

7.0 Procurement procedure 2 – Planning and advice

7.1 Overview

Introduction

Procurement procedure 2 – Planning and advice consists of four parts:

- guidelines on understanding the strategic context for the procurement activity
- an outline of the delivery models available for use
- guidelines on the selection of a supplier selection method
- guidelines for contract forms to be used with the procurement procedure.

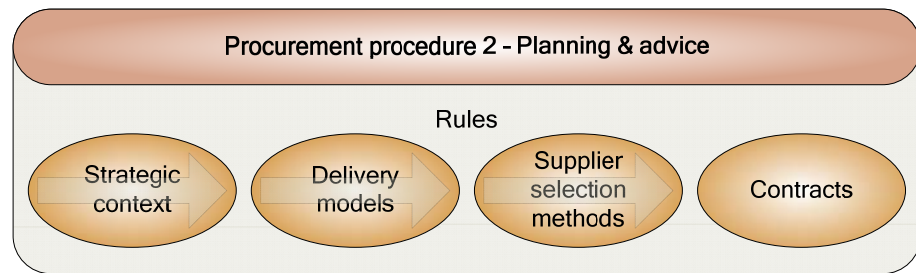
In this chapter

This chapter contains the following sections:

Section	Page
7.1 Overview	7-1
7.2 Definition	7-2
7.3 Strategic context	7-4
7.4 Delivery models	7-7
7.5 Supplier selection methods	7-12
7.6 Contracts	7-14

7.2 Definition

Purpose



The planning and advice procurement procedure covers the selection and engagement of suppliers to carry out professional services that are not directly related to expenditure on physical infrastructure or public transport services. Professional services directly related to these works or services must be purchased using the appropriate procurement procedure. Examples of services covered by this procurement procedure include:

- travel behaviour change studies and strategies
- sea freight studies and strategies
- traffic count surveys
- initial investigations of infrastructure development proposals
- passenger transport studies and strategies.

As noted in procurement procedures 1 and 3, certain planning and advice activities in relation to infrastructure and public transport services can be purchased using this procurement procedure. This allows the purchaser more flexibility and choice to better align the procurement procedure with the activity.

Note that this procurement procedure does not apply to the use of in-house professional services that have the NZTA's prior approval.

Summary of requirements

Approved organisations must follow the requirements below when using this procurement procedure.

Definition

The activity must fit within the definition for planning and advice procurement.

Strategic context

To use this procurement procedure, an approved organisation must understand the procurement activity's strategic context. This will enable the approved organisation to fully specify the outputs that are required and to understand the activity's complexity, scale, timing, innovation potential and risk, and assess the supplier market.

Delivery models

All approved organisations are permitted to use the staged delivery model as outlined in this procurement procedure.

The advanced delivery model (supplier panel) can only be used with the NZTA's prior written approval under s25 of the LTMA.

7.2 Definition continued

Summary of requirements continued

Supplier selection methods

All approved organisations are permitted to use the supplier selection methods referred to in this procurement procedure.

The quality based supplier selection method is an advanced component where the output being purchased is anything other than professional services. As an advanced component, an approved organisation must have the NZTA's prior written approval under s25 of the LTMA for its use.

Rules

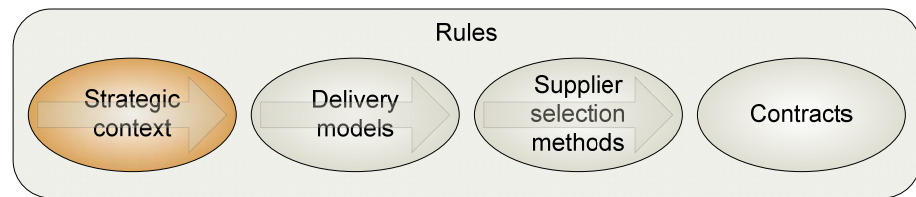
The rules set out in chapter 10 *Rules* must be followed.

Further assistance

Contact the NZTA if you are not sure if the activity conforms to the requirements of the planning and advice procurement procedure, or if you wish to depart from the rules contained here.

