Procurement, and generally appropriate, given the context of the pandemic response environment.

Our review identified differing expectations between Lanaco and the government agencies, in terms of Lanaco's readiness and ability to develop and supply a product that

would meet the relevant health sector standards. When this was recognised by the agencies involved they engaged with Lanaco to provide support to help Lanaco understand what was required.

Lessons learned

In assessing the process of engagement by agencies with Lanaco we identified several 'lessons learned' that could assist government agencies better engage with private sector suppliers in the future.

These include:

- Managing potential expectations gap through clearly defining expected outcomes and supporting private suppliers to better understand applicable government procurement processes and other relevant regulatory requirements (such as health standards)
- Ensure clarity of roles and responsibilities between government entities
- Maintaining regular, consistent and timely communication during the entire period
- Adapting procurement risk management practices to consider all risks, including establishing the balance between being fair to all suppliers and supporting local businesses.

Acknowledgement

We thank you for the opportunity to conduct this review and for the time and collaboration given to us by representatives from Te Kawa Mataaho, MoH, OCC, NZHPL and MBIE.

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Background, context and timeline of key events

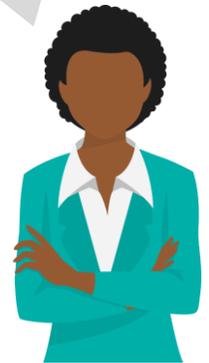
Background and context

Operating environment

The period when government agencies started to engage with Lanaco was characterised by the following factors:

- **Emergency situation.** Initial engagement between government agencies and Lanaco occurred at the beginning of the COVID-19 pandemic in New Zealand. It was a period of emergency response and government agencies had to act at pace and adjust its procurement disciplines and practices. This included using emergency procurement processes and adjusting the way procurement planning and market interactions were performed. Prior to the pandemic, the PPE procurement process was largely decentralised: NZHPL, Pharmac, HealthSource and DHBs held several contracts with established suppliers that DHBs could use. In April 2020, as a response to the pandemic, MoH took the role of central coordination of emergency PPE procurement, leveraging the contracts held by NZHPL, Pharmac, HealthSource and DHBs
- **Increased focus on quality.** In the early stages of the pandemic in 2020, issues around the quality of imported PPE started to surface. There were multiple instances of counterfeit products in the market. As a result, government agencies increased their focus on checking the quality of supplied products, including adherence to global standards, certification, etc. This led to the development of a set of stringent requirements for masks for the health sector by mid-2020.
- **Availability of testing and certification facilities.** The pandemic not only affected the supply chain of PPE, but also increased pressure on testing and certification facilities around the world. This limited the ability of new PPE manufacturers to perform quality testing and increased the time it took to obtain relevant certifications for their products.
- **Changing supply and demand.** During 2020-2021 the supply and demand of PPE changed significantly, leading to significant fluctuation of pricing for masks and particulate respirators. While early in the 2020, due to constraints on demand and export bans, the prices went up, later in 2020 and 2021, they came back close to pre-pandemic levels. These fluctuations have affected the health sector procurement decisions.

It is important to understand the context of the global and New Zealand environment that existed at that time and the effect that it had on the government procurement activities, the growing knowledge of the health sector about COVID-19 and changing supply and demand situation.



Background and context

Agencies involved

This review covered the activities of the following government agencies from April 2020 to October 2021:

- **Ministry of Health (MoH)** as a central coordinator and owner of emergency PPE procurement for the health and disability sector from late April 2020
- **New Zealand Health Partnerships Limited (NZHPL)** as a contract holder of the health sector PPE supply contracts (this role has not changed during the pandemic), and as a central point for research and development support for local manufacturers of PPE from May 2020.
- **Ministry of Business, Innovation and Employment (MBIE)** in its capacity as the COVID-19 Innovation Acceleration Fund (CIAF) manager and the owner of the New Zealand Government Procurement (NZGP).
- National Crisis Management Centre's **COVID-19 Operations Command Centre (OCC)** which was responsible for providing oversight and day-to-day coordination of response activities across national agencies, in its capacity to investigate local manufacturing options in April 2020.

