

# Appendix 2: Benchmark Material

Teaching Council internal policies and  
System-wide guidance

# Teaching Council Conflict of Interest Policies

## Teaching Council Internal Policies

### *Relevant Extracts from the Teaching Council Conflict of Interest Policies applicable at the time*

<b>Conflict of Interest Policy August 2022 FINAL</b> <b>In force August 2022, current policy</b>	<b>Conflict-of-Interest-Policy-June 2018</b> <b>In force June 2018 to July 2022</b>
<p><b>Definitions</b></p> <p><b>Conflict of Interest (COI)</b> could occur if an employee's or contractor's position or responsibilities to the Council are affected or compromised or perceived to be, by some other interest or duty that the employee or contractor may have. This other matter or duty might be:</p> <ul style="list-style-type: none"> <li>• the employee's or contractor's own financial or business affairs, or</li> <li>• a relationship (whānau or otherwise) or other role the employee or the contractor has, or</li> <li>• an opinion or view held by the employee or the contractor</li> </ul> <p>Ask the question 'might the employee's or the contractor's other interest create an incentive or bias for them to act in a way that may not be in the best interests of the Council?'</p> <p><b>Prohibited activities.</b> Employees or contractors may not be involved in:</p> <ul style="list-style-type: none"> <li>• the decision to appoint or employ a person with whom the employee or the contractor has a personal connection (whānau or otherwise).</li> <li>• influencing or participating in a decision to award contracts for service or supply where the employee or the contractor has a personal connection (whānau or otherwise) or has a financial interest in the organisation or a related organisation (such as parent company or subsidiary) that supplies goods or services to the Council or that has tendered for such supply, including through family or close friends.</li> <li>• involvement in either processing, investigating, considering, or determining the complaint against a teacher where the employee or the contractor has a personal connection (whānau or otherwise) either with the teacher or any other party to the complaint.</li> <li>• involvement in processing, considering or approving applications for registration and certification in any category where the employee or the contractor has a personal connection (whānau or otherwise).</li> </ul>	<p><b>Definitions</b></p> <p>A <b>Conflict of Interest (COI)</b> is a situation in which a person is in a position to obtain personal or financial benefit from actions or decisions made in an official capacity</p> <ul style="list-style-type: none"> <li>• This may occur where an employee: may derive a personal or financial benefit from the matter, or</li> <li>• is the spouse, civil union partner, de facto partner, child, or parent of a person who may derive a personal or financial benefit from the matter, or</li> <li>• may have a personal or financial interest in a person to whom the matter relates, or</li> <li>• is a partner, director, officer, board member, or trustee of a person who may have a personal or financial interest in a person to whom the matter relates, or</li> <li>• is otherwise directly or indirectly interested in the matter.</li> </ul>

<ul style="list-style-type: none"> <li>• the provision of advice (when acting in a capacity not related to the Council) or information to a third party that relates to a matter which will be considered by Council.</li> </ul>											
<p><b>Declaring a Conflict</b></p> <p>All employees and contractors are expected to declare all actual, potential, or perceived conflicts of interest they have.</p> <p>Employees and contractors will err on the side of openness when deciding whether something should be disclosed. If they are unsure whether there is a conflict, they should discuss the matter with their manager.</p> <p>All actual or perceived conflicts must be declared:</p> <ul style="list-style-type: none"> <li>• upon commencement with the Council,</li> <li>• as soon as the employee or the contractor becomes aware of the conflict, or</li> <li>• as required upon request for an updated declaration.</li> </ul> <p>All conflicts of interest must be entered into a Conflicts Register.</p> <p>Failure to declare a conflict may result in disciplinary action (for an employee) or termination of the contract (for a contractor).</p>	<p>All Council employees, temporary contractors and independent contractors working for the Council will identify, disclose and manage conflicts of interest.</p> <p>Employees will be encouraged to err on the side of openness when deciding whether something should be disclosed.</p> <p>All actual or perceived conflicts must be declared:</p> <ul style="list-style-type: none"> <li>• upon commencement with the Council</li> <li>• as soon as the employee or contractor becomes aware of the conflict, or</li> <li>• as required upon request for an updated declaration.</li> </ul> <p>Failure to declare a conflict may result in disciplinary action (for an employee) or termination of the contract (for a contractor).</p> <p>Conflicts of interest include, but are not limited to, the following situations:</p> <table border="1"> <thead> <tr> <th>Nature of interest</th><th>Conflict</th></tr> </thead> <tbody> <tr> <td>Personal knowledge of applicant</td><td>Applications for registration in any category where the employee or contractor knows the applicant well and would otherwise have a role in processing, considering or approving the application.</td></tr> <tr> <td>Personal knowledge of teacher creating bias</td><td>Complaints against a teacher where the employee or the contractor knows well either the teacher or any other party to the complaint and has a role in either processing, investigating, considering or determining the complaint.</td></tr> <tr> <td>Financial</td><td>Contracts for service or supply where the employee or contractor knows in a personal capacity or has a financial interest in the organisation or a related organisation (such as parent company or subsidiary) that supplies goods or services to the Council or that has tendered for such supply, including through family or close friends.</td></tr> <tr> <td>Confidential/prior knowledge</td><td>Where an employee or contractor (acting in a capacity not related to Council) provides advice or information to a third party that relates to a matter which will be considered by Council at a later date, if that advice or</td></tr> </tbody> </table>	Nature of interest	Conflict	Personal knowledge of applicant	Applications for registration in any category where the employee or contractor knows the applicant well and would otherwise have a role in processing, considering or approving the application.	Personal knowledge of teacher creating bias	Complaints against a teacher where the employee or the contractor knows well either the teacher or any other party to the complaint and has a role in either processing, investigating, considering or determining the complaint.	Financial	Contracts for service or supply where the employee or contractor knows in a personal capacity or has a financial interest in the organisation or a related organisation (such as parent company or subsidiary) that supplies goods or services to the Council or that has tendered for such supply, including through family or close friends.	Confidential/prior knowledge	Where an employee or contractor (acting in a capacity not related to Council) provides advice or information to a third party that relates to a matter which will be considered by Council at a later date, if that advice or
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	<p>information would not otherwise be available to the general public.</p> <p>Secondary employment Where an employee's or contractor's secondary employment could give rise to a direct or indirect conflict of interest or perceived conflict of interest.</p> <p>Membership of another organisation which could give rise to a possible conflict of interest such as an association, or professional body Where an employee or contractor's interests as a result of membership within an organisation could give rise to a direct or indirect conflict of interest</p>
<p><b>Managing a conflict of interest</b></p> <p>All declared conflicts will be assessed by the employee's or the contractor's manager for risk to the Council and appropriate management put in place.</p> <p>Management of a conflict of interest may involve (from least to most intervention):</p> <ul style="list-style-type: none"> <li>• noting the conflict but taking no action.</li> <li>• requiring additional oversight or review over the employee/contractor.</li> <li>• withdrawing from discussing or voting on a particular item of business at a meeting.</li> <li>• exclusion from a committee or working group dealing with the issue.</li> <li>• re-assigning certain tasks or duties to another person.</li> <li>• agreement or direction not to do something.</li> <li>• withholding certain confidential information or placing restrictions on access to information.</li> <li>• transferring the employee/contractor (temporarily or permanently) to another position or project.</li> <li>• resignation or dismissal from one or other position or entity.</li> </ul> <p>The employee's or contractor's manager will assess the situation declared to identify whether a conflict exists and must be avoided or is able to be managed. This involves weighing up the interests of the Council, the public interest, and the legitimate interests of the employee or the contractor, as well as the position held and the nature and seriousness of the conflict.</p> <p>Consideration must be given to adequately managing the conflict so the employee or the contractor declaring the conflict is not vulnerable to learning confidential</p>	

<p>information. Care must be taken to ensure this information is kept confidential especially from those who have declared a conflict.</p> <p>Where a conflict requires management, the manager will discuss with the employee the required action and will document this on the declaration form.</p> <p>This agreed management must be reviewed by the DCE/CE prior to being entered on the Conflicts Register.</p>	
<p><b>Roles and Responsibilities</b></p> <p>Employees and contractors are:</p> <ul style="list-style-type: none"> <li>• expected to disclose all actual, potential, or perceived conflicts of interest they have.</li> <li>• expected to comply with any mitigation required to manage the conflict</li> </ul> <p>The line manager will:</p> <ul style="list-style-type: none"> <li>• consider and determine any mitigation / management required of an actual or potential conflict of interest</li> <li>• ensure robust procedures are in place and regularly reviewed where an employee or contractor has personal knowledge of a teacher with an application for registration and certification and/or during processing, investigating, considering, or determining the complaint against a teacher.</li> </ul>	<p><b>Roles and Responsibilities</b></p> <p>The line manager will consider and determine any mitigation / management required of an actual or potential conflict of interest where an employee or contractor has personal knowledge of an applicant or teacher. The line manager will also monitor that the conflict of interest reported by the employee or contractor is managed appropriately and that care is taken to insulate the employee/contractor from any confidential or sensitive information.</p> <p>The Deputy Chief Executive or General Manager, Professional Services will consider other actual or potential declared conflicts of interest</p>

