
CONTRACT PROCEDURES MANUAL (SM021)

Procurement Strategy and Methods

THIRD EDITION, AMENDMENT 2, EFFECTIVE FROM 21 SEPTEMBER
2020

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If you have further queries, call our contact centre on 0800 699 000 or write to us:

NZ Transport Agency
Private Bag 6995
Wellington 6141

This document is available on the NZ Transport Agency's website at www.nzta.govt.nz.

DOCUMENT MANAGEMENT PLAN

Purpose

This document details updates, amendments and contact points for the *Contract procedures manual* (SM021).

Document information

This document has the status of a standard as defined in Waka Kotahi NZ Transport Agency's (Waka Kotahi) *Register of network standards and guidelines manual*.

The content is based on the Waka Kotahi current best business practices and those developed in the past from managing professional services and physical works contracts.

While all care has been taken in compiling this document, the Board accepts no responsibility for failure in any way related to the application of this standard or any reference noted in it.

Document name	Contract procedures manual
Manual number	SM021
Manual owner	Procurement Strategy and Methods
Manual sponsor	Senior Manager Procurement
Review team members (Part A)	Colin Mackay, Paul Teeuwen, Delphine Haas, Jaco De Vries, Malcolm Pautz
Review team members (Part B)	Brett Rigden, Victoria James, Michelle Ferguson, Miriama Leota

Amendment and review strategy

This document is subject to review and amendment from time-to-time. Users can elect to receive notifications of updates to SM021 via the following channels:

- [Technical advice notice](#) and/or
- [Email updates](#)

Notification via each channel may not occur simultaneously and information included in each channel may vary. However, the key information provided in the updates will be consistent across both channels.

Feedback

If you have any feedback or questions about this manual, please email procurement@nzta.govt.nz with the subject line "**Feedback for SM021**". Your request will be forwarded for review.

Distribution

The document management plan is included in the manual and sent to Information Management.

RECORD OF AMENDMENT

Amendments to this document are recorded on the Amendment control sheet below. A summary of amendments to this document can be found on [the Waka Kotahi website](#) and users can elect to receive notifications of amendments via the options [above](#).

All individuals seeking to rely on, or implement, this document have a duty to ensure that they are familiar with the most recent amendments.

Amendment control sheet

Note: minor amendments are not always identified below.

Amendment number	Description of change	Effective date	Updated by
1	Manual revised to Second Addition Amendment 1. Updates to part A and B. Full details of amendments are provided on the Waka Kotahi website, Contract procedures manual.	July 2013	Richard Crawforth (Part A) / Katherine Scapolo (Part B)
2	Manual revised to Second Addition Amendment 2. Updates to part A and B. Full details of amendments are provided on the Waka Kotahi website, Contract procedures manual.	March 2015	Paula Alkema (Part A) / Ruia Harris (Part B)
3	Manual revised to Second Addition Amendment 3. Updates to part A and B. Full details of amendments are provided on the Waka Kotahi website, Contract procedures manual.	March 2016	Paula Alkema (Part A) / Ruia Harris (Part B)
4	Manual revised to Second Addition Amendment 4. Updates to Part A. Full details of amendments are provided on the Waka Kotahi website, Contract procedures manual.	March 2017	Paula Alkema (Part A)
5	Interim update to reflect the Waka Kotahi transformation. Updates to Part A and B and delegations schedule.	October 2017	Paula Alkema
6	Manual revised to Third edition. Updates to Part A. Placeholder included for Part B. Full details of amendments are provided on the Waka Kotahi website .	March 2020	Tania Cleary, Laura Macready
7	Manual revised to Third edition, Amendment 1. Updates to Part B. Minor updates to Part A. Full details of amendments are provided on the Waka Kotahi website .	June 2020	Tania Cleary, Laura Macready
8	Manual revised to Third edition, Amendment 2. Minor updates to Part A and Part B. Full	September 2020	Tania Cleary, Laura Macready

details of amendments are provided on [the Waka Kotahi website](#).



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About This Manual

Selecting Part A or Part B

Status of this manual

This manual details the Waka Kotahi procedures for procuring. The manual is split into two parts:

- Part A contains procedures relating to the contracting of professional services and physical works and will generally be used for works that are included in the National Land Transport Programme (NLTP) (infrastructure).
- Part B contains procedures for the procurement of goods, services and/or works related to internal operations, and for expenditure from administration budgets (non-NLTP) (corporate).

Overview – Part A

Part A details procedures for implementing the requirements of the Waka Kotahi [Procurement manual](#). It also covers the administrative requirements for contracts involving payments for professional services (PS) and physical works (PW).

The purpose of Part A is to ensure compliance with the Waka Kotahi [Procurement manual](#), the [Government Procurement Rules](#), the [Government Roading Powers Act 1989](#), the [Land Transport Management Act 2003](#) and other Waka Kotahi manuals, policies and procedures that may be issued from time to time in relation to procurement. It also covers the administrative requirements for contracts involving payments for professional services and physical works.

Procedures relating to PS or PW only:

- PS: This manual distinguishes procedures and requirements for PS only by referencing the paragraphs/sections with PS as has been done for this sentence.
- PW: This manual distinguishes procedures and requirements for PW only by referencing the paragraphs/sections with a PW as has been done for this sentence.

The provisions of Part A of this manual are mandatory for all contracts funded in full or in part by the National Land Transport Programme (NLTP). Where questions or matters as to its application arise, the guidance of the [Procurement Services team](#) should be sought.

Wherever a financial limit is indicated in this manual it shall be exclusive of goods, services and/or works tax (GST).

Whilst this section of the manual is mandatory for all NLTP contracts, it is considered industry best practice, and much of the approaches taken to contracting as detailed in this manual are considered directly applicable for use by other road controlling authorities.



Associated manuals and references – Part A

All advertising, tendering, closing of tenders, tender evaluation and acceptance of tenders shall comply with the latest issue and any subsequent amendments or additions of the following publications (as relevant):

- the Waka Kotahi

[Infrastructure procurement strategy](#)

[Project management manual \(SM011\)](#)

[State highway control manual \(SM012\)](#)

[Cost estimation manual \(SM014\)](#)

[State highway professional services contract proforma manual \(SM030\)](#)

[State highway construction contract proforma manual \(SM031\)](#)

[State highway maintenance contract proforma manual \(SM032\)](#)

[Prequalification for physical works information pack](#)

- *New Zealand Standard 3910:2013 Conditions of contract for building and civil engineering construction (NZS 3910:2013)*
- *New Zealand Standard 3916:2013 Conditions of contract for building and civil engineering – Design and construct (NZS 3916:2013)*
- *New Zealand Standard 3917:2013 Conditions of contract for building and civil engineering – Fixed term (NZS 3917:2013)*
- *Conditions of contract for consultancy services December 2017 (CCCS)*
- This manual and any other applicable instructions issued.

For Waka Kotahi staff, electronic copies of templates are found on [OnRamp](#).

Overview – Part B

Part B deals with the procurement and contracting procedures associated with the internal operations of Waka Kotahi (non-NLTP) and funded by administration budgets:

- Any procurement that supports its day to day operations, including the procurement of office supplies, vehicles and office equipment.
- Procurement for the provision of decision-making advice that has an indirect impact on transport infrastructure, which may include policy and strategic advice, education and safety research.
- Procurement of goods, services and/or works that support our obligation to provide New Zealanders with access to the land transport system, such as manufacture and distribution of licence plates, manufacture and distribution of media labels for vehicles and bulk processing of letters for drivers and vehicle owners.
- Procurement of advertising campaigns, communication and publications

In general these activities will be conducted in accordance with the [Government Procurement Rules](#).

For Waka Kotahi staff, electronic copies of templates are found on [OnRamp](#).



Key considerations applying to Part A and Part B

Legal services

For guidance on procurement of legal services please contact the Waka Kotahi Legal team.

Privacy

Waka Kotahi deals with the personal information of a large number of people and engages with a wide range of people and organisations who may handle personal information on behalf of Waka Kotahi.

Waka Kotahi has obligations under the *Privacy Act 1993* to ensure that we comply with the twelve Information Privacy Principles set out in the Act that cover the life-cycle of personal information.

Queries or concerns about privacy should be directed to the Waka Kotahi [Privacy Officers](#)

Broader outcomes

[Broader outcomes](#) are the secondary benefits that are generated by the way a good, service or works is produced or delivered. These outcomes can be social, environmental, cultural or economic benefits, and will deliver long-term public value for New Zealand.

Cabinet has taken a targeted approach to leveraging broader outcomes and is placing greater requirements on agencies to leverage a [priority set of broader outcomes](#).

For further information on Broader outcomes or for assistance including Broader outcomes in the procurement process, [contact the Procurement Strategy and Methods team](#).

Construction sector accord

The Government, in partnership with the construction industry signed an accord in April 2019, with the purpose of strengthening the partnership between Government and industry and providing a catalyst to transform the construction sector for the benefit of New Zealand.

The Accord establishes shared goals between Government and industry. Waka Kotahi has specific responsibilities within the Accord and is jointly accountable for delivering on the government's commitments.

The specific commitments by Waka Kotahi under the Accord include:

- better risk management and fairer risk allocation
- better procurement practices and improved pipeline management
- upholding a set of guiding principles and pledges enshrined in the accord
- streamline contractor health and safety prequalification processes
- refresh our infrastructure procurement strategy and publish a list of industry engagement activities to ensure all businesses have the opportunity to engage with the work programme
- demonstrate partnering with local government.

Waka Kotahi expects approved organisations to where possible contribute to the commitments outlined above.



Terminology applying to Part A and Part B

Term	Abbreviation	Definition
Adjusted evaluation price		The tendered price less schedules fixed amounts and, the Supplier quality premium (SQP) and Alternative tender premium (ATP).
Alternative tender		A tender proposing alternative methods, forms or materials which might produce a different quality or durability but within the scope specified in the Request for tender (RFT).
Alternative tender premium	ATP	The difference in price that the tendering authority is prepared to pay for the product offered by an alternative tender compared to the minimum standard product specified in the RFT'. Used in the evaluation of alternative tenders in PW contracts.
Approved funding allocation		<p>This is the current approved funding allocation shown in the State Highway Project Financial Management System (SAP) against the work unit that will fund this contract. It is the figure that is to be compared with the expected contract estimate (which includes the tender price) to determine if the allocation is sufficient to award the contract.</p> <p>Note that for multiple phase PS contracts this allocation will be for the first phase only and will therefore be less than the expected contract estimate. It is expected that a separate allocation for Waka Kotahi-managed costs will have been set up against a separate work unit, and is not to be funded from this approved funding allocation, which will fund the contract only. In the case of construction contracts this approved funding allocation excludes Waka Kotahi-managed costs, consent monitoring fees and all PS fees.</p>
Base contract estimate		The total sum of the elements that make up a contract estimate and including provisional sums but not including escalation, a contingency allowance or Waka Kotahi-managed costs (refer to SM014).
Base project phase estimate		The sum of all base contract estimates making up the phase and including Waka Kotahi-managed costs but still excluding escalation and contingency allowance.
Brook's law method		Type of quality-based supplier selection method as referred to in the Waka Kotahi Procurement manual .



Business day		Any weekday in New Zealand, excluding Saturdays, Sundays, New Zealand (national) public holidays and all days from Boxing Day up to and including the day after New Year's Day.
Closed contest (Limited invitation to tender)		Limited number of tenderers invited to submit a tender without public advertisement of contract.
Consultant		For the purposes of Part B of this manual, a Consultant is defined as a company or an individual where service provision is linked to a defined outcome, typically with remuneration linked to agreed milestones, or deliverables, and where supervision of the individuals is the function and responsibility of the consultancy organisation (or shared with the client)
Contractor		For the purposes of Part B of this manual, a Contractor is an individual who is either hired directly or via a third party to perform duties that would normally be provided by an existing Waka Kotahi staff member, either in their normal day-to-day duties, or on a project.
Delegated authorities schedules (Parts A and B)		The Delegated authorities schedules are quick reference guides which list those delegated authorities (e.g. group managers, Board) who are authorised, for example, to approve advertising, open price files (at different contract value level).
Evaluation estimate		Used in the evaluation of tenders, the Evaluation estimate is the base estimate less all scheduled fixed amounts including provisional sums, contingencies and Waka Kotahi-managed costs.
Expected contract estimate		This is the expected estimate for the contract (prepared by Waka Kotahi for PS contracts and by the consultant for PW contracts), and includes an allowance for escalation and appropriate contingency but excludes Waka Kotahi-managed costs, consent monitoring fees and all PS fees for construction contracts. It is stated as the 'Expected contract estimate' figure on forms G, H and I in SM014 .
Expected estimate		The base estimate including an allowance for contingency but excluding Waka Kotahi-managed costs. Note that escalation is only included in the expected estimate when it is used for funding applications. Reference to expected estimate in this manual will generally include allowance for escalation (refer to SM014).



Expected project phase estimate		The sum of all expected contract estimates making up the phase (which include escalation and contingencies) and including Waka Kotahi-managed costs (consent monitoring fees and PS fees for construction phases).
General Manager Transport Services		For the purposes of this manual, although reference is made to this position, an officer designated by the appropriate national office manager may have appropriate delegated powers and duties. The General Manager of Transport Services is authorised to approve contracts as set out in the Delegated authorities schedules.
Government Procurement Rules	GPR	The Ministry of Business Innovation and Employment's Procurement Rules defines procurement procedures up to contract award to be used by government agencies for all contracts over \$100,000. To be used for non-NLTP projects.
Insurance advisory committee	IAC	The Insurance advisory committee reviews and endorses departures to standard insurance provisions in proformas/contracts for Waka Kotahi contracts with suppliers, including contracts that relate to all NPTP funded professional services and all contracts for non-NLTP funded procurement.
Index		Used in price quality method (PQM). Refers to the result of multiplying the non-price attribute grade with the non-price weight.
Lowest price conforming method	LPC	This is a supplier selection method that can 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 tender documents.
Manager		For the purposes of this manual, this position will be held by the officer or individual and is authorised to make contract recommendations and approvals as set out in the Delegated authorities schedules in this manual.
Monetary values		Monetary values quoted or implied in this manual are in New Zealand dollars and shall be exclusive of GST.
Net present value	NPV	The 'whole life' value of the project when all future benefits and costs (such as maintenance) are evaluated and discounted in accordance with the procedures outlined in the current version of the Waka Kotahi Economic evaluation manual .



Network manager		Reference is made in this manual to the network manager. For the purposes of this manual, this position will be held by the officer or individual with delegated authority from the appropriate national office or regional manager. The network manager has responsibility for the development and/or delivery of the contract (network operations).
New Zealand Government Electronic Tenders Service	GETS	Used by Waka Kotahi to advertise and receive all open tenders. Also used for closed tenders.
Non-price attribute weight		Refers to the total weight provided for the non-price attributes. The sum of the non-price weight and the price weight has to be 100 percent.
Performance assessment by coordinated evaluation	PACE	Performance assessment by coordinated evaluation (PACE) is the performance evaluation system used by Waka Kotahi to assess contracts.
Prequalification classification level		The prequalification system includes four Prequalification classification levels A through D. Level A is the highest classification and D the lowest.
Price weight		This is the weight given to the price attribute when evaluating a tender. The sum of the non-price weight and the price weight has to be 100 percent.
Price quality method	PQM	Price quality method is a type of price quality supplier selection method as referred to in the Waka Kotahi Procurement manual .
Procurement lead		For the purposes of Part B of this manual, this position will be held by the Waka Kotahi employee, or consultant, tasked with designing the procurement process and managing the tendering. This may be the project manager.
Project manager		For the purposes of this manual, this position will be held by the officer or individual with delegated authority from the appropriate portfolio manager. The project manager has responsibility for the development and/or delivery of the project (capital improvements).
Purchaser nominate price (Target price)		Supplier selection method where the approved organisation fixes the price to be paid and advises this through the RFP. Referred to as target price by the Ministry of Business Innovation and Employment.



Qualified evaluator		This is a member of a tender evaluation team that holds a National Certificate in Competitive Pricing Procedures or New Zealand Certificate Infrastructure Civil Engineering (Procurement Procedures). A qualified evaluator is required on all tender evaluations over \$200,000.
Registration of interest (previously a Statement of intention and ability (SIA))	ROI	Used to identify suppliers interested in, and capable of, delivering the required goods, services and/or works. Potential suppliers can be asked to provide information on their capability to do the work. It is usually the first stage of a multi-stage tender process. An ROI is similar to an expression of interest (EOI). Suppliers can be shortlisted using an ROI.
Request for information	RFI	A formal request for information to gain a more detailed understanding of the supplier market and the range of solutions and technologies that may be available.
Request for proposal	RFP	A formal means of seeking proposals from the market for goods, services and/or works where Waka Kotahi is open to supplier innovation – that is, where the outputs and outcomes are important, rather than the process the supplier follows to deliver them.
Request for quotation	RFQ	Formal means of seeking quotations from the market for goods, services and/or works where price is the main selection criterion, the requirement is for “stock standard” or “off the shelf” goods, services and/or works, and the procurement is low risk. This is typically used for non-NLTP processes.
Request for tender	RFT	A formal means of seeking tenders from the market to provide goods, services and/or works where the public entity's specification or requirements are clearly defined and there is little room for flexibility or innovation. This is typically used for NLTP services and projects.
Senior Manager		The respective Waka Kotahi Tier 3 manager that holds the delegated financial authority for the works or services being undertaken.
Sponsor		For the purposes of part B of this manual, a Sponsor is the internal Waka Kotahi person for whom the contract is being arranged and who maintains oversight of the area of the Waka Kotahi business where the output of the contract will be applied.
State Highway Project Financial Management System	SAP	Financial Management system used by the Transport Services group.



Supplier quality premium	SQP	Defined as ‘the amount the tendering authority is prepared to pay to secure a higher quality tender relative to the lowest quality tender’. Used in PQM to represent an explicit dollar value that represents the difference in quality between tenderers.
Tangible cost adjustment	TCA	Defined as “the value calculated for particular aspects of the product provided by each tenderer on a like for like basis”. Used in the evaluation of PQM tenders in PW contracts, typically where there is a design requirement, such as in Design and Construct tenders.
Tender Evaluation team	TET	The group that evaluates supplier responses to an RFT against the set criteria and makes a recommendation of a shortlist or the preferred supplier. This group must contain at least one certified tender evaluator in accordance with the Waka Kotahi Procurement manual .
Tender Secretary		For the purposes of this manual, this position will be held by the officers or individuals with delegated authority from the appropriate portfolio manager to undertake the administration of the tender process and the maintaining of the tender/contract records.
Tendering authority		Refers to the agency tendering a contract.
Traditional delivery model		Delivery model referred to as staged delivery in the Waka Kotahi Procurement manual .
Waka Kotahi NZ Transport Agency	Waka Kotahi	NZ Transport Agency (Waka Kotahi NZ Transport Agency), a crown entity established on 1 August 2008 by section 93 of the Land Transport Management Act.
Waka Kotahi Procurement manual		The Waka Kotahi Procurement manual defines procurement procedures to be used for all contracts funded from the National Land Transport Fund.
Weighted sum		The sum of all the non-price attribute indices. Refer to the definition of ‘Index’. Used in PQM.
Weighted sum margin		The result of deducting the lowest weighted sum from all other weighted sums and inclusive (i.e. the lowest weighted sum will be zero). This forms a relative comparison between tenderers. Used in PQM.
Whole of life cost		For the purposes of Part B of this manual, the Whole of life cost is an estimate of the total cost of the goods, services or works over the whole of their life. It is the combination of the purchase price and all other expenses and benefits that the agency will incur (eg installation and training, operating and maintenance costs, repairs, decommissioning, cost associated with disposal and residual value on disposal).



PART A – INFRASTRUCTURE PROCUREMENT PROCEDURES

Part A

Part A deals with procurement of Professional services (PS) and Physical works (PW) funded through the NLTP and:

- provides administrative guidelines
- defines actions/processes that are to be undertaken, and
- describes the required documentation for each.

Each action/process undertaken must be documented in a clear and orderly manner.