Summary of government engagements with Lanaco

In **April 2020**, early in the COVID-19 pandemic, Lanaco and OCC, through the Government's Industry Liaison person, engaged in discussions regarding the provision of disposable particulate-filtering facepiece respirators.

OCC entered into discussions with Lanaco with an understanding that Lanaco had the ability to produce P2/N95 masks that met suitable standards with New Zealand materials in the timeframe required to meet the government's demand.

With that in mind, a draft Procurement Plan was prepared by NZGP and reviewed by OCC, which considered 'entering into direct negotiations with Lanaco with a view to entering into a non-exclusive contract to produce P2/N95 masks' and using emergency procurement to do this.

Through an independent review of Lanaco's manufacturing practices, commissioned by OCC and MoH and performed by Sir Ray Avery in **early May 2020**, it was determined that Lanaco at that time did not have the mask design and the production process to meet relevant standards and health sector requirements. In particular, this review cited a lack of certification for manufacturing and ISO-certified quality management system (in line with ISO 13485 or ISO 9001).

By **early May 2020**, the COVID-19 Emergency Response team within MoH, who were overseeing the Lanaco relationship at that time, handed over this relationship to NZHPL with a view to support Lanaco to develop a suitably designed mask and manufacturing process that would meet all applicable quality requirements. As a result, both parties (NZHPL and Lanaco) started working on a Letter of Intent (LoI) document to formalise this support.

In **June 2020** Lanaco received a COVID-19 Innovation Acceleration Fund (CIAF) grant from MBIE for the further development of their masks. Lanaco applied for this grant in **April 2020** of their own accord.

During the period of drafting and agreeing the terms of the LoI, there were many iterations of the LoI wording. Multiple changes were requested by Lanaco with a focus on future procurement and financial commitments. The LoI was signed in **October 2020** to develop and manufacture a mask that would meet specified requirements. The fit testing of Lanaco masks with several DHBs began, which was facilitated by NZHPL.

This LoI was extended in **February 2021** for six months to allow for the completion of fit testing with multiple DHBs.

In **April 2021** Lanaco raised concerns about the lack of progress towards a supply contract with MoH. MBIE's CIAF team notified MoH that Lanaco's masks had not yet been tested to conform with required standards.

From **April 2021** Lanaco, through their legal representatives, Russell McVeagh, had multiple interactions with MoH and NZHPL.

In **May 2021** MBIE's CIAF team completed an internal report on Lanaco's grant, acknowledging deviations from initial anticipated outcomes, e.g. use of overseas materials instead of indigenous source and not being able to fully certify the product

The LoI with Lanaco was terminated by NZHPL in **June 2021** 'without reason' as per the terms of the LoI.

The legal discussions between Lanaco, NZHPL and MoH continued after **June 2021**. During this time, MoH connected Lanaco with the Government Procurement team from MBIE to assist Lanaco to understand government procurement rules and practices.

At the time of our engagement, NZHPL and MoH have not been able to confirm that Lanaco's products have met all applicable requirements to enable any future procurement. No contract was entered into between Lanaco and any government agency at the time of our engagement.

Timeline of key events

Mask procurements for health sector

Interactions with LANACO

pre-March 2020: De-centralised model

PPE including masks and particulate respirators were procured through existing contracts managed by NZHPL and other entities.

NZHPL: contract holder for existing contracts

March – April 2020: Centralised model

Purchasing was done by MoH through existing NZHPL contracts and emergency procurement with non-standard suppliers (e.g. importers and brokers) to address the supply issues.