# Teaching Council Procurement Policies

## Teaching Council Internal Policies

### *Relevant Extracts from the Teaching Council Procurement Policies applicable at the time*

20240229 Procurement Policy 2024 In force February 2024, current policy	Procurement Policy December 2021 In force December 2021 to January 2024	Procurement Policy April 2018 In force April 2018 to November 2021
<p><b>Policy Statements</b></p> <p>Where they are available, and meet requirements, existing contracts and supply arrangements will be used.</p> <p>We will follow good practice by applying the Procurement Principles (below) and, where appropriate, the <a href="#">Government Rules of Sourcing</a> when planning, conducting and managing our procurements.</p>	<p><b>Policy Statements (how)</b></p> <p>Where they are available, and they meet requirements, existing contracts and supply arrangements will be used.</p> <p>We will follow good practice by applying the Procurement Principles (below) and, where appropriate, the <a href="#">Government Rules of Sourcing</a> when planning, conducting and managing our procurements.</p>	<p><b>Policy Statements (how)</b></p> <p>Where they are available and they meet requirements, existing contracts and supply arrangements will be used.</p> <p>We will follow good practice by applying the Procurement Principles (below) and, where appropriate, the <a href="#">Government Rules of Sourcing</a> when planning, conducting and managing our procurements.</p>
<p><b>Procurement Principles</b></p> <p><b>Plan</b></p> <p>When planning procurement, we will use processes that are proportionate to the size, complexity and risks involved.</p> <p>We will have financial approval aligned with the Council's Delegations Policy before going to market.</p> <p>Before approaching the market, we will be clear about what we require and how we will assess providers.</p> <p><b>Source</b></p> <p>We will choose providers that have demonstrated their ability to meet our requirements and offer the best value-for-money over the lifetime of the goods and services.</p>	<p><b>Procurement Principles</b></p> <p><b>Plan</b></p> <p>When planning procurement, we will use processes that are proportionate to the size, complexity and risks involved.</p> <p>We will have financial approval aligned with the Council's Delegations Policy before going to market.</p> <p>Before approaching the market, we will be clear about what we require and how we will assess providers.</p> <p><b>Source</b></p> <p>We will choose providers that have demonstrated their ability to meet our requirements and offer the best value-for-money over the lifetime of the goods and services.</p>	<p><b>Procurement Principles</b></p> <p><b>Plan</b></p> <p>When planning procurement, we will use processes that are proportionate to the size, complexity and risks involved.</p> <p>We will have financial approval aligned with the Council's Delegations Policy before going to market.</p> <p>Before approaching the market, we will be clear about what we require and how we will assess providers.</p> <p><b>Source</b></p> <p>We will choose providers that have demonstrated their ability to meet our requirements and offer the best value-for-money over the lifetime of the goods and services.</p>



<p>To get the best from our providers and contracts, we will set clear performance measures, then monitor and manage against them.</p> <p>Our decisions and practices must be able to withstand public scrutiny at all times. To ensure this throughout our procurement activities we will clearly record our planning, processes and decisions so they can easily be audited.</p> <p><b>Manage</b></p> <p>To build effective relationships with providers we will be consistent, transparent, fair and accountable in the way we work with all our providers.</p>	<p>To get the best from our providers and contracts, we will set clear performance measures, then monitor and manage against them.</p> <p>Our decisions and practices must be able to withstand public scrutiny at all times. To ensure this throughout our procurement activities we will clearly record our planning, processes and decisions so they can easily be audited.</p> <p><b>Manage</b></p> <p>To build effective relationships with providers we will be consistent, transparent, fair and accountable in the way we work with all our providers.</p>	<p>To get the best from our providers and contracts, we will set clear performance measures, then monitor and manage against them.</p> <p>Our decisions and practices must be able to withstand public scrutiny at all times. To ensure this throughout our procurement activities we will clearly record our planning, processes and decisions so they can easily be audited.</p> <p><b>Manage</b></p> <p>To build effective relationships with providers we will be consistent, transparent, fair and accountable in the way we work with all our providers.</p>																						
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<b>Conflicts of interest and decision making</b> Where a procurement process involves evaluation of supplier responses via a panel, all panel members and decision makers will be required to declare conflicts of interest (COI) prior to being provided with supplier responses, and to update the evaluation panel chair if further actual or perceived conflicts arise during the process.  In the event that an evaluation panel member has an actual or perceived conflict of interest with a supplier or one or more members of its key personnel, that panel member will absent themselves from the evaluation and discussion of that supplier's response, but not other supplier responses where they have no conflict.  The evaluation panel chair is responsible for ensuring the procurement process is undertaken in accordance with existing policies and procedures and applicable government procurement guidelines. They remain independent by not being a scoring member of the evaluation panel.  After evaluating the supplier responses, the panel will provide a final recommendation to the relevant Deputy Chief Executive for approval. If the value of the work to			

<p>be undertaken exceeds the financial delegations held by the DCE, the recommendation will be forwarded to the Chief Executive for their approval after first checking whether the CE has no actual or perceived conflicts of interest in respect of the supplier.</p> <p>If the Chief Executive advises that they have an actual or perceived conflict of interest with the recommended supplier, the DCE will forward the recommendation to the Chair of the Governing Council for approval.</p>		
<p><b>Exceptions to the Policy</b></p> <p>Any departure from the policy must be justified in a procurement plan or business case that is signed off by the business owner, endorsed by the Procurement Advisor and approved by the Chief Financial Officer and Chief Executive. Justification to directly source a supplier will often be based on existing relationships built over several years, memoranda of understandings already in place, IT system considerations, or the position that the supplier has in the market.</p> <p>Seeking an exemption to the policy must justify why application of the policy is not appropriate. Consideration should be given to how directly sourcing might be perceived by the market.</p>	<p><b>Exceptions to the Policy</b></p> <p>Any departure from the policy must be justified in a procurement plan or business case that is signed off by the business owner, endorsed by the Procurement Advisor and approved by the Chief Financial Officer and Chief Executive.</p>	<p><b>Exceptions to the Policy</b></p> <p>Any departure from the policy must be justified in a procurement plan or business case that is signed off by the business owner, endorsed by the Procurement Advisor and approved by the Chief Operating Officer.</p>

Office of the Auditor General :  
Managing conflicts of interest:  
A guide for the public sector

[Managing conflicts of interest: A guide for the public sector](#)

## **Part 2: The nature of conflicts of interest**

### **What is a conflict of interest?**

2.1 A conflict of interest is any situation where your duties or responsibilities as an employee or office holder in a public organisation conflict, or could be seen to conflict, with some other interest you might have outside of work.

2.2 The other interest or duty might be:

- holding another public office;
- being a current or (recent) former advisor, director, or partner of another business or organisation;
- being a member of a club, society, or association;
- having a professional or legal obligation to someone else (such as being a trustee);
- having a beneficial interest in a trust;
- owning or occupying a piece of land;
- owning shares or some other investment or asset;
- having received a gift, hospitality, or other benefit from someone;<sup>4</sup>
- owing a debt to someone; or
- being a relative or close friend of someone who has one of these interests, or who could otherwise be personally affected by a decision of the public organisation.

Having an interest does not necessarily mean you have a conflict of interest.

2.3 Having a personal interest, on its own, is not what causes a conflict. Everyone has multiple roles and interests at work, at home, in their extended families, or in the community. A potential conflict of interest arises only where your duties or responsibilities as an employee or office holder in a public organisation overlap with one of your other roles or interests.

2.4 For example, you are an elected member of a local council and also involved in running a business, on the committee of a local sports club, and a member of a voluntary organisation. Your involvement in the business, role on the committee, and membership of the voluntary organisation are all interests that you have as well as your role as an elected member of the council.

2.5 These other interests do not necessarily mean you have any conflicts of interest. An interest becomes a potential conflict of interest only if it overlaps in some way with your role as an elected member. For example, your interest might result in a potential conflict of interest if:

- your business puts in a bid to provide goods or services to the council;
- the sports club is located on land leased from the council; or

- the voluntary organisation seeks funding from the council to help fund its activities.

### **Why might having a conflict of interest be a problem?**

2.6 Having a conflict of interest does not mean you have done anything wrong, and it is not necessarily a problem if it is managed properly. Conflicts can arise in all sorts of situations, as the list above shows. Some conflicts are serious, some less so. Some are unavoidable, especially in a small country like ours.

2.7 However, in any situation where activities are paid for out of public funds or carried out in the public interest, the public needs to be confident that decisions:

- are made for the right reasons; and
- are not influenced by personal interests or ulterior motives.

2.8 The risk with having a conflict of interest – at least, one that is not properly managed – is that you will be seen to be advancing your own interests or the interests of others you feel a sense of loyalty or obligation to, rather than the interests of your role as a public servant.

2.9 Even if you have no intention of acting improperly, and are confident that you can think and act impartially, if it looks like you might be influenced by personal interests or ulterior motives when making a decision, you risk undermining public confidence in the integrity of that decision. You can also potentially expose the organisation you work for to legal, commercial, political, or reputational risk.

### **Why managing conflicts is particularly important in the public sector**

2.10 Conflicts of interest can arise in all walks of life, including the private sector. However, there are higher expectations about conflicts of interest in the public sector because it is public money that is being spent, and public powers that are being exercised.

2.11 Where activities are paid for out of public funds, or decisions are made exercising public powers, members of the public rightly expect the people making those decisions to act impartially, without any possibility that they could be influenced by favouritism or improper personal motives, or that public resources could be misused for private benefit.

2.12 Also, unlike private organisations, public organisations are subject to specific legal rules that require their decision-making processes to be procedurally fair. Any decision of a public organisation that is tainted by bias, or the appearance of bias, is potentially subject to legal challenge.

2.13 This means that conduct that might be allowed in the private sector is not necessarily acceptable in the public sector. For example, under the Companies Act 1993, company directors are required to disclose when they have a personal interest in a transaction but might then be permitted to discuss and vote on that transaction, despite having an interest in it. Similarly, small businesses in the private sector often employ and contract with family members as a matter of course. Such practices might be unacceptable – or, at the very least, require more careful management – in a public organisation.

## **Conflicts of interest and corrupt conduct**

2.14 Corrupt conduct can arise when a conflict of interest is intentionally concealed, understated, mismanaged, or abused.

2.15 Experience shows that many, if not most, forms of corrupt conduct involve a conflict of interest. It is also possible to engage in corrupt conduct to do with another person's conflict of interest.

2.16 Examples of conduct that could be corrupt include:

- concealing or failing to disclose a conflict of interest;
- making false or understated declarations about a conflict of interest;
- favouring another interest over public duty;
- improperly influencing others to favour a personal interest;
- misusing resources to favour a personal interest;
- improperly accessing, using, or disclosing information about a conflict of interest;
- acting improperly to favour another person's personal interests; and
- improperly allowing others to conceal a conflict of interest.

## **Part 3: Different types of conflicts of interest**

### ***Managing conflicts of interest: A guide for the public sector.***

3.1 The seriousness of a conflict, and the type of risks it gives rise to, for you personally and the organisation you work for, will vary depending on the nature of the conflict and the context in which it arises. Conflicts of interest can arise in a wide variety of ways. In all cases, the underlying concern is the same – that is, ensuring that decisions are made impartially, and managing the risk of bias, or the appearance of bias.