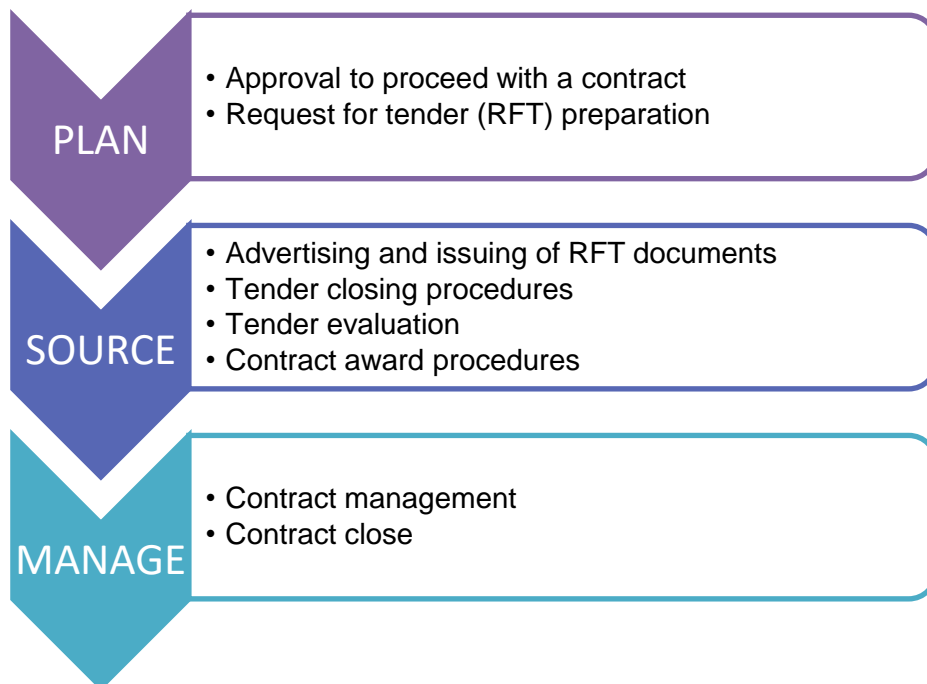
Advice can be sought from the [Procurement Services team](#) on any stage of the procurement process in Part A of this manual.

Contract process

Waka Kotahi follows a process in tendering, awarding and administering contracts for PS and PW in accordance with the [Procurement manual](#). The procedures for each stage of this process are discussed in the following relevant sections.

Process chart

The following diagram identifies the stages in the tendering and contract administration process for PS and PW contracts.





Summary of templates referred to in Part A

External links to the below templates can be found [here](#).

Appendix	Template name and internal link
I	Request for approval to commence the procurement process PS
II	Request for approval to commence the procurement process PW
IV	Conflict of interest supplier declaration for direct appointment of suppliers Conflict of interest and confidentiality agreements
XXVI(A)	Small procurement plan PS contract
XXVI(B)	Small procurement plan PW contract
XXVIII	Stage 1 procurement strategy
XXIX	Stage 2 procurement plan
XXV	Price quality method guidelines
XXIII	Request for approval of insurance amounts PW contract (NZS 3910)
	Request for approval of insurance amounts PW contract (NZS 3916)
III	Register of tender documents issued
XXI	Notice to tenderers
XVII	Notice of late tender
V	Schedule of tenders received
VI	Checklist by Tender Secretary prior to tender evaluations
XVI	Non-conformity rejection
XXVII	Notice of release of bond
	Notice of release of contract from global bond register
VII	Evaluation summary forms and guidelines
	Form G PQM simple spreadsheet
	Form I Brook's law method spreadsheet
	Form J LPC method spreadsheet
XXII	Approval of preferred tenderer status
	Preferred tender notice
X	Acceptance notice for PS contract
XII	Acceptance notice for PW contract (LPC method)



XIV	Acceptance notice for PW contract (NZS 3910 – PQM)
	Acceptance notice for PW contract (NZS 3916 – PQM)
XI	Decline notice for PS contract
XIII	Decline notice for PW contract (LPC method)
XV	Decline notice for PW contract (PQM)
XVIII	Acceptance notice for PS contract (Brook's law and purchaser nominated price method)
XIX	Decline notice for PS contract (Brook's law and purchaser nominated price method)

Optional templates available for use

Template name and internal link
Consultant briefing pack template
GETS advert templates
GETS notice of contract award flow chart
GETS notice of contract award guidance



Delegated authorities schedule – Part A

All procurement activity must be carried out in accordance with the procurement delegations as outlined on [OnRamp](#). The most commonly used procurement delegations are summarised below:

Activities and services (incl Professional Services) contracts				
Value limit	up to \$1 million	up to \$5 million	up to \$20 million	over \$20 million
Procurement strategies (BR099-100)	Senior Manager (Tier 3*)****		General Manager / Director Office of the Chief Executive	
Advertise tenders [^]	Manager (Tier 4**)	Senior Manager (Tier 3**)****	Senior Manager Procurement	
Approval to proceed to RFT phase (following shortlisting) [^]				
Open price files (and approval to name preferred) (BR101-102)				
Award (approval and execution of contract) (BR 103-105, 190)			General Manager / Director Office of the Chief Executive	Board
Activities and services (incl Professional Services) Variations				
Value limit	up to \$5 million	up to \$10 million	up to \$20 million	over \$20 million
Contract variations of original contract value (including execution of any written variation to give effect to the variation) (BR107-109) ^{^^}	Manager (Tier 4***)	Senior Manager (Tier 3****)****	General Manager / Director Office of the Chief Executive	Board

[^] Approval required by this manual but not related to a specific business rule

^{^^} See rule 107a and 107b for the approval of the sum of the total variations up to \$100,000 and \$250,000

^{*} Relevant Senior Manager who has Delegated financial authority (DFA) for the cost centre/ Work breakdown structure (WBS)

^{**} Manager of the team undertaking the procurement

^{***} Manager of the team who has the contract manager and who has DFA for the cost centre/ WBS

^{****} Please refer to the procurement delegations as outlined on [OnRamp](#) for the full list of the DFAs with authority to approve



Projects and Physical Works Contracts					
Value limit	Up to \$1 million	up to \$15 million	Up to \$20 million	Up to \$50 million	over \$50 million
Single stage business case (stage 1 procurement strategy) (BR155-158)	Senior Manager OPPP / Senior Manager OPPI	Senior Manager OPPP	Chief Financial Officer (CFO)		Board
Stage 2 procurement plan [^]	Manager (Tier 4*) / Manager Commercial / Manager Procurement Services		Senior Manager Procurement		
Advertise tenders [^]					
Proceed to RFT phase (following shortlisting) [^]					
Open price files (and approval to name preferred) (BR113-114)	Portfolio Manager Delivery Portfolio** / Manager Commercial** // Manager System Management				
NLTP Award (approval and execution of contract) (BR116-119)	Manager System Management**	Portfolio Manager Delivery Portfolio** / Manager Commercial** // Manager System Management	Senior Manager Project Delivery / Senior Manager System Management		General Manager Transport Services
Projects and Physical Works Variations					
Value limit	up to \$1 million	up to \$15 million	Up to \$50 million	Over \$50 million	
Contract variations of original contract value (including execution of any written variation to give effect to the variation) (BR120-122b)***	Manager (Tier 4**) / Senior Project Manager / Principal Project Manager	Portfolio Manager Delivery Portfolio** / Manager Commercial** / Manager System Management	Senior Manager Project Delivery / Senior Manager System Management	General Manager Transport Services	

[^] Approval required by this manual but not related to a specific business rule

* Manager of the team undertaking the procurement

** Relevant manager who has DFA for the WBS

*** See rule 120a for the approval of the sum of the total variations up to \$250,000



NOTES:

1. Transport Services' Project assurance and approval process (PAA) approvals are in addition to delegated authority approvals. It is the responsibility of the project manager/system manager to ensure all steps required under the PAA process are undertaken.
2. Delegations are valid for contract estimates and tender prices under the 95th percentile of the NLTP budget. If values are over 95th percentile of the NLTP funding the Board shall accept the tender, approve award and execute the contract (PS and PW (BR193)).
3. Stated levels of delegation to approve contract variations are cumulative.



1 APPROVAL TO PROCEED WITH A CONTRACT

1.1 Overview

1.1.1 Authority to contract	Waka Kotahi has authority to enter into contracts as provided for in section 25 of the <i>Land Transport Management Act 2003</i> .
1.1.2 Prior to advertising a tender	Ensure sufficient financial approval is held to cover the base estimate, contingencies, escalation, consenting fees and Waka Kotahi-managed costs. There must also be intent to complete the proposed works.
1.1.3 Contracts approved for use for NLTP funded procurement	<p>Waka Kotahi can be the principal for the following types of contract:</p> <ul style="list-style-type: none">state highway PS contractsstate highway PW contracts, including: state highway design–construct contracts where the contractor both designs and constructs the work state highway maintenance contracts, namely Network outcomes contracts (NOC)other contracts may be considered for use as approved by the Manager Procurement Services.

1.2 Approval to proceed with procurement

1.2.1 Forms to be completed and responsibility for completing	<p>Approval to proceed with the procurement process is required in accordance with the Delegated authorities schedule - Part A and must be obtained once the relevant procurement documentation (planning documents and RFT) has been prepared.</p> <p>To gain approval to proceed to competitive tender use:</p> <ul style="list-style-type: none">Template I Request for approval to commence the procurement process PS, orTemplate II Request for approval to commence the procurement process PW. <p>It is the responsibility of the project manager or the network manager, and not the Tender Secretary, to ensure that the relevant template is completed, and the necessary approvals are obtained.</p>
1.2.2 Allocation of a contract number	<p>Contract numbers shall be obtained from the contract register prior to tender release.</p> <p>If a consultant is preparing the request for tender (RFT) a contract number will be provided on request to the project manager/ Tender Secretary.</p> <p>Further information about the contract register can be found on OnRamp.</p>

1.3 Procurement planning

1.3.1 Introduction

The Waka Kotahi [Procurement manual](#) requires that records are maintained for every procurement activity.

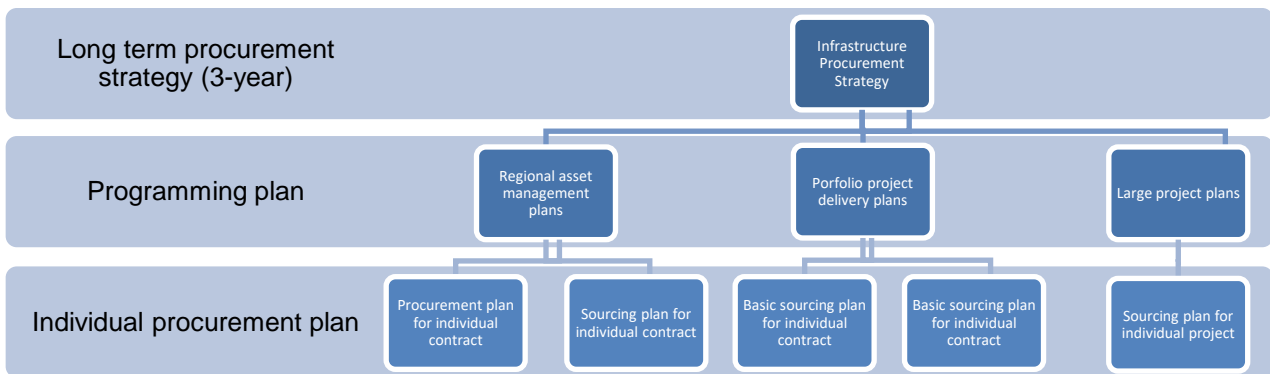
1.3.2 Procurement planning

The purpose of procurement planning is to document the strategic context and considerations in the choice of delivery model, supplier selection method and other key procurement criteria.

The content and detail required in procurement planning should be scaled for the size and risk of the procurement. However, as a minimum your procurement planning should include:

- a description of what is being purchased
- an assessment of the competition in the supplier market
- an assessment of the market's capability to deliver the outputs
- an assessment of the available delivery models and reasoning for the use of the one adopted.
- the supplier selection method, including details of the non-price attributes (including weightings) and Tender Evaluation team (TET) membership.
- the Governance structure, including Board members, where applicable.
- an assessment of potential procurement and probity risks.

The diagram below illustrates the procurement strategy hierarchy and the plans required for different types of projects.



1.3.3 Procurement planning PS and PW contracts with an estimate of <\$10 million

Where the expected construction estimate of the procurement is <\$10 million a small procurement plan which outlines the delivery model, supplier selection method, key tender information, budget and funding allocation is required.

The following templates should be completed if a traditional delivery model is to be used for the procurement:

PS: [Template XXVI\(A\) Small procurement plan PS](#)

PW: [Template XXVI\(B\) Small procurement plan PW](#)

Where a delivery model other than a traditional delivery model is proposed, [contact Procurement Services team](#) for advice.

1.3.4 Procurement planning PS and PW contracts with an estimate of >\$10 million

Where the expected construction estimate of the procurement is >\$10 million, the following procurement planning is required:

- A Stage 1 procurement strategy outlining the high-level considerations in the choice of delivery model and the details of the procurement as applicable. [Template XXVIII Stage 1 procurement strategy](#) can be used for this purpose.
 - If required, a Stage 2 procurement plan that confirms the delivery model determined in the Stage 1 procurement strategy is still correct and provides details of the procurement of the supplier. [Template XXIX Stage 2 procurement plan](#) can be used for this purpose
-

1.3.5 Procurement plans for state highway asset management

Each system management team should produce a high-level procurement plan for all asset management projects. Contact the [Procurement Services team](#) for further details and the latest template.

Each system management team should also produce an asset management sourcing plan. This plan contains the project's specific information such as delivery model, supplier selection method, key tender information, budget and funding allocation. Contact the [Procurement Services team](#) for further information and the latest asset management project sourcing plan template.

1.4 Delivery model

1.4.1 Types of delivery model

The types of delivery model commonly used are:

- staged (traditional)
- design construct (design and construct, public private partnership (PPP), early contractor involvement (ECI), NOC)
- shared risk (supplier panel, competitive alliance and project alliance)

Further information on delivery models is found in the Waka Kotahi [Infrastructure procurement strategy](#) and the [Procurement manual](#).

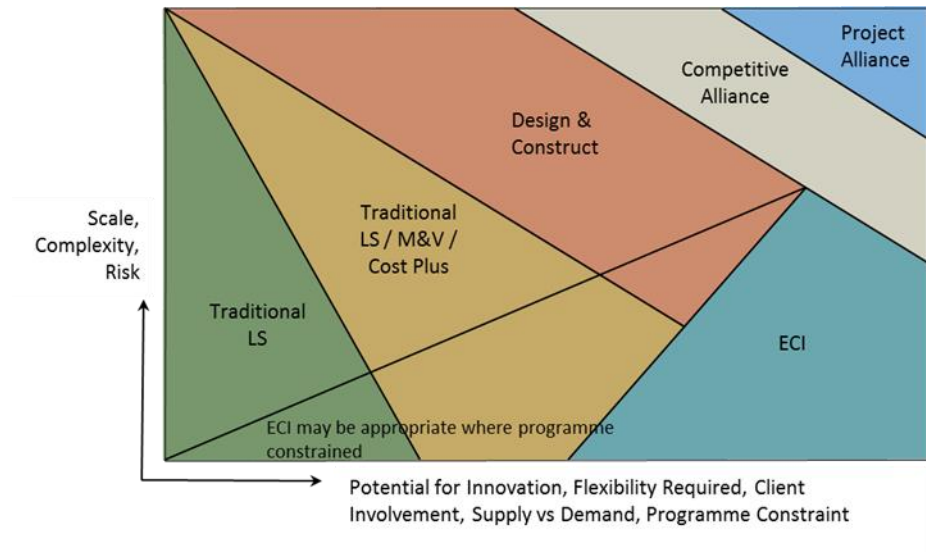
1.4.2 Selection of delivery model

Project risk and potential for innovation are the key criteria for selecting a procurement's delivery model. There is no definitive point for moving from one delivery model to the next, rather the trend is to move to less traditional delivery models as the potential for innovation and transfer of risk to the supplier increases.

When the quantum and severity of risk that can be allocated to the supplier is low, and the potential to add value or innovate is also low, use of a traditional model is preferable. As potential for both innovation and transfer of risk to suppliers increase, the design and construct model becomes preferable. The full delivery model is preferable over the design and construct model when the potential for both innovation and

transfer of risk to the supplier are high. This concept is illustrated in the figure below:

Delivery model selection diagram



The [Procurement Services team](#) has a delivery model assessment matrix to assist in the determination of the appropriate delivery model.

1.5 Selecting a supplier selection method

1.5.1 Introduction

The Waka Kotahi [Procurement manual](#) refers to supplier selection methods and explains the parameters for their use. Tender evaluation for each method shall be in accordance with the requirements of the [Procurement manual](#).

1.5.2 Direct appointment method

Direct appointment is an expedited procedure of evaluation that may only be used for **procurements valued at \$200,000 or less** and where the risk that the works or services will not be satisfactorily completed is low. The direct appointment method can be used for procurements which are valued over \$200,000 if it can be shown that greater value for money can be obtained by using this method as stated in the [Procurement manual](#) section 10.11.

PS: The procedure would normally involve negotiation with one consultant, engaged using the Waka Kotahi [short-form contract agreement \(SM030\)](#). Alternatively, a simple request for a methodology and price, from one consultant engaged using the Waka Kotahi short-form contract agreement. If consideration is given to more than one supplier the procedures prescribed in the [Closed contest \(Limited invitation to tender\) supplier selection method](#) must be followed.

PW: The invitation to tender may be brief but must be in writing and include tender information and a specification of the work to be done. For PW procurements the [minor works contract proforma \(SM031 \(Appendix E\)\)](#) should be used with amendments as appropriate. If consideration is given to more than one supplier the procedures prescribed in the [Closed contest \(Limited](#)

[invitation to tender](#)) supplier selection method must be followed.

When either of these procurement methods are used the project manager or the network manager must still ensure that [template / Request for approval to commence the procurement process PS](#) or [template II Request for approval to commence the procurement process PW](#), and all supporting information such as a contract estimate, are prepared and the necessary approvals obtained.

1.5.3 Closed contest (Limited invitation to tender)

The Closed contest (Limited invitation to tender) supplier selection method is an expedited procedure of supplier selection that is typically used on **procurements valued up to \$400,000**. It should only be used where the scope of work required is well defined and as a result there is a high confidence that the price will be less than \$400,000 and the risk of unsatisfactory completion of the work is low.

It is important that a proper process is followed when using a Closed contest (Limited invitation to tender) method. To do this, ensure:

- the invitation to tender is in writing and contains key tender information and a specification of the work to be done
- where available, a minimum of three suppliers are invited to tender
- a consistent and transparent evaluation method is outlined and used
- reasons for the decisions are recorded and maintained
- PW only: contractors are selected from the register of prequalified contractors in the first instance.

If you have any questions about conducting a Closed contest (Limited invitation to tender) supplier selection method, contact the [Procurement Services team](#).

1.5.4 Exemptions from direct appointment and closed contest monetary limits

Exemptions from the monetary limits above may be granted by the appropriate delegated financial authority in certain circumstances. To gain an exemption complete the [exemption from open advertising request form](#). You will need to refer to the relevant Procurement manual rule and provide justification for your request, Refer to [this flowchart](#) to determine whether you need to complete an exemption from open advertising request.

1.5.5 Open tender

Open tender should be used on **procurements valued over \$400,000**. The evaluation of tenders should be consistent with the supplier selection methods detailed in this manual.

1.5.6 Lowest price conforming tender method (LPC method)

PS: This method may be applied to PS where the scope of service required is well defined and as a result there is a high confidence that **procurement price will be \$400,000 or less**. It is expected that the use of this method for PS supplier selection would be rare.

PW: This method may be used on procurements **up to a value of \$5 million**. It can be used for procurements of higher value that



are deemed to be straightforward, low-risk works. The LPC method can be used in conjunction with prequalification and some or all non-price attributes may be omitted.

Where LPC method is used the base estimate must be included in the RFT for transparency purposes.

1.5.7 Purchaser nominated price (Target price) method

This method may be used where outputs are difficult to specify or quantify and should typically only be used for strategy studies, feasibility studies, transportation studies, and investigations. The RFT specifies the price to be paid for the procurement.

1.5.8 Brook's law method (type of quality-based method)

For particularly complex procurements having outputs that are difficult to specify precisely Brook's law method may be used.

PS: This method may be used where there is a risk that the assignment will not be completed adequately by some consultants and the best quality consultant available, at a negotiated reasonable cost, must be engaged.

PW: This method may be used where a full delivery procurement model has been selected and the procurement outputs are difficult to specify.