7.3 Strategic context

Rule



An approved organisation must, as part of its assessment of the strategic context, assess all proposed procurement activity against the objectives set out in a procurement strategy, which has been endorsed by the NZTA. At a minimum, the assessment must consider whether:

- the proposed procurement activity is consistent with the value for money objectives in the procurement strategy
- the proposed procurement activity is consistent with the policies or constraints, where relevant, in the procurement strategy
- any changes in the procurement environment since the development of the procurement strategy have a material effect on the procurement decisions made.

Where an approved organisation's procurement activities, choices and decisions are inconsistent with its procurement strategy, the approved organisation must document the reasons for its decisions.

See section 10.4 *Procurement strategies* for further details.

Reference procurement strategy

The strategic analysis will typically be undertaken at the commencement of the funding cycle and as part of any regular refresh of a procurement strategy. Circumstances can change, and therefore changes to the original specification or approach to the procurement activity could deliver better value for money.

At the commencement of each procurement activity, it is important to reflect on the specific strategic context in which the procurement is to be undertaken and ensure that the specific value for money objectives for that procurement activity can still be obtained. This assessment will involve looking at the assumptions documented in the procurement strategy and testing them against the current environment to check if they remain valid.

It is important to emphasise that, at this point, the approved organisation's strategic approach to procurement will already have had a significant influence on specifying the nature of the outputs to be purchased and their scale and complexity. The approved organisation will have considered:

- what is being purchased and why, and the timing
- the capacity, capability and competitiveness of the market to deliver the outputs
- the procurement capability of the approved organisation to manage the procurement activity
- the broad procurement options, including procurement procedures to be used and the delivery model.

7.3 Strategic context continued

Reference procurement strategy continued

The analysis and conclusions on the above factors will have enabled the approved organisation to specify the required outputs during activity formulation and the development of a procurement strategy. To ensure that the specified outputs and the proposed approach to the procurement activity will obtain best value for money, the proposed approach must now be assessed to ensure consistency against the original objectives in light of the current situation.

The following checklist provides guidance on the matters that should be considered when undertaking this assessment. This process will ensure a full understanding of the strategic context for the particular procurement activity.

Strategic consideration	Questions for approved organisations
1. Is there a clear statement of the outputs to be purchased?	<ul style="list-style-type: none"> Have all elements of the output been clearly specified? Do you have a good understanding of the expected price that you will have to pay for the outputs?
2. Is there clear alignment to the objectives as stated in the procurement strategy?	<ul style="list-style-type: none"> Does your approach to this procurement activity still align with your strategic priorities? Is your proposed approach to aggregation and bundling (where relevant) consistent with your procurement strategy? Is there any reason why this procurement activity should no longer proceed? Are the identified economic, environmental and social considerations still relevant?
3. Is there appropriate procurement capability to undertake the activity?	<ul style="list-style-type: none"> Do you have the capability to undertake the procurement activity? If not, where are the gaps and how is the required capability to be resourced? Do you have the necessary resources to deliver and monitor the contract? Are the risks associated with the procurement activity understood and quantified? Who is best placed to manage this risk?
4. What is the status of the supplier market?	<ul style="list-style-type: none"> Have there been any significant and relevant changes to the supplier market (ie number of suppliers, competitiveness of the market) that will affect your intended approach to the procurement activity? Are any other approved organisations purchasing similar goods and services? Is the proposed timing of your procurement activity able to be accommodated by the supplier market?
5. What are the risks and opportunities?	<ul style="list-style-type: none"> Are the identified risks and opportunities still relevant?

At the end of this step, the approved organisation will determine if the original assumptions as documented in the procurement strategy, as they relate to this procurement activity, still hold true.

If circumstances have changed and better value for money can now be obtained by an alternative approach, consider what can be done differently while acknowledging that the options at this stage are limited.

7.3 Strategic context continued

Confirm strategic context

Where the particular circumstances in which the activity is to be undertaken have changed since the procurement strategy was prepared and there is potential to enhance value for money through an alternative approach to the procurement activity, an approved organisation should take this into account. For example, there may now be opportunities to:

- collaborate with other approved organisations on the procurement activity
- aggregate or bundle a number of procurement activities into one larger procurement activity in order to obtain a pricing advantage through scale
- take advantage of innovation
- change the timing for the procurement activity.

