



Local government procurement

Introduction

Each year councils spend more than \$8 billion (more than two thirds of their revenue) on goods and services to provide and maintain vital infrastructure, facilities, and services for their communities.

People expect that their rates will be spent appropriately and competently. They also expect value for money. These expectations for how public money is spent apply to all public organisations, and failure to deliver on them goes to the heart of trust and confidence in our public sector.

We visited 21 councils throughout New Zealand to see how they carry out procurement. During these visits, we heard common messages about the challenges councils are facing and where they felt they could improve.

Through our Office's other audit and inquiry work, we have seen many situations where procurement goes wrong. In our view, this is more likely to happen when public organisations do not have the right culture, leadership, or systems in place for procurement. This applies to councils as much as it does across the public sector, as our council visits confirmed.

In this article, we ask a series of questions about the procurement practice and culture in a council. These questions have been informed by some of the concerns that we heard from council staff and observations that we have made from our other work. The topics the questions cover are:

- good governance for procurement;
- planning for significant capital projects;
- conflicts of interest;
- emergency procurement;
- procurement capability and capacity;
- procurement policies and training;
- contract management; and
- achieving broader outcomes through procurement.

We encourage councils to reflect on these questions and, where they see gaps, implement the necessary changes to strengthen their processes and procedures.



Good governance for procurement

- Does your council have appropriate governance arrangements in place for procurement?
- Do the governance arrangements in place for procurement support effective accountability of management and elected members?
- Are there effective delegations to allow procurement to be managed effectively?
- Does your council have effective means for informing and engaging with elected members about procurements so they can make informed decisions when required?

For an organisation to function well, and to be able to account properly to its stakeholders, there needs to be a clear distinction between those *managing* the organisation and those *governing* it.

It is the role of managers to carry out the day-to-day operations of the organisation. It is the role of the governing body to ensure that systems and processes are in place that shape, enable, and oversee the management of the organisation.

Governors have an important role in setting the organisation's procurement strategy. To do this, they need good information on the organisation's pattern of expenditure and a clear understanding of which suppliers are strategically important. However, when governors become involved in operational decisions, it interferes with their ability to hold management to account.

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Unfortunately, our Office often sees examples of procurements where the lines between governance and management are blurred. For example, mayors or other elected members might be part of tender evaluation panels. This is not good practice.

We expect to see appropriate delegations and reporting systems in place for procurement. For councils, policies and delegations should clearly outline the authority of the chief executive and other staff to commit to particular types of expenditure. Delegations need to be flexible enough for councils to deliver day-to-day services and not be unnecessarily

constrained by schedules for council meetings. However, it is entirely appropriate for major procurements to require sign-off by the governing body. In order for elected members to approve procurement decisions when required, they need enough information to make informed decisions.

Planning for significant capital projects

- How confident are you about your council's forecasting of capital expenditure and that enough resources are available to achieve current forecasts?
- How has your council engaged with suppliers to determine their capacity and levels of interest?
- Has your council shared its plans with the New Zealand Infrastructure Commission – Te Waihanga?

In our report, *Matters arising from our audits of the 2018-28 long-term plans*, we noted that some:

... councils are responding to unprecedented levels of growth. All councils are responding to increasing requirements for levels of service, including as a result of regulatory changes. They also need to reinvest in their existing infrastructure, often at higher levels than in the past to address historical underinvestment and improve services to meet community expectations.

These challenges mean that councils will need to do more, and larger, procurements. So it is even more important that councils do procurement well.

Although the situation will differ for each council, we expect all councils to carefully plan, prioritise, and monitor their future capital programmes so they can realistically achieve capital programme budgets and deliver the levels of service agreed with their communities. Procurement is an important part of this.

When we visited councils, many told us they were starting to see a decrease in the number of suppliers bidding for contracts, especially for construction projects. Although this had not yet affected their ability to meet their capital programme and deliver services, it could become a greater problem as the effects of growth are felt more widely. Only a few of the councils we visited actively discussed with suppliers upcoming works and ways of reducing any barriers to participate in procurement.