The approval of the appropriate Senior Manager or Senior Manager Procurement is required prior to the use of Brook's law evaluation for either PS or PW tenders. To contact the Senior Manager Procurement please email procurement@nzta.govt.nz and clearly state the approval required in the subject line.

Note: The Brook's law method is a type of quality-based supplier selection method. Other variants exist and are used by the Transport Services team with the appropriate approval.

1.5.9 Price quality method (PQM)

Price quality method (PQM) uses a mathematical model to translate the non-price attribute grades of each tenderer to an explicit dollar value, the Supplier quality premium (SQP). The SQP shows how much Waka Kotahi is prepared to pay to secure a higher quality tender relative to the lowest quality tender.

This method may be considered for use on all PS and PW contracts.

Generally alternative tenders are not to be provided for in PS contracts however, where the project manager/ network manager determines a benefit in allowing for alternative tenders, PQM may be used. Alternative tenders, where allowed, are valued using a dollar premium known as the Alternative tender premium (ATP).

For transparency purposes, the base estimate must be specified in the RFT, as it will be used in the calculation of the SQP. Refer to [Price/ non-price attributes selection](#) section of this manual. Price weight sensitivity can be checked using the [attribute weight setting tool](#) in the [Procurement manual tools](#) in the Waka Kotahi [Procurement manual](#).

Refer to [template XXV Price quality method guidelines](#) for guidelines on the pre-tender preparation required for the [tender evaluation process](#) prior to the issue of the RFT.

1.5.10 PQM + Price deviation adjustment (PDA)

This is a supplier selection method for **PS tenders only** in combination with PQM. The Price deviation adjustment (PDA) penalises tenderers for submitting prices less than 90% of the median of the tendered sums (when only two tenders are received the Base estimate is included in the median price calculation). The PDA is added to the tendered sum as part of the evaluation price calculation. The PDA adds a penalty of \$1.50 for every dollar the tendered sum is below 90% of the median of the tendered sums.

Use of the PDA requires the approval of the Senior Manager Procurement. To contact the Senior Manager Procurement please email procurement@nzta.govt.nz and clearly state the approval required in the subject line.

Further information relating to PDA (and the evaluation form) can be found [here](#).

1.5.11 Prequalification with PW tenders (PW only)

Prequalification must be used for all PW tenders in line with [clause 1.7.1](#) of this manual.

The project manager/network manager must nominate one or more of the prequalification categories and levels required to tender.

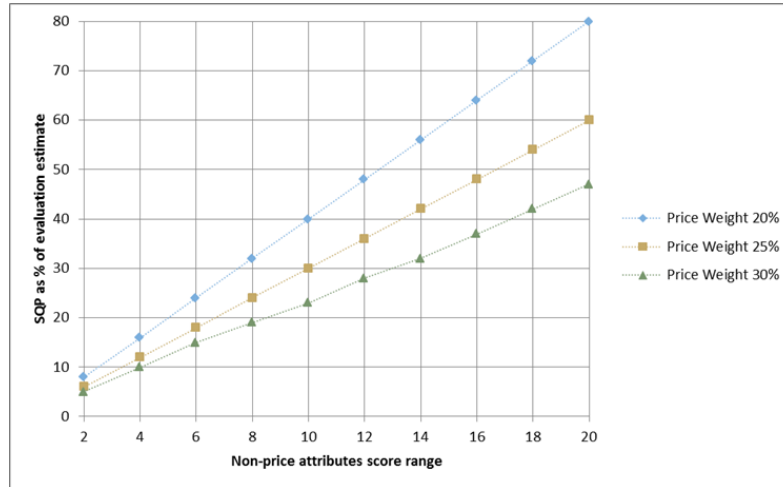
The project manager/ network manager shall consider the scope of work, nature, special features of the works, the Waka Kotahi objectives and the risk profile of the works for each contract when selecting which categories and level of pre-qualification to specify.

1.6 Price / non-price attributes selection

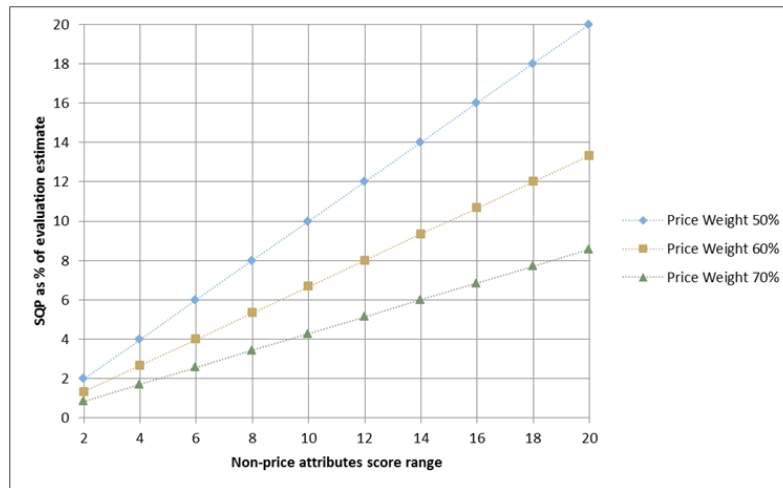
1.6.1 Price/non-price weighting selection

When using a price-quality supplier selection method it is important to select the correct price/non-price weighting. A sensitivity analysis must be undertaken to determine the price/non-price weightings. It is suggested that the SQPs generated for a range non-price attributes grades be considered. The supplier market and the likely non-price attributes grade variance should also be considered. Previous tenders may give an indication of the likely range in non-price attributes grades. The graphs and table below illustrate the SQP generated for a range of variances in non-price attributes scores and non-price weightings.

SQP sensitivity testing for PS tenders



SQP sensitivity testing for PW tenders



The graphs are read by selecting the non-price attributes score range you wish to consider on the x-axis and reading the SQP as percentage of the evaluation price for the different price weightings from the y-axis (e.g. for PS with non-price attributes score range of 10 the SQPs are: price weight 20% = 40% of evaluation est.', price weight 25% = 30% of evaluation est.', and price weight 30% = 23% of evaluation est.').

The analysis can be used to consider the potential SQPs generated by the different non-price weighting and select the correct weighting depending on the premium Waka Kotahi is prepared to pay for a higher quality supplier on the project.

This analysis should also be available to the TET prior to the evaluation, so they can understand the SQP generated from the non-price attributes grades. Sharing this analysis with the TET should mean adjustments to the calculated SQPs as part of the sanity check are less frequent.

Selection of price/non-price weightings for Transport Services procurements must be within the ranges shown in the table below unless approval is obtained from Senior Manager Procurement. To contact the Senior Manager Procurement please email

procurement@nzta.govt.nz and clearly state the approval required in the subject line.

Type of works being tendered	Allowable total non-price attributes weighting range
PS	70-80%
PW	30-50%

1.6.2 Non-price attributes (NPA) selection

The Waka Kotahi [Procurement manual](#) defines four Non-price attributes (NPAs) which can be used in price quality and quality-based evaluations:

- relevant experience
- track record
- relevant skills and
- methodology

The use of the four core non-price attributes in evaluations is explained in [section 5.6 Part A](#) of this manual.

PS: The use of relevant skills, methodology and relevant experience attributes is mandatory for all PS contracts when using a price quality or quality-based evaluation method. The use of track record is optional.

PW: The default position for all Waka Kotahi PW contracts is to include at least one prequalification level.

The below table provides recommendations on the correlation between the prequalification level, the selection of the supplier selection method and the NPAs when using prequalification. The NPAs selected should also reflect the associated specific contract risks that are linked to the selection of an appropriate prequalification level.

Prequalification level	Recommended supplier selection methods	Non-price attribute options				Recommended number NPAs
		Relevant experience	Track record	Relevant skills	Methodology	
A (>\$20M)	PQM	✓	✓	✓	✓	4
A	PQM	✓	✓	✓	✓	2-3
B	LPC / PQM	x	x	✓	✓	0-2
C	LPC	x	x	✓	✓	0-1
D	LPC	x	x	✓	✓	0-1

Exceptions to the above are permitted, but with the expectation that most procurements would operate within the recommended number of NPAs.

When using a price quality evaluation method in combination with a limited number of NPAs, the NPAs utilised become more sensitive. It is important that sensitivity testing is done in selecting an appropriate overall quality price weighting (e.g. a quality weighting of higher than 30% on a PW contract is not likely to be appropriate for contracts with two or less NPAs selected).

The choice of NPAs and their weightings should be based on the contract specific characteristics, including risk and size. It is recommended that any NPA included is given a minimum weighting of five percent when used for PQM evaluations.

1.6.3 Prequalification in supplier selection

The supplier selection method used with prequalification will be determined by the following:

1. For procurements with an estimated out-turn cost <\$5 million, which are considered low risk in all aspects, the Transport Services team will use the LPC method.
2. For procurements with an estimated out-turn cost of <\$5 million, which are considered complex or high risk, or procurements with an estimated out-turn cost of >\$5 million the Transport Services team will use the PQM.

1.7 Prequalification for PW

1.7.1 Registration of contractors for prequalification

The prequalification registration system for contractors has been devised to ensure that only contractors who have demonstrated their ability to perform to the predetermined standards, can tender for Waka Kotahi PW contracts on state highways.

Prequalification must be used for all PW contracts, unless, for example, where work is of a highly specialist nature, resulting in insufficient pre-qualified contractors being able to undertake the work and leading to lack of competition. In situations such as this, the project manager/ network manager may elect not to require prequalification with the approval of Manager Procurement Services.

In addition, any contractor that is prequalified in any Australian jurisdiction may be considered prequalified for the purposes of the Waka Kotahi prequalification system under the mutual recognition arrangement. Applicants can request prequalification through mutual recognition, and it is at the discretion of Waka Kotahi whether to undertake additional assessments, to grant or to decline the application.

Prequalification shall not be used for PS contracts.

1.7.2 Work categories and

The prequalification system classifies contractors according to their ability to meet specified quality levels within four PW categories. Each work category has four possible quality levels, where A is the



classification levels

highest and D is the lowest, to give 16 prequalification classification levels:

Work categories	Classification level			
	A	B	C	D
1. Routine and minor works	1A	1B	1C	1D
2. Surfacing	2A	2B	2C	2D
3. Bridge construction	3A	3B	3C	3D
4. Construction	4A	4B	4C	4D

Level A	<ul style="list-style-type: none"> • Prequalification classification typically for high value Capital Works and NOC Maintenance contracts • Capable resources and experience to carry out project estimated above \$20 million (indicative only) • Are considered high risk • Needs the highest Quality Management System to ISO 9001 2019 • Technically complex requiring specialist appreciation and understanding • Involves full partnering and co-operation with all parties • Complex and sensitive Environmental Management issues
Level B	<ul style="list-style-type: none"> • Prequalification classification typically for medium to high value Capital Works and NOC Maintenance contracts • Capable resources and experience to carry out projects estimated at between \$5 million and \$20 million (indicative only) • Are considered medium to high risk • Quality Management System having evidence of working towards ISO 9001 2019 certification • Technically complex requiring technical appreciation and understanding • Limited surveillance required, and the contractor adheres to the principles of partnering • Complex Environmental Management issues
Level C	<ul style="list-style-type: none"> • Prequalification classification typically for low to medium value Capital Works contracts • Capable resources and experience to carry out projects estimated at between \$0.5 million and \$5 million (indicative only) • Are considered low to medium risk • Need a moderate level of quality control • Provide 3 copies of recent Quality Plans for assessment of capability • Not technically complex but requiring technical appreciation and understanding

	<ul style="list-style-type: none"> • Minimum surveillance on co-operation and pro-active partnering • Simple Environmental Management issues
Level D	<ul style="list-style-type: none"> • Prequalification classification typically for the low cost/ low risk, minor works, safety programs and panel participants • Capable resources and experience to carry out projects usually less than \$0.5 million (indicative only) • Are considered low risk • Need only a simple level of quality control – provide 1 copy of a recent Quality Plan to enable assessment of capability • Technically simple, routine or repetitive • Minor levels of surveillance and support • Does not involve sensitive Environmental Management issues

The project manager/ network manager will determine what classification level the contractors should have successfully met to satisfy the project requirements. For any contracts that include work which crosses more than one category (eg construction and surfacing) the project manager/ network manager may elect to require prequalification for more than one classification level.

The prequalification work categories are discussed further in the Waka Kotahi [Prequalification Information Pack](#).

1.7.3 Performance criteria

When applying for prequalification contractors are required to supply information with their application under the following performance criteria:

- quality assurance
- traffic management
- environment management
- health and safety
- project management
- quantum or size of work
- cooperation and proactive partnering.

1.7.4 Application for prequalification registration

For details and information on how to apply for Prequalification refer to [the Waka Kotahi website](#).

1.7.5 Review of contractor's performance

A Prequalification Evaluation team (PET) will use the interim and final performance assessment by coordinated evaluation (PACE) reports to monitor the performance of pre-qualified contractors.

Performance reviews are undertaken by the PET in consultation with the project manager/ network manager, supervising consultant and the contractor where performance is inadequate.

1.7.6 Inadequate performance

Performance is considered **inadequate** if:

- the total PACE score (interim or final) for any of the four main criteria categories (management, production, health and safety,

or administration) average 40 percent or less, in which case a performance review will be undertaken. Inadequate performance of subcontractors may trigger review of main contractors' pre-qualification.

In addition, the PET, in discussion with the project manager/ network manager, will make a decision on whether a performance review is necessary when:

- three or more (in total) of the individual PACE criteria are 40 percent or less, or
- two or more in any one category are 40 percent or less.

Penalties for inadequate performance can apply to any or all of the Waka Kotahi regions and involve any of the following:

- **Warning** – any recurrence will lead to automatic suspension or improvement required with a specified timeframe.
 - **Downgrading** – supplier downgraded and required to re-submit application to reverse downgrading.
 - **Suspension** – pre-qualification withdrawn for a set period (nationally or regionally).
 - **Rescind registration** – pre-qualification withdrawn for a set period and application must be resubmitted.
-

- 1.7.7 Prequalification database** The [current list of prequalified contractors](#) and their classification are found on the Waka Kotahi website.
-

1.8 Liability and insurance for PS contracts

1.8.1 General

The requirements for liability and insurance for PS contracts are set out on the [Highways Information Portal](#) and in the General and Special conditions in [SM030](#). Bonds and insurances are accepted in principle from those companies who hold a minimum interactive [S&P rating](#) of 'A'. It is the suppliers' responsibility to ensure that their bond or insurance company have this 'A' rating or better.

Financial strength ratings of licensed insurers in New Zealand can be found [here](#).

However, where the consultants insuring organisation cannot be identified at the above link, advice should be sought from insurance@nzta.govt.nz

1.8.2 Insurance advisory committee

The Insurance advisory committee (IAC) reviews and endorses departures to standard insurance provisions in proformas/contracts for Waka Kotahi contracts with suppliers, including contracts that relate to all NPTP funded professional services and all contracts for non-NLTP funded procurement. For the avoidance of doubt, questions relating to physical works contracts are not dealt with by the IAC and should be sent to insurance@nzta.govt.nz.

The IAC does not hold a decision-making function. Its role is to review and endorse requests.



1.8.3 IAC process

- Engage the IAC by completing the [Request for approval of changes to standard insurance provisions form](#).
 - Once the request form has been completed, an automated workflow will send your request to the IAC for endorsement.
 - The workflow then sends your request to the delegated financial authority, nominated by you in the request, for their approval.
 - You will be notified of the outcome via email.
 - Record of the request and the outcome will be retained by the IAC.
-

1.8.4 Liability and insurances

For default liability and insurance levels (minimum requirements) refer to section E of the General and Special conditions in [SM030](#).

Departures to standard liability and insurance provisions require endorsement by the IAC with approval from the appropriate delegated financial authority prior to advertising of tender, for example:

- contracts where the consultancy fees are estimated in excess of \$10 million
- any contract where the total estimate exceeds \$100 million
- any contract considered to have unique or unusual circumstances and that requires a variation from the default liability and insurance levels.

Engage the IAC in accordance with the process set out in clause 1.8.3 above.

1.8.5 Changed insurance requirements after award

If for any reason the project manager/ network manager believes that insurance requirements should be amended during the currency of any contract (eg if the value of the contract increases significantly) then advice should be sought from insurance@nzta.govt.nz.

1.8.6 Decreasing or waiving insurance requirements

The delegated financial authority (with endorsement from the IAC) may approve a decision to decrease or waive the Public liability insurance (PL) and/ or Professional indemnity insurance (PI) requirements where:

- the supplier's actions or recommendations are extremely unlikely to have an impact on Waka Kotahi goals, objectives and third parties; and
- the supplier will not be undertaking site visits or working on/near the State highway; and
- the supplier will not be working from Waka Kotahi office; and
- no design work is involved (for example – facilitating workshops, minor phone/internet research, business advice relating only to processes).

Engage the IAC in accordance with the process set out in clause 1.8.3 above.



For further advice please contact the [Procurement Services team](#).

1.9 Insurance, bonds and retentions for PW contracts

1.9.1 Introduction

The requirements for liability and insurance for PW contracts are set out on the [Highways Information Portal](#) and in the General and Special conditions in [SM031](#) and [SM032](#) for fixed term contracts. Bonds and Insurances are accepted in principle from those companies who hold a minimum interactive [S&P rating](#) of 'A'. It is the suppliers' responsibility to ensure that their bond or insurance company have this 'A' rating or better.

Financial strength ratings of licensed insurers in New Zealand can be found at [here](#).

However, where the contractors insuring organisation cannot be identified at the above link, advice should be sought from insurance@nzta.govt.nz.

1.9.2 Insurance

The provisions for insurance of the contract works are set out in Section 8 of *NZS 3910:2013 Conditions of contract for building and civil engineering construction (NZS 3910: 2013)*, *NZS 3916: 2013 Conditions of contract for building and civil engineering – Design and construct (NZS 3916: 2013)* and *NZS 3917: 2013 Conditions of contract for building and civil engineering – Fixed term (NZS 3917: 2013)*. Current policy concerning the administrative provisions is as follows:

- PL under section 8.3.2 arising from the use of any motor vehicle – not less than \$5 million.
 - For maintenance contracts, including resealing, no insurance of the contract works and materials is required except as noted below.
 - For construction contracts (rehabilitation, earthworks, bridges, etc.) insurance cover of the contract works and materials is required.
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1.9.3 Insurance certificate approval

Waka Kotahi requires the insurance company providing the public liability and contract works insurance cover to sign the insurance certificate. No proof of construction machinery and motor vehicle insurance is required.

1.9.4 Principal's arranged insurances (PAI)

PAI is the default insurance provision for PL and contract works cover for both maintenance contracts and capital projects. The objective of PAI is to have all such contracts properly insured on a known basis with secure insurers at a competitive price. More information is found on the [PAI portal](#).

PAI provides PL and contract works cover for contracts up to a value of \$200 million that meet the policy requirements found on the [PAI portal](#).



Where contracts are valued over \$200 million or do not meet the policy requirements, project managers/ network managers should contact the Senior Manager Procurement in accordance with 1.9.5 below.

1.9.5 Approval for insurance levels

Some contracts require insurance levels to be approved by the appropriate delegated financial authority, with endorsement from the Insurance team (refer to [templates XXIII Request for approval of insurance amounts](#)) prior to advertising of tender.

The project manager/ network manager shall submit their proposal to the Insurance team for endorsement and thereafter to the appropriate delegated financial authority for approval for the following contracts:

- Any contract where the estimate exceeds \$200 million.
- Network Outcomes Contracts (NOC) for the following regions:
 - Auckland
 - Wellington
- Any contract where construction work is contemplated on significant strategic parts of the Waka Kotahi asset, such as, the Auckland Harbour Bridge, Newmarket Flyover, Thorndon Elevated Motorway, Christchurch – Lyttleton Road Tunnel. While Waka Kotahi does not insure the roading network, bridges or tunnels, it is possible that Waka Kotahi may need to insure the asset being worked on. Note that this would only apply to contracts where the structure supporting the asset was being worked upon and there is a serious risk of structural damage.

For any other contract where the project/contract manager considers it necessary, (eg any contract that includes unusual or non-standard activities or construction areas of known existing high-risk activities such as underlying mines, asbestos dumps) the approval of the delegated financial authority (with endorsement from the Insurance team) should be sought prior to advertising of tenders (refer to [templates XXIII Request for approval of insurance amounts](#)).