In the event that an alternative approach is chosen as the most effective way to obtain better value for money, the purchaser should adopt this approach and fully specify the procurement activity in light of this changed assessment.

Document outputs

Having confirmed the strategic context of the specific procurement activity, the purchaser must document the link between the procurement strategy and the activity.

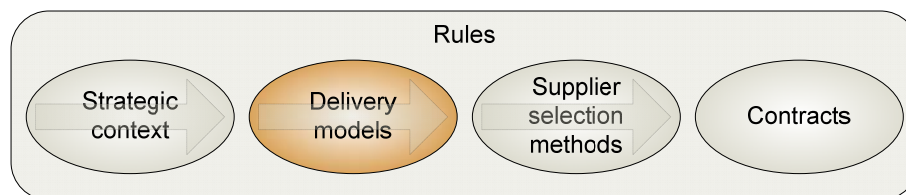
At the end of the strategic context assessment, the approved organisation will have fully specified and documented the outputs to be purchased. The approved organisation will clearly understand the factors associated with the delivery of the activity that need to be addressed during the procurement phase. This understanding is critical, as it provides the information required to determine which delivery model and supplier selection method are likely to produce the best value for money outcomes.

Where there are any changes in approach from what is specified in the procurement strategy, it is especially important to document the reasons for an alternative approach. If this requires the procurement strategy to be varied, the NZTA's endorsement of this variation should be sought at this stage.

The documentation process is likely to be an ongoing process as various decision points are reached. The approved organisation must meet the requirements set out in section 10.6 *Documentation and publication requirements*, including recording all decisions in relation to the selection of a delivery model and a supplier selection method.

7.4 Delivery models

Rule



All approved organisations are permitted to use the staged delivery model as outlined in this procurement procedure.

The advanced delivery model (supplier panel) can only be used where an approved organisation has the NZTA's prior written approval under s25 of the LTMA.

Introduction

The delivery models available for use with this procurement procedure are:

- staged
- supplier panel (advanced).

Each delivery model has distinct characteristics that suit particular procurement events. In general, the main factors influencing which delivery model should be applied are determined through reference to:

- the approved organisation's procurement strategy
- the defining characteristics of the procurement activity.

The defining characteristics of a procurement activity are its complexity, scale, timing, innovation potential, risk and supplier market.

Selecting a delivery model

The purchaser must consider the following factors (where relevant) when selecting a delivery model for a specific procurement activity:

- complexity and uncertainty
- scale
- timing and urgency
- innovation potential
- risk management
- supplier market.

Selecting a delivery model for a planning and advice procurement activity involves analysing the conditions that surround the procurement event that were identified in the strategic context analysis and specified in the activity description. All considerations must be documented as part of the reporting requirements attached to this procedure.

The capability and capacity of the purchaser play an important role in determining which delivery models can be used. If, after assessment, the delivery model selected proves to be outside the purchaser's capability and capacity, an alternative delivery model should be selected. The purchaser should consider investing in the development of capability and capacity where no reasonable alternative exists. For further guidelines, refer to appendix B *Criteria for selecting a delivery model*.

7.4 Delivery models continued

Selecting a delivery model continued

The following table provides examples of when to consider each delivery model that best fits a planning and advice activity. It describes the circumstances under which it is advisable to use each of the models.

Delivery model	Consider when ...	May not be suitable for ...
Staged	<ul style="list-style-type: none"> The programme consists of a modest number of individual activities. There may be benefit (because of complexity, scale, risk, etc) in seeking proposals from a wide group of suppliers. 	<ul style="list-style-type: none"> A succession of similar or related activities.
Supplier panel (advanced)	<ul style="list-style-type: none"> A succession of similar or related activities are included in the programme and supplier consistency would be valued There is value in establishing a longer term relationship with suppliers. The volume of work may be too large for one supplier to undertake. Specialist skills or equipment are required. There are a number of suppliers who can provide the required outputs. There is an advantage in having a choice of suppliers to select from at reasonably short notice. 	<ul style="list-style-type: none"> A modest sized programme of individual activities. Situations where there is benefit (because of complexity, scale, risk, etc) in seeking proposals from a wide group of suppliers.