In 2019, the Government set up the New Zealand Infrastructure Commission – Te Waihanga (the Commission), which is an independent body to

support infrastructure investment to improve long-term economic performance and social well-being. One area of focus for the Commission is an infrastructure pipeline of major capital projects that will be added to over time. The pipeline is intended to give more visibility and certainty about future projects to help suppliers plan and secure the capability and capacity that will be required for these projects.

A few councils have already started to include their planned infrastructure projects in the pipeline. The 4th edition of the *Government Procurement Rules*, which came into force on 1 October 2019, includes a requirement for agencies to engage with the Commission when considering procuring infrastructure with a total cost of ownership of more than \$50 million.¹ Although it is not mandatory for councils to comply with the *Government Procurement Rules*, they are encouraged to do so. We recommend that all councils consider engaging with the Commission so that their planned infrastructure projects can start being included in the pipeline.

The Commission also has procurement and delivery advice and support functions. Its capacity and capability in this area will develop over time. We recommend that councils look into how the Commission might be able to support them.

Conflicts of interest

- **Does your council have adequate policies and processes in place for staff and elected members to:**
 - **declare and manage risks from conflicts of interest (which might affect all stages in the procurement life cycle)?**
 - **record gifts and hospitality from suppliers and potential suppliers?**

Too often we find individuals and organisations with a poor appreciation of how conflicts of interest, whether actual or perceived, can undermine public trust and confidence. Although organisations might have a process for staff to declare actual, potential, or perceived conflicts, we often find that people's understanding of what needs to be declared, or how it is best managed, is limited.

As noted in our good practice guide *Procurement guidance for public entities*, individuals should be aware of the potential for conflicts of interest

whether they are elected members, staff members, or advisers directly or indirectly involved in any part of the procurement process. Anyone involved in the procurement process should be required to declare any personal interest that might affect, or could be perceived to affect, their impartiality. When an interest is declared, consideration will need to be given to what steps are necessary to manage the conflict. Councils should maintain a register of declarations of interests and record any conflicts of interest and how they will be managed.

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All those involved in the procurement process should be required to declare any personal interest that might affect, or could be perceived to affect, their impartiality.

Conflicts of interest can have both legal and ethical dimensions. Under no circumstances should a procurement process allow council staff or elected members to receive preferential treatment.

There are two specific restrictions that apply to elected members under the Local Authorities (Members' Interests) Act 1968. Under the Act, an elected member cannot:

- enter into contracts with their local authority worth more than \$25,000 in a financial year; or
- discuss or vote on matters before their authority in which they have a direct or indirect pecuniary interest, other than an interest in common with the public.

Councils also need to consider the treatment of gifts, hospitality, or other incentives from suppliers. Concerns might arise, for example, if a person who is managing a current contract has received gifts or hospitality from the supplier and then participates in the selection process for a new contract.

Further information is available in our good practice guides available on our website.

¹ Rule 64 of the *Government Procurement Rules*. The rules can be found at procurement.govt.nz.

Emergency procurement

- **Does your council have guidance for staff and elected members about:**
 - **what constitutes an emergency; and**
 - **the procedures that should be followed for an emergency procurement?**
- **How does your council ensure that anyone making an emergency procurement can be appropriately held to account for their decisions and actions?**

Councils sometimes need to procure goods and services quickly to respond to an emergency. An emergency is when there are genuine unforeseen and urgent circumstances. Examples include earthquakes, flooding, a pandemic, or a terrorist attack.

An urgent situation that has occurred because of a lack of planning, or a failure to mitigate a known risk, is not a genuine emergency. When there is no genuine emergency, we expect councils to follow the usual steps for any procurement, even if there is some urgency. These steps include making an informed decision, using a competitive process to select a supplier,² and getting appropriate authorisations before making any decisions. All decisions and agreements should also be recorded at the time they are made.