3.2 To work out how to manage a conflict, it can be helpful to categorise it as a:

- [financial conflict](#);
- [non-financial conflict](#);
- [conflict of roles](#); or
- [predetermination](#).

3.3 The situation you are facing might not fall neatly into one category. There are also situations where you might have more than one type of conflict. But, if you are trying to figure out whether you have a conflict and, if so, what to do about it, analysing your situation by putting it in one of these four categories can be a useful starting point.

3.4 In addition to these four categories, you also need to consider potential conflicts created by the possession of official information. The Serious Fraud Office often sees among public sector employees a failure to appreciate that it can be an offence to use information acquired in an

official capacity for the personal benefit of that official or another.<sup>5</sup> As we noted earlier, public sector officials are often held to a higher standard than in the private sector and it is important that officials do not take advantage of information acquired in their official role to make a gain either for themselves or others.

3.5 In all situations, your conflict might be actual or perceived – that is, you might have an actual conflict, or there could be no conflict, but to an outside observer it looks like there is.

3.6 Members of the public do not often have access to all the relevant facts and cannot know what is in your mind or what your motivations are. They can judge only by appearances and information in the public domain. That means perceived conflicts are often as risky as actual conflicts, and you need to take just as much care to identify and manage them.

### **Financial conflicts of interest**

3.7 A financial conflict of interest is any situation where you stand to gain or lose financially from a decision you are asked to make.

3.8 Financial interests might be direct or indirect. There are also situations where you might be deemed to share the same financial interests as another person or organisation. For example, you might be deemed to share any financial interests your spouse or partner has, or those of any business you are involved in.

3.9 A financial interest need not involve cash changing hands directly. It could, for example, be an effect on the value of land or shares that you own, or the turnover of a business you are involved in.

3.10 Financial conflicts of interest are often treated more strictly than non-financial conflicts of interest. For example:

- Under the common law, any financial conflict of interest (except one that is trivial) automatically disqualifies a public official from participating in a decision.
- The Local Authorities (Members' Interests) Act prohibits members of local authorities and office holders in other specified public organisations<sup>6</sup> from discussing or voting on any matter in which they have a financial interest, unless their interest is "in common with the public".

3.11 If you have a financial conflict of interest:

- you should treat it seriously, even if it seems trivial to you; and
- you need to make sure you are familiar with any specific rules that apply to the management of financial conflicts of interest in the organisation you work in.

## **Part 4: Dealing with conflicts of interest when they arise**

4.1 There are two important aspects to dealing with conflicts of interest when they arise:

- [identifying and disclosing the conflict of interest \(primarily the responsibility of the employee or office holder concerned\)](#); and



- [deciding what action, if any, is necessary to best avoid or mitigate any effects of the conflict of interest \(primarily the responsibility of the public organisation\).](#)

### **Identifying and disclosing a conflict of interest**

4.2 Conflicts of interest can arise at any time. You might know from the outset, when you start in a role with a public organisation, that you have an outside interest that could result in a conflict of interest. Or you might take on a new role or appointment outside of work that could lead to a conflict at work. Or something might crop up, or your role at work might change, so that something that was not a conflict before becomes a potential conflict.

4.3 In short, everyone in the public sector needs to remain alert to the possibility of conflicts at all times.

### **Responsibility to identify and disclose conflicts of interest**

4.4 The primary responsibility for identifying and disclosing conflicts of interest to the relevant people in a timely and effective manner rests with the person concerned.

4.5 This is because it is the individual person who will always have the fullest knowledge of their own affairs. They will be in the best position to realise whether and when something at work has a connection with another interest of theirs.

4.6 Managers and other senior personnel should remain generally alert for issues affecting other people that might create a problem. All public organisations need to be aware of any separate obligation they might have to disclose certain types of interests and potential conflicts (for example, under financial reporting standards).

### **Identifying conflicts of interest**

4.7 In Parts 2 and 3, we discuss in detail the nature of conflicts of interest and the types of other interest that can give rise to a conflict of interest. The main question that must always be addressed is:

*Whether an employee's or office holder's duties or responsibilities to a public organisation could be affected, or could be perceived to be affected, by some other interest or duty that the employee or office holder may have.*

### **Dealing with conflicts of interest when they arise**

4.8 It is important to focus on the overlap between the two interests: that is, whether the person's other interest has something to do with the particular matter that is being considered or carried out by the public organisation.

4.9 It is better to err on the side of openness when deciding whether something should be disclosed. Many situations are not clear-cut. If you are not sure whether something constitutes a conflict of interest, it is safer and more transparent to disclose the interest anyway. The matter is then out in the open. Others with more expertise can judge whether the situation constitutes a conflict of interest, and whether the situation is serious enough to warrant any further action.

4.10 Disclosure promotes transparency and is always better than trying to manage the situation yourself.

## **Disclosing conflicts of interest internally**

4.11 If a matter where a person has an interest arises at a formal meeting, the person should declare to the meeting that they have an interest in the matter before the matter is discussed. The declaration should be recorded in the minutes of the meeting.

4.12 In other situations, the matter should be raised and discussed with a relevant person as soon as the potential for a conflict of interest is identified. For most staff, the relevant person will be their manager (or another designated person in the public organisation). For a chief executive, the relevant person might be the board chairperson, responsible Minister, or another senior person in the public organisation. Board members should make a disclosure to the chairperson or deputy chairperson.

4.13 There might be an applicable law or internal policy that requires a disclosure to be lodged in a register. It is always wise to record any disclosure in writing anyway.

4.14 If something significant changes about the official role or the other interest, or the nature of the connection between them, the person should make a further disclosure, in case it is necessary to reconsider any decisions about how to deal with the conflict of interest.

## **Disclosing conflicts of interest externally**

4.15 A public organisation might be under an obligation to disclose some types of interests and potential conflicts of interest publicly.

4.16 For example, an organisation might be required to disclose some matters in its financial statements, to comply with relevant accounting and auditing standards: PBE IPSAS 20 *Related Party Disclosures* (Public sector Standards), NZ IAS 24 *Related Party Disclosures* (For-profit Standards), and ISA (NZ) 550 *Related Parties*. Those standards require the disclosure of transactions with related parties. In short, a "related party" is someone who has the ability, directly or indirectly, to control or exercise significant influence over the other party.

4.17 Even if there is no legal requirement to publicly disclose an employee or officeholder's interest or conflict of interest, we recommend that public organisations consider the benefits of doing so. We recognise it is unrealistic for a public organisation to publicly disclose all conflicts of interest it is required to manage, and obviously any public disclosure would need to be balanced against the individual's right to privacy.

4.18 However, the value of public transparency should not be underestimated – particularly for those public organisations that spend substantial sums of public money through procurement or grant allocation processes, or in any situation where public trust and confidence is fundamental to that public organisation's ability to continue functioning successfully.

4.19 Many of the complaints made to us about a conflict of interest could have been avoided if the organisation had been more open about the conflict that had arisen and been willing to explain publicly what it was doing about it.

4.20 Options public organisations might want to consider include establishing their own threshold for public disclosure of significant conflicts of interest or disclosing conflicts in the context of

significant or high-profile projects or transactions. Also, or alternatively, it might choose to make its policies on dealing with conflicts of interest publicly available.

### **Deciding on further action**

4.21 Simply declaring a conflict of interest is not usually enough. Once the conflict of interest has been identified and disclosed, the public organisation might need to take further steps to remove any possibility – or perception – of public funds or an official role being used for private benefit.

4.22 In our view, responsibility rests with those "at the top" of the organisation. Leaders and senior managers need to model behaviour to the highest standard. It is not enough to have clear policies and processes. These must be seen to be strictly observed and enforced by those in senior positions.

4.23 The public organisation should carefully consider what, if anything, needs to be done to adequately avoid or mitigate the effects of the conflict of interest.

### **Responsibility to decide next steps**

4.24 Usually, it is the public organisation's responsibility to determine the appropriate next steps (and to direct the affected employee or office holder accordingly). It is a matter of risk management. The decision-maker will usually be the person's manager (or other relevant person in relation to disclosure), acting on behalf of the public organisation. The public organisation's chairperson, chief executive, legal advisors, human resources staff, and other managers might need to help make decisions or offer advice to decision-makers. For convenience, we refer to the decision being made by "the public organisation".

4.25 Sometimes the decision about what the person needs to do will be straightforward, because there might be a clear legal requirement or other written rule covering the situation. An example is where there are statutory rules about participating in meetings that apply to members of a governing body. The onus to be aware of the rule, and to comply with it, lies with the person concerned. The judgement is theirs to make.

### **Action that should be taken to avoid or mitigate**

4.26 For each potential conflict, it is important for the public organisation to consider whether something more ought to be done after disclosure. In doing so, the organisation should have regard to the principles (see paragraph 1.5) and the risk of how outside observers might reasonably perceive the situation. It is not safe to assume that a disclosure, and no further action, is always adequate.

4.27 First, if any legal requirement applies, then compliance with that is critical and overriding. For example, where the situation involves a legal requirement about a board member participating in a meeting, the law will usually require the member to refrain from participating in discussions and voting on the matter. There is usually no scope to decide on some lesser mitigation option.

4.28 Secondly, the public organisation should consider whether any relevant policy of the organisation contains a clear rule covering the situation.

4.29 Thirdly, if no relevant legal requirement or policy applies (or after any such rule has been complied with), then the public organisation should also consider whether anything more needs

to be done. This is where there might be scope for a range of options. This assessment is a matter of judgement. In especially difficult situations, it might be necessary to seek professional advice and/or consult other published sources of guidance.

4.30 In exercising judgement, the public organisation needs to assess carefully:

- the seriousness of the conflict of interest;
- the level of risk the conflict gives rise to; and
- the range of possible mitigation options.

### **Assess the seriousness of a conflict of interest**

4.31 Several factors might need to be considered in assessing the seriousness of the conflict of interest. They include:

- the type or size of the person's other interest;
- the nature or significance of the particular decision or activity being carried out by the public organisation;
- the extent to which the person's other interest could specifically affect, or be affected by, the public organisation's decision or activity; and
- the nature or extent of the person's current or intended involvement in the public organisation's decision or activity.

4.32 Seriousness is a question of degree. It involves a spectrum of directness and significance – how close and how big. Directness (and its opposite, remoteness) is about how closely or specifically the two interests concern each other. Significance is about the magnitude of the potential effect of one on the other.