Staged delivery model

Under staged delivery, an activity is delivered through one or more separate contracts between the purchaser and supplier(s). These may include separate engagement of suppliers for functions that require different skills.

Price determination

The contract price may be a lump sum or taken from a schedule of prices where a robust price estimate for a stage, based on the known scope of work, is available at the time the supplier is engaged.

The scope of work required to complete specific stages is often not well defined at the beginning of those stages. In this case, a contract based on a lump sum or a schedule of prices will not be conducive to obtaining the best value for money. It would be better to select the supplier using the quality based supplier selection method and then negotiate the price or base it on a cost reimbursement model.

7.4 Delivery models continued

Staged delivery model continued

Relationship management

Under a staged model, the roles for all parties are typically well defined and it is possible to clearly specify the outputs with respect to scope, and technical and service details. The outputs are often well understood through past experience. Where the outputs are well defined, the purchaser can maintain more control over delivery and is more able to control scope. The purchaser is more likely to receive appropriate proposals aligned with initial cost estimates. Risk is largely managed by the purchaser.

Advantages

- Transaction costs for both supplier(s) and purchaser are confined to each individual engagement (there are no panel establishment costs).
- Competitiveness can be encouraged by allowing all willing and able suppliers to compete for contracts.
- Any willing supplier can submit a proposal.

Disadvantages

- Significant transaction costs are incurred for every engagement.
- Competition occurs at supplier selection only.

Supplier panel delivery model (advanced)

The supplier panel delivery model establishes a relationship with a group of suppliers that will be used to deliver a bundle of outputs for a group of activities. This does not imply an exclusive arrangement between the purchaser and the panel. Occasionally, the purchaser may engage suppliers that are not panel members to deliver similar outputs using a staged delivery model.

The supplier panel model enables the purchaser to appoint a range of suppliers that, as a panel, offer the best combination of skills and experience required to deliver the outputs.

This model uses a two-stage process. In the first stage, suppliers are appointed to the panel. In the second stage, tasks are allocated to panel members. Tasks may be allocated to a preferred panel member by direct appointment or through a competitive process involving two or more panel members.

Price determination

As noted above, the supplier panel delivery model uses a two-stage process.

Stage 1

In the first stage, suppliers are selected and appointed to the panel. Open competition is to be used to select suppliers.

When the suppliers are appointed to the panel, only the broad scope of the work to be undertaken is defined. The price of what will be supplied cannot be settled at the time of engagement. The purchaser and supplier(s) will agree at the time of engagement on a mechanism that will determine the price for the work that a supplier will be asked to deliver.

The contract between the purchaser and the suppliers on the supplier panel is usually referred to as a 'framework' contract.

7.4 Delivery models continued

Supplier panel delivery model (advanced) continued

Stage 2

In the second stage, work is allocated to panel members. This may or may not involve a competition between suppliers on the panel to win the right to deliver a particular part of the work. The allocation of work can be determined in a variety of ways. The following examples are typical means of allocating work:

- a non-competitive basis (eg obtaining a quote from any one panel member)
- a competitive basis (eg obtaining quotes from several panel members)
- an equal division of work basis
- a rotational basis
- a geographic basis
- a preferred supplier basis (eg some suppliers may be preferred for particular activities, or one supplier is given the opportunity to undertake the work, with other suppliers approached if necessary).

The precise mechanism for allocating work to the members of a supplier panel is a strategic consideration.

Approved organisations wishing to use a supplier panel will need to set out their expected means of allocating work when seeking approval from the NZTA to use this advanced model.

The mechanism for allocating work must be agreed in the framework contract by all parties to the contract.

Relationship management

The supplier panel model provides for the establishment of collaborative relationships between the purchaser and the suppliers. It should also encourage panel members to have a high level of awareness of the purchaser's requirements.

Performance can be incentivised by making the allocation of tasks to panel members dependent on the quality of their performance on earlier panel tasks.