MoH: central coordination of emergency procurement

NZHPL: contract holder for existing contracts

NCMC/OCC: investigation of local manufacturing options

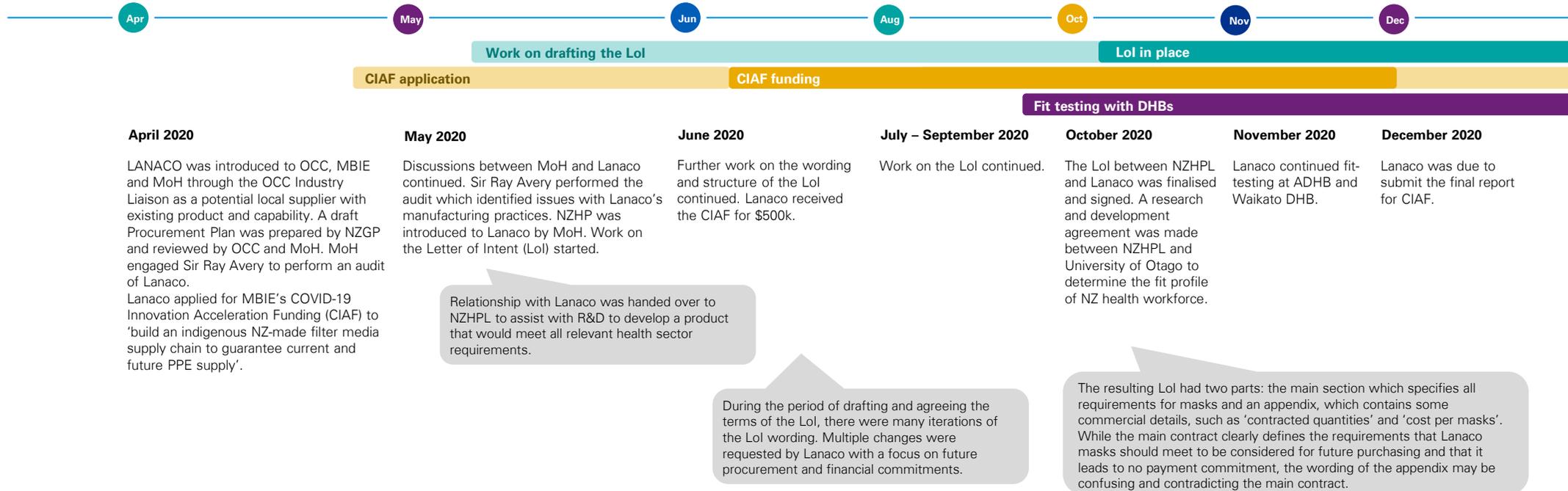
Due to the nature of the pandemic, there have been changes not only in roles and responsibilities of different government agencies, but also changes in personnel within the agencies.

April 2020 – present: Centralised model

Consolidated management of health & disability system PPE sourcing and supply by MoH

MoH: central coordination and ownership of sourcing for PPE and masks

NZHPL: contract holder for existing contracts and oversight of R&D of local manufacturing options



Timeline of key events

May 2020 – present

Consolidated management of health & disability system PPE sourcing and supply with MoH

MoH: central coordination and ownership of sourcing for PPE and masks

NZHPL: contract holder for existing contracts and oversight of R&D of local manufacturing options



Feb

Apr

May

Jun

Jul

Sep

Dec



Mask procurement arrangements for health sector

Lol in place Lol extension

Work on reporting for CIAF

Fit testing with DHBs

February 2021

The Lol was extended by NZHPL for another 6 months until 31 August 2021 to cover the ADHB final testing and to collect feedback from other DHBs.

During this time there appears to be a lack of communication from MoH and NZHPL re possible outcomes for Lanaco and the overall Government's strategy towards mask purchases (i.e. forecasted demand is met by existing suppliers).

March 2021

Lanaco raised their concerns about the lack of a clear commercial commitment from MoH.

April 2021

Lanaco escalated their issues to the Director-General Health (DGH) claiming their masks meet all standards and requirements. The first Minister briefing was prepared.

MBIE's CIAF team notifies MoH that the products that have been produced from the CIAF contract have not yet been tested to confirm AS/NZ 1715 P2 level.

May 2021

MBIE completed a report for Lanaco's CIAF, acknowledging deviations from initial anticipated outcomes, e.g. use of overseas materials instead of indigenous source and not being able to fully certify the product.