1.9.6 Liability caps

Waka Kotahi physical works Contracts are to include a liability cap with one of the following standard liability cap levels:

- Up to \$25M Contract Value: Higher of \$20M or 200% of Contract Value
- \$25M – under \$500M Contract Value: Higher of \$50M or 100% of Contract Value
- \$500M or above Contract Value: \$500M

The liability cap must be expressed as a \$ amount. Contract Value is the maximum total estimated value of expenditure intended under the Contract including contingency. Any departure from a standard liability cap level must be:

- for either a higher than standard liability cap level or unlimited liability, and;
- endorsed by the Commercial Advisory Committee prior to approval by the Delegated Financial Authority.

To request for a departure from a standard liability cap level and/or for further information:

- Review the [Liability Cap Guidance](#), and, or;
- email procurement@nzta.govt.nz

1.9.7 Changed insurance requirements after award

If for any reason the project manager/ network manager believes that insurance requirements should be amended during the currency of any contract (eg if the scope of the contract changes significantly) then such proposed amendments must be first submitted to the Insurance team for endorsement and then to the delegated financial authority for approval.

1.9.8 Retentions

Retentions are provided for under section 12.3 of *NZS 3910:2013*, *NZS 3916: 2013* and *NZS 3917: 2013*.

For construction contracts the maximum amount of retention is \$200,000. The amount to be retained is based on the total estimate contract value and is calculated as follows:

- 10% for the first \$200,000 of the total estimate contract value
- 5% for the next \$800,000, and
- 1.75% of the amount in excess of \$1 million.

For large construction contracts, over \$20 million in value, the capped retention limit of \$200,000 is not considered adequate. For such contracts the consultant is to make a recommendation in regard to the appropriate level of retention to the project manager.

For NOCs the maximum amount of retention is \$200,000. The amount to be provided by the contractor as a bond in lieu of retention is based on the total estimate contract value and is calculated as follows:

- 10% the first \$200,000 of the total estimate contract value
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-
- 5% for the next \$800,000
 - 1.75% for the amount in excess of \$1 million
-

1.9.9 Bond in lieu of retentions

The contractor in addition may offer an on demand bond in lieu of retentions as provided for under section 12.3.3 of *NZS 3910:2013*, *NZS 3916: 2013* and *NZS 3917: 2013*.

For all contracts the bond value shall be the applicable contract retentions set out in [clause 1.9.8](#) above plus a **further 10 percent of that figure**.

Where a contractor is providing a bond in lieu of retention, the bond amount may be larger than the maximum amount of retention set out in [clause 1.9.8](#) above as a result of adding a further 10 percent to that figure.

1.9.10 Contractor's bond - bonding policy

The default position for Waka Kotahi is that a Contractor's bond will not be required. However, where a Contractor's bond is required the contractor can use his Global bond if one is in place. Where a Contractor's bond is considered necessary or appropriate, the following bonding policies for PW contracts will apply:

1. For contracts with an estimated cost of less than \$100 million and/or duration of less than six months, no bond is required.
2. For contracts of any value that have very special characteristics or complexity the requirements for on demand bonds are to be submitted to the Senior Manager Procurement for approval. Any proposal for bonds must not be greater than the reasonably expected loss to Waka Kotahi in the event of the contractor defaulting.
3. For contracts in excess of \$100 million the appropriateness of the proposed on demand bond(s) is to be considered by the Senior Manager Procurement for approval.

Bonds are accepted in principle from those companies who hold a minimum interactive [S&P rating](#) of 'A'. It is the suppliers' responsibility to ensure that their bond or insurance company have this 'A' rating or better.

To contact the Senior Manager Procurement please email procurement@nzta.govt.nz and clearly state the approval required in the subject line.

Refer to [section 8 Part A](#) of this manual for further details on bond releases. [See templates XXVII Notice of release of bond, Notice of release of contract from global bond register.](#)

1.9.11 Amendments to standard PW bond forms

Some bond providers require amendments to the of *NZS 3910:2013*, *NZS 3916: 2013* and *NZS 3917: 2013* bond forms making them on demand and enabling multiple draw downs.

The following amendments to the of *NZS 3910:2013*, *NZS 3916: 2013* and *NZS 3917: 2013* standard bond forms are acceptable to Waka Kotahi:

'The contractor and sureties are jointly and severally held and bound to the principal in the sum of NZ\$XXXXXX and bind themselves, their



successors and assigns jointly and severally for the payment of that sum and the sureties undertake that they will pay to the principal any amount demanded by the principal provided the demand by the principal is in writing, provided always that the sureties' total liability under this bond should at no time exceed NZ\$XXXXX in the aggregate.

Notwithstanding any other provision of this bond, the sureties may pay to the principal an amount equal to its maximum liability under this bond less any moneys previously paid, or such lesser amount the principal may specify. Any such payment will result in the sureties' liabilities under this bond immediately ending and this bond being null and void.'

Advice should be sought from the [Procurement Services team](#) before agreeing to any other amendments to standard PW bond forms.

1.9.12 Global bond policy

Any contractor may apply to join the Waka Kotahi global bond scheme if the contractor has a:

1. current contract(s) with Waka Kotahi
2. track record of having had at least one current contract with Waka Kotahi at all times during the last three years, and
3. track record of no bond being called upon by Waka Kotahi within the last six years.

Global bonds are approved at the discretion of Waka Kotahi and can be applied for by contacting globalbond@nzta.govt.nz.

If a global bond is obtained, this will ordinarily replace the need to offer a Contractors Bond (if required) and/or to deduct retention monies under *NZS 3910:2013*, *NZS 3916: 2013* and *NZS 3917: 2013*. However, the global bond may only be used for contracts with a tendered sum up to \$50 million, as after that amount, contract specific bonds will be required.

Contractors who do not wish to participate in the global bond scheme or are not eligible to do so will have to provide a contract specific bond for the amount stated in the contract documents (if required) and retention monies will be retained as provided for in the general conditions.

For contractors who participate in the global bond scheme, it is the contractor's responsibility to ensure they have a current global bond and this is at the correct level for the contracts covered by the bond. Failure to provide or renew a current global bond at the correct level will result in the engineer retaining payment to the value of the contract specific bond (if specified) and retentions for each contract under the scheme until a valid project specific bond or global bond is provided.

The terms of any global bond obtained must be contained in a deed, and must:

- provide that the bond amount will be automatically reinstated to the full amount of the global bond amount every time the bond is called upon by Waka Kotahi, and
-

-
- provide that ‘the surety unconditionally and irrevocably undertakes for itself, its successors and assigns to pay to Waka Kotahi on written demand at any time after the date of this deed any sum or sums not exceeding in total the bond amount’.
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1.9.13 Global bond amounts

Global bond amounts will be reassessed annually, covering the subsequent 12-month period. The applicable global bond amount shall be as follows:

- The minimum amount of the global bond held shall be \$1million.
- Thereafter the global bond shall be the lesser of either:

50% of the cumulative value of the individual contract bonds covered;
or

a maximum capped global bond value of \$3million.

Measurement of cumulative value of the contracts shall be based on the value of contracts commenced and that have not achieved final completion as at 1 July.

A register of contracts included within the global bond is to be kept by each Contractor. This register is to be made available annually in setting the global bond amount, and at any time thereafter as requested.

1.9.14 Cancellation of global bond

The Tender Secretary must notify globalbond@nzta.govt.nz if any contract within a global bond agreement is called upon by Waka Kotahi during the lifetime of the agreement. Waka Kotahi will then consider this when determining whether to renew or cancel the agreement upon expiry.

If Waka Kotahi or the contractor chooses to cancel the global bond agreement, it is the contractor’s responsibility to ensure that all contracts are covered by bonds in lieu of retentions in compliance with contract requirements.

1.9.15 Global bond procedures

Each year prior to 1 July and on confirmation of the global bond amount and receipt of the contractor’s global bond, Waka Kotahi shall issue a letter to the contractor confirming the acceptance of the global bond.

The contractor shall make this letter available to the Tender Secretary, project manager / network manager and/or Engineer to Contract on request to confirm they have fulfilled their obligations in respect of bond requirements for individual contracts.

1.10 Conflict of interest

1.10.1 Conflict of interest

Anyone involved (including, but not limited to, anyone who has input into the design, planning, participation in the evaluation process etc) in a procurement activity must proactively declare any actual or potential conflicts of interest or risk of bias before the commencement of their role on the procurement activity using the [Conflict of interest and confidentiality agreement](#). This must be

updated as and when any conflicts arise throughout the procurement process. It is important that both actual and perceived conflicts of interest are declared so that any identified risks can be appropriately managed.

TET leaders have specific responsibilities and requirements alongside the general requirement to complete the [Conflict of interest and confidentiality agreement](#). See [clause 5.1.6](#) for further information.

Suppliers are also required to declare any conflicts of interest. Suppliers involved in a competitive tender will fulfil this obligation during the tender process by responding to the standard tender documentation outlined in [clause 2.1.3](#). For any direct appointment or panel selection, suppliers must complete the [COI supplier declaration for direct appointment of suppliers](#). When consultants or contractors are engaged to undertake procurement activity on behalf of Waka Kotahi, the standard [Conflict of interest and confidentiality agreement](#) must be completed. For the avoidance of doubt, for any direct appointment or panel selection (eg for a consultancy to undertake the writing of an RFT) the following forms must be completed:

- [COI supplier declaration for direct appointment of suppliers](#) (company disclosure)
- Individual [Conflict of interest and confidentiality agreements](#) forms by each individual working on the on the project (individual disclosure)

Contact the [Procurement Services team](#) for further information.

More information about conflicts of interest can be found on the [OnRamp Procurement page](#) or in the Waka Kotahi [Conflict of interest policy](#).

1.10.2 Types of conflict of interest

Examples of the types of potential conflicts that could arise are highlighted below (not an exhaustive list):

- Any personal interest in the purchasing decision (eg owning shares in a supplier or related company)
 - Any relative or close friend who has a personal interest in the goods, services and/or works purchased, or who could be personally affected by the purchasing decision (eg a family member is an employee or shareholder of a supplier)
 - Any personal obligations, loyalties or bias that could influence the way procurements are conducted, offers are evaluated or purchases recommended
 - Any recent offers (eg within the past two years) of any special discounts, gifts, trips, hospitality, rewards or favours by the suppliers of the goods, services and/or works being purchased
 - Anything that could give the appearance of bias towards or against a particular supplier (eg a consultancy contract with a potential supplier).
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PLAN

If you have any interests as those described above or generally similar in nature but not strictly covered by its wording, then you should discuss it with the [Procurement Services team](#).

An interest that is nothing more than an interest in a publicly available managed fund or passive investment product (eg superannuation/ KiwiSaver fund) that may have interests in listed PS or PW tenderers is not required to be disclosed.

1.10.3 Conflict of interest resolution actions

Once the [Conflict of interest and confidentiality agreement](#) has been completed, the appropriate resolution action must be determined. For very low-risk perceived or potential conflicts of interest, recording the interest in the [Conflict of interest and confidentiality agreement](#) is likely to be sufficient. For more significant or higher risk potential or actual conflicts of interest consider the following options:

- Restrict the employee's involvement in the process
 - Recruit an independent third party to oversee part or all of the process
 - Remove the employee from the process
 - Relinquish – have the employee relinquish the private interest that causes the conflict
 - Resign – the employee resigns from their position at Waka Kotahi
-



2 REQUEST FOR TENDER (RFT) PREPARATION

2.1 RFTs

2.1.1 Introduction

RFT documents need to be clear, easy to understand and tailored to each individual procurement and its specific requirements.

The relevant mandatory requirements and guidelines stated in the Waka Kotahi [Procurement manual](#) must be followed as applicable.

PS: RFTs are generally prepared by Waka Kotahi. The project manager or the network manager may use a consultant to undertake the preparation or assist in this process, but Waka Kotahi retains the sole right to approve the RFT prior to advertisement on GETS

PW: RFTs are generally prepared by the network manager, project manager or other consultant separately engaged by Waka Kotahi as appropriate but Waka Kotahi retains the sole right to approve the RFT prior to advertisement on GETS.

2.1.2 Proforma contract documentation

The following Proforma contract documentation must be used as the basis for the respective RFT, unless otherwise approved by the Manager Procurement Services:

- PS ([State highway professional services contract proforma manual \(SM030\)](#)),
- PW – capital ([State highway construction contract proforma manual \(SM031\)](#)),
- PW – maintenance ([State highway maintenance contract proforma manual \(SM032\)](#))

2.1.3 Tender submissions

The RFT must specify number and format of tender submissions. This will typically be a single electronic file. The Tender Secretary must provide members of the Tender Evaluation team (TET) with access to the tender submission files. Making additional paper or electronic copies of the tender submissions received is undesirable and should be avoided as far as possible.

2.1.4 TET members to be named

The names of the individuals forming the TET are to be stated in the RFT for transparency purposes.

Tenders greater than \$200,000 require a qualified evaluator.

2.1.5 Alternative tenders

Every RFT must state whether alternative tenders will be considered or not. If alternative tenders will be considered, the RFT must clearly articulate the scope for alternative tenders. A non-alternative (conforming) tender must also be submitted if an alternative tender is submitted.

Provision should be made in the RFT to require tenderers to consult with Waka Kotahi regarding their alternative proposal prior to tender closure. This may be done through interactive meetings or submitted



directly to Waka Kotahi. The information presented in the consultation is to be kept strictly confidential.

The alternative tender must be clearly identified and presented with sufficient information to allow the alternative to be evaluated.

It is important to emphasise that alternative tenders must still conform to the specified contract scope. The RFT must stipulate that alternative tenders include the following:

- A statement to the effect that it is submitted as an alternative tender.
- A general description of the physical nature and a clear statement of the scope of the alternative proposed.
- The alternative product details, design, proposed methodology and how it differs from the method or product specified in the RFT.
- The benefits and/or disadvantages, and evidence of previous success.
- The social and environmental advantages and/or disadvantages, and evidence that tangible benefits to the client can be derived from them.
- The experience and current capabilities of the tenderer to implement the works.
- The risks to Waka Kotahi and consequential flow on effects.
- Whether the alternative tenders may be considered in combination with their own non-alternative tender or other conforming alternative tenders.
- The price (in the price file).

Alternative proposals submitted in response to the RFTs must be treated as being of potential advantage to that tenderer. Detail of any innovative ideas from such proposals must not be revealed in any revised RFT in relation to the procurement where re-tendering is invited.

2.1.6 Price files

Each tenderer is only to submit one price file, tender form and schedule unless expressly requested by Waka Kotahi or where alternative tenderers are permitted.

2.1.7 Where a consultant is used

Any consultant who prepares an RFT shall be precluded from tendering for that contract.



2.2 Checking of RFT documents

2.2.1 Introduction	The RFT documents must be thoroughly checked. This topic discusses the responsibilities of the personnel involved for each category of contract.
2.2.2 Checking	<p>PS: The appropriate Waka Kotahi manager must ensure that all RFT documents prepared in-house or by a consultant are thoroughly checked to ensure that all requirements are covered and that the estimate is appropriate.</p> <p>PW: The consultant responsible for the preparation of the RFT documents must ensure that the RFT documents are in compliance with the Waka Kotahi Procurement manual. Waka Kotahi project manager/ network manager, in general terms only, check the scope of the work and estimate.</p> <p>Note: It is the responsibility of Waka Kotahi project manager/ network manager to ensure all required checks / approvals have been undertaken prior to tendering a procurement.</p>
2.2.3 Tendering period	<p>Rule 34 of the Government Procurement Rules (Rule 34) outlines the minimum number of Business days that must be allowed for the preparation of tender submissions. This rule applies to NLTP-funded and corporate procurement.</p> <p>For the purposes of Rule 34, Waka Kotahi considers a Closed contest (Limited invitation to tender) supplier selection method as equivalent to an RFQ.</p> <p>For NLTP-fund procurements, for the purposes of Rule 34, Waka Kotahi considers that publishing a Notice of intention, or including a procurement activity in the Forward Plan, is equivalent to a prior listing in an Annual Procurement Plan.</p> <p>When determining the minimum number of business days required, both the day that the tender was released and the day that the tender is due to be submitted must be excluded from this calculation.</p>
2.2.4 Where two files are used	For supplier selection methods such as PQM and Brook's law which use a two-file system, clear instructions must be given in the RFT as to the identification of the two files in which the tenderers return the tender.
2.2.5 Where tenders close	All tenders must be advertised via NZ Government Electronic Tenders Service (GETS) and close electronically via the GETS eTender box. This includes Closed contest (Limited invitation to tender) tender processes.



2.3 Shortlisting procedures

2.3.1 Benefits of shortlisting

If used correctly shortlisting prospective suppliers carries out three important functions:

- It reduces the cost of tendering for the industry, by reducing the number of full submissions.
- It ensures only high-quality suppliers are selected for the work.
- It reduces the administrative burden of evaluating tenders.

Note: If used incorrectly shortlisting can increase the burden on suppliers and evaluators by introducing a second tier of submissions/evaluations.

2.3.2 Shortlisting

Analysis of the supplier market is required to determine if shortlisting is required. Incorrect overuse of shortlisting can narrow the market as it acts as a barrier to entry. Analysis of the supplier market should include:

- an assessment of the likely tenderers
- an assessment of the quality of supplier required and the likely cost of the tender process to Waka Kotahi and the supplier
- an assessment of the tenderers' ability to meet the required quality standard and deliver the contract outputs successfully.

For further description on the factors influencing the decision to shortlist see the Waka Kotahi [Procurement manual](#).

2.3.3 Tendering process

All suppliers who are eligible to tender are requested to submit a Registration of interest (ROI) (formerly a Statement of interest and ability (SIA)). The ROI shall be evaluated using a subset of the attributes in the [Procurement manual](#). Prospective tenderers must be advised that no other evaluation information is to be submitted with the ROI. On the completion of the ROI evaluation, all prospective tenderers must be advised of the shortlisted tenderers.

Debriefs, if carried out, must be offered to all tenderers and should not occur until after the tender has been awarded. For the tender process shortlisted tenderers may then be requested to provide information on certain non-price attributes, including those submitted for the ROI, for evaluation.

If shortlisting is to be used typically three tenderers will be taken though into the full tender process (this may be extended to four in some cases). However, if the TET is not able to clearly distinguish between tenderers at the shortlist margin (i.e. grades between the two are ≤ 1.0) then they may take the next placed tenderer through the full tender evaluation process also. This must be clearly stated within the RFT document.

On award of the contract, all unsuccessful suppliers shall be informed as prescribed in [section 5.12 Part A](#) of this manual.



2.4 Interactive meetings

2.4.1 Benefits and use of interactive meetings

Interactive meetings provide a useful communication channel between the client and tenderer during the tender period.

The interactive meetings are commercial in confidence and non-contractual in nature

Interactive tender meetings are generally used for large, complex, high risk tender processes. They are always used on design – construct, ECI, NOC and alliance tender processes.

The key purpose of the meetings is to:

- clarify the intent of the contract, and ensure all parties are aligned on the specified requirements,
- provide a forum for an open exchange of information and ideas,
- allow additional information transfer to more clearly identify risk, so it can be better managed,
- align client and supplier objectives, and
- allow the tenderer to put forward conceptual design ideas for design–construct contracts, or alternative tender proposals and for the client to provide feedback on the designs' acceptability.

Where interactive meetings are used, the process proposed must be clearly documented in the RFT.

Tenderers may distribute information during the meeting but this must be returned to the tenderer. It is important that all tenderers are offered equal time and access to the TET during the interactive process.

Changes (or clarifications) identified by a tenderer as a consequence of individual interactive meetings must be formally submitted by the tenderer through a separate request for clarification. The Tender Secretary will subsequently issue a notice to tenderer (NTT) or notice to specific tenderer (NTST) as appropriate.

Generally, tenderers are provided with the RFT and invited to an initial combined inception meeting with the TET and advisors, where the process to be followed and the contract objectives are explained. Tenderers' initial queries are also discussed.

Following the combined inception meeting, a meeting timetable for interactive meetings will be agreed with tenderers.

Interactive meetings with individual tenderers should be timed logically within the tender period phase. The timing should allow tenderers the opportunity to compile appropriate questions and to incorporate information received into their tender submission.

A note should be recorded in the contract file identifying the name of the tenderer, TET members present, location and time of the interactive meetings held.



2.5 Commercial in confidence

Meetings or other communications between tenderers and Waka Kotahi may be deemed to be commercial in confidence. Where a tenderer's communication includes commercially sensitive information the tenderer can request and upon agreement of the TET the communication may be given commercial in confidence status, and Waka Kotahi will respond by way of NTST.