The flexibility of this model allows for risk to be managed in ways that best match specific tasks.

Advantages

- There is flexibility to move resources to urgent tasks and to fast-track activities as required.
- The skills and experience of more than one panel member can be used for the delivery of a specific task.
- The costs involved in supplier selection and engagement for a programme of many small and similar activities are reduced.
- Purchaser knowledge of supplier capability increases over time because of the ongoing relationship.
- Supplier knowledge of purchaser requirements increases over time because of the ongoing relationship.
- Competitive tension between suppliers is maintained over the contract duration.
- The purchaser can choose from a range of suppliers that, as a panel, offer the best combination of skills and experience required to deliver the outputs.
- Where more than one panel member has similar skills or experience, the risk of shortages is reduced.

7.4 Delivery models continued

Supplier panel delivery model (advanced) continued

Disadvantages

- The additional costs to both the purchaser and the suppliers of establishing the panel may outweigh any benefits.
- The opportunities for new suppliers to enter the market are reduced as long as the panel remains in place.
- The number of suppliers who can submit a proposal is limited to panel members.

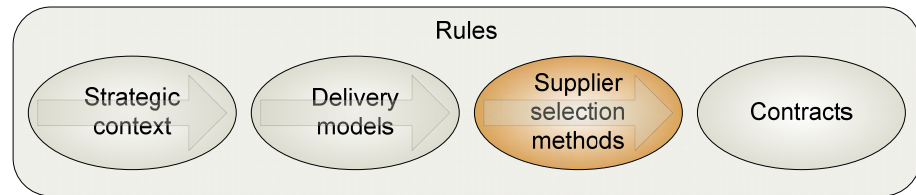
Supplier panel vs prequalification

Supplier panels are sometimes confused with prequalification systems. The table below sets out their important features.

Supplier panel	Prequalification
Staged process for appointment.	Staged process for appointment.
Advanced delivery model.	Stage in a supplier selection process.
A purchaser may have more than one supplier panel.	A purchaser may have more than one prequalification register.
Established once with a finite number of suppliers determined by the purchaser.	Any number of suppliers can apply to be on a prequalification register.
The supplier for a particular piece of work is determined by a process set out in the framework contract. This may or may not involve competition among panel members.	The supplier for a particular piece of work is determined by a competition among all prequalified suppliers.
Panel members enter into a contract with the purchaser for a particular project or for a term.	Prequalification registers are usually for particular types of work and are not confined by project or term. There is no contract between the purchaser and the prequalified suppliers.
Supplier panels, once formed, are not normally re-opened for new suppliers to join. Where this is permitted, it would need to be clearly set out in the framework contract.	Prequalification registers are updated or opened to new suppliers on a regular basis.

7.5 Supplier selection methods

Rule



All approved organisations are permitted to use the supplier selection methods referred to in this procurement procedure.

The quality based supplier selection method is an advanced component where the output being purchased is anything other than professional services. As an advanced component, an approved organisation must have the NZTA's prior written approval under s25 of the LTMA for its use.

Introduction

This section details the process for selecting the most suitable supplier selection method to use in combination with the chosen delivery model.

The following tables show the supplier selection methods that provide a good fit with the delivery models specified for this procurement procedure.

See chapter 5 *Supplier selection process* for detailed guidelines on the application of the supplier selection methods listed here. See appendix D *Procurement procedure decision trees* for a graphic which links strategic context, delivery models and supplier selection methods.

Staged delivery model

Note: Under staged delivery, an activity is delivered through one or more separate contracts. Different supplier selection methods may therefore be required for different contracts when using this model.

The following table sets out guidelines on selecting a supplier selection method.