4.33 The public organisation might judge that the overlap of the two interests is so slight that it does not really constitute a conflict of interest. In other words, there is no realistic connection between the two interests, or any potential connection is so remote or insignificant that it could not reasonably be regarded as a conflict of interest.

4.34 However, it must be remembered that this judgement is not primarily about the risk that misconduct will occur. It is about the seriousness of the connection between the two interests.

4.35 Similarly, an interest might not be seen as serious if it is a generic interest held in common with the public. That is, the interest is substantially the same kind and size as the interest held by all members – or a large segment – of the public.<sup>7</sup>

### **Determining appropriate mitigation options**

4.36 Judgements made about the seriousness of any conflict of interest will inform the suitable mitigation option. It might also be necessary to take into account the practicability of any options for avoiding or mitigating the conflict.

4.37 There is a broad range of options for avoiding or mitigating a conflict of interest. The options (listed roughly in order of lowest to highest severity) include:

- taking no action;

- asking whether all affected parties will agree to the person's involvement;
- seeking a formal exemption to allow participation (if such a legal power applies);
- imposing additional oversight or review over the person;
- withdrawing from discussing or voting on a particular item of business at a meeting, or taking some other steps to limit influence or decision-making powers (for example, they might not take part in decisions but could still provide advice);
- exclusion from a committee or working group dealing with the issue;
- re-assigning certain tasks or duties to another person;
- agreement or direction not to do something;
- withholding certain confidential information;
- placing restrictions on access to information (including, if applicable, post-employment restrictions, such as restrictions under a restraint of trade agreement);
- transferring the person (temporarily or permanently) to another position or project;
- relinquishing the private interest;
- refraining from having further dealings with a person or organisation; and
- resignation or dismissal from one or other position or organisation.

4.38 If the public organisation determines that a situation does not really amount to a conflict of interest after all, or is too indirect or insignificant, it might formally record or declare the disclosure and assessment in some form but take no further action. However, it should not be assumed that this will always be enough. The risk to be assessed is not just the risk of actual misconduct by the person involved but the risk that the public organisation's capacity to make decisions lawfully and fairly might be compromised or its reputation damaged. In making this assessment, the public organisation needs to consider how the situation could reasonably appear to an outside observer.

4.39 It might sometimes be necessary for a person to stay involved in a matter despite having recognised a conflict of interest if the conflict is inevitable and unavoidable and the matter cannot reasonably be dealt with without the person's involvement. That should be rare (and other mitigation options might need to be considered, too). One example is where all the people involved have a conflict of interest.

4.40 Ensuring that the conflicted person is no longer involved in the public organisation's work on the particular matter, through withdrawal, removal, or reassignment, is the most typical mitigation option. Taking one of those steps will usually be enough to adequately manage a conflict of interest.

4.41 Occasionally a conflict of interest might be so significant or pervasive that the person will need to consider giving up one or other interest or role. However, these cases are likely to be uncommon. The other interest needs to be considered in relation to a particular matter coming before the public organisation, so it will not often be necessary to ask, in a general sense, whether

a conflict of interest is so great that the person should not remain working for the public organisation at all.

4.42 However, giving up an interest or role might not always deal with a conflict of interest if it happens at a very late stage.<sup>8</sup> In other words, sometimes it might be too late for the person to choose to withdraw from one role or interest in order to be able to carry on with the other one.

4.43 If circumstances change, a decision about whether there is a conflict of interest or how to manage it should be reviewed and might need to change.

4.44 Many situations are not clear-cut and a range of possible judgements could be reasonable. The decision about what to do in any particular case is an internal matter. It is for the public organisation to determine (except if there is a legal obligation on the affected person to determine). But, in the interests of openness and fairness (and to minimise the risk of the public organisation having to defend itself against an allegation of impropriety), it is always safer to be cautious. Once a conflict of interest is recognised, the most common response should be withdrawal or exclusion from considering the matter.

4.45 It is wise to make a written record about any decision.<sup>9</sup> This might include details of the facts, who undertook the assessment, and how and what action was taken as a result. Sometimes risk management might be helped by also considering whether to make an announcement to certain other people, or even publicly, about the conflict of interest and how it has been dealt with.

Office of the Auditor General :

## Getting it Right - Managing conflicts of interest in Procurement

[Managing conflicts of interest in procurement — Office of the Auditor-General New Zealand](#)

***Relevant extracts from the Auditor General guide: Getting it right - Managing conflicts of interest in procurement – April 2022***

**Managing conflicts of interest in procurement**

**Getting it right**

**Managing conflicts of interest in procurement**

*“based on what we have seen from our work, conflicts of interest in a procurement process that are not identified or managed well can significantly undermine fairness and impartiality”*

**Introduction**

**Why is it particularly important to manage conflicts of interest in procurement?**

The Ministry of Business, Innovation, and Employment, as the functional lead for procurement, has established procurement rules and these principles:

- 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.

Essentially, all of these principles come back to one important over-riding point: procurement needs to be fair and ethical. Procurement decisions in the public sector are essentially decisions about spending public money. As such, they must be – and be seen to be – fair, impartial, and provide value for money.

Sometimes, and just as importantly, conflicts of interest can create a perception of a lack of fairness or impartiality. That, in turn, can call into question the integrity of a procurement decision, can negatively impact market confidence, and undermine trust and confidence in the integrity of the public sector.

If it looks like someone involved in a procurement process has been influenced by favouritism or improper personal motives, the organisation can also be exposed to legal, commercial, or reputational risk.

Based on what we have seen from our work, conflicts of interest in a procurement process that are not identified or managed well can significantly undermine fairness and impartiality.

**Common ways that conflicts of interest in procurement processes arise**

Public sector procurement bridges the boundary between the public, private, and voluntary sectors. One of the reasons concerns about conflicts of interest in procurement often arise is that procurement decisions involve these different sectors interacting. Each sector might have different ideas about what is appropriate.

Conflicts of interest can arise in several different ways. These include:



- employment relationships – an individual may have previously worked for (or with) a tenderer;
- financial interests – an individual may have a financial interest in a company that has tendered for a contract;
- business relationships – an individual may have received a gift or hospitality from a potential provider; and
- family or personal relationships – an individual may also have a conflict of interest through a family member or friend. Regardless of how the conflict arises, there is a risk that an individual with a conflict might (consciously or unconsciously) pass on information or make comments about a procurement to potential providers that create an unfair advantage or improperly influence a decision-making process.

Regardless of how the conflict arises, there is a risk that an individual with a conflict might (consciously or unconsciously) pass on information or make comments about a procurement to potential providers that create an unfair advantage or improperly influence a decision-making process.

Even if these things don't happen, managing perceptions is as important as managing actual conflicts of interest

We have prepared six common scenarios where conflicts of interest can arise during procurement. We set out:

- why the scenario represents a conflict of interest;
- how it might affect trust and confidence; and
- why some proposed mitigations may not fully address the risk.

We also provide some ways to help avoid, mitigate, or manage the conflicts.

### Scenario 1: A relative works for a supplier

#### What is the situation?

A government department needs a building firm for a major capital project. Rawiri, the manager in charge of delivering this project, is married to Kevin, who works for a building firm.

Kevin's firm is on a shortlist of suppliers bidding for the contract. He is in charge of putting together pricing.

Rawiri is in charge of putting together the government department's requirements. He will be part of the evaluation team choosing which firm to award the contract to.

#### Why is this a conflict?

This was a potential conflict of interest at the planning stage. It became an actual conflict of interest as soon as Kevin's firm was shortlisted to bid for the project.

Rawiri is representing the interest of the government department he works for. That interest is getting the best value supplier for the job. However, Rawiri also has an interest in Kevin's successful employment.

#### Management plans that do not mitigate the conflict

The government department identified some management plans to deal with this scenario. However, these plans do not remove the risk or reduce it to an acceptable level.

Proposed management plan	Why it does not work
Rawiri and Kevin do not discuss the project at home.	This would be impossible to verify. Even if it were manageable in practice, it does not mitigate the <i>perception</i> of a conflict, particularly from other suppliers bidding for the contract.
Rawiri will be an adviser to the evaluation panel but not a full member giving the suppliers a score. One of his staff will replace him on the panel and do this.	This does not remove the perception that Rawiri is still in a position of influence. If his advice is needed, it must be influential. Replacing him with one of his own staff creates a power imbalance where he will remain influential. The situation would be different if his manager replaced him.

#### What might be a better plan?

A better plan would be to completely remove Rawiri from the procurement stage of the project. A conflict of interest involving close relatives in influential positions is very difficult to mitigate.

Mitigation might be possible if they were more distant relatives (such as cousins) or if they held less influential roles (such as administrative staff members).

### Scenario 4: Shares, directorships, and other financial interests

#### What is the situation?

A government department is procuring reconfigured national transport services. Existing contracts are due to expire shortly.

The procurement covers urgent and routine transport services throughout the country. The services are structured into several regions, and public organisations can use the services contracted for their region.

A working group is set up. Jan, a director at one of the public organisations that would use the transport services, is a member of this group.

Jan declares that she has a close working relationship with one existing supplier. She also has “secondary employment” with a potential supplier and a subsidiary of another. She holds shares in a fourth potential supplier.

### **Why is this a conflict?**

Roles in, or relationships with, organisations that intend to participate in a procurement process always create the risk of divided loyalties. This is particularly true if the organisation’s success or failure in the procurement affects the person’s income or the value of any shares that they own.

In this situation, the interests of the public organisation that Jan is the director of are not aligned with the interests of the other organisations she also works for or has an interest in.

### **Procurement can be undermined at the planning stage**

The draft technical specification was shared with the working group that Jan was part of. Because she had specialist knowledge and experience, she could provide feedback and influence the specification.

She might have consciously or unconsciously skewed the specification to favour the suppliers she was involved with, even if only because she was more familiar with their operations.

Other suppliers could certainly perceive this to be the case.

### **Communication needs to be formal and well controlled**

Jan suggested that she could be a contact for suppliers that wanted to know more about the service requirements in her region. Again, this could have led to actual, potential, or perceived inequity in what information was provided, when, and to whom.

It could be perceived that those organisations that Jan had a relationship with or worked for could get preferential access to useful information.