Tenderers shall notify Waka Kotahi of the name and contact details of the person within their own organisation with whom Waka Kotahi will direct all communications during the tender period.

Communications that are commercial in confidence between a tenderer and Waka Kotahi must be in writing, issued separately and clearly marked that they are 'commercial in confidence' and for the attention of Waka Kotahi representative as listed in the tender document. The associated response to the tenderer by Waka Kotahi shall be password protected.

Waka Kotahi will respect commercial in confidence communications. However, where a significant event arises, which in the opinion of Waka Kotahi threatens to frustrate or end the tender and/or contract process, Waka Kotahi reserves the right to inform all tenderers by NTT or to terminate the tender process. If Waka Kotahi deems this to be the case it will communicate with the tenderer who raised the commercial in confidence matter to seek their agreement (in writing) to relax the commercial in confidence status. If the tenderer does not agree, Waka Kotahi will decide whether the communication should be the subject of a general communication to all tenderers.

2.6 Base estimate to be included in the RFT

For purposes of transparency, accuracy and to allow tenderers to comment the estimate is to be included in the RFT for all contracts unless the Purchaser nominated price (target price) supplier selection method is used. The base estimate is used in the calculation of the SQP for PQM and it is therefore important that the most up to date estimate is included in the RFT.

The TET shall not amend the base estimate after close of tenders without the advice/approval of the Manager Procurement Services.

3 ADVERTISING AND ISSUING OF TENDER DOCUMENTS

3.1 Issuing of tender documents

3.1.1 Introduction

After the RFT has been prepared, approval to proceed to procure a supplier is to be sought and tender documents issued (via GETS).

All tenders shall be advertised via GETS, including where the supplier is selected in a limited invitation to tender process. In this instance, the project manager / network manager shall advise the Tender Secretary of the suppliers to invite to the GETS advertisement, prior to placing the tender on GETS. It is considered good practice to inform those suppliers invited to tender of the timing of the GETS advert and to follow up with a phone call to confirm they received the invitation to tender.

Direct appointments do not have to be advertised via GETS.

A Notice of intention (NOI) is a useful tool to signal upcoming opportunities to the market, which or may not have been included as part of the Waka Kotahi forward work program, and to allow Waka Kotahi to gauge market interest. NOIs are issued via GETS and may provide general information about a tender. Contact the [Procurement Services team](#) if further assistance is required.

3.1.2 Administrative procedure approval to advertise

The procedure below must be followed regardless of whether the contract is being advertised or not. Where the tender process is being managed by a consultant the following provisions shall apply unless amended by the consultant’s PS contract.

Step	Action
1	<p>Approval to proceed with the procurement process must be sought by the project manager/network manager for PS contracts or by the consultant for PW contracts. The forms to be completed are as follows:</p> <ul style="list-style-type: none"> PS: Template I Request for approval to commence the procurement process PS PW: Template II Request for approval to commence the procurement process PW
2	<p>Where applicable, the project manager/network manager must notify the Senior Manager Procurement before advertising, using templates XXIII Request for approval of insurance amounts for PS and PW or ECI (refer to sections 1.8 and 1.9 Part A of this manual for guidance). To contact the Senior Manager Procurement please email procurement@nzta.govt.nz and clearly state the approval required in the subject line.</p>
3	<p>For PS contracts the project manager/network manager shall forward to the Tender Secretary:</p> <ul style="list-style-type: none"> Template I Request for approval to commence the procurement process PS Attachments stipulated on the form (including the wording for the GETS advertisement).

	<ul style="list-style-type: none"> RFT document (and attachments) for uploading onto GETS. <p>For PW contracts the consultant shall forward to the project manager/network manager for the appropriate Senior Manager's approval, three full working days prior to the required deadline for advertising, the following:</p> <ul style="list-style-type: none"> Template II Request for approval to commence the procurement process PW Final set of tender documents (and attachments) for uploading onto GETS. All accompanying documentation as required by the PW contract. The wording required for the GETS advertisement. <p>The Tender Secretary will send a copy of the approved template II Request for approval to commence the procurement process PW to the consultant.</p>
4	<p>For PW contracts the project manager shall instruct as appropriate the Tender Secretary to proceed with the advertising of the contract on GETS, with the RFT documentation attached to the GETS advert.</p>
5	<p>The Tender Secretary shall run a report via GETS to confirm who has subscribed to the GETS advert and downloaded the RFT documentation. This report shall be saved to the contract file. When issuing additional documentation via post or email, an acknowledgement of receipt should be requested. If receipt is not acknowledged within a reasonable period the Tender Secretary/consultant should alert the project manager/network manager and investigate.</p>

3.1.3 Approval to engage a contractor without advertising (PW only)

Where a contract is not advertised, as provided for elsewhere in this document (see [section 1.5 Part A](#)), and the contractor is selected from the register of prequalified contractors, [template II Request for approval to commence the procurement process PW](#) shall be completed and forwarded to the Senior Manager together with accompanying documentation as appropriate. On approval by the Senior Manager the original copy of the form signed by the Senior Manager is to be returned to the consultant.

3.2 Release of tender details

Details of tenderers must not be released to any external organisation other than the Waka Kotahi consultant who is assisting with the tender.

If requests for tenderers' information are received from prospective subconsultants/subcontractors the details of these interested parties should be given to registered tenderers with a brief description of their interest.

3.3 Communication during the tender period

3.3.1 Process for communicating during the tender period

Communication during the tender period outside of a prescribed interactive tender process will be in writing (this includes e-mail communication, which may include attachments). Communications will be issued by the person nominated as the contact person in the tender documents. This should be someone outside of the TET and will normally be the Tender Secretary for PS contracts.

[Template XXI Notice to tenderers](#) must always be used when issuing an NTT. Waka Kotahi branded templates must be used for all other communication with tenderers.

PS: The officer responsible for preparation of the RFT (usually the person named as the project manager/ network manager in the RFT) shall be responsible for all advice given to tenderers during the tender period and for the issue of notices to tenderers, such notices would normally be issued by the Tender Secretary on behalf of the project manager/ network manager. All communication with prospective tenderers shall be adequately documented including formal notices to tenderer, a copy of which shall be retained by the Tender Secretary at time of issue. The Tender Secretary is not to issue a notice or to give any advice without the approval of officer responsible for the tender.

PW: The officer responsible (usually the consultant Team Leader) for RFT preparation shall be responsible for all advice given to tenderers during the tender period and for the issue of NTT. All communication with prospective tenderers shall be adequately documented including formal NTT, a copy of which shall be sent to the Tender Secretary at time of issue. The consultant acting as the Tender Secretary is not to issue a notice or to give any advice without the approval of the officer responsible for the tender.

3.3.2 Control of notices

It is the responsibility of Waka Kotahi or consultant's officer responsible for the tender to ensure that the content of all notices is correct. It is the responsibility of the person issuing the notice to ensure that the notice is sent to the correct tenderer.

Tenders that will have a substantial number of NTST issued dealing with commercial in confidence issues should ensure appropriate controls and safeguards are in place to prevent issue of information to the wrong tenderer. Tenders generally requiring these additional controls are design-construct and Alliance contracts.

The method of additional control for NTST is to apply a unique password to each tenderer throughout each tender process. All tenderers shall be issued with a password by the Tender Secretary or consultant's officer at the start of the tendering process. All commercial in confidence documents/notices will then be password protected with this unique password. If an email/notice is inadvertently sent to the wrong tenderer it can then not be opened by that tenderer. Alternative methods of control should be discussed with the [Procurement Services team](#) prior to the start of the tender process.

4 TENDER CLOSING PROCEDURES

4.1 Tenders register and box

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- 4.1.1 Register of tenders** A register of tenders must be maintained by the Tender Secretary. When the completed [template I Request for approval to commence the procurement process PS](#) or [template II Request for approval to commence the procurement process PW](#) form is forwarded to the Tender Secretary, the details of the form must be used to populate the register of tenders. [Template III Register of tenders](#) is to be used and retained on file. The Tender Secretary shall take care to ensure this register is kept confidential (especially from other tenderers).
-
- 4.1.2 eTender box** All tenders are to be received electronically, either via the GETS eTender box or the Waka Kotahi document share folder (for design-construct and Alliance contracts). Direct appointments are exempt from this requirement.
-
- 4.1.3 Maintaining the eTender box** The Tender Secretary shall be responsible for the security of the tenders and access thereto. The Tender Secretary shall be responsible for ensuring tenders are not emailed after the closing time and that any late tenders are appropriately endorsed.
-

4.2 Receipt of tenders

-
- 4.2.1 Introduction** Tenders will only be received in electronic format via the GETS eTender box, or for larger tender processes (design-construct, Alliances), via the Waka Kotahi document share folders within Infohub. Note that, unless expressly provided for in the tender documents, tenders submitted by email, mail, courier or in person will not be accepted and will be returned unopened upon receipt.
-

- 4.2.2 Receiving tenders** The table below shows what to do when receiving tenders.

If tender is received . . .	then . . .
by mail, email, courier or in person and is endorsed to the effect that it contains a tender	advise that tender cannot be received. Tender to be returned unopened upon receipt.
late	refer section 4.3 Part A of this manual.

4.3 Processing of late tenders

-
- 4.3.1 Introduction** All documentation required as part of a tender must be received in the GETS eTender box (or the Waka Kotahi document share folders) by the tender closing time. However, in practice there will on occasion be tenders that are late and the rejection of which would be unreasonable. A late tender may be accepted where:

- the tender was late due to extreme circumstances or circumstances beyond the control of the tenderer, and
- the additional time would not have allowed the tenderer to materially change their tender, and
- accepting the late tender will not disadvantage any of the other tenderers who submitted their response on time.

Where advice is requested from the probity auditor regarding a late tender the Tender Secretary must ensure that this advice is provided in writing and a copy retained on the contract file.

4.3.2 Procedure

Follow this procedure when a late tender is received.

Step	Action				
1	The Tender Secretary must endorse 'late tender received pm ... /... / ...' on the tenderer's email / file and together with a witness initial the endorsement. The email attachment / file should not be downloaded and saved into Infohub. Note GETS does not allow uploading of tender submissions to the eTender box after the closing time of the tender (if uploading not completed prior to close time, then tender will not upload)				
2	Enter the name of the tenderer at the bottom of template V Schedule of tenders received and endorse 'late'.				
3	The Tender Secretary, in consultation with the TET leader, shall determine and note the reason for the tender being received after the closing time.				
4	<p>The TET leader must make a report/recommendation to the Senior Manager regarding any late tenders. The Senior Manager must give approval to consider or reject the tender. Where it is deemed that it was not beyond the control for the tenderer to deliver their tender by closing time, the late tender shall be rejected, and the email / file deleted. The Tender Secretary must attach template XVII Notice of late tender and copy placed on file.</p> <p>Where the TET leader/ Senior Manager cannot decide whether to accept the late tender or would like advice they will contact the Manager Procurement Services who will decide on the appropriate action.</p>				
5	<p>The TET leader may decide that a late tender is deemed acceptable, on being subject to the following tests:</p> <p>Note: To accept a late tender in all cases, there must be proof that the carriage of the tender was beyond the control of the tenderer at tender closing time.</p> <table border="1"> <thead> <tr> <th>If ...</th> <th>then ...</th> </tr> </thead> <tbody> <tr> <td>the full tender would arrive and be uploaded to the GETS eTender box before the tender closing time in the normal course of action and accepting the late tender will not disadvantage any of the other tenderers who submitted their response on time</td> <td>with the agreement of the TET leader, accept the late tender and document the reasons for doing so.</td> </tr> </tbody> </table>	If ...	then ...	the full tender would arrive and be uploaded to the GETS eTender box before the tender closing time in the normal course of action and accepting the late tender will not disadvantage any of the other tenderers who submitted their response on time	with the agreement of the TET leader, accept the late tender and document the reasons for doing so.
If ...	then ...				
the full tender would arrive and be uploaded to the GETS eTender box before the tender closing time in the normal course of action and accepting the late tender will not disadvantage any of the other tenderers who submitted their response on time	with the agreement of the TET leader, accept the late tender and document the reasons for doing so.				



4.4 Opening of tenders

4.4.1 Introduction

Opening of tenders is completed in conjunction with the preparation of a [template V Schedule of tenders received](#) . These procedures relate to the security of the tenders during the opening process.

4.4.2 Procedure

The Tender Secretary must download the electronic tender files from GETS/ InfoHub document share folders and open them in the presence of a witnessing officer. No one else should be present. It is essential that the witnessing officer remain present from the time the files are downloaded from the GETS eTender box/ InfoHub document share folder, opened and tenders examined, to the completion of tender identification (by saving to a secure Infohub folder etc). The process should be undertaken without interruption and in a secure area preventing any other person from seeing the tenders.

4.4.3 Procedure

The Tender Secretary shall follow the below procedure when opening tenders from the GETS eTender box/ InfoHub document share folder.

Step	Action	
1	Check if the tender comprises two, separate electronic pdf files.	
	If the tender comprises ...	then ...
	one file	Download the file and save to a secure folder in Infohub.
	two separate files	<ul style="list-style-type: none"> download the file titled 'Non-price attributes' or 'Methodology (where shortlisting is used), and save to a secure folder in Infohub, and the file titled 'Price', shall remain in the GETS eTender box / InfoHub document share folder until the delegated authority has provided approval to open prices. The price file shall then be saved in a secure Infohub folder
2	If a tender required to be submitted in two separate files is submitted in one file then: <ul style="list-style-type: none"> check for specific requirements in the RFT document extract the tender form and contract pricing schedule into a separate file, note the error of the tenderer and the action taken and state on template VI Checklist by Tender Secretary prior to tender evaluations and advise the TET Leader of the action taken. 	

4.5 Preparation of schedule of tenders received

4.5.1 Introduction

Within 24 hours of tender closing, the Tender Secretary must prepare a [template V Schedule of tenders received](#) for each tender closing.

4.5.2 Policy

The [template V Schedule of tenders received](#) must be treated as confidential and kept from perusal by staff members not involved in the tender administration and the public.

For the purpose of noting the number of tenders received, a tenderer's conforming tender, along with any alternatives offered, must count as one tender.

4.5.3 Procedure

The Tender Secretary shall complete the following procedure.

Step	Action
1	Complete template V Schedule of tenders received to include amount of tender for one-file tenders only.
2	Together with witnessing officer initial the completed template V Schedule of tenders received .
3	Save / file template V Schedule of tenders received and originals of information from tenderers in contracts folder / file.
4	Complete template VI Checklist by Tender Secretary prior to tender evaluations (or prior to each stage of the tender evaluation where two files are provided) for each tender. Save / file the checklist in the contracts file.
5	Save the following documentation in the secure folder in Infohub: <ul style="list-style-type: none"> • copy of the completed template V Schedule of tenders received • copy of the completed template VI Checklist by Tender Secretary prior to tender evaluations • copies of any information that a tenderer has provided • copies of all tenderers' (non-price attributes) received.
6	Email the Infohub folder link to the officer responsible for the evaluation of the tenders.
7	Change the status of the tender advert in GETS to "Evaluation".

In completing the [template VI Checklist by Tender Secretary prior to tender evaluations](#) the Tender Secretary should:

- Check each tender to identify any obvious non-conformity with the RFT (including any prequalification requirements stated in the RFT), the Waka Kotahi [Procurement manual](#) or this manual.

Where, in a two-file tender evaluation procedure, the price has been included in the non-price file the tender is prima facie non-conforming and may be rejected in consultation with the TET leader.

Where the Tender Secretary identifies such price information and believes it has been included by mistake, they may, with the authority of the tenderer, remove all references to the price contained in the non-price file before forwarding the non-

price information to the TET. The TET leader should be consulted prior to any action.

If the price is not detected by the Tender Secretary and gets to the TET, then the tender will be non-conforming and may be rejected by the TET.

Tenderers are not entitled to rely on the Tender Secretary to correct the tenderer's errors.

- Check that each tender submission received conforms to the page limit specified in the RFT. Where the tender submission has more than the specified number of pages of information the Tender Secretary must extract the last additional page(s) to the specified limit and save these as a separate file without the TET seeing them. The TET leader should not be provided with the additional pages until after the relevant evaluation scores have been finalised.
- Check that each tender submission received conforms to the font size specified in the RFT. Where the tender submission does not conform to the font size, the Tender Secretary should assess the submission with a view to determine the number of additional pages. These additional pages should be extracted to the specified limit and saved as a separate file without the TET seeing them. The TET leader should not be provided with the additional pages until after the relevant evaluation scores have been finalised.
- Check additional pages removed do not contain any page(s) that are clearly identified as tags and clarifications. If such pages are identified, ensure that they are noted to the TET leader.

The additional pages will be given to the TET leader after the relevant evaluation scores have been finalised. All pages (including those additional to the limit) of the accepted tenderers submission will form part of the contract agreement with the successful tenderer.

- Note any tags that are clearly identified (additional and less obvious tags included within the tender information might only be able to be identified by the TET).
 - Discuss with the TET leader any non-conformances or additional information identified. Agree on the action required. If the tender is rejected advise the tenderer of the action taken by way of [template XVI Non-conformity rejection](#).
 - Attach [template V Schedule of tenders received](#) to each of the tender evaluation sets, including the [Conflict of interest and confidentiality agreement](#) as provided for in [clause 1.10.1](#) of this manual.
-

4.6 Opening the price file

4.6.1 For two-file tenders

On receipt of the completed Form G or H with the non-price attribute information completed, and approval of the delegated authority, the

Tender Secretary shall download, save and open the price files, in the presence of a witnessing officer (being any person so authorised by the Senior Manager or Senior Manager Procurement) and complete the file copy of [template V Schedule of tenders received](#) by inserting the amount of tenders.

Note: Refer to the [Delegated authorities schedule - Part A](#) for approval required to open the price file(s).

4.6.2 Tags in the price file

If the price file is found to contain tags that appear to constitute an unauthorised alteration or qualification of the RFT, the Tender Secretary should consult with the TET leader. With the consent of the TET leader the Tender Secretary should request the tenderer to remove unacceptable tags. Refusal to remove unacceptable tags may result in the tender being rejected.

4.6.3 Arithmetic check

An arithmetic check of the accuracy in the extensions of rates and addition for the preferred tenderer shall be carried out by the Tender Secretary or other appropriate person prior to award.

If the Tender Secretary discovers errors and/or omissions in a tender, the Tender Secretary may, in consultation with the TET, without advising the tenderer of the errors and/or omissions, request the tenderer confirm the tender without correction. Where such confirmation is not received the tender may be rejected.

All tender schedules must be properly filled in, on the original forms, to the satisfaction of the Tender Secretary, including schedules where provided in the RFT. Schedules considered by the Tender Secretary to be improperly filled in (e.g. rates not provided where required in the schedule), may in consultation with the TET, result in the tender being rejected.

Where the Tender Secretary and/or the TET discovers a tender contains errors in extension of unit rates or summation of items such as to vary the tendered sum, the Tender Secretary will draw the error to the attention of the tenderer and invite the tenderer to confirm the tendered sum notwithstanding the error. Where such confirmation is not received, the tender may be rejected.

If the tendered rates are found to contain any errors in extension of unit rates or in summation, such as to vary the tendered sum, then the Tender Secretary shall adjust the rates, after consultation with the TET and tenderer, to agree with the tendered sum. The adjusted rates shall then become the contract rates for payment. If agreement cannot be reached as to the adjustments, then the tender shall be rejected.

For Brook's law method and the two- file method the preferred tender only is arithmetically checked following evaluation.