Supplier type	Supplier selection method and rationale
Selecting the supplier(s)	<p>Direct appointment</p> <p>Direct appointment must only be used in the circumstances described in appendix C <i>Supplier selection methods</i> and where it will deliver best value for money.</p> <p>Lowest price conforming</p> <p>Lowest price conforming should be used where the purchaser determines that best value for money can be obtained by selecting the supplier(s) that offer the lowest price and meet the requirements as set out in the RFP. This method should only be used where the output required is very well specified.</p> <p>Appendix C <i>Supplier selection methods</i> contains further details.</p>

7.5 Supplier selection methods continued

Staged delivery model continued

Supplier type	Supplier selection method and rationale
Selecting the supplier(s) continued	<p>Purchaser nominated price</p> <p>Purchaser nominated price should be used where the purchaser has predetermined the price that it is prepared to pay for the desired outputs. Best value for money is obtained by selecting the supplier(s) that provide the best proposal for the price as set out in the RFP.</p> <p>This method is typically used for such activities as strategy studies, feasibility studies, transportation studies and investigations.</p> <p>Appendix C <i>Supplier selection methods</i> contains further details.</p> <p>Price quality</p> <p>Price quality should be used where the specified outputs can be priced by the supplier and where the purchaser determines that best value for money will be obtained by selecting the supplier that offers the best combination of price and quality requirements as set out in the RFP.</p> <p>Appendix C <i>Supplier selection methods</i> contains further details.</p> <p>Quality based</p> <p>Quality based should be used where the purchaser determines that best value for money can be obtained by selecting the best quality supplier(s) and then negotiating the price with that supplier(s).</p> <p>Appendix C <i>Supplier selection methods</i> contains further details.</p>

Supplier panel delivery model (advanced)

The selection of the supplier panel should be undertaken as a staged process, with stage 1 focused on the appointment of suppliers to the panel and stage 2 allocating work to panel members.

Stage 1: Appointing suppliers to the panel

Panels can be appointed through the price quality or quality based methods.

For the price quality supplier selection method, a proxy schedule is commonly used to determine price.

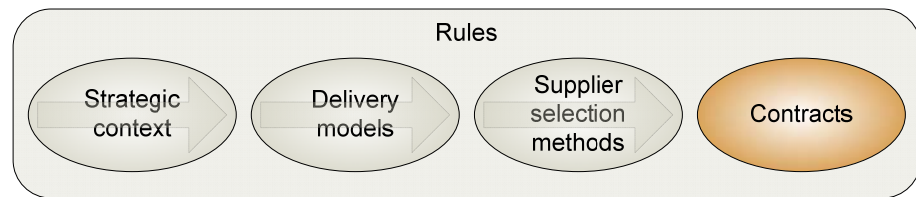
Note: The quality based supplier selection method is an advanced component when used for anything other than professional services.

Stage 2: Allocating work to panel members

This stage involves selecting a member of the supplier panel to carry out a particular activity. The specific process for allocating work will be part of the detail that requires approval by the NZTA for use by the purchaser.

7.6 Contracts

Introduction



Once a preferred supplier is selected, an approved organisation will enter into a contract with that supplier. The contract establishes the form of the relationship between the parties and stipulates the terms and conditions for the purchase of the outputs.

Scope of contracts

The scope of contracts will vary according to the outputs to be purchased. Planning and advice contracts should cover:

- description of the outputs being purchased
- term of contract
- price and review mechanisms (where applicable)
- standard terms and conditions (eg limitation of liability and insurance)
- health and safety requirements
- variations and time extensions
- disputes resolution
- contract default conditions and termination processes
- other issues that may be specific to the individual procurement.

In some situations, the full specification of the outputs may not be possible due to the scope and complexity of the activity. Activities that are well defined can be more fully specified in the contract than activities that are more broadly defined at the outset and then become better defined as the activity is undertaken. It may sometimes be difficult to specify every potential contingency that could arise during the contract period.

Form of contract

Contract form is individual to a particular activity. The decision on contract form rests with the approved organisation. However, approved organisations are encouraged to use standard form contracts, wherever possible. The efficiencies from using a standard form contract are easily lost when an individual purchaser chooses to modify the standard form.

A number of standard form contracts can be used. Factors that will assist an approved organisation to choose a standard form contract include:

- type and number of supplier(s)
- form of relationship
- type and volume of output(s)
- scale and complexity
- risk management strategy and incentives.