When there is a genuine emergency, procurement can be more flexible. For example, direct procurement might be needed to avoid delays in providing emergency relief. Other examples include staff making decisions without delegated authority or making a verbal agreement with a supplier instead of a written contract.

In any urgent situation, procurement can sometimes be done more quickly by using contracts that are already in place, such as an all-of-government or syndicated contract or a panel arrangement. In a genuine emergency, a council could consider using another agency's suppliers where they have been appointed through a competitive process.

During emergencies, councils are still accountable to their communities. This accountability needs to be balanced against avoiding delays in responding to the emergency. To help maintain accountability for emergency procurement, councils should ensure that they fully document each procurement, including any decisions made, as soon as possible. Councils still need to identify and manage conflicts of interest and actively manage other procurement risks that

can occur in an emergency situation. The Ministry of Business, Innovation and Employment provides more examples of emergency situations and guidance on emergency procurement in its *Quick Guide to Emergency Procurement*.³

Although an emergency is an unforeseen situation, we understand that emergencies can and do occur. Under the Civil Defence Emergency Management Act 2002, councils are required to plan for future emergency situations and to be able to function to the fullest possible extent during and after an emergency. We expect councils to plan for emergency procurement and to have guidance available for staff. This guidance should include criteria for what constitutes an emergency and procedures that should be followed. Our *Procurement guidance for public entities* includes more information on this.

Procurement capability and capacity

- **Does your council have enough staff capable of leading procurement practice in your council?**
- **Are all relevant staff receiving appropriate procurement training, development, and support?**

Procurement staff are often responsible for advising councils on spending large sums of money and on selecting the best suppliers for critical projects and services. Each staff member involved in a procurement process should have the required skills for the type and level of the procurement concerned.

Some councils told us they bring in specialist procurement capability when required, for example when doing a large, one-off procurement. Dedicated procurement resources within councils are typically small. Sometimes this consists of only one person, or even less than one full-time role. This means that procurement staff can be quite isolated. Councils need to consider ways to help those staff connect with people, including from other councils, to share experience and expertise.

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² Unless there is a good reason not to, for example if the procurement is below the council's threshold for a competitive procurement process.

³ The guide is available at procurement.govt.nz.

In many councils, procurement expertise and procurement activity is dispersed throughout the organisation – even when there is a centralised procurement function. This arrangement, or devolved model, can be appropriate given the size and scale of many councils and the way their operations are organised. However, such devolved models rely on all staff involved in procurement having an appropriate level of skills, knowledge, and competence. These staff also need to be able to understand and interpret policies and procedures so they can apply them effectively.

In devolved models, procurement expertise can sometimes be held by only a few people in an organisation, such as long-serving staff members who have many years' experience in procurement. This depth of experience has benefits and risks. For example, when those staff leave or retire there can be a loss of their accumulated knowledge. Councils can mitigate this risk by, for example, having up-to-date policies and processes for procurement and ensuring that staff comply with them.

There are opportunities for councils to collaborate to reduce costs and improve efficiency, including increasing capability. Many councils already work together in different ways. This can range from developing a shared procurement framework to joint contracts. Collaboration can take place through formal structures such as shared-services companies that are jointly owned by member councils, regional working groups and forums, and less formally on an as-required basis. Procurement staff from several councils also get together to share practices through the Local Government Strategic Procurement Group.

Procurement policies and training

- **Does your council provide training and development so that all staff involved in procurement are kept up to date with procurement policy and processes?**
- **What assurance is there that staff are complying with council procurement policy and processes?**

We expect every council to have their own procurement policy and processes that are tailored to their operating environment. These policies should be regularly reviewed as procurement processes evolve, new priorities emerge, laws and rules change, and market conditions develop. Staff need to be familiar with these policies and processes to ensure that they are consistently applied. Governors need assurance that those policies and processes are being followed.