4.6.4 Unsustainable tenders

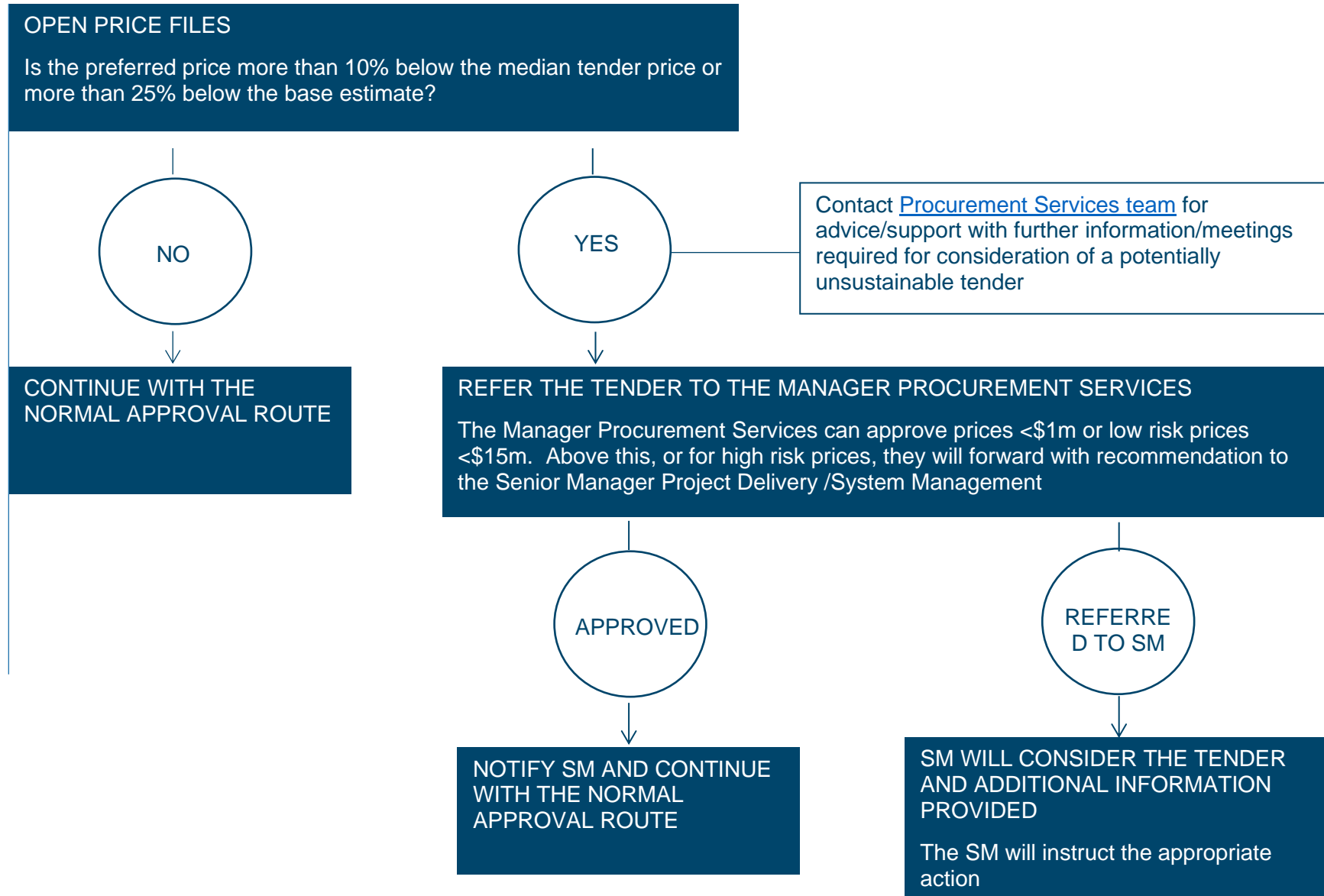
If a low tender price is received (greater than 10% below the median tendered price or greater than 25% below the base estimate) the process below is followed:

1. After the price file has been opened the TET determines that the preferred tenderer's price is within the potentially
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unsustainable range outlined above and advises the Project Manager / Network Manager (if they are not a member of the TET).

2. The TET is encouraged to discuss the process requirements and tender with [Procurement Services team](#) and seek advice on the way to proceed.
 3. The TET shall arrange for a review of the preferred tender price against the base estimate and other tendered prices. This can be undertaken by the TET or an external advisor, but input from whoever has prepared the estimate is recommended. The review should be presented in a short memo/report format and include (this will be the basis of TET report 2):
 - a comparison of tender prices vs estimates both at a schedule item and work category level;
 - any apparent explanations for the significant variations;
 - comment on the viability and/or sustainability of the rates provided by the preferred tenderer;
 - summary of outstanding issues and risks; and
 - proposed actions required (mitigations/process).
 4. At this point the TET should determine if a clarification meeting should be held with the preferred tenderer to resolve the issues or approval sought from the Manager Procurement Services to proceed with award. This is a key point and it is recommended that advice is sought from the final approving authority under the unsustainable tender process (via the Procurement Services team) before holding a clarification meeting.
 5. If a clarification meeting is held the outcomes should be documented in a final unsustainable tender report containing the initial analysis, actions taken, outcomes from the clarification meeting, any other steps required before awarding the contract and any ongoing mitigations. Present the unsustainable tender report to the required authority for approval and continue with the contract award process.
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4.6.5 UTC flowchart





4.6.6 Tender documentation

A copy of [template V Schedule of tenders received](#), completed with the number of tenders received, together with copies of the tender forms and contract pricing schedules shall be scanned and saved in the secure tender folder in Infohub and the folder link emailed to the TET leader.

4.7 Modification and withdrawal of tenders

4.7.1 Modification of tenders

A tenderer may modify their tender after tender submission provided the modification is in writing and received prior to the closing time.

4.7.2 Withdrawal of tenders

A tenderer may withdraw their tender at any time prior to issue of a tender acceptance notice.



5 TENDER EVALUATION

5.1 Evaluation policy - general

5.1.1 Introduction

An evaluation process is necessary to ensure all willing tenderers have an equal opportunity to compete for procurements. Therefore, the evaluation process must be conducted with integrity and probity. To ensure this, Waka Kotahi and the TET must:

- act in good faith
- act fairly between tenderers
- provide the same information to all tenderers
- not ignore or depart from manual processes
- assume every action and inaction will be publicly scrutinised
- always be aware that they will be judged with the benefit of hindsight.

In achieving its objective, the Waka Kotahi project manager/ network manager must ensure:

- selection of appropriate people for the TET
- implementation by those people in a way that demonstrably delivers integrity
- any conflicts between the manuals being used are identified and resolved
- lack of knowledge of the process requirements by any member of the TET are identified and addressed.

Waka Kotahi reserves the right to change the TET for any reason at any time during the tender evaluation process on condition that the tender prices have not yet been opened. If the TET members were named in the RFT then all tenderers shall be informed in writing of the new TET members.

PW: The Waka Kotahi project manager/ network manager must ensure that an appropriate Waka Kotahi representative is involved in the tender evaluation process as a member of the TET where the PW contract estimate exceeds \$5 million.

5.1.2 Evaluation process and policy

The evaluation must be undertaken fairly and impartially in accordance with the requirements of

- the Waka Kotahi [Procurement manual](#)
 - this manual, and
 - the RFT documents.
-

5.1.3 Confidentiality of evaluation process

Information relating to the examination, clarification, evaluation and comparison of tenders and recommendations concerning the award of contracts shall not be disclosed to tenderers or other persons not officially concerned with such processes, until award of the contract

to the successful tenderer has been announced. The information disclosed shall then be only as prescribed in the Award of contract section of this manual.

Any effort by a tenderer to influence Waka Kotahi in the process of examination, clarification, evaluation and comparison of tenders, and in decisions concerning award of contract, may result in the rejection of the tender concerned by Waka Kotahi.

All communication with tenderers from the time of closing of tenders until the award of the contract shall be through the Tender Secretary except where during the course of tender evaluation the TET may request additional information or clarification as described in [section 5.3 Part A](#).

5.1.4 Prior to the commencement of the tender evaluation process

Each member of the TET and each advisor to the TET must be properly familiar with the following:

- the evaluation procedure which is to be used, and the precise criteria for evaluating tenders by this method
- the RFT, current CCCS and/or current conditions of contract (*NZS 3910: 2013, NZS 3916: 2013, NZS 3917: 2013*) and all manuals which are applicable to the tender evaluation, and, in particular, the specific provisions of these documents
- his/her individual responsibilities in relation to the tender evaluation
- the restrictions on the TET which, for example prevent it redefining attributes or creating new ones

Further, each TET member, and any other individual who will be involved in the tender evaluation process, must:

- be informed on the roles and processes before the evaluation commences
 - take reasonable steps to ensure that there are adequate procedures in place to ensure that his/her obligations under the relevant documents can be performed (eg do they have all the relevant manuals, sufficient time and availability to meet as a TET, etc)
 - update their [Conflict of interest and confidentiality agreement](#) and submit to the TET leader prior to tender close in accordance with [clause 5.1.6](#).
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5.1.5 Credentials of evaluators

TET requirements:

- The TET must include at least two persons who have the appropriate skills, experience and standing in the industry (three for more complex contracts)
 - For the evaluation of tenders with an estimated contract value over \$200,000, the TET must include a person (not necessarily the TET leader but who will have a senior role on the team) that has an appropriate level of knowledge of the work being purchased under the contract and holds the qualification of New
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	<p>Zealand Certificate Infrastructure Civil Engineering (Procurement Procedures) (or other Waka Kotahi-approved qualification)</p> <ul style="list-style-type: none"> • TET must not include any member who may have any interest in an organisation tendering for the project being evaluated that cannot be appropriately managed • the TET leader shall be the recommending officer • the TET leader shall not be the tender approving officer.
<p>5.1.6 Managing conflict of interest on the TET</p>	<p>All members of the TET and advisors to the TET are required to complete the Conflict of interest and confidentiality agreement as provided for in clause 1.10.1 of this manual. This form shall be provided to the TET leader.</p> <p>The TET leader is responsible for ensuring that all TET members and advisors have completed the Conflict of interest and confidentiality agreement so that any identified risks can be appropriately managed. The TET leader can determine the appropriate resolution action (if any) as outlined in clause 1.10.3 of this manual.</p> <p>Where the conflict or risk of bias concerns the TET leader, continued involvement as the TET leader must be approved by the Manager Procurement Services. If necessary, the Manager Procurement Services will discuss any issues or concerns with the probity auditor.</p> <p>If there is a conflict of interest which requires a change in the TET members, then this must be addressed immediately to replace the TET member and an NTT issued to all tenderers informing them of the change.</p>
<p>5.1.7 Evaluation process to be complied with</p>	<p>The TET in undertaking the evaluation must ensure that the tender evaluation process as described and detailed in the RFT is followed and documented as required.</p>
<p>5.1.8 Details to be recorded</p>	<p>Details of any phone call, discussion or meeting between the TET member and any other person (eg referees, other TET members, officers of the tendering authority) which relates to the evaluation of the tender is kept on file as a file note duly dated and signed by its author. TET members should take care to ensure that all such written material or file records do not contain comments which are derogatory to any tenderer.</p>
<p>5.1.9 Referee checks</p>	<p>Where a tenderer is required by the RFT to provide the names of any referees in support of their tender, the TET is encouraged to contact all such referees. This will normally be done by telephone. Where appropriate the TET may nominate a suitably qualified individual, preferably not a member of the TET, to contact a referee(s) on behalf of the TET. In such a case this individual is required to comply with all the referee check requirements as specified below, that would otherwise be carried out by the TET.</p> <p>In making reference checks with referees, a TET should ensure that:</p> <ul style="list-style-type: none"> • where the initial effort to contact a referee is unsuccessful, at least one more attempt is made to contact that referee

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- a detailed record is kept of unsuccessful attempts to contact a referee
 - where an individual member of the TET contacts the referee, that team member reports back to the rest of the team on the referee's comments
 - detailed notes are kept of any comment or opinion offered by a referee
 - neutral and balanced questions are asked, and the referee is not lead in any way.
-

5.1.10 During the tender evaluation process

Each member of the TET must be familiar with the principles of fairness, probity and acting in good faith which include ensuring that:

- all information is accurate and up to date. Where information comes from outside the tender documents it must be assessed for reliability.
 - only relevant information is considered and irrelevant information is excluded (to be determined by reference to the RFT, and the relevant evaluation manuals).
 - views about tenderers which are relied upon in the decision-making process can be substantiated.
 - information before TET that is not considered relevant is clearly identified as having been disregarded.
 - the evaluation procedure is being applied in a consistent manner to each tenderer's bid.
 - all tenders are kept secure at all times, including when they are being worked on away from Waka Kotahi premises.
 - evaluation of each proposal is completed in the time allocated and based on the content of the tender against the previously agreed criteria.
 - no discussion is to be held with another member of the TET in relation to individual scoring or tenderers in relation to the tenders.
 - the TET, and the Waka Kotahi personnel involved in the tender evaluation process, are familiar with the difference between clarification of tenders as opposed to negotiation of tenders which may lead to the improper improvement of bids during the evaluation stage.
 - the TET and other Waka Kotahi personnel are taking care to ensure that the evaluation process is properly documented.
 - the TET evaluation reports are accurate, and not made inaccurate by omissions or selective quoting.
 - others not on the TET do not become involved in the process.
 - they do not engage in any practice that may give one tender an advantage over another.
-

5.1.11 Tenderer presentations

Consideration should be given to the desirability of all tenderers making presentations on their tender bids. If the TET feel that tender presentations may be required this should be highlighted in the RFT. The TET will decide if presentations are required. Where tenderer presentations are required these will take place after tender close and before completion of the tender evaluation.

The objective of the presentation is to:

- highlight key aspects of the tenderer's submission
- introduce key team members.

Tenderers shall not provide new information in their presentations. Participants in the presentation may distribute resources during the meeting but these must be returned to the tenderer.

Each tenderer shall conduct their presentation on the assumption that the TET has no knowledge of the content of the tenderer's submission.

The TET will be permitted to ask questions seeking clarification only.

A note should be recorded in the contract file identifying the name of the tenderer, TET members present, location and time of the presentations held.

5.1.12 One conforming tender

Should only one tender be received, or if there is only one conforming tender, the evaluation process as stated in the RFT shall be followed to ensure the tender is acceptable.

Negotiation with the tenderer is acceptable provided the scope of work is not altered and the final negotiated price does not exceed the tendered price.

5.1.13 Pre-letting meeting

If the TET has outstanding concerns regarding any aspects of the preferred tender, a pre-letting meeting should be held to address these. Meetings should be held once the preferred tenderer has been identified and before any contract acceptance has been made. Acceptance and decline notifications should not be sent out until after the successful conclusion of the pre-letting meetings and approval to award the contract has been obtained.

The meeting will generally focus on confirming the expectations of Waka Kotahi in relation to the contract and seeking assurance the tenderer has fully understood and is committed to delivering the required outputs. Other issues which may be discussed are any areas of the tender which the TET feel are potentially weak and may lead to issues with contract delivery, or increased risk.

5.1.14 Negotiation with preferred tenderer when quality-based supplier selection

If tenders have been evaluated using a quality-based method the pre-letting meeting(s) are also used for negotiation of the contract terms including price and risk allocation. It is important to have an approved negotiation plan in place prior to the first meeting. This will allow the meeting to be productive and give a clear direction as well as align the expectations of Waka Kotahi as to acceptable outcomes of the negotiations. If a proposed price has been submitted as part of



method has been used	the tender, an analysis on this should be done prior to the pre-letting meeting and the negotiation plan updated as required.
5.1.15 Negotiation with preferred tenderer when price or price quality supplier selection method has been used	<p>Negotiation with the preferred tenderer (irrespective of the number of conforming tenders received) is acceptable provided:</p> <ul style="list-style-type: none">• the negotiation is consistent with the RFT• negotiation is limited to contract terms (including price, ie loading of price schedule) and must not extend to negotiation for the best price (where competition between suppliers has been used to do that), and• the changes to the contract must not be so extensive that the tender process can no longer be said to have tested the market. <p>In general negotiations should be focused on agreeing mitigation for any risk areas highlighted in the tender process and aligning the contracted parties on the required outcomes and outputs.</p>
5.1.16 When tender price varies from the estimate	<p>If the recommended tender price varies from the estimate by 10 percent or more the recommending officer must provide justification why the tender is recommended.</p> <p>The project manager/ network manager must endorse the recommendation and confirm that sufficient funds are available.</p>
5.1.17 Tender evaluation time frame	<p>The TET should make every effort to complete the evaluation as soon as possible after tender closing.</p> <p>If the evaluation of tenders has not been completed within two months of the tender closing date, the project manager/ network manager must ensure that all tenderers are advised in writing whether or not each of their tenders is still under consideration.</p>
5.1.18 Crown entities tendering for Waka Kotahi contracts	<p>There is no legal restriction on Crown entities tendering for Waka Kotahi contracts. The Waka Kotahi Procurement manual requires that where a tender conforms to the procedural and substantive requirements of an RFT, Waka Kotahi must consider that tender. Waka Kotahi is bound to consider all conforming tenders that are submitted in response to its RFTs, regardless of whether they are submitted by private contractor or by a Crown entity.</p>

5.2 Conformity, tags and clarifications

5.2.1 Checklist by Tender Secretary	<p>To assist in evaluating tenders and maintaining conformity, the template VI Checklist by Tender Secretary prior to tender evaluations for each tenderer shall be referred to prior to the TET undertaking the evaluation to ensure that all comments noted by the Tender Secretary are considered.</p> <p>Where the removal of additional pages is identified, the TET leader will follow procedures as set out in the NPA assessment.</p>
5.2.2 Review of tags	<p>Each page of the tender document should be checked by the TET for changes not authorised by any NTT. Any such change will be</p>

considered as a tag. Qualification of the RFT whether explicit or contained in the body of the tender shall be regarded as a tag.

Tags shall be dealt with in accordance with the requirements of the RFT or in the absence of any specific requirements they shall be dealt with as follows:

- The tenderer shall be requested to remove tags that are unacceptable to Waka Kotahi, without amendment to the tender price. The tender is to be rejected if the tenderer refuses to remove unacceptable tags.
 - If tags are found on the tender form or any contract pricing schedule or otherwise included in the price file, the tenderer shall be requested to remove the tags. Unacceptable tags in the price file cannot be considered and the tender is to be rejected if the tenderer refuses to remove them.
-

5.2.3 Clarification

Clarification of a tender can be sought to establish conformity with the RFT or for any other reason during tender evaluation.

Clarification cannot provide an advantage or disadvantage to a tender in any way and any additional information provided which attempts to improve the tender shall not be included for evaluation purposes. Clarification can not include any change to the price or substance of the tender.

However, should a tender not include information of a minor nature requested in the RFT and it is required to complete the evaluation, then the tenderer should be advised and invited to supply it. In considering the additional information the TET should take page limit requirements into account.

Any request for clarification or additional information should be sent out in writing, and should include:

- specific request for information including reference to RFT clauses where relevant,
- the form that the information/ response is required in, and
- the time within which the information/ response must be received.

If the TET are unable to undertake a meaningful evaluation because a significant amount of information requested in the RFT has not been supplied and/or there is a record of the tenderer being continually requested to submit further details by way of clarification, then the tender may be deemed non-conforming and rejected. The supply of an entire attribute cannot on any sensible interpretation be called clarification. The TET must consider the integrity of the process and the possible prejudice of other tenderers in providing their tenders by a deadline.

5.2.4 Alternative tenders

Alternative tenders shall only be considered for evaluation where they are expressly provided for in the RFT and a non-alternative (conforming) tender has also been submitted (unless expressly stated otherwise in the RFT).

If provision has been made in the RFT for tenderers to consult with Waka Kotahi regarding their alternative proposal prior to tender close, Waka Kotahi reserves the right to reject any alternative tender that has not been pre-consulted.

If an alternative tender offers a result, which is outside the scope of the RFT, then it is non-conforming and shall be rejected. In the rare situation when an alternative tender is outside the scope of the RFT but offers a better outcome, Waka Kotahi may consider declining all the tenders and re-inviting tenders based on a revised RFT. The revised RFT must not reveal the detail of any innovative idea used in the alternative tender. This situation can be avoided by having a more outcome focused scope.

Alternative tenders are valued using a dollar premium known as the **ATP**.

The ATP may be positive, negative or zero. Non-alternative tenders shall have an ATP of zero dollars, because the tender is offering the product to the standard specified in the RFT.

The ATP evaluation must consider the net present value (NPV) of the result offered by the alternative tender in comparison with the minimum standard, i.e. the ATP is the difference between the NPV of the alternative and the NPV of the non-alternative. The assessment should consider whole-of-life cost associated with the alternative.

The ATP evaluation will also consider the social and environmental advantages and/or disadvantages to identify whether tangible benefits for the client can be derived.

Alternative tender evaluations must be clearly documented, and only the total ATP figure will be entered into the spreadsheets. Refer to [template XXV Price quality method guidelines](#) for an example (shown in the example calculation using PQM).