7.6 Contracts continued

Form of contracts continued

Standard form contracts used in New Zealand include:

- Conditions of Contract for Consultancy Services (2005) – (CCCS). This standard form is widely used for engineering consultancy services. It was developed jointly by the Auckland Regional Contracts Group (ARCG) and the Association of Consulting Engineers New Zealand Inc (ACENZ). Published by ACENZ (www.acenz.org.nz).
- NEC3. This international standard form includes a suite of standard contracts covering both construction and professional services. The NEC3 contracts are designed to support a more collaborative approach to procurement than is the case with more traditional standard forms. Published in the UK by NEC (www.neccontract.com).

This manual contains no specific guidance on the contract form to be adopted under this procurement procedure. Approved organisations can adopt the form of contract that best suits their requirements.

Purchasers must advise potential suppliers of the proposed contract terms and conditions, including the proposed form of contract. See section 10.12 *RFP contents and conformity*.

Changes to contracts

This manual sets out guidelines for how contracts may be changed after they have been let. The rules for planning and advice contracts are:

- section 10.11 *Direct appointment where competition reduces value for money* (requires, in some circumstances, the approved organisation to make public significant increases in the outputs to be delivered under a contract)
- section 10.21 *Maximum term of a term service contract for infrastructure or planning and advice* (restricts changes to the term of a term service contract).

This manual contains no other restrictions on changes that can be made to planning and advice contracts.

Approved organisations should note that there are no restrictions on the type of changes typically referred to as variations to the contract works (or services) within the scope of the contract. Neither are there restrictions on making changes to the contract terms to improve value for money (eg by adding an incentive mechanism).

Changes to scope of outputs

Approved organisations should be cautious when making significant additions to the originally agreed scope of outputs. The options available to deliver the additional outputs need to be considered to ensure that best value for money is obtained. For example, if an RFP is issued for a route study and, after receiving several proposals, the purchaser lets a contract for that study, best value for money may not be served by changing the contract output scope to two or three similar studies. Modest additions to output scope may represent good value for money but this becomes less likely as the scope change becomes larger.

Significant changes to the originally agreed scope of outputs are covered by the rule in section 10.11 *Direct appointment where competition reduces value for money*. This rule does not prevent an approved organisation from adding scope to an existing contract. However, if the additional output was not foreseeable when the contract was let, it requires the approved organisation to undertake a value for money assessment of the options and to publish the contract change.

7.6 Contracts continued

Changes to scope of outputs continued

This does not relate to the situation where a change to the scope of the works (or services) is needed to simply deliver the originally agreed scope of outputs; approved organisations are not required to publish such a contract change. For example, where a civil engineering construction project encounters unforeseen foundation conditions the purchaser will typically work with the supplier in accordance with the contract who will deliver the added scope of work.

Approved organisations should ensure that the required output is correctly described in the RFP. If the scope of the output could be added to, then the RFP should say so and the conditions should be described. Additional output can be added to a contract while continuing to deliver value for money but the procurement process needs to be well managed. For example, value for money could be obtained by letting a contract for a feasibility (investigation) phase of a project on condition that, if certain performance criteria are met, the purchaser will negotiate a price for delivery of the design phase.

Approved organisations should bear in mind that best value for money will be obtained if suppliers can see that these matters are managed reasonably, fairly, transparently and consistently.

Contract price adjustment for cost fluctuation

With best practice risk management, risks that cannot be managed by suppliers, such as inflation, should not be passed to suppliers. An approved organisation that does not apply cost fluctuation adjustment to its contracts (and passes cost fluctuation risk on to the supplier) may pay more as a result.

The NZTA publishes cost fluctuation indices for a number of output types and provides guidelines for how those indices are to be used. Allowing for cost fluctuation in contracts using these cost adjustment indices is the most practical way to manage inflation risk long-term and help approved organisations obtain value for money.

The *Cost indices for infrastructure tool* describes how the NZTA calculates indices and how approved organisations should use them.

The NZTA does not require approved organisations to make provision in contracts for contract price adjustment for cost fluctuation, other than for public transport services contracts (see section 10.27 *Contract price adjustment for input price variation public transport services*).

Note that the NZTA limits funding assistance for contract price adjustment for cost fluctuation to the amount calculated using the appropriate NZTA index.