We found that the councils we visited did have up-to-date procurement policies and processes or were updating them. Training was almost always provided, however this varied in content. Although some councils were satisfied with the training available, others felt there was not much training available beyond procurement basics. It is important that councils provide staff involved in procurement with regular and appropriate training so that they know what is the current best practice and current council policies and processes. Many councils are supporting staff to gain professional procurement qualifications, which can be a suitable option for staff who are procurement specialists.

Councils also need to ensure that there are regular internal audits, or other reviews, of procurement activity. The findings from these reviews should be reported to the governing body either directly or through the audit and risk committee. Regular reviews of procurement practice can also help to identify training needs and other risks.

Contract management

- **Does your council know which suppliers it is contracting with and what its obligations are?**
- **What assurance is there that:**
 - **your council is fulfilling its own contractual obligations; and**
 - **suppliers are meeting contracted performance requirements, and that actions are taken when performance falls below contracted levels?**
- **Does your council monitor contracts throughout their life cycle to ensure that they deliver the intended value for money?**

We expect councils to have ongoing management of the contract and the relationship with the supplier. Councils need to monitor and manage supplier performance to assess whether they are receiving value for money.

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We found that most councils could improve the way they manage contracts. Although councils have systems and processes in place for recording and managing contracts, these are often very basic and not always used consistently. For example, a lack of discipline in entering contracts into the system means that records are incomplete. Several councils told us they could not easily provide a list of all their current contracts.

Council staff believe they have enough day-to-day oversight over large contracts. Council staff also told us that supplier performance is monitored and action is taken when supplier performance falls below the agreed service level. However, some of our other work in this area indicates that this could be done better. For smaller contracts there is often little oversight, and there is a risk that the cumulative effect of many smaller contracts with less oversight can sometimes be greater than a larger contract that receives more oversight and attention.

Councils need to ensure that they are committing enough resources to properly manage the many contracts that they have. Although this might require significant investment for some councils, the benefits, in our view, of having proper systems and processes are worth the investment.

For example, one council had a contract where it shared the risks and rewards with the contractor (also known as a contract with a pain/gain share). The council had entered into this contract without having the systems and resources in place to manage it adequately. Consequently, the council had not monitored the contract or the contractor's performance for several years. This meant that the council was not in a position to enforce the pain/gain provisions in the contract, and might have had an unknown liability to the contractor or, alternatively, been owed money that it had a duty to its ratepayers to collect.

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Achieving broader outcomes through procurement

- **Is your council clear about its role in promoting the social, economic, environmental, and cultural well-being of communities now and in the future?**
- **Does your council understand how procurement can contribute to those outcomes?**
- **How have those outcomes been incorporated into your council's procurement policy and processes?**

Price and value for money will always be important factors in procurement decisions. However, councils must consider other important factors that might be relevant to determining value and, as a result, how value for money is assessed.

Amendments to the Local Government Act 2002 in 2019 have reinstated that:

... the purpose of local government is to promote the social, economic, environmental, and cultural well-being of communities in the present and for the future.

Councils have to determine the outcomes they aim to achieve and consider the four aspects of well-being when making decisions, and plan how their activities will contribute to their desired outcomes for their communities.

The *Government Procurement Rules* also reinforce this message. The rules require agencies to “consider, and incorporate where appropriate, broader outcomes when purchasing goods, services or works”. The rules define broader outcomes “as the secondary benefits that are generated from the procurement activity. They can be environmental, social, economic or cultural benefits”.⁴ Although it is not mandatory for councils to comply with the rules, they are encouraged to do so.

Councils that fail to comply with legislative requirements, or follow best practice, in their procurement practices will be at risk of legal challenge and additional scrutiny and criticism from stakeholders and other third parties.

Councils can mitigate some of this risk by engaging with their elected members about their strategic objectives and how they can align these with their intended procurement outcomes. For example, if elected members want to prioritise using local suppliers, or support suppliers that pay a living wage, councils should be exploring ways to build those objectives into procurement policies and processes.

⁴ Rule 16 of the *Government Procurement Rules*. The rules can be found at procurement.govt.nz.