Communications between DGH and Lanaco continued. Lanaco involved their legal representatives, Russell McVeagh.

June 2021

Legal discussions continued. NZHPL terminated the Lol 'without reason' as per the terms of Lol.

July-August 2021

Legal discussions about certifications continued. MBIE established the Office Supplies panel that includes PPE (including general-use masks).

September-November 2021

Legal discussions continued. Lanaco inquiring whether NZHPL/MoH prevented (requiring endorsement from MoH) Lanaco from dealing with other Government agencies, e.g. Ministry of Education.

According to NZHPL and MoH, at the time of our review, Lanaco products have not fully met all the applicable health sector requirements to be considered for any potential future procurements.

December 2021

Second Minister briefing prepared outlining the situation with Lanaco.

Interactions with LANACO

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Detailed observations

Detailed observations

Key observations

We have assessed the steps undertaken by the government agencies against the five Government Procurement Principles, noting that several of them may not be fully applicable, given that no formal procurement has been made:

- *Plan and manage for great results*
- *Be fair to all suppliers*
- *Get the right supplier*
- *Get the best deal for everyone*
- *Play by the rules*

We noted the following:

- **Flexible approach to procurement** (*Plan and manage for great results*) Government agencies showed a good level of flexibility in their procurement approach, which focused on quick actions to secure supply. They were exploring various options and showed genuine intention to develop local sources of supply to address supply chain risks. A draft Procurement Plan, which considered direct procurement of P2/N95 masks from Lanaco, was prepared by NZGP within a week from the initial contact between Lanaco and the Government's Industry Liaison person.
- **Misalignment of expectations since the early stages of engagement** (*Plan and manage for great results*) After the early stages of interactions with Lanaco, Government agencies considered their relationship with Lanaco as assisting them with mask research and development. Due to stringent quality requirements

(testing and certification) applicable for masks for the health sector, MoH and NZHPL could not consider Lanaco as a suitable supplier until these requirements were fully met. The understanding of the PPE requirements in the context of COVID-19 was rapidly changing at that time. It is possible, that MoH and NZHPL may not have clearly, and in a timely way, explained these requirements to Lanaco, and ensured that these requirements were fully understood by Lanaco, which may have contributed to an expectation gap between Lanaco and government agencies.

- **Support for Lanaco** (*Be fair to all suppliers*) Government agencies provided significant support to Lanaco to enable it to develop a suitable product for the health sector. This included an audit of Lanaco's manufacturing practices, a COVID-19 Innovation Acceleration Fund (CIAF) grant from MBIE, fit testing with several DHBs through NZHPL and access to research conducted by the University of Otago on face mask fit. On the other hand, such level of support may be perceived as providing an unfair advantage to Lanaco as a government supplier. By supporting Lanaco with research and development, government agencies create a risk of limiting competition and constraining the market which may lead to reduced value for money that government agencies may receive in the future. In addition, such level of support received by Lanaco from several agencies (MBIE, MoH and NZHPL) may have created an expectation of future contracts for Lanaco. There is an inherent tension in this principle which requires careful consideration by government agencies.

- **Clarity of Letter of Intent** (*Get the right supplier*) NZHPL and Lanaco signed the Lol in October 2020. The Lol had two parts: the main body, which specified all requirements for masks, and an appendix, which contained some commercial details, such as 'contracted quantities' and 'cost per masks'. While the main body clearly defined the requirements that Lanaco masks should meet to be considered for future purchasing and that it leads to no payment commitment, the wording and the details of the appendix may have led to an expectation that a future contract would be provided. This may have contributed to the expectation gap mentioned above.
- **Timeliness and consistency of communications** (*Play by the rules*) During the early stages of the pandemic, there were many changes in roles and responsibilities between the government entities and also within those agencies. Lanaco interacted with multiple government agencies during the period under review, such as MoH, NZHPL, MBIE (as the owner of the CIAF) and the Government Procurement branch of MBIE. We noted that sometimes various government agencies were not aware that Lanaco was interacting with multiple agencies as there was no regular and direct engagement between the agencies with respect to Lanaco. We also noted that communications with Lanaco occurred on an ad hoc or as needed basis, sometimes resulting in periods with no communications between the parties. While this is not unusual in the government environment, this may have an impact on private suppliers and manufacturers.