Shares are part ownership of a business

Jan holds shares in a company that is a potential supplier. As a result, she has a financial interest in the outcome of the procurement process. This is because the success of the company will influence the value of her shares.

Management plans that do not mitigate the conflict

The government department identified some management plans to deal with this scenario. However, these plans do not address the risk arising from the shares and the secondary employment.

<b>Proposed management plan</b>	<b>Why it doesn’t work</b>
Jan does not have a decision-making role in evaluating tenders or selecting supplier(s).	Although this limits the level of influence Jan has on the outcome to some extent, it does not control her influence on the requirements and specifications. These could still favour certain suppliers.

Jan is conflicted with multiple parties in the tender, so the effect of this will average out.	Multiple conflicts do not “average out”. On the contrary, they combine to undermine confidence in the process. This management plan also does not consider the relative size of the conflicts. For example, if most of Jan’s secondary income is from one supplier, she might be more positively inclined towards it than the other suppliers.
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### **What might be a better plan?**

Conflicts from roles in, or relationships with, other organisations can be difficult to mitigate or manage, especially if the conflict is financial.

Even if Jan gives up her secondary employment, these organisations will become former employers. Former employers are a common source of conflict, which we cover in scenario 5.

A better plan is for Jan to not be involved at all. If her expert input is needed, an independent peer review might give the government department confidence that the resulting specifications and requirements do not favour any particular party.

It is inappropriate for Jan to be a contact for suppliers during the tender process. All contact, questions, and requests for clarification from suppliers should be through a single point of contact at the public organisation. This ensures that information flow is controlled and that all interested parties get the same information at the same time.

# All of Government Procurement Rules (Principles, Charter, Managing Conflicts of Interest and Rules)

**Relevant Extracts from the All of Government Procurement Rules (Principles, Charter, Managing Conflicts of Interest and Rules)**

<p><b>Government Rules of Sourcing<sup>1</sup></b></p> <p><b>3rd edition published March 2015 - In force 1 July 2015 to 30 September 2019</b></p>
<p><b>Procurement Principles<sup>2</sup></b></p> <p><b>1. PLAN AND MANAGE FOR GREAT RESULTS</b></p> <ul style="list-style-type: none"> <li>• Identify what you need and then plan how to get it.</li> <li>• Set up a team with the right mix of skills and experience.</li> <li>• Involve suppliers early – let them know what you want and keep talking.</li> <li>• Take time to understand the market and your effect on it. Be open to new ideas and solutions.</li> <li>• Choose the right process – proportional to the size, complexity and any risks involved.</li> <li>• Encourage e-business (for example, tenders sent by email).</li> </ul> <p><b>2. BE FAIR TO ALL SUPPLIERS</b></p> <ul style="list-style-type: none"> <li>• Create competition and encourage capable suppliers to respond.</li> <li>• Treat all suppliers equally – we don’t discriminate (this is part of our international obligations).</li> <li>• Give NZ suppliers a full and fair opportunity to compete.</li> <li>• Make it easy for all suppliers (small to large) to do business with us.</li> <li>• Be open to subcontracting opportunities in big projects.</li> <li>• Clearly explain how you will assess suppliers’ proposals – so they know what to focus on.</li> <li>• Talk to unsuccessful suppliers so they can learn and know how to improve next time</li> </ul> <p><b>3. GET THE RIGHT SUPPLIER</b></p> <ul style="list-style-type: none"> <li>• Be clear about what you need and fair in how you assess suppliers – don’t string suppliers along.</li> <li>• Choose the right supplier who can deliver what you need, at a fair price and on time.</li> <li>• Build demanding, but fair and productive relationships with suppliers.</li> <li>• Make it worthwhile for suppliers – encourage and reward them to deliver great results.</li> <li>• Identify relevant risks and get the right person to manage them</li> </ul> <p><b>4. GET THE BEST DEAL FOR EVERYONE</b></p> <ul style="list-style-type: none"> <li>• Get best value for money – account for all costs and benefits over the lifetime of the goods or services.</li> <li>• Make balanced decisions – consider both costs and benefits and economic effects of the deal.</li> <li>• Encourage all parties to come up with new ideas and solutions – try not to be too prescriptive.</li> <li>• Take calculated risks where suppliers need to invest.</li> <li>• Have clear performance measures – monitor and manage to make sure you get great results.</li> <li>• Work together with suppliers – keep assessing and improving.</li> </ul>

<sup>1</sup> **5th** Edition was published on 9 October 2025, new rules come into effect 1 December 2025. **4th** edition published June 2019 - In force 1 October 2019 to 30 November 2025 **3rd** edition was published March 2015, in force from 1 July 2015 to 30 September 2019. **2nd** edition was published June 2014, in force 26 May 2014 to 30 June 2015. And **1st** edition was published April 2013, in force 1 October 2013 to 25 May 2014.

The Government’s procurement principles articulate public sector values. Because the Rules cannot cover all possible circumstances, agencies should use the principles to help make good procurement decisions. Source Audit NZ - [Applying the Government Procurement Rules](#)

- 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 – manage and remove conflicts of interest.
- Protect suppliers' commercially sensitive information and intellectual property.

### Relevant Procurement Rules

#### RULE 1 PRINCIPLES

1. Each agency must have policies in place that incorporate the five *Principles of Government Procurement*. The *Principles* apply to all procurements, even if the *Rules* do not apply. 2. Each agency must make sure that:

- a. all staff engaged in procurement have been trained in the five *Principles*
- b. its procurement practices reflect the five *Principles*
- c. it is able to show how it has used sound research to plan an appropriate approach to-market strategy that is proportionate to the nature, risk, value and complexity of each procurement.

#### Procurement Planning

Before you choose a procurement process, you should think about the nature of the goods, services or works you need, and assess the

best way to approach the market. You must make sure that:

- all suppliers get fair notice of the contract opportunity
- the process encourages competition
- suppliers have enough time to respond.

You should base your decisions on a clear understanding of your agency's needs and an appropriate level of market research. It's important that the process you choose reflects the value and complexity of the procurement. Don't overcomplicate a straightforward tender simply because the *Rules* apply.

Good procurement starts with good planning. Knowing what you need to buy and understanding the market makes government an 'intelligent customer'.

The following *guidance* is helpful when it comes to planning a major project:

- *Governance and oversight of major IT projects* by the Office of the Auditor-General (2000) [www.oag.govt.nz](http://www.oag.govt.nz)
- *Better capital planning and decision making: Quick reference guide* by the National Infrastructure Unit [www.infrastructure.govt.nz](http://www.infrastructure.govt.nz)

#### RULE 2 INTEGRITY

1. Each agency must have in place policies that safeguard the integrity of its procurement activities and processes. The policies must

require that:

- a. the agency and all staff involved in procurement can justify their procurement decisions
- b. those involved in procurement decisions stay impartial
- c. procurement processes are fair, transparent and reasonable
- d. all staff involved in procurement act responsibly, lawfully and with integrity.

2. Each agency must have policies in place that help all staff involved in procurement to identify, notify and manage conflicts of interest. Each agency must be able to show how it uses sound judgement to manage conflicts of interest.

## **RULE 6 WHO THE RULES APPLY TO**

### **Required application**

1. The following agencies must apply the Rules:

a. all Public Service departments

b. New Zealand Police

c. New Zealand Defence Force

d. State Services agencies covered by the Whole of Government Direction. A list of these agencies is available at:

[www.procurement.govt.nz](http://www.procurement.govt.nz).

2. Crown Research Institutes must have regard to the Rules.

3. Certain agencies not listed in Rules 6.1 and 6.2 are bound to meet the requirements of the WTO Agreement on Government

Procurement or other free trade agreements. For these agencies, only those Rules relevant to the commitments made, and procurement covered by, those agreements will apply. A list of these agencies is available at: [www.procurement.govt.nz](http://www.procurement.govt.nz)

4. The agencies identified in Rules 6.1 and 6.2 may be audited for compliance with the Rules (eg by the Auditor-General under the Public Audit Act 2001).

### **Good practice guidance only**

5. School Boards of Trustees, *Public Finance Act Schedule 4 organisations*, and the Reserve Bank of New Zealand are expected

to have regard to the *Rules* as good practice *guidance*.

6. Wider *State Sector* and *Public Sector* agencies are encouraged to have regard to the *Rules* as good practice *guidance*.

7. In applying the *Rules* as good practice *guidance*, the agencies identified in Rules 6.4 and 6.5 are to interpret all 'must' *Rules* as 'should' *Rules*.

## **RULE 7 WHEN THE RULES APPLY – GOODS OR SERVICES OR REFURBISHMENT WORKS**

1. The *Rules* apply:

a. to the procurement of goods or services or *refurbishment works*, or a combination of goods or services or *refurbishment works*, when

b. the *maximum total estimated value* (Rule 9) of the procurement meets or exceeds the value threshold of \$100,000(excluding GST).

2. To estimate the *maximum total estimated value* (Rule 9) for goods or services or *refurbishment works* an agency must take into account:

a. all related services (eg installation, training, servicing, and management consultancy services)

b. all types of goods (eg operating consumables)

c. all subcontracted goods or services or works.



3. This Rule does not apply to goods, services or *refurbishment works* that are purchased for commercial resale.

#### **RULE 9 ESTIMATING VALUE**

Each agency must estimate the total value of a procurement to determine whether it meets or exceeds the relevant value threshold (set out in Rules 7 and 8).

Agencies must act in good faith and use good judgement to estimate the value of a procurement. Agencies must include the estimated value in their business case or procurement plan. This estimate is referred to as the *maximum total estimated value*.

2. Each agency must consider the total value over the whole-of-life of the contract/s when estimating the procurement's *maximum total estimated value*. The estimate must include the value of all of the contracts that may result from the procurement.

3. The value is the total amount excluding GST.

4. If an agency cannot estimate the *maximum total estimated value* of a procurement it must apply the *Rules*.

5. When an agency calculates the *maximum total estimated value* of a procurement, it must include everything required for the full delivery of the goods, services or works. This includes the value of:

- a. options to purchase additional goods, services or works
- b. options to extend the term of the contract
- c. paying any premiums, fees or commissions to the supplier or a broker
- d. any revenue streams a supplier receives
- e. any other form of remuneration or payment due to the supplier or to a third party or any interest payable.

