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Introduction

When faced with the need to find a supplier to deliver a particular output, considering the following points should help [Procurement manual](#) users to reach a decision that obtains best value for money and is consistent with the Waka Kotahi NZ Transport Agency procurement policies as expressed through the Procurement manual.

- Value for money is the single objective of procurement
- Open competition is the Procurement manual default position
- Direct appointment is permitted in some situations
- The Procurement manual places few restrictions on changes to a contract after it has been let
- The Procurement manual demands transparency

Attachment 1 – *Options for finding a supplier* lists some of the ways to find a supplier / to source works, goods or services. It discusses limitations on the use of each option and its suitability to particular situations.

Exemptions from procurement procedure requirements

This practice note assumes that the procurement being considered is subject to Land Transport Management Act (LTMA) procurement procedure requirements and therefore subject to the Waka Kotahi Procurement manual. All activity that is funded in whole or in part from the national land transport fund (NLTF) is subject to procurement procedure requirements unless the expenditure is specifically exempt by LTMA s26. These exemptions include emergency works, immediate response and administration.

Consistency with an approved procurement procedure and with **the purchaser's** Waka Kotahi endorsed procurement strategy

This practice note focusses on the supplier selection process alone. It assumes that supplier selection will be conducted in a way that is consistent with a Waka Kotahi approved procurement procedure, including meeting the Procurement manual strategic context requirements.

Value for money is the single objective of procurement

Land Transport Management Act (LTMA) section 25 establishes that procurement procedures must be **'designed to obtain the best value for money'** and that competition is *desirable* because it drives value for money in the long term as well as in the short term. This is reflected in the Procurement manual.

Note that the legislative desire for healthy competition does not always mean competition on price at the tender box. Competition on price, whenever that is practicable, is desirable but competition around the qualities (attributes) of suppliers, including experience, reputation, ability to innovate, etc is similarly important as is competition around the qualities of the product being offered.

In the Procurement manual the role of competition is discussed. For example, in Chapter 3.0 *Value for money*, section 3.4 *The process for maintaining or enhancing value for money through procurement* under the heading *Using an approved procurement procedure*, the role of competition in the supplier selection process is discussed.

Open competition is the Procurement manual default position

Section 10.8 *Competition for supply (the rule) begins as follows* ‘Every supplier selection process must commence as an open competitive process in which all suppliers are invited to engage’. However, the options available, the alternatives to open competition, should always be considered. Section 10.8 goes on to say that section 10.9 *Direct appointment and closed contest*, allows an exception to this rule. There are other exceptions, and Attachment 1 lists options, some of which include approaches that do not commence as an open competitive process.

Note that a prequalification system satisfies the requirement to begin with an open competition – as does the use of shortlisting. Refer section 5.2 *Approach to supplier selection* and 5.3 *Staged supplier selection processes*.

Direct appointment is permitted in some situations

Section 5.2 *Approach to supplier selection* discusses the open, closed and direct appointment approaches to supplier selection and lists the circumstances in which direct appointment may be justified including those covered by:

- Section 10.9 *Direct appointment and closed contest (low dollar value contracts)*
- Section 10.10 *Direct appointment of a monopoly supplier*
- Section 10.11 *Direct appointment where competition will not help obtain best value for money*
- Section 10.27 *Direct appointment of a supplier for a public transport unit*

Section 10.11 *Direct appointment where competition will not help obtain best value for money* will be used on occasions to engage a supplier for a large value contract. However, the rules in section 10.11 demand documentation of the strategic value for money rationale for the decision, and transparency, including reporting the fact that a supplier has been engaged. It is vital, when considering a direct appointment in terms of section 10.11, to also consider Government Rules of Sourcing [Rule 14 Exemption from open advertising](#).

The Procurement manual places few restrictions on changes to a contract after it has been let

Changes to contracts are discussed in Procurement manual section 6.6 *Contracts* – refer the discussion under the headings *Changes to contracts* and *Changes to scope of outputs*. The same issues are also dealt with in section 7.6 and section 8.6 as they relate to the procurement procedures for *Planning and advice* and *Public transport services*.

Purchasers can add scope to a contract, however, if the added scope could not have been envisaged when the contract was let the purchaser must be able to rationalise that decision on best value for money grounds. Such an unanticipated contract change **will usually be able to be described as a ‘product scope’ change**. The rules in section 10.11 *Direct appointment where competition will not help obtain best value for money* will probably apply.

The above restrictions do not **apply to normal ‘contract variations’, including variations to the scope of works or services required to complete the project for which the contract was let**. Such variations usually can be

described as changing the ‘project scope’ but not the ‘product’ that the contract was originally established to deliver.

The Procurement manual demands transparency

Section 10.6 *Documentation and publication requirements*, and section 10.6A *Supplier selection process requirements*, demand documentation and publication of contracts let, including contracts let by direct appointment. On occasions this will extend to publication of a change to a contract where the circumstances are covered by the rules in section 10.11 *Direct appointment where competition will not help obtain best value for money*.