Detailed observations

- **Limited communication about procurement approach for masks** (*Play by the rules*) During the time when Lanaco was working on improving the design of its mask and production processes, the global mask supply chain changed dramatically. MoH was able to secure deliveries of masks and the prices have gone down. These factors changed the underlying assumptions that existed at the time when government agencies considered the feasibility of procuring masks from Lanaco. We could not see evidence that these changes in procurement considerations have been clearly communicated to Lanaco to help manage expectations and develop a suitable long-term plan.
- **Consistency of quality requirements** (*Get the right supplier*) The Lol defines the quality requirements that Lanaco masks should meet to be considered for any future procurement. These requirements were driven by the global and New Zealand health sector practices. These requirements remained the same throughout the period of government's interactions with Lanaco. From the MoH and NZHPL perspective, Lanaco has not been able to demonstrate that it fully meets these requirements. Lanaco disagrees with this position. Determining the extent of Lanaco's compliance with the Lol requirements and technical specifications was out of scope for this review.

Detailed observations

The table below provides our summary observations for each of the Government Procurement Principles.

We acknowledge that there is a degree of an overlap between the Principles and that not all of these Principles fully apply to Government's engagement with Lanaco, as it did not enter into the formal Procurement process.

Government Procurement Principle	Commentary
<p>Plan and manage for great results</p> <ul style="list-style-type: none"> • <i>Identify what you need, including what broader outcomes should be achieved, and then plan how to get it.</i> • <i>Set up a team with the right mix of skills and experience.</i> • <i>Involve suppliers early – let them know what you want and keep talking.</i> • <i>Take the time to understand the market and your effect on it. Be open to new ideas and solutions.</i> • <i>Choose the right process – proportional to the size, complexity and any risks involved.</i> • <i>Encourage e-business (for example, tenders sent by email).</i> 	<p>The planning phase for engagement with Lanaco is reflective of the emergency situation that government agencies were in during the period. Key decisions had to be made quickly and with regards to the intended outcomes.</p> <p>Key government agencies, such as OCC and MoH, showed good understanding of the needs, expected outcomes and market conditions in relation to mask procurement. They were open to apply fit-for-purpose procurement processes, including exemptions and emergency procurement. They showed a good level of coordination and agility at the early stages of engagement with Lanaco. Government agencies involved relevant personnel with procurement subject matter expertise throughout the period.</p> <p>Government agencies showed a good level of flexibility in its procurement approach, which focused on quick actions to secure supply. They were exploring various options and showed genuine intention to develop local sources of supply to address risks. A draft Procurement Plan, which considered direct procurement of P2/N95 masks from Lanaco, was prepared by NZGP within a week from the initial contact between Lanaco and the Government's Industry Liaison person.</p> <p>After the early stages of interactions with Lanaco, when it became clear that Lanaco did not have a compliant product or scaled and certified manufacturing process, Government agencies considered their relationship with Lanaco as assisting them with mask research and development. Due to stringent quality requirements (testing and certification) applicable for masks for the health sector, MoH and NZHPL could not consider Lanaco as a suitable supplier until these requirements were fully met.</p> <p>The understanding of the PPE requirements in the context of COVID-19 was rapidly changing at that time. It is possible, that MoH and NZHPL may not have clearly and timely explained these requirements to Lanaco, and ensured that these requirements are fully understood by Lanaco, which may have contributed to an expectation gap between Lanaco and government agencies.</p>