5.2.5 Additional pages that have been removed

After the TET has completed the non-price attribute evaluation, the TET leader must request any additional pages that have been removed and:

- The TET leader will consider the information in the additional pages removed to ensure that they contain no tags or issues that require clarification.
- The TET leader must deal with these issues before opening the price file. Any information included in these additional pages is not to be considered in the non-price attribute evaluation and the TET's non-price attribute evaluation should not be revised after these pages are seen.

All pages (including those additional to the limit) of the accepted tenderers submission will form part of the contract agreement with the successful tenderer.



5.3 Dealing with comments on the base estimate received from tenderers

Where the base estimate is stated in the RFT tenderers can comment on the base estimate accuracy up to 4pm, five working days prior to tender close, through the following process:

1. Comment is to be directed to the probity auditor nominated in the RFT. Tenderers must not provide their comment directly to Waka Kotahi or anyone other than the probity auditor.
2. The probity auditor must immediately advise the nominated authority upon receipt of any comment. The probity auditor will filter any sensitive information that may prejudice the nominated authority's judgement and not connect the tenderer's identity to the response given.
3. The nominated authority shall consider the comment and:
 - if the comment strongly identifies any significant issue(s), the nominated authority may proceed to step 4 or take immediate action as in step 5
 - if the comment does not indicate any significant issue(s), the nominated authority shall advise the probity auditor who will then advise the tenderer that the matter will not be pursued further. No other details or justifications shall be provided.
4. The nominated authority may ask the probity auditor to invite other tenderers (who have not previously commented) to submit their comment as soon as possible. The probity auditor shall not reference any detail or comment from other tenderers in the correspondence.
5. The nominated authority will further consider the information and, if deemed necessary, issue instructions to tenderers through an NTT before tenders close. These may include extending the tender period, suspending the tender or re-tendering. The nominated authority will notify the probity auditor if it intends to issue an instruction to tenderers.

The probity auditor must:

- be an independent party
- filter out any sensitive information before passing the comment to the nominated authority
- *not* connect the comments submitted with the tenderer's identity
- ensure that any other sensitive information is not passed to tenderers or TET.

The Waka Kotahi Probity Auditor is Shaun McHale, Managing Director, Probity Assurance Services, McHale Group Ltd, Level 1, 187 Featherston Street, PO Box 25103, Wellington 6146, mobile: +64 27 486 3412, email: shaun.mchale@mchalegroup.co.nz.

The nominated authority (unless otherwise indicated) will be the Manager Procurement Services email procurement@nzta.govt.nz, Private Bag 6995, Wellington 6141, New Zealand.

The nominated authority must:

- be an independent party
 - *not* reveal any price sensitive information to the TET
 - *not* reveal the identity of any tenderer(s) who have made comment
 - *not* reveal a tenderer's comment to other tenderers
 - *not* seek advice from the TET, project manager/ network manager, expert advisors or consultant *before* seeking advice from the Senior Manager Procurement or Probity Auditor.
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5.4 Tenderers' key personnel

Once tenders have been submitted, tenderer requests for substitution of named (nominated) key personnel shall only be considered after award of the contract. Approval of a substitution may be granted if replacement is by a person of equivalent or better skills and qualifications and is to the satisfaction of Waka Kotahi.

5.5 Subconsultants / subcontractors and consortia

5.5.1 Subconsultants/ Subcontractors

When assessing attributes, the attributes of the sub consultants / subcontractors must be included. The detail expected in the tender should be in proportion to the amount of work to be carried out. For example, a short statement in a general section could cover a minor subconsultant's/subcontractor's attributes. In considering additional information the TET should take page limit requirements into account.

A tenderer who proposes to subcontract any significant portion of the work should still have an appropriate organisational and management structure.

5.5.2 Consortia

This is similar to the subconsultant/subcontracting situation except that the consortium would jointly sign the tender and therefore have a closer involvement in the management and organisation of the contract. Although close evaluation is necessary, a group of contractors may complement each other well and enhance the quality of the overall tender.

5.6 Non-price attribute evaluation

5.6.1 Introduction

When evaluating NPAs, deliberations shall relate to the RFT and the contract requirements.

When allocating the grades for NPAs, care must be exercised not to award higher grades just because a tenderer's capabilities exceed those required for implementation of the project. For example, if only one excavator is necessary to complete drainage work within the scheduled period, the ownership of one excavator and demonstrating access to a backup excavator should obtain a high score, the ownership of fifty excavators does not warrant the award of a higher grade.

Any factual information available to the TET may be used in determination of non-price attributes. However, the TET shall not be obliged to look beyond the tender submissions.

Information supplied by the tenderer must be in accordance with the RFT.

5.6.2 Non-price attribute evaluation

NPAs shall be evaluated as specified in the RFT and in accordance with the Waka Kotahi [Procurement manual](#).

Each of the tenderers submitted NPAs are evaluated and awarded a grade. A tender is non-conforming if it is graded less than the relevant minimum quality threshold. The minimum quality threshold is generally an attribute grade of 35 or less, but some RFT documents may specify a higher threshold.

No further evaluation of non-price attributes for that tender is to take place. Any tender deemed non-conforming shall be excluded from being entered into the evaluation summary forms for determination of the lowest adjusted evaluation price. The price file should be retained unopened pending any formal challenge unless requested to be returned.

Grading of each non-price attribute should be in increments that give the appropriate level of flexibility considering the value of the contract and the possible SQP generated (eg increments of five points).

On completion of the evaluation of the non-price attributes, the evaluators shall 'stand back' and undertake an overall review to verify from the information available, that:

- for a pass/fail evaluation, the tenderer can be expected to complete the project adequately and safely
- for a price/quality evaluation, the grade awarded is reasonable, particularly in comparison with grades awarded to other tenderers

Financial resources are not to be included in any non-price attributes. Where there is doubt that the tenderer has sufficient financial resources to complete the contract, the matter shall be taken up with the Manager Procurement Services upon completion of the evaluation and prior to award of contract.

5.6.3 Use of tender evaluation

[Template VII Evaluation summary forms and guidelines](#) are to be used by TET members during tender evaluation to record individual

forms for price quality grading

scores and notes to support scores. The purpose of using standard forms is to ensure uniformity in evaluation and contribute to consistent and transparent evaluation.

The tender evaluation forms for PS contracts may be found in [SM030](#). For PW capital contracts forms are provided in the standard documentation ([SM031](#)). For PW maintenance contracts the forms are provided in the standard maintenance contracts documentation ([SM032](#)).

The following describes the use of these forms:

- The TET leader selects and briefs the TET (others may be involved in this briefing as required).
- The Tender Secretary ensures TET members are provided with sets of pre-formatted forms corresponding to the number of tenders received, access to the tender submission files and a copy of the RFT. Pre-formatted forms will have included, as appropriate, the contract name and number, attribute weights, personnel titles as described in the personnel schedule listed on the relevant skills form, resource factors on the resources form and factors to be graded against on the methodology form.

Note: Attribute, sub attribute, personnel and methodology factor weights are determined by the project manager/ network manager and indicated in the RFT.

- TET members independently read and evaluate the tenders then grade the non-price attributes noting their overall rating for each attribute. Each TET member records their reasoning behind their attribute grade allocation, the key differentiations.

Note: Sufficient time must be allowed for this step prior to the TET meeting.

- The TET meets and grades are recorded on [template VII Evaluation summary forms and guidelines](#), or on an electronic white board from which copies can be made, or on an electronic spreadsheet.
- The attributes for each tenderer are then agreed by consensus and recorded in the highlighted box.

A TET member should be nominated to be responsible for summarising and recording the essential reasoning behind the agreed grades of each non-price attribute (to be used in TET report 1) and for ensuring that all evaluation forms and comments are correctly filed. An overview is made, by the TET, of all tenderers' grades verifying that grades awarded are appropriate and reasonable, particularly with respect to grades awarded to other tenderers and if necessary other recent contracts. The Senior Manager may also give a review of the relativity.

If required, grades are adjusted by agreement, with the TET leader finalising grades if no consensus can be reached.

Note: All documentation used during the evaluation process (group marking spreadsheet) and all documents written or received by the TET during the evaluation, must be retained on the contract file to ensure tenderers can properly receive feedback on their tender

submissions if requested. All such documentation is to be retained for a period of seven years after completion of tender evaluation after which it may be destroyed unless notice of any claim or dispute relating to the TET process has been received.

5.6.4 Non-price attribute definitions, comments and descriptions

The general definition of each non-price attribute is to be found in the Waka Kotahi [Procurement manual](#). The following supplementary comments to those contained within the [Procurement manual](#) are provided for guidance in attribute evaluation.

Note: The attribute descriptions included within contract proforma manuals ([SM030](#), [SM031](#) and [SM032](#)) for use in the RFT may be amended only in exceptional circumstances and with the approval of the Manager Procurement Services via a procurement or sourcing plan.

5.6.5 Relevant experience

The TET should consider:

- specific experience in technical and non-technical areas relevant to the project.
- recent experience as more valuable than historic experience
- adaptability of tenderers existing experience to other projects where relevant, whether the tenderer can make the change from large scale to small-scale work or from one large contract to many small contracts and vice versa. the relevant experience regarding newly formed firms taking into consideration that new employees/personnel may contribute to the relevant experience of a company/newly formed firm.

The tenderer's responses should be sufficient to demonstrate overall experience and capability (gives a measure of a tenderer's adaptability) as well as provide examples of specific experience in the technical areas relevant to the project.

The TET is encouraged to contact the referees provided in the tender. The TET is encouraged to make more than one attempt to contact referees.

5.6.6 Track record

Based on track record determined from completed projects, it is necessary to determine whether the tenderer is likely to perform satisfactorily if awarded the contract. Unsatisfactory performance on a contract constitutes unsatisfactory track record.

Personnel within newly formed firms may contribute to the track record of a company.

Great care is required in grading this attribute where the information required is not adequately provided and the TET does not have comparable direct knowledge of and information on all tenderers performance. Efforts should be made to validate information provided by previous clients on a tenderer's past performance both good and bad. It is often necessary to look beyond the information supplied for records of the tenderer's performance. Care must be taken to ensure that one poor/very good performance is not taken out of context and allowed to overshadow the assessment of this attribute.

The TET may make use of the Waka Kotahi PACE database to evaluate the tenderer's performance.

Interim PACE evaluations may be considered when evaluating a supplier's track record performance in conjunction with verbal reference from project manager/ network manager, and then it shall only be seen as an input into the track record evaluation, not the sole means of measuring track record.

Final evaluations may be considered when evaluating a supplier's track record performance.

There will be instances where tenderers submit project(s) for track record, some with interim PACE evaluations, others with final PACE evaluations, or non- Waka Kotahi projects with no PACE evaluations. In these instances the TET shall make a judgement on how to use the information from the PACE database. It is recommended that referees are asked to complete a PACE questionnaire (either by telephone, or in writing) which is then used in the tender evaluation. Care shall be taken to benchmark any interim or referee generated evaluations to any final evaluations submitted.

Any PACE records referred to shall be printed and kept in the contract file.

Consideration should be given to the local and national mix of projects put forward by the tenderers. The maximum number of projects and their relevance to track record should be as defined in the RFT.

Evaluators should determine, from the project descriptions and grade accordingly the level of project compliance with required quality standards, reasons for exceeding or being under budget and reasons for completion on date other than due date.

The TET is encouraged to contact the referees provided in the tender. The TET is encouraged to make more than one attempt to contact referees.

PW: The tenderers safety record, as may be provided in supporting information, may be used in support of determination of compliance with quality standards.

5.6.7 Relevant skills

Nominated personnel are generally to be evaluated on an individual basis however others nominated may be evaluated collectively as appropriate.

It is necessary to determine whether the qualifications and training and practical experience of the nominated personnel is sufficient to achieve the output quality required. Both technical and management experience and training should be evaluated as appropriate to position. Care should be taken in exercising credit for national or international expertise and the influence these nominated personnel may have on project outputs. For this purpose reference should be made to the individual curriculum vitae provided ensuring these are up to date and agree with the information provided in the tender as appropriate.

A comparative evaluation of the proposed time commitment to the project and/ or focus for nominated personnel is required. The area of particular focus should be described.

5.6.8 Methodology

It is necessary to determine whether the tenderer is proposing an appropriate methodology for the type of work detailed in the RFT and whether the submission focuses on the needs of the project. It is recommended that sub attributes in the RFT align with the project's risk areas.

The tenderer's understanding of the nature of the project, the client's needs and the means and methods whereby the desired results can be achieved in a practicable and efficient manner, should be assessed. Tenderers' must describe how they will complete the contract works on time and to the standards specified in the tender documents. Some high-level examples that could be considered are:

- The risk and the effect of an innovative approach to the project requirements may deserve merit, but any effect on other or future projects should be determined.
- Knowledge of contract area should be adequately demonstrated and factors that may affect the project outcomes should be identified.
- A work programme subdivided into elements or phases of the project as appropriate, including the identification of any key points requiring interface with the client/and client approval to proceed, should accurately reflect the project requirements.
- How risks are proposed to be identified, assessed and managed so as to minimise additional costs to the client and the proposed strategy to ensure 'no surprises' in financial management and reporting should be described.
- Proposed reviews and quality assurance measures should be adequately detailed and assessed in terms of their application as required in the RFT.

The following factors are often considered as part of the methodology evaluation:

- The appropriateness of the tender programme of works showing start and finish dates of major activities.
 - The division of work (own forces, subconsultants/subcontractors or independent trades-people) and how the labour resources are allocated to each work activity (scheduled item).
 - Proposed planning and programming.
 - Proposed communication: within the company, and/or between site staff and the engineer.
 - Proposed recording, reporting and invoicing.
 - The key elements identified in the project quality plan.
 - A statement of knowledge of local conditions.
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- Demonstration of an understanding of the contract requirements, knowledge of performance assessment, and any innovation.

And the following as noted:

PS: The proposed supervision of construction should be assessed to determine whether it is adequate for the type of work to be implemented.

PW: The means of managing traffic during implementation of the project.

5.7 Evaluating supplier selection methods

5.7.1 Introduction

This topic discusses the procedures and processes to complete the evaluation of tenders for different supplier selection methods with reference being made to the Waka Kotahi [Procurement manual](#).

The officer responsible for the evaluation of the tenders shall ensure receipt of the completed [template V Schedule of tenders received](#), the completed [template VI Checklist by Tender Secretary prior to tender evaluations](#), copies of any information that a tenderer has provided, copies of all tenderers' (non-price attributes) received.

The implication of late tenders and non-conforming tenders should be considered at the commencement of evaluation, for each method.

A report and recommendation is made to the appropriate delegated authority on each tender evaluation using [template V Schedule of tenders received](#) and other forms and reports as stated for the supplier selection method used.

All tender submission files, group TET forms and comments, summary forms and RFT documents are retained on the contract file.

5.7.2 LPC method

This one file method comprises two stages with the first being the ranking of tenders in ascending order based on price. The second stage consists of evaluating the non-price attributes commencing with the highest ranked (lowest price) tenderer from the first stage. This process shall continue until an acceptable conforming tender is determined. The contract shall only be awarded to the highest-ranking (lowest price) tenderer who obtains a pass on all non-price attributes.

[Template VII Form J LPC method spreadsheet](#) should be used in the evaluation with all non-price attributes being assessed on a pass or fail basis. The TET must, prior to the evaluation of the non-price attributes for any tender, clearly define the cut off between a pass and a fail.

To ensure proper price comparison of tenders, the adjusted tender price shall be determined for alternative tenders and acceptable tags. The adjusted tender prices shall be compared with non-alternative tender prices to determine the tender ranking in ascending order based on prices.

If the lowest tender price is significantly greater than the estimate, the reason should be determined if possible and an allocation adjustment made before the contract is awarded. Negotiation with the preferred supplier is permitted provided it is carried out in accordance with the RFT requirements (see the Waka Kotahi [Procurement manual](#) appendix C and section 10.12).

Where the lowest tendered price is significantly less than the Waka Kotahi estimate of the cost of work to be performed under the contract, or other tenders, the tenderer must be requested to confirm the tender price before award, in accordance with [clause 4.6.4](#).

If the lowest tender price is unacceptable or upon request of confirmation is withdrawn, then the tender with the next lowest tender price should be evaluated.

5.7.3 Brooks law method

This method uses a system of ranking that must be specified in the RFT for non-price attributes.

The evaluation of non-price attributes shall be undertaken as required in this section of the manual using the weight assigned to each attribute in the RFT, for indices calculation.

This two-file method has three stages comprising the evaluation of non-price attributes, calculation of indices for each non-price attribute and summation of the indices for each tender and finally price negotiation with the tenderer with the scoring the highest overall index.

[Template VII Form I Brook's law method spreadsheet](#) is to be used for the evaluation of non-price attributes and calculation of indices to determine the preferred tenderer.

Once evaluation of non-price attributes has been completed the TET and delegated authority sign and date the TET report 1. Once approved, the project manager/ network manager should request the Tender Secretary to open the price file of the preferred tenderer.

It is considered good practice on the larger projects to have a negotiation strategy in place prior to commencing the pre-letting process. The [Procurement Services team](#) can be contacted for further support.

If a single tender is received, the strategy for negotiation must be approved by the delegated authority to award the contract prior to proceeding with negotiation.

If negotiations cannot be successfully concluded with the highest scoring tenderer, the advice of the delegated authority to open price files should be sought prior to opening the price file of the second ranked tenderer and entering into negotiations.

The objective of the negotiation is to reach a fair price for an agreed quality of service which may involve a trade-off between quality, methodology, resources to be applied and price.

Care must be exercised during negotiations not to nullify the evaluation of non-price attributes completed in the first stage. This could result from proposed changes in key personnel or tenderers

methodology. Other tenderers could be compromised if, as a consequence of negotiation of the tender, a change in key personnel is accepted or there are reductions in the scope of work.

Once negotiations have been successfully completed the TET and delegated authority sign and date the TET report 2 and [template V Schedule of tenders received](#) to approve the award of the contract.

5.7.4 PQM

Before starting the evaluation please refer to the [sensitivity analysis \(section 1.6 Part A\)](#) which must have been undertaken to select price/non-price weightings. The analysis should be used to calibrate the TET's marking of the non-price attributes.

The ultimate aim of the non-price attribute evaluation is for the TET to agree an SQP for each tender which is a true reflection of the value in comparison to the other tenders received.

The tender evaluation process for PQM is as follows:

First, open File 1 and evaluate the non-price attributes. Non-price attributes grades should be transferred to [template VII Form G PQM simple spreadsheet](#). Calculate the following for each tender:

1. **Indices** = non-price attribute grades [0.0 - 100.0] x weights [30 - 80] / 100
2. **Weighted sum** = Sum of all indices [30 - 80]
3. **Weighted sum margin** [30 - 80] = each weighted sum – lowest weighted sum
4. **SQP (\$)** = base estimate* (\$) x weighted sum margin [30 - 80]/price weight [10 - 70]

* Remove any amounts fixed by Waka Kotahi from the estimate, e.g. provisional sums.

Note: The range indicated in [] denotes the maximum possible range of the figures. The weight assigned to each non-price attribute is given in the RFT. The total non-price attribute weight is a minimum 30, and the price weight is maximum 70 i.e. needs to total 100.

Transport Services contracts for PS are to have a non-price attributes weight of between 70 - 80 %, and PW contracts are to have a non-price attributes weight of between 30 - 50 %. Approval of the non-price attributes weightings outside the above levels is required from the Senior Manager Procurement prior to advertising the contract. To contact the Senior Manager Procurement please email procurement@nzta.govt.nz and clearly state the approval required in the subject line.

[Template VII Form G PQM simple spreadsheet](#) is to be used for the evaluation of non-price attributes and calculation of SQPs to determine the preferred tenderer.

Once the SQPs have been calculated and mathematically checked, the TET must perform a 'sanity' check on the SQP calculated for each tenderer to confirm that the respective SQPs represent the amount that Waka Kotahi is prepared to pay to secure one tenderer, relative to another. If the TET is not satisfied with any SQP, they are entitled to adjust the SQP. Where an SQP is adjusted the TET must

record the calculation of the adjusted SQP and provide written and well-documented justification for the adjustment.

If there are any alternative tenders, proceed to calculate the ATP as discussed in [section 5.2.4 Part A](#), together with Tangible cost adjustment (TCA) if they have been allowed for under the RFT. The ATP and TCA evaluation must be shown.