#### **Estimating value**

Even if the value of a procurement is less than the value threshold (set out in *Rules 7 and 8*), agencies are still expected to follow good procurement practice. This means applying the *Principles* and having regard to other good practice *guidance*.

It's better to be cautious. If your estimated value is getting close to the value threshold (eg services valued at \$98,000), always consider using an open tender process. After all, your calculation is only an estimate.

#### **RULE 10 NON AVOIDANCE**

An agency must not intentionally avoid applying the *Rules* when planning for, valuing or undertaking a procurement.

2. When calculating a procurement's *maximum total estimated value* (Rule 9), an agency must not intentionally avoid applying the *Rules* by either:

- a. designing, structuring or dividing a procurement into separate parts
- b. using a non-standard or alternative valuation method to lower the estimated value.

#### **RULE 13 OPT-OUT PROCUREMENTS**

In certain circumstances, when a procurement is covered by the *Rules* (meets the requirements of Rules 6 and 7 or Rules 6 and 8), an agency can opt-out of applying all Rules to that procurement, except those listed in Rule 13.4 and 13.5. These circumstances are listed in Rule 13.3 and are called *opt-out procurements*.

2. When doing an *opt-out procurement*, an agency should still conduct its procurement according to the *Principles* and other procurement good practice *guidance*. It should also achieve the best value for money over the life of the contract, which isn't always the cheapest price.

3. The following is the list of valid *opt-out procurements*:

a. Between government agencies: Any of the following agencies can purchase goods, services or works from each other:

i. *Public Service* departments

ii. New Zealand Police

iii. New Zealand Defence Force

iv. agencies covered by the *Whole of Government Direction* (Rule 6.1)

v. *Crown Research Institutes*.

However, if the purchasing agency chooses to use an open competitive process it must apply the *Rules*.

b. Overseas: Goods, services or works purchased outside of New Zealand for use outside of New Zealand.

c. Offices overseas: Any procurement relating to constructing, refurbishing or furnishing New Zealand government offices overseas.

d. Non-contractual arrangement: Any non-contractual arrangement (eg a Memorandum of Understanding between two government departments) or any form of assistance including cooperative agreements (eg diplomatic assistance to another government).

e. Land and buildings: Purchasing or renting land or existing buildings or other immovable property. This does not include *refurbishment works* or *new construction works* which are covered by *Rules 7* and *8*.

f. Conditional grant: Any form of conditional grant. However, an agency must not design or structure a procurement as a form of conditional grant to avoid applying the *Rules*.

g. International development assistance: Providing international development assistance through multilateral or bilateral assistance, including aid in the form of conditional grants, budget support or any form of contribution or diplomatic assistance.

h. International funding: Any procurement funded by an international grant, loan or other assistance or that must comply with an international organisation's procedure where that procedure is inconsistent with the *Rules*.

#### Opt-out decisions

The opt-out Rule allows the government flexibility in the way it sources goods services or works in certain situations.

Agencies should

always consider their options and use good judgement to decide whether or not opting out of the *Rules* is the best way to meet their

needs. Agencies should always keep a record of their decision and the reasons for it.

#### Valid Opt-Out Procurements

i. International organisation: Any procurement conducted under a procedure required by an international organisation or funded

by an international grant, loan or other assistance that is inconsistent with the *Rules*.

j. International agreements between countries: Agreements between countries for the joint implementation of a project.

k. Public services: The provision of certain types of *health services*, *education services* and *welfare services*. See Chapter 7 *Definitions* for more information.

l. Government's central financial control functions: Central banking control functions on behalf of government such as those carried out by the Reserve Bank, and Crown debt management functions such as those carried out by the Treasury. See Chapter 7 *Definitions* for more information.

m. Military and essential security interests: Measures necessary for the protection of essential security interests, procurement

indispensable for national security or for national defence, the maintenance or restoration of international peace or security, or to protect human health, including:

- i. procurement of arms, ammunition or war materials
- ii. stationing military or implementing a joint military project under an international agreement (eg a peacekeeping deployment)
- iii. a measure to protect: public morals, order or safety; human, animal or plant life or health; intellectual property; or relating to goods, services or works of persons with disabilities, philanthropic or not-for profit institutions, and prison labour.

The following *Rules* apply to all *opt-out procurements*:

- a. Rule 5 *Protection of suppliers' information*
- b. Rule 47 *Supplier complaints*
- c. Rule 48 *Prompt payment*
- d. Rule 49 *Maintaining records*
- e. Rule 50 *Audit*.

5. The following *Rules* apply to *opt-out procurements* when relevant:

- a. Rule 46 *Debriefing suppliers* (if the agency has used a competitive process)
- b. Rule 55 *All-of-Government Contracts*
- c. Rule 56 *Syndicated Contracts*
- d. Rule 57 *Common Capability Contracts*
- e. Rule 60 *Geospatial information and services*
- f. Rule 61 *Intellectual Property*
- g. Rule 62 *Public Private Partnerships*
- h. Rule 63 *Business Cases and Investment*

*Decisions*

- i. Rule 64 *Investment Reviews*
- j. Rule 65 *Timber and wood products*
- k. Rule 66 *Employee transfer costs*

#### **RULE 14 REQUIREMENT TO OPENLY ADVERTISE**

1. Wherever possible an agency should use open competitive procurement processes to give all suppliers the opportunity to compete.
2. An agency must openly advertise on the Government Electronic Tenders Service (*GETS*):
  - a. if the *maximum total estimated value* (Rule 9) of the procurement meets or exceeds the relevant value threshold (Rules 7 or 8), and
  - b. there is no *exemption from open advertising* (Rule 15).
3. Agencies may advertise using other media, as well as *GETS*.

#### **Open competitive process**

Good procurement is about good process and good results. Open competitive processes that comply with the *Rules* include:

- a. one-step processes such as a *Request for Quote* or *Request for Tender*

b. multi-step processes such as a *Registration of Interest* followed by a shortlisting then a *Request for Proposal* or *Request for Tender*

#### **RULE 15 EXEMPTION FROM OPEN ADVERTISING**

An agency does not need to openly advertise a contract opportunity on GETS if an exemption from open advertising under Rule 15.9 applies.

2. If the procurement is exempt from open advertising, an agency must use either a closed competitive process (with a limited number of known suppliers) or a direct source process (with a known supplier).

3. An agency must not exempt a procurement from open advertising to:

- a. avoid competition
- b. protect domestic suppliers
- c. discriminate against any domestic or international supplier.

Document the rationale

4. If an agency exempts a procurement from open advertising under Rule 15.9, it must:

- a. obtain evidence of the facts and circumstances to verify the reasons/for the exemption before starting the procurement, and
- b. document the rationale for the decision. This rationale may form part of the business case or procurement plan or may be a stand-alone document.

5. The rationale document must include:

- a. the name of the agency
- b. a description of the goods, services or works
- c. the maximum total estimated value (Rule 9) of the goods, services or works
- d. the specific exemption/s, that applies (from the list in Rule 15.9)
- e. details of the facts and circumstances which justify the exemption.

6. A senior manager must endorse the rationale before the agency undertakes the procurement. The agency must retain the documented rationale for audit purposes.

7. If MBIE asks for the documented rationale, the agency must promptly make it available.

Closed competitive and direct source

Processes that comply with the Rules where there is a valid exemption from open advertising are:

- Closed competitive: a Request for Quote, Request for Tender or Request for Proposal restricted to a limited number of known
- suppliers
- Direct source: a closed Request for Quote, Request for Proposal or Request for Tender restricted to a known supplier.

If an exemption from open advertising applies, an agency must still comply with all the other Rules.

If an agency uses a direct source process (with one known supplier) it does not mean that it can instantly contract that supplier. It should request a formal proposal from the supplier and evaluate the proposal, assess its value for money, which isn't always the cheapest price and undertake due diligence before deciding to negotiate a contract. It must not simply approach one supplier and award a contract without proper evaluation of capacity, capability, risk, value for money and due diligence.

### **GETS Contract Award Notice**

8. Agencies must publish a Contract Award Notice (Rule 45) on GETS for any procurement that it has exempted from open advertising, except when doing secondary procurement (Rule 15.9.i).

### **Valid exemptions**

9. Valid exemptions from open advertising are:

a. Emergency: A genuine emergency as defined by MBIE's Quick Guide to Emergency Procurement. Urgent situations that are created by an agency, such as lack of advance planning, do not constitute an emergency.

b. Following an open tender: An agency may use a closed competitive process or direct source process to procure goods, services and works if:

i. it has openly advertised the contract opportunity in the last 12 months, and ii. it has not substantially changed the core procurement requirements, and

iii. the first time the opportunity was advertised it:

(a) did not receive any responses, or

(b) did not receive any responses that complied with the pre-conditions (Rule 25) or conformed with or met the requirements (including quantity), or

(c) 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 preconditions (Rule 25) or conformed with or met the requirements.

Prototype: Purchasing a prototype for research, experiment, study or original development. Original development may include a limited production or supply if this is necessary to:

i. carry out field tests and incorporate the findings, or

ii. prove that the good or service or works can be produced or supplied in large numbers to an agreed quality standard.

This exemption does not apply to quantity production or supply to establish commercial viability or to recover research and development costs. Once the contract for the prototype has been fulfilled, an agency must openly advertise any subsequent procurement of the same goods, services or works.

f. Commodity market: Goods purchased on a commodity market.

g. Exceptionally advantageous conditions: For purchases made in exceptionally advantageous conditions that only arise in the very short term. This exemption does not cover routine purchases from regular suppliers.

h. Design contest: Where a contract is awarded to the winner of a design contest. To meet this exemption:

i. the design contest must have been organised in a manner which is consistent with the *Rules*, and

ii. the contest must be judged by a panel whose members understand that the winner will be awarded a contract, and

iii. members of the panel do not have any conflict of interest in carrying out the judging of the contest.

i. Secondary procurement: Where an agency has established a *Panel of Suppliers* (in accordance with Rule 54) or is purchasing under an *All-of-Government Contract* (Rule 55), *Syndicated Contract*. (Rule 56) or *Common Capability Contract* (Rule 57), it does not need to openly advertise individual contract opportunities that are awarded through that arrangement.

j. Unsolicited unique proposal: Where an agency receives an unsolicited proposal, as described in MBIE's *Guide to unsolicited unique proposals*, and all of the following apply:

i. the proposal is unique

ii. the proposal aligns with government objectives

iii. the goods, services or works are not otherwise readily available in the market place

iv. the proposal represents value for money.