Detailed observations

Government Procurement Principle	Commentary
<p>Be fair to all suppliers</p> <ul style="list-style-type: none"> • <i>Create competition and encourage capable suppliers to respond.</i> • <i>Treat all suppliers equally – we don't discriminate (this is part of our international obligations).</i> • <i>Seek opportunities to involve New Zealand businesses, including Māori, Pasifika and regional businesses and social enterprises.</i> • <i>Make it easy for all suppliers (small and large) to do business with government.</i> • <i>Be open to subcontracting opportunities in big projects.</i> • <i>Clearly explain how you will assess proposals – so suppliers know what to focus on.</i> • <i>Talk to unsuccessful suppliers so they can learn and know how to improve next time.</i> 	<p>Government agencies actively sought opportunities to involve New Zealand businesses to strengthen local supply (Lanaco as a new supplier and QSi, a Whanganui-based PPE manufacturer, as an existing one). They were also open to subcontracting arrangements as included in Lanaco's MBIE's CIAF bid (an Auckland-based manufacturer Revolution Fibers was disclosed as a sub-supplier to Lanaco).</p> <p>In its interactions, MoH and NZHPL explained the requirements for Lanaco to be considered for future procurement and contracts. These were formalised through the Lol. NZHPL and MoH were consistent in applying the requirements from the Lol. These requirements did not change and were driven by the health sector standards.</p> <p>Government agencies provided significant support to Lanaco to enable it to develop a suitable product for the health sector. This included an audit of Lanaco's manufacturing practices, a CIAF grant from MBIE, fit testing with several DHBs through NZHPL and access to research conducted by the University of Otago on face mask fit.</p> <p>The above point may be perceived as unfairly advantaging Lanaco. By supporting Lanaco with research and development, government agencies, in the long-term, may create a risk of limiting competition and constraining the market which may lead to reduced value for money that government agencies may receive in the future. While such an approach may be appropriate in the emergency situation, these risks should be continuously monitored and managed, especially if conditions change.</p>

Detailed observations

Government Procurement Principle	Commentary
<p>Get the right supplier</p> <ul style="list-style-type: none"> • <i>Be clear about what you need and fair in how you assess suppliers – don't string suppliers along.</i> • <i>Choose the right supplier who can deliver what you need, at a fair price and on time.</i> • <i>Choose suppliers that comply with the Government's Supplier Code of Conduct.</i> • <i>Build demanding, but fair and productive, relationships with suppliers.</i> • <i>Make it worthwhile for suppliers – encourage and reward them to deliver great results.</i> • <i>Identify relevant risks and get the right person to manage them.</i> 	<p>OCC/MoH were clear with Lanaco about the need that existed in the health sector, including the volumes, size and quality. OCC/MoH followed an appropriate due diligence process to evaluate Lanaco's ability to deliver (and at a fair price and on time), such as independent audit undertaken by Sir Ray Avery, and reasonable actions were taken to address the matters identified, e.g. through support with research and development and fit testing.</p> <p>NZHPL and Lanaco signed a Lol in October 2020. The Lol had two parts: the main body which specified all requirements for masks and an appendix, which contained some commercial details, such as 'contracted quantities' and 'cost per masks'. While the main contract clearly defined the requirements that Lanaco masks should meet to be considered for future purchasing and that it leads to no payment commitment, the wording of the appendix may have led to an expectation that a future contract would be provided. While NZGP was involved in preparing the draft Procurement Plan, they were not involved in assisting NZHPL with the Lol.</p> <p>The Lol clearly defines the quality requirements that Lanaco masks should meet to be considered for any future procurement. These requirements were driven by the global and New Zealand health sector practices. These requirements remained the same throughout the period of government's interactions with Lanaco.</p>
<p>Get the best deal for everyone</p> <ul style="list-style-type: none"> • <i>Get best public value – account for all costs and benefits over the lifetime of the goods or services.</i> • <i>Make balanced decisions – consider the possible social, environmental, economic effects and cultural outcomes that should be achieved.</i> • <i>Encourage and be receptive to new ideas and ways of doing things – don't be too prescriptive.</i> • <i>Take calculated risks and reward new ideas.</i> • <i>Have clear performance measures – monitor and manage to make sure you get great results.</i> • <i>Work together with suppliers to make ongoing savings and improvements.</i> • <i>It's more than just agreeing the deal – be accountable for the results.</i> 	<p><i>While this is a key Procurement Principle, in the context of engagement with Lanaco, it has limited relevance as the parties did not advance to a open/closed procurement process or have a formal procurement contract.</i></p> <p>Government agencies clearly attempted to achieve the best public value, considering costs and benefits, social and economic effects from its mask procurement approach. They were open to new ideas, e.g. using new filtering materials. Significant efforts and consideration have been put into developing local suppliers, including Lanaco.</p> <p>The global mask supply environment has changes significantly during the period of government's engagement with Lanaco. As a result, the indicative price per mask proposed by Lanaco through the appendix to the Lol was no longer economically viable from the government's perspective towards the later periods of the engagement.</p>