Attachment 1 - Options for finding a supplier

Option	Option description	Limitations	Comment
1	Open competition	Open competition will almost always be an option – refer <i>Open competition is the Procurement manual default position.</i> An open competition will be advertised on GETS.	This ‘default position’ of an open competition is referred to in rule 1 in Procurement manual section 10.8 <i>Competition for supply.</i> Situations where an option other than open competition will deliver better value for money occur frequently – but the decision not to use an open competition must be defensible in best value for money terms, having regard to competition considerations.
2	Closed contest	Refer 10.9 <i>Direct appointment and closed contest for low dollar value contracts.</i> In terms of this section it is permissible to run a competition amongst a minimum of three selected suppliers, if the contract dollar value is less than the limit allowed by section 10.9.	The guidelines to section 10.9 encourage the use of registers as a tool to identify potential suppliers. In section 5.2 <i>Approach to supplier selection</i> the use of registered is further discussed. On occasions the use of a closed contest for a contract with a dollar value greater than the limit given in section 10.9 may be justified, but specific approval to vary the rule in section 10.9 would be required from Waka Kotahi.
3	Direct appointment – low dollar value contracts	Refer section 10.9 <i>Direct appointment and closed contest for low dollar value contracts</i> – the contract dollar value must be less than the allowed limit.	This is the first of a number of Procurement manual rules which allow direct appointment of a supplier. The guidelines to section 10.9 encourage the use of registers as a tool to identify potential suppliers.
4	Direct appointment – monopoly supplier	Refer section 10.10 <i>Direct appointment of a monopoly supplier.</i>	The term ‘monopoly supplier’ is defined in the guidelines to section 10.10.

Option	Option description	Limitations	Comment
5	Direct appointment – where competition will not help obtain best value for money	Refer section 10.11 <i>Direct appointment where competition will not help obtain best value for money.</i>	There will be circumstances, other than those described above, where a direct appointment will be the preferred option from a best value for money standpoint. Section 10.11 gives approved organisations the freedom to make a decision to direct appoint on best value for money grounds, but demands transparency, just as it demands transparency around any significant supplier engagement. Section 10.11 makes specific reference to Government Rules of Sourcing Rule 14 Exemption from open advertising.
6	Direct appointment – public transport units	Refer section 10.27 <i>Direct appointment of a supplier for a public transport unit.</i>	The policy framework governing the engagement of suppliers of public transport services allows for direct appointment of a supplier for a ‘unit’ under circumstances described in the Procurement manual.
7	Purchasing through an existing contract	There are few Procurement manual restrictions on purchasing through an already established contract with a suitable supplier. The established contract may be with another purchaser.	This situation is discussed above under the heading The Procurement manual places few restrictions on changes to a contract after it has been let . As with all procurement decisions, Waka Kotahi expects that the decision will be made on the basis of best value for money. Best value for money needs to be judged in strategic terms, and when adding work to another contract the impact on the competitive market is one of the more important strategic considerations.

Option	Option description	Limitations	Comment
8	Purchasing through an existing supplier panel	Supplier panels are set up by a purchaser, or group of purchasers, to deliver a defined range of works or services. They must be approved by Waka Kotahi – refer section 10.5 <i>Procurement procedure advanced components</i> .	Sometimes using a panel to supply works or services, that do not fit the approved panel scope exactly, will nevertheless be the best value for money way to obtain them. Sometimes an approved organisation that was not envisaged as using the panel will have a sound value for money reason to later do so. Given that the establishment of the panel was specifically approved by Waka Kotahi then such departures from the panel's agreed range of panel activity will typically need Waka Kotahi approval, but if it can be shown to be the best value for money approach then that approval should be forthcoming.
9	Purchasing using a prequalification register	A prequalification system satisfies the requirement to begin with an open competition – refer section 5.2 <i>Approach to supplier selection</i> . No Waka Kotahi approval is needed to establish or use a prequalification system but the approved organisation's proposal to use such a system will usually need to be described in their Waka Kotahi endorsed long term programme wide procurement strategy. The system and its use will also need to meet the requirements set out in section 5.2.	Approved organisations are encouraged to consider using a prequalification system and should look to using an existing system rather than create one of their own. For transport related physical works contracts the Waka Kotahi state highways physical works prequalification system can be used by any road controlling authority. A prequalification system, when widely used and used in a 'standard' way, without loading those submitting proposals with additional unnecessary requirements, can be a very efficient way to select a supplier.
10	Joint purchasing with another approved organisation	Consideration of joint purchasing is encouraged by Waka Kotahi as just one of the ways in which purchasers can collaborate to obtain better value for money.	Any significant joint purchasing arrangement will usually need to be described in the Waka Kotahi endorsed long term programme wide procurement strategies of the approved organisations involved. Procurement manual section 1.7 <i>Procurement procedures</i> , under the heading <i>Managing payments when collaborating with other purchasers</i> , gives specific guidance on how to manage payments when collaborating so as to meet LTMA requirements.

Option	Option description	Limitations	Comment
11	Obtaining professional services by utilising another approved organisation's in-house professional services resources	Shared services arrangements, including those through which the in-house professional services resources of approved organisations are shared, are encouraged by Waka Kotahi. This is another example of approved organisation collaboration.	Any significant and ongoing in-house professional services resource sharing will usually need to be described in the Waka Kotahi endorsed long term programme wide procurement strategies of the approved organisations involved.