**RULE 49 MAINTAINING RECORDS**

1. Without limiting its obligations under the Public Records Act 2005, an agency must keep records of each procurement for at least three years from the date the contract was signed by all parties.
2. The records must document the procurement process, all decisions, the contract awarded and include all recommendations and reports.
3. An agency may store the records electronically, if its system complies with requirements of the Public Records Act 2005. Disposal of records is subject to the authorisation of the Chief Archivist, in accordance with the Public Records Act 2005.

# All of Government Procurement Rules (Principles, Charter, Managing Conflicts of Interest and Rules)



## **Government Procurement Rules<sup>3</sup>**

**4<sup>th</sup> edition published June 2019 - In force 1 October 2019 to 30 November 2025**

### **Procurement Principles<sup>4</sup>**

#### **1. PLAN AND MANAGE FOR GREAT RESULTS**

- Identify what you need, including what *Broader Outcomes* should be achieved, 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).
- Seek opportunities to involve New Zealand businesses, including Māori, Pasifika and regional businesses and social enterprises.
- Make it easy for all suppliers (small and large) to do business with government.
- Be open to subcontracting opportunities in big projects.
- Clearly explain how you will assess proposals – so suppliers 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.
- Choose suppliers that comply with the Government's Supplier Code of Conduct
- 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 public value – account for all costs and benefits over the lifetime of the goods or services.
- Make balanced decisions – consider the possible social, environmental, economic and cultural outcomes that should be achieved.
- 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.

<sup>3</sup> 5<sup>th</sup> Edition was published on 9 October 2025, new rules come into effect 1 December 2025. 4<sup>th</sup> edition published June 2019 - In force 1 October 2019 to 30 November 2025 3<sup>rd</sup> edition was published March 2015, in force from 1 July 2015 to 30 September 2019. 2<sup>nd</sup> edition was published June 2014, in force 26 May 2014 to 30 June 2015. And 1<sup>st</sup> edition was published April 2013, in force 1 October 2013 to 25 May 2014.

<sup>4</sup> The Government's procurement principles articulate public sector values. Because the Rules cannot cover all possible circumstances, agencies should use the principles to help make good procurement decisions. Source Audit NZ - [Applying the Government Procurement Rules](#)

- 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.

#### **Procurement Charter<sup>5</sup>**

The New Zealand Government directs agencies to:

##### **1. SEEK OPPORTUNITIES TO INCLUDE NEW ZEALAND BUSINESSES**

Openly work to create opportunities for local businesses and small-to-medium enterprises to participate in your procurement processes.

##### **2. UNDERTAKE INITIATIVES TO CONTRIBUTE TO A LOW EMISSIONS ECONOMY AND PROMOTE GREATER ENVIRONMENTAL RESPONSIBILITY**

Ensure that economic and social development can be implemented on a sustainable basis with respect for the protection and preservation of the environment, reducing waste, carbon emissions and pollution.

##### **3. LOOK FOR NEW AND INNOVATIVE SOLUTIONS**

Make sure you don't overprescribe the technical requirements of a procurement, give businesses the opportunity to demonstrate their expertise.

##### **4. ENGAGE WITH BUSINESSES WITH GOOD EMPLOYMENT PRACTICES**

Ensure that the businesses you contract with operate with integrity, transparency and accountability, and respect international standards relating to human and labour rights.

For businesses operating within New Zealand, ensure that they comply with all New Zealand employment standards and health and safety requirements.

##### **5. PROMOTE INCLUSIVE ECONOMIC DEVELOPMENT WITHIN NEW ZEALAND**

Engage with Māori, Pasifika, and regional businesses and social enterprises in order to actively contribute to our local economy. Openly working to include and support these businesses and enterprises through procurement will promote both skills development and a diverse and inclusive workforce.

##### **6. MANAGE RISK APPROPRIATELY**

Responsibility for managing risks should be with the party – either the agency or the supplier – that is best placed to manage the risk. Agencies and suppliers should work together on risk mitigation strategies.

##### **7. ENCOURAGE COLLABORATION FOR COLLECTIVE IMPACT**

Look to support greater collaboration, both across-agency and across-businesses to give likeminded groups the opportunity to find common solutions within your procurement opportunities.

<sup>5</sup> The Government Procurement Charter sets out the Government's expectations of how agencies should conduct their procurement activity to achieve public value. Public value strikes a balance between quality, outcomes, and price. The Charter applies even when the Rules do not. Agencies need to demonstrate how they are meeting these expectations. Source Audit NZ: [Applying the Government Procurement Rules](#)

## **Guide to Procurement - Managing conflicts of interest and confidentiality**

It's important that everyone in your agency behaves ethically. Conflicts of interest should be properly identified and transparently managed.

All agency staff, contractors, consultants and volunteers have a duty to put the public interest above their personal or private interests when carrying out their official duties.

### **What is a conflict of interest?**

A conflict of interest is where someone is compromised when their personal interests or obligations conflict with the responsibilities of their job or position. It means that their independence, objectivity or impartiality can be called into question.

A conflict of interest can be:

- **actual:** where the conflict already exists
- **potential:** where the conflict is about to happen, or could happen
- **perceived:** where other people might reasonably think that a person has been compromised.

### **How conflicts of interest can arise**

A conflict of interest can arise through a relationship, an activity or strong personal views.

An employee has a conflict of interest if, as part of their work duties, they're required to deal with:

- a relative or close personal friend
- an organisation, club, society or association they're a member of
- a person who is their community or church leader
- a person or organisation they:
  - have a professional or legal obligation to
  - have a business interest or own property with
  - owe money to
  - previously worked for, or currently work for (secondary employment).

An agency employee could also have a conflict of interest if they're given something from someone who could benefit from their decisions, eg:

- a gift
- an invitation to lunch, dinner or a sporting event
- free or subsidised travel or accommodation
- any other sort of benefit, including money.

A conflict can also arise if a person holds strong personal views on an issue their agency is considering, eg political views or religious beliefs.

## **The consequences of not managing conflicts of interest**

The main goal of managing conflicts of interest is to ensure that decisions are made – and are seen to be made – on proper grounds, for legitimate reasons and without bias.

A poorly managed ‘perceived’ conflict of interest can be just as damaging as a poorly managed ‘actual’ conflict of interest. These conflicts can be positive or negative. You could be seen to favour or benefit someone, or be against them to disadvantage them.

While conflicts of interest should be avoided wherever possible, they often happen innocently. It is how they are managed that counts. A conflict of interest that has not been properly managed, could seriously undermine the integrity of our procurement processes and could lead to complaints, challenges and in some cases, the agency’s decision being overturned. When a conflict has been ignored, improperly acted on or influenced actions or decision-making, the conduct (not the conflict itself) can be seen as misconduct, abuse of office or even corruption

Conflicts that are identified must be reported to the manager in charge of the activity. The conflict and the process for managing it must be recorded in writing.

Conflicts of interest can be managed by:

- restricting the person’s further involvement in the matter
- engaging an independent third party to oversee all or part of the process and verify its integrity
- removing the person with the conflict from working on the procurement
- the person giving up the private interest that created the conflict
- the person resigning from their position with the agency – this should only be considered if the conflict of interest can’t be resolved in any other workable way.

[Managing conflicts of interest in procurement - Office of the Auditor-General New Zealand Tumuaki o te Mana Arotake](#)

[Standards of Integrity and Conduct - Public Service Commission Te Kawa Mataaho](#)

## **How to declare a conflict of interest**

All agency staff that are actively involved in a procurement activity, or could influence the process or the outcome of a procurement, must complete and sign a conflict of interest declaration and a confidentiality agreement as soon as they're appointed to an evaluation team.

People who should complete a conflict of interest declaration include:

- the procurement team (staff, contractors and consultants)
- the evaluation panel
- consultants asked to advise the team
- anyone involved in making a recommendation
- anyone involved in approving a recommendation or making an important decision
- anyone making a financial approval for the procurement.

This does not include:

- senior leaders who provide sign-off but don't otherwise influence the process, unless your agency has a different policy.

You can complete these declarations online using the conflict of interest tool.

[Conflict of interest management tool](#)

Declarations need to be revisited regularly and checked once the supplier has been chosen.

Alternatively, you can also use these agreements to declare a conflict of interest.

- [Conflict of interest and confidentiality agreement – template \[DOCX, 261 KB\]](#)
- [Conflict of interest and confidentiality agreement for panel chair - template \[DOCX, 261 KB\]](#)

### **Conflict of interest management tool**

The conflict of interest (Col) tool is available to all New Zealand public sector organisations to register and use as part of their procurement practice. The Col tool makes it easy and fast to capture, assess, manage and record potential conflicts of interest of panel members evaluating a tender on a secure digital platform. It also helps agencies to transition from using, archiving paper based documents to a common digital platform and experience.

Features and benefits of the Col tool include:

- Free to register and use
- Reduces administration time and risk
- Guided declaration process for users
- Draft, agree and curate conflict management plans online
- Secure and reliable platform.

### **Accessing the conflict of interest tool**

[Access the conflict of interest management tool](#)

To register or express interest, please contact your New Zealand Government Procurement Account Manager, or submit a request through our online contact form. [Email us](#)

### **Resources**

You can complete the 'Tiakitanga – Towards Better Evaluation' e-learning module on managing conflicts of interest and developing the skills to facilitate tender evaluation process. This course is available on Hīkina.

[The Evaluation Process - Hīkina - Learning for Government Procurement and Property](#)

## Relevant Procurement Rules

### RULE 1 PRINCIPLES AND THE GOVERNMENT CHARTER

1. Each agency must have policies in place that incorporate the five Principles of Government Procurement and the Government Procurement Charter. The Principles and the Charter apply to all procurements, even if the Rules do not apply.
2. Each agency should consider making these policies publicly available.
3. Each agency must make sure that:
  - a. all staff engaged in procurement have been trained in the five Principles and the Charter
  - b. its procurement practices reflect the five Principles and the Charter
  - c. it is able to show how it has used sound research to plan an appropriate approach to-market strategy that is proportionate to the nature, risk, value and complexity of each procurement.