Detailed observations

Government Procurement Principle	Commentary
<p>Play by the rules</p> <ul style="list-style-type: none">• <i>Be accountable, transparent and reasonable.</i>• <i>Make sure everyone involved in the process acts responsibly, lawfully and with integrity.</i>• <i>Stay impartial – identify and manage conflicts of interest.</i>• <i>Protect suppliers' commercially sensitive information and intellectual property.</i>	<p>Key personnel from the agencies showed a clear understanding of relevant Government Procurement Rules and the requirement to follow them was communicated to Lanaco. NZHPL and MoH indicated to Lanaco on a number of occasions that all possible future purchases will have to follow the Government Procurement Rules.</p> <p>NZHPL also followed the requirements and conditions specified in the Lol. Agencies showed adherence to existing Procurement Rules, applicable laws and acted with integrity and impartiality.</p> <p>During the early stages of the pandemic, there were many changes in roles and responsibilities between the government entities and also within these agencies. Lanaco has interacted with multiple government agencies during the period under review, such as MoH, NZHPL, MBIE (as the owner of the CIAF) and the Government Procurement branch of MBIE. We noted that sometimes various government agencies were not aware of Lanaco's interactions with these agencies.</p> <p>During the time when Lanaco was working on improving the design of its mask and production processes, the global mask supply chain has changed dramatically. MoH has secured deliveries of masks and the prices have gone down. These factors have changed the underlying assumptions that existed at the time when government agencies considered the feasibility of procuring masks from Lanaco. We could not see evidence that these changes in procurement considerations have been clearly and transparently communicated to Lanaco to help manage expectations and develop a suitable long-term plan.</p>

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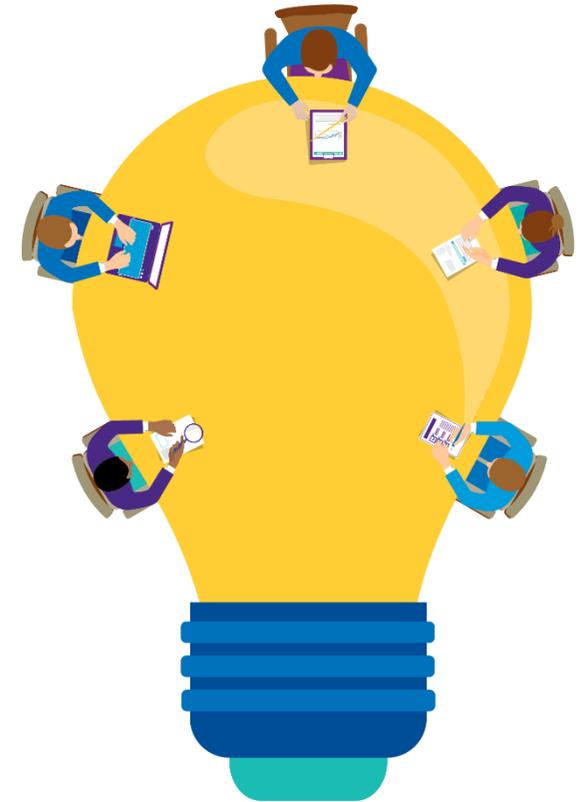
Lessons learned