#### Procurement Planning

Before you choose a procurement process, you should think about the nature of the goods, services or works you need, and assess the best way to approach and collaborate with the market. You must make sure that: *•* all suppliers get fair notice of the contract opportunity *•* the process encourages competition *•* suppliers have enough time to respond. You should base your decisions on a clear understanding of your agency's needs and an appropriate level of market research. It's important that the process you choose reflects the value and complexity of the procurement. Don't overcomplicate a straightforward tender simply because the Rules apply.

### RULE 2 INTEGRITY

1. Each agency must have in place policies that safeguard the integrity of its procurement activities and processes. The policies must require that:
  - a. the agency and all staff involved in procurement can justify their procurement decisions
  - b. those involved in procurement decisions stay impartial
  - c. procurement processes are fair, transparent and reasonable
  - d. all staff involved in procurement act responsibly, lawfully and with integrity.

2. Each agency must have policies in place that help all staff involved in procurement to identify, notify and manage *conflicts of interest*. Each agency must be able to show how it uses sound judgement to manage *conflicts of interest*.

Government procurement is an area where integrity is of the utmost importance. The Standards of Integrity and Conduct set by the State Services Commissioner must be applied by individuals working in the public state sector. The *State Services code of conduct* and supporting information can be found on the State Services Commission's website: [www.ssc.govt.nz](http://www.ssc.govt.nz). *Managing conflicts of interest: Guidance for public entities* is available at: [www.oag.govt.nz](http://www.oag.govt.nz).

Suppliers to government are expected to act with integrity and comply with the *Supplier Code of Conduct* available at [www.procurement.govt.nz](http://www.procurement.govt.nz). Consider incorporating a commitment for suppliers to adhere to the *Supplier Code of Conduct* in your contracts.

## **RULE 5 WHO THE RULES APPLY TO**

### **Required application**

1. The following agencies must apply the *Rules*:

- a. all *Public Service* departments
- b. New Zealand Police
- c. New Zealand Defence Force
- d. *State Services* agencies covered by the *Whole of Government Direction*.

A list of these agencies is available at: [www.procurement.govt.nz](http://www.procurement.govt.nz)

2. Crown Research Institutes must have regard to the *Rules*.

3. Certain agencies not listed in Rules 5.1 and 5.2 are bound to meet the requirements of the WTO Agreement on Government Procurement or other free trade agreements. For these agencies, only those *Rules* relevant to the commitments made, and procurement covered by, those agreements will apply. A list of these agencies is available at: [www.procurement.govt.nz](http://www.procurement.govt.nz).

4. The agencies identified in Rules 5.1 and 5.2 may be audited for compliance with the *Rules* (e.g. by the Auditor-General under the Public Audit Act 2001).

### **Good practice guidance only**

5. School Boards of Trustees, Public Finance Act Schedule 4 organisations, and the Reserve Bank of New Zealand are expected to have regard to the *Rules* as good practice guidance.

6. Wider State Sector and Public Sector agencies are encouraged to have regard to the *Rules* as good practice guidance.

7. In applying the *Rules* as good practice guidance, the agencies identified in Rules 5.5 and 5.6 are to interpret all ‘must’ *Rules* as ‘should’ *Rules*.

## **RULE 6 WHEN THE RULES APPLY – GOODS OR SERVICES OR REFURBISHMENT WORKS**

1. The *Rules* apply:

- a. to the procurement of goods or services or *refurbishment works*, or a combination of goods or services or *refurbishment works*, when
- b. the *maximum total estimated value* (Rule 8) of the procurement meets or exceeds the *value threshold* found at: [www.procurement.govt.nz](http://www.procurement.govt.nz)

2. To estimate the *maximum total estimated value* (Rule 8) for goods or services or *refurbishment works*, an agency must take into account:

- a. all related services (e.g. installation, training, servicing, and management consultancy services)
- b. all types of goods (e.g. operating consumables)
- c. all subcontracted goods or services or works.

3. This rule does not apply to goods, services or *refurbishment works* that are purchased for commercial resale.

Where procurement is below the threshold, agencies should consider if there is a capable *New Zealand business*, including Māori businesses, Pasifika businesses and social enterprises, that could fulfil the contract opportunity.

## **RULE 8 ESTIMATING THE MONETARY VALUE OF A PROCUREMENT**

1. Each agency must estimate the total monetary value of a procurement to determine whether it meets or exceeds the relevant *value threshold* (set out in Rules 6 and 7). Agencies must act in good faith and use good judgement to estimate the monetary value of a procurement. Agencies must include the estimated monetary value in their business case or *procurement plan*. This estimate is referred to as the *maximum total estimated value*.

2. Each agency must consider the total value over the whole-of-life of the contract/s when estimating the procurement's *maximum total estimated value, including any costs associated with the disposal of goods*. The estimate must include the value of all of the contracts that may result from the procurement.
3. The value is the total amount excluding GST.
4. If an agency cannot estimate the *maximum total estimated value* of a procurement, it must apply the *Rules*.
5. When an agency calculates the *maximum total estimated value* of a procurement, it must include everything required for the full delivery of the goods, services or works.

#### **RULE 12 OPT-OUT PROCUREMENTS**

1. In certain circumstances, when a procurement is covered by the *Rules* (meets the requirements of Rules 5 and 6 or Rules 5 and 7), an agency can opt-out of applying all *Rules* to that procurement, except those listed in Rule 12.4 and 12.5. These circumstances are listed in Rule 12.3 and are called *opt-out procurements*.
2. When doing an *opt-out procurement*, an agency should still conduct its procurement according to the *Principles* and other procurement good practice *guidance*. It should also achieve the best *public value*, over the life of the contract, which may include the outcomes in the *Government Procurement Charter*.
3. The following is the list of valid *opt-out procurements*:
  - a. Between government agencies: Any of the following agencies can purchase goods, services or works from each other:
    - i. Public Service departments
    - ii. New Zealand Police
    - iii. New Zealand Defence Force
    - iv. agencies covered by the Whole of Government Direction (Rule 5.1)
    - v. Crown Research Institutes.

However, if the purchasing agency chooses to use an open competitive process it must apply the *Rules*.

#### **RULE 13 REQUIREMENT TO OPENLY ADVERTISE**

1. Wherever possible an agency should use open competitive procurement processes to give all suppliers the opportunity to compete.
2. An agency must openly advertise on the Government Electronic Tenders Service (GETS):
  - a. if the maximum total estimated value (Rule 8) of the procurement meets or exceeds the relevant value threshold (Rules 6 or 7), and
  - b. when there is no exemption from open advertising (Rule 14).
3. Agencies may advertise using other media, as well as GETS.

#### **RULE 14 EXEMPTION FROM OPEN ADVERTISING**

1. An agency does not need to openly advertise a contract opportunity on GETS if an exemption from open advertising under Rule 14.9 applies.
2. If the procurement is exempt from open advertising, an agency must use either a closed competitive process (with a limited number of known suppliers) or a direct source process (with a known supplier).
3. An agency must not exempt a procurement from open advertising to:
  - a. avoid competition



- b. protect domestic suppliers
- c. discriminate against any domestic or international supplier.

#### **Document the rationale**

4. If an agency exempts a procurement from open advertising under Rule 14.9, it must:
  - a. obtain evidence of the facts and circumstances to verify the reason/s for the exemption before starting the procurement, and
  - b. document the rationale for the decision. This rationale may form part of the business case or procurement plan or may be a standalone document.
5. The rationale document must include:
  - a. the name of the agency
  - b. a description of the goods, services or works
  - c. the maximum total estimated value (Rule 8) of the goods, services or works
  - d. the specific exemption/s, that applies (from the list in Rule 14.9)
  - e. details of the facts and circumstances that justify the exemption.
6. A senior manager must endorse the rationale before the agency undertakes the procurement. The agency must retain the documented rationale for audit purposes.
7. If MBIE asks for the documented rationale, the agency must promptly make it available.

#### **GETS Contract Award Notice**

8. Agencies must publish a Contract Award Notice (Rule 48) on GETS for any procurement that it has exempted from open advertising.

#### **Valid exemptions**

9. Valid exemptions from open advertising are:
  - a. **Emergency:** A genuine emergency as defined by MBIE's Quick Guide to Emergency Procurement. Urgent situations that are created by an agency, such as lack of advance planning, do not constitute an emergency.

#### **b. Following an open competitive process:**

An agency may use a closed competitive process or direct source process to procure goods, services and works if:

- i. it has openly advertised the contract opportunity in the last 12 months, and
- ii. it has not substantially changed the core procurement requirements, and
- iii. the first time the opportunity was advertised it:
  - a. did not receive any responses, or
  - b. did not receive any responses that complied with the pre-conditions (Rule 28) or conformed with or met the requirements (including quantity), or
  - c. 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 (Rule 28) or conformed with or met the requirements.
- c. **Only one supplier:** If the goods, services or works can be supplied by only one supplier and there is no reasonable alternative or substitute because:
  - i. for technical reasons there is no real competition, or

- ii. the procurement relates to the acquisition of intellectual property or rights to intellectual property (including patents or copyrights), or other exclusive rights, or
- iii. the procurement is for a work of art.

d. **Additional goods, services or works:** Goods, services or works additional to the original requirements that are necessary for complete delivery. This rule applies where all three of the following conditions are met:

- i. the original contract was openly advertised, and
- ii. a change of supplier cannot be made for economic or technical reasons, and
- iii. a change of supplier would cause significant inconvenience or substantial duplication of costs for the agency.

#### **RULE 52 MAINTAINING RECORDS**

1. Without limiting its obligations under the Public Records Act 2005, an agency must keep records of each procurement for at least three years from the date the contract was signed by all parties.
2. The records must document the procurement process, all decisions, the contract awarded and include all recommendations and reports.
3. An agency may store the records electronically, if its system complies with requirements of the Public Records Act 2005. Disposal of records is subject to the authorisation of the Chief Archivist, in accordance with the Public Records Act 2005.

#### **Recording the process**

The procurement process includes planning, sourcing, evaluations, meetings, issues and resolutions, recommendations and decisions. Each step should be thoroughly documented and maintained as records.