Lessons learned

Key 'lessons learned'

As a result of the observations set out in Section 2, we have identified the following 'lessons learnt' that the government agencies should consider to strengthen its practices for future engagements with private suppliers:

- **Manage the expectations gap.** Once the decision has been made to engage with a private supplier, government agencies should ensure that appropriate briefings have been held to educate about government procurement processes, applicable rules and regulatory environment. This will ensure that private entities fully understand potential complexities and will help all parties clarify and manage their expectations.
- **Ensure roles and responsibilities are clear.** Government agencies need to have a clear understanding of their respective roles and responsibilities, especially for complex relationships. If possible, assign a 'single point of contact' or dedicated relationship manager (agency) to ensure consistency and timeliness of communications.
- **Communication:** Further to the above point, government agencies should ensure that clear, regular and consistent communication channels exist between relevant government agencies and private suppliers to help communicate any changes in market conditions, government procurement plans, etc.
- **Ensure clarity and understanding of written arrangements.** When entering into relationships with private suppliers, it is important to ensure that all parties have a clear agreement on expectations related to any arrangements and potential commitments. Where appropriate (for example, for high-risk engagements), government agencies should follow standard Government Procurement contracts and consult with Government Procurement when agreeing on bespoke contracts. Legal advice should be received prior to entering into such high-risk arrangements.
- **Adapting procurement risk management practices.** When considering engaging with private suppliers, especially for bespoke arrangements, such as research and development or capability building, government agencies should apply strong risk management practices to identify, evaluate and mitigate relevant risks. The risks of favouring selected suppliers and creating inefficient markets should be explicitly considered and appropriately managed, given the inherent tension that exists between being fair to all and encouraging local suppliers. It is appropriate to innovate, take risk and support local suppliers and achieve wider social development goals, but these decisions should be driven by clear long-term planning and vision. We acknowledge that these activities also need to adapt during emergency response situations.



4

Scope and approach

Detailed scope and approach

Objectives and scope

The objectives of this review were to:

- consider whether the government's process of engaging with Lanaco during the COVID-19 pandemic was carried out appropriately, that is, in **accordance with the Five Principles of Government Procurement**
- **identify any lessons learned** and improvements to processes that would increase the effectiveness of government purchasing from similar recipients of grant funding in the future.

This review was to consider, make findings on, and report on whether the government's process of engaging with Lanaco during the COVID-19 pandemic was carried out appropriately having regard to the relevant Government procurement rules and practices as they apply at the pre-procurement stage, focused on the Five Principles of Government Procurement and in the context of the response to a pandemic.

This review covered the activities of government agencies from April 2020 to October 2021

Out of scope

The scope of the review did not include:

- direct contact or interaction with Lanaco
- considering matters relating to the Ministry of Business, Innovation and Employment's decision to award grant funding to Lanaco
- considering or making findings relating to whether a legally binding commitment was made between the Ministry of Health, NZHPL and Lanaco, or some of those entities
- performing a legal review of contractual arrangements between the Ministry of Health, NZHPL and Lanaco, or some of those entities
- making findings as to the civil, criminal or disciplinary liability of any person but may identify further steps that could be taken.

Our engagement also excluded any technical assessments and evaluations, such as (but not limited to):

- Applicable quality standards, specifications and certifications for masks
- Evaluation of any technical audit reports, test results and certification and accreditation audits
- Reviewing and assessing any supply and demand forecast information and plans*.

Our approach

We applied the following approach to this engagement:

- Conducted interviews with relevant personnel from MoH, OCC, MBIE and NZHPL
- Obtained and reviewed relevant documentation
- Analysed the events and activities of government agencies against the Government Procurement Principles
- Identified relevant 'lessons learnt' for government agencies to consider for the future procurement activities with private suppliers
- Prepared, discussed and finalised our report.

** - more details on this subject can be found in the 'Ministry of Health: Management of personal protective equipment in response to Covid-19' report by the Office of the Auditor-General*

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