When the SQPs (and ATPs and TCAs) have been finalised, the TET and delegated authority sign and date the TET report 1 and printout of Form G. The project manager/ network manager must then request the Tender Secretary to open the price files.

5.8 Reports and recommendation

5.8.1 Tender reports and recommendation

[Template V Schedule of tenders received](#) shall be used in recording the evaluation results and the recommendation.

The TET reports and recommendation to the appropriate delegated authority, shall include comment on the rational and key points contributing to:

- confirmation that all tenders have been evaluated by the TET in accordance with the relevant evaluation criteria outlined in the RFT.
- the non-price attributes grade for each tenderer (grades to be included to sub-attribute level)
- why any tender failed any non-price attribute
- the acceptance or rejection of tags and late tenders
- any issues to be discussed during pre-letting meetings
- the recommendation to accept a tender that is not the lowest in price, and the acceptance of a tender where the tender price varies from the estimate of cost of work by 10 percent or more as applicable
- [Template VII Evaluation summary form and guidelines for PS and PW](#).

The [Procurement Services team](#) can provide TET report templates.

The TET should then make the recommendation to the appropriate delegated authority.

The delegated authority may approve award if the contract value is within funding allocation and within their approval limit via [template V Schedule of tenders received](#).

5.8.2 Late tenders

The evaluation report should include the reasons why the tender was accepted or rejected.

5.8.3 Non-conforming or rejected tenders

Reasons for disqualification of any tender shall be reported and may include a tender that has been failed on any non-price attribute or a

tender that was the preferred tenderer but was rejected because of failure to withdraw unacceptable tags.

5.8.4 Final evaluation forms

Tender evaluation reports, are to be accompanied by a completed report form for the particular supplier selection method used as follows:

- For LPC, [template VII Form J LPC method spreadsheet](#) shall be completed.
 - For Brooks law, [template VII Form I Brook's law method spreadsheet](#) shall be completed.
 - For PQM [template VII Form G PQM simple spreadsheet](#) shall be completed.
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5.9 Approval to open price files

5.9.1 Approval to open price files

Refer to the [Delegated authorities schedule - Part A](#) for delegation to open price files.

Approval to open price files is undertaken following completion and approval of TET report 1.

Prior advice is required when there are any features in the recommendation which are unusual or controversial. These situations are to be brought to the attention of General Manager Transport Services before approval is given to accept the contract.

Advance notice is to be given when urgent approval of a tender is required.

Verbal advice of approval shall be followed up in writing.

Note that it is the responsibility of the project manager/ network manager and not the Tender Secretary to ensure that [template V Checklist by Tender Secretary prior to tender evaluation](#) is completed and the necessary approvals are obtained.

5.10 Preferred tenderer status

5.10.1 When should preferred tenderer status be given

Suppliers are often involved in a number of tender processes nationally at any one time. If a TET has completed its tender evaluation and reached consensus on the favoured tender but the contract cannot yet be awarded for whatever reason the favoured tenderer should then be given preferred tenderer status. This will allow all tenderers to make informed decisions on other tender proposals they are working on and will also provide the preferred tenderer with an earlier indication of the pending contract award.

For example, if there is a need for Board approval to award the contract, or to first negotiate an acceptable price or contract terms with the favoured tenderer, then the favoured tenderer should be given preferred tenderer status.

The TET must seek approval from the officer with the delegated authority to approve the opening of price files (refer to the [Delegated authorities schedule - Part A](#)), to announce the preferred tenderer. Use [template XXII Approval of preferred tender status](#). As soon as this approval is obtained the TET leader should verbally inform all tenderers of their status, ie either preferred or not preferred. They may also advise tenderers' who are not preferred, the name of the tenderer who is preferred. Within 24 hours of such verbal advice the Tender Secretary must formalise this status in writing (email or letter) to each tenderer. Use [template XII Preferred tenderer notice](#).

Formal advice of status will include the following:

- The tenderers current status - either preferred or not preferred.
- The name of the tenderer who is preferred.
- An indication of the likely contract award date.
- A reminder that any work undertaken by the preferred tenderer before contract award is at their risk (preferred tenderer only).

Formal advice should specifically **not** include any advice on any non-price attribute grades, SQP, ATP, TCA, price information or ranking of tenderers. This information is to be released only when the contract is awarded (with the exception of the ATP and TCA which are not to be disclosed).

5.11 Consider commercial issues prior to contract award

Following opening of price files and prior to contract award the TET must review the preferred tenderer's schedule of prices and satisfy themselves that it does not contain any oddities or commercial issues. Examples of areas to consider:

- Front loading of the tender price in a PS multiple phase contract, eg is the pricing schedule balanced and not loaded in the detailed business case phase?
- Sensible and meaningful pricing of tendered lump sum items, eg is the lump sum price for as-built drawings appropriate?

If the TET is concerned that the schedule of prices is not balanced or it contains other commercial issues then they should hold a pre-letting meeting with the preferred tender (advice on commercial issues is available from the [Procurement Services team](#)). The pre-letting meeting should be used to discuss these concerns and rectify them to the satisfaction of the TET.

The price analysis and any associated pre-letting minutes should be captured in TET report 2. The TET and the delegated authority sign and date the TET report 2 and printout of [template VII Form G PQM simple spreadsheet](#). The project manager/ network manager must then request the Tender Secretary to issue the appropriate acceptance and decline notices.

5.12 Approval to award contract

5.12.1 Procedure

The following procedure applies when accepting a tender. The Tender Secretary undertakes this task from step 3.

Step	Action						
1	The project manager/network manager should ensure that sufficient financial approval is held to cover the accepted tender price including provisional sums and contingencies (except price contingency). If the contract price exceeds the available allocation the contract cannot be awarded until additional funding is sought and approval given.						
2	<table border="1"> <thead> <tr> <th>If the acceptance ...</th> <th>then ...</th> </tr> </thead> <tbody> <tr> <td>of a tender does not require Senior Manager approval</td> <td>submit all required information to the Manager for approval. Once approval has been given go to step 3.</td> </tr> <tr> <td>of a tender requires Senior Manager approval</td> <td>send all required information to the Procurement Services team. Procurement Services will review the TET report(s), facilitate Senior Manager approval and email the approval to the team responsible for the contract. Once approval received go to step 3.</td> </tr> </tbody> </table>	If the acceptance ...	then ...	of a tender does not require Senior Manager approval	submit all required information to the Manager for approval. Once approval has been given go to step 3.	of a tender requires Senior Manager approval	send all required information to the Procurement Services team . Procurement Services will review the TET report(s), facilitate Senior Manager approval and email the approval to the team responsible for the contract. Once approval received go to step 3.
	If the acceptance ...	then ...					
of a tender does not require Senior Manager approval	submit all required information to the Manager for approval. Once approval has been given go to step 3.						
of a tender requires Senior Manager approval	send all required information to the Procurement Services team . Procurement Services will review the TET report(s), facilitate Senior Manager approval and email the approval to the team responsible for the contract. Once approval received go to step 3.						
3	<p>Issue the appropriate acceptance notice and decline notices, upon receipt of the approved tender schedule.</p> <p>tender acceptance notice:</p> <ul style="list-style-type: none"> • template X Acceptance notice for PS contract • template XVIII Acceptance notice for PS contract (Brook's law and purchaser nominated price method) • template XII Acceptance notice for PW contract (LPC method) • template XIV Acceptance notice for PW contract (NZS 3910 - PQM) or template XIV Acceptance notice for PW contract (NZS 3916 - PQM) <p>tender decline notice:</p> <ul style="list-style-type: none"> • template XI Decline notice for PS contract • template XIX Decline notice for PS contract (Brook's law and purchaser nominated price method) • template XIII Decline notice for PW contract (LPC method) • template XV Decline notice for PW contract (PQM) <p>rejection notice on basis of non-conformity:</p> <ul style="list-style-type: none"> • template XVI Non-conformity rejection 						
4	<p>If all tenderers have an email, email a copy of the tender acceptance notice to the successful tenderer and tender decline notices to unsuccessful tenderers.</p> <p>If an unsuccessful tenderer does not have an email, post all tender decline notices.</p> <p>If the successful tenderer does not have an email, post tender acceptance notice and all tender decline notices.</p>						

5	Update status of advert on GETS to “Awarded” if required and provide the information outlined in clause 5.12.2. Refer to this flowchart to determine whether you are required to post an award notice to GETS.
6	One complete copy of each tenderer’s documentation including pricing schedules shall be archived in accordance with the policy for archiving. Contract documents shall be retained on the contract file and on completion of the contract shall be archived as above

5.12.2 Information required for an award notice

The information that must be included in the award notice published to GETS is outlined in rule 48 of the GPR. Using the [GETS Contract award notice guidance](#) will help to ensure you have provided the necessary information in line with rule 48. Waka Kotahi may include additional information to that required by rule 48 at its discretion.

5.12.3 Disclosure of evaluation information

The Waka Kotahi [Procurement manual](#) (section 5.5) sets out the minimum information which should be provided.

On award of the contract, all tenderers are to be advised of the following:

- Name of successful tenderer.
- Price and SQP of successful tender (submitted price preceding any negotiation).
- Price range for tenders received (except for Brook’s law tenders) where three or more conforming tenders are evaluated.
- Range of grades for each non-price attribute and range of SQPs, where three or more conforming tenders are evaluated (PQM).
- For each tenderer, their individual non-price attributes grade and SQP (PQM).

Waka Kotahi shall not be required to provide any further information regarding details of tenders or details of how the evaluation was arrived at.

5.13 Tender debrief meetings

After the tender process is complete and the contract awarded, it is important the all tenderers are given the opportunity to discuss their tenders with the TET. This will benefit all parties to the process and provide opportunity for continuous improvement.

It is important that non-compliance in tender submissions is discussed and details of any pages removed and not considered in the evaluation are provided to the tenderers.

A note should be recorded in the contract file identifying the name of the tenderer, TET members present, location and time of the debrief held.



Where significant delay is likely between announcing preferred tenderer status and awarding the contract, tender debriefs should be offered to tenderers prior to decline of tenders.



6 CONTRACT AWARD PROCEDURE

6.1 Contract file and record keeping

6.1.1 Record keeping

It is important that we maintain electronic copies of all information, communications, documentation relating to the procurement (including, but not limited to that information outlined in clause 6.1.4). These electronic copies must be saved to the contract file on InfoHub.

Where you receive a physical copy of a signed document (eg a contract, statement of work) this must be scanned and saved to the contract file on InfoHub. The original physical copy should then be stored in accordance with your business unit’s processes for the required retention period. Contact the [Corporate records and information team](#) for assistance with determining the length of the required retention period past the expiry date of the contract.

6.1.2 Contract procedures

PS: The contracts are administered by Waka Kotahi, therefore the full contract file is held in Waka Kotahi office. This contract file must contain all relevant information relating to the administering of that contract in addition to that stated below.

PW: The file must contain all relevant correspondence that will adequately monitor the contract. This file need not include other papers concerning the contract. These papers will be included in the full file maintained by the consultant.

6.1.3 Information in contract file

Contract files must include the following information:

PS contracts	PW contracts
<ul style="list-style-type: none"> estimate template I Request for approval to commence the procurement process PS copies of all notices to tenderers template V Schedule of tenders received and evaluation reports unsuccessful tender submissions copy of the successful tender and post tender correspondence copy of the tender acceptance, decline and non-conformity notices the signed contract document (or an indication of where this is stored) report on consultant’s performance 	<ul style="list-style-type: none"> liquidated damages pre-assessment estimate template II Request for approval to commence the procurement process PW copies of all notices to tenderers template V Schedule of tenders received and evaluation reports unsuccessful tender submissions copy of tender submissions (including successful and unsuccessful tender submissions and post tender correspondence) copy of the tender acceptance, decline and non-conformity notices the signed contract document (or an indication of where this is stored)

<ul style="list-style-type: none"> • correspondence on the contract generated in the local office with any other party • correspondence to and from the consultant pertinent to the contract • contract completion certificate 	<ul style="list-style-type: none"> • insurance certificates • report on consultant's performance • correspondence on the contract generated in the local office, between the consultant and any other party • correspondence to and from the consultant pertinent to the contract • practical completion certificate (including certificates for separable portions) • final completion certificates • final construction report
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6.1.4 Maintenance contracts (PW only)

After contract award the Tender Secretary must forward a copy of the contractor's operational requirements and pricing schedule to the [Procurement Services team](#).

6.2 Compilation of contract documents signing sets

6.2.1 PS contracts

Signing sets of contract documents shall be executed not later than 20 working days following acceptance of tender.

Two sets of the contract documents (these can either be electronic or hard copies) should be assembled and checked for completeness as follows:

- the RFT
- the contract agreement form completed ready for signing
- the tender form and tendered pricing and personnel schedules (original and copy(s)) bound into signing sets, Section F of the RFT
- the letter of acceptance, notices to tenderers, tender clarification queries and responses, interview minutes, pre-letting minutes, and any other tendering or agreement related correspondence bound into section F of the RFT
- photocopies of the general conditions, and the relevant standard specifications bound into section G of the RFT.

6.2.2 Sets of documents for PS

If working with paper copies of contract documents, there must be two signed sets of documents. Other sets may be required for working purposes. The original Waka Kotahi set of documents must be held in secure storage. This may be used if arbitration is necessary on the contract.

6.2.3 PW contracts

Signing sets of contract documents shall be executed not later than 20 working days following acceptance of tender.

Section 2.7 of *NZS 3910: 2013* and sections 2.6 of *NZS 3916: 2013* and *NZS 3917: 2013* cover the procedural requirements of the Principal and the contractor in the execution of the contract agreement. Three sets of

documents are required for distribution in accordance with the requirements.

Note the signing sets are to be the original versions of the RFT documentation issued (ie do not incorporate changes from NTTs issued throughout the tendering process).

The consultant has the responsibility for assembling and arranging the signing of contract documents.

If working with paper copies of contract documents, the set of documents to be held by Waka Kotahi must be the original documents. This set of documents must be returned to the Tender Secretary when the contract has been signed. The Tender Secretary must hold the documents in secure storage and these documents can be used if arbitration is necessary on the contract.

6.2.4 Procedure

PS: The Tender Secretary must ensure the following tasks are completed for the signing of contract documents (including short-form contract agreements).

PW: The consultant responsible for the contract must ensure the signing of the contract documents is completed in accordance with the following procedure.

Step	Action						
1	Assemble the signed sets of contract documents securely together ensuring the documents are complete and all pages are in order.						
2	Number the pages in each section. Note: Each page number will be the unique identifier for that page.						
3	Index the document as given in the following table. Note: The contract documents must contain an index under the cover sheet. The index must reference all sections and pages that form the contract document. The title of each section must be entered in the index showing the number of pages that form the section. Example: General conditions for the provision of PS, pages i-iii and 1-10.						
	<table border="1"> <thead> <tr> <th>If the contract document ...</th> <th>then ...</th> </tr> </thead> <tbody> <tr> <td>is one document</td> <td>index it as in the example given above.</td> </tr> <tr> <td>consists of individual documents</td> <td>enter each document individually on the index and number the document, e.g. Tender form page 1 Letter to tenderer page 2</td> </tr> </tbody> </table>	If the contract document ...	then ...	is one document	index it as in the example given above.	consists of individual documents	enter each document individually on the index and number the document, e.g. Tender form page 1 Letter to tenderer page 2
If the contract document ...	then ...						
is one document	index it as in the example given above.						
consists of individual documents	enter each document individually on the index and number the document, e.g. Tender form page 1 Letter to tenderer page 2						
4	Ensure the index page(s) of each set is signed. Note: This must be done by all persons who will be signatories to the contract. The signing of all pages is not required.						
5	Sign the contract. Note: This must be undertaken by the delegated authority.						

Note: The Tender Secretary must ensure that all sections of each signing set of the contract documents are securely attached to form one document.

6.2.5 Filing of signed contracts

Once a contract has been signed by all parties, a copy of that fully signed contract must be saved to InfoHub in accordance with clause 6.1.1 and the InfoHub link saved in the contract register. The mandatory fields must also be completed at this point. The recommended fields may be updated as relevant.

It is the responsibility of the project manager to ensure the contract is filed and the contract register is updated as appropriate.

6.3 Signing of the contract agreement

6.3.1 Introduction

This topic discusses the procedure Waka Kotahi will follow when signing the contract agreement where the supplier is a

- company
- partnership
- joint venture
- consortium
- individual

In all cases of doubt or difficulty, get legal advice as failure to achieve binding execution can leave Waka Kotahi without remedies.

6.3.2 Company

Where the supplier is a company, the contract agreement must be signed by either:

1. two or more directors of the company (whose signatures need not be witnessed)
2. if there is only one director, by that director whose signature must be witnessed
3. if the constitution of the company so provides, a director and another person, in which case both signatures must be witnessed, or
4. a person appointed as the attorney of the company (copy of power of attorney and a certificate of non-revocation required).

The two most common styles are:

XYZ CONSULTANTS LIMITED

Director

Director

or:

XYZ CONSULTANTS LIMITED

Director

Witness' signature:

Name:

Occupation:

Address:
Secretary
Witness' signature:
Name:
Occupation:
Address:

While common seals are no longer a legal requirement they are still sometimes used.

Sometimes a power of attorney is used. The attorney binds the company, but only to the kind of document involved. The extent of the power must be checked. The attorney must give a certificate of non-revocation.

A copy of the power of attorney and the **original** certificate of non-revocation must be **attached** to the document.

A person held out by a company as having authority to sign on its behalf can bind a company. However there can be issues as to whether it is the company or the person him/her self who is doing the holding out and the extent of the person's authority. If the contract is significant (for either party) then the more formal levels of execution described above must be used, unless documentation of the authority to bind the company is provided.

6.3.3 Partnership

Where the supplier is a partnership, the contract agreement may be signed by any of the partners.

If there is any doubt about the authority of the person signing, the authority of the particular person involved must be checked.

Generally any partner can bind a partnership to a contract in the usual course of the partnership business. The execution style should be:

Signed by X as a member of the XYZ
 Partnership who, by signing warrants that he/she has authority
 to bind the XYZ Partnership.

Witness' signature
 Name:
 Occupation:
 Address:

If the contract is particularly significant or outside the normal scope of the partnership, then each partner must be required to sign.

It is always essential to ensure that the proper description of the partnership is shown. (There may be several with slightly different names).

6.3.4 Joint ventures/ consortia	<p>There is no fixed rule for joint ventures/ consortia as their ability to enter into contracts is governed by the individual agreement creating the joint venture/ consortium. A joint venture/ consortium is not a legal entity in its own right.</p> <p>When contracting with a joint venture/ consortium, a check must always be made with the joint venture/ consortium to find out what the correct procedure is for that particular joint venture/ consortium.</p>
6.3.5 If joint venture/ consortium is a company	<p>A common practice is for a joint venture/ consortium to form a company as an administrative vehicle for contracts. In this case the usual rules for limited liability companies are followed.</p>
6.3.6 If joint venture/ consortium is not a limited liability company	<p>A joint venture/ consortium can be a combination of companies or partnerships or even a mix of companies and partnerships.</p> <p>If the joint venture/ consortium is not a limited liability company, then as a general rule an authorised representative of each joint venture/ consortium party must sign.</p>
6.3.7 Individuals	<p>Contracts dealing with individuals must be signed by the individual. It must be noted that individuals sometimes use trading names.</p> <p>Example: John Smith may use the trading name John Smith Roadmarking. A trading name is not a legal entity and in such a case the individual must sign his/her name. The signature must be witnessed, and the witness must add name, occupation and address.</p>

6.4 Who may sign the bond (PW only)

6.4.1 Introduction	<p>A bond is a deed and some different rules apply. This topic discusses the procedures Waka Kotahi follows when signing bonds where the contractor is a:</p> <ul style="list-style-type: none"> • partnership • joint venture/consortium • individual <p>In all cases of doubt or difficulty get legal advice as failure to achieve binding execution can leave Waka Kotahi without remedies.</p>
6.4.2 Limited liability company	<p>As for execution of a contract, except that a person held out by the company should not execute.</p> <p>Execution should be by:</p> <ul style="list-style-type: none"> • two directors • one director and secretary (if constitution permits) • power of attorney (banks frequently execute this way).
6.4.3 Partnerships	<p>As for execution of a contract. As giving bonds is not usually part of the normal business of most partnerships, ordinarily every partner must sign.</p>

6.4.4 Joint ventures/ consortia	There is no fixed rule as to how joint ventures/ consortia enter into deeds. It will depend on the provisions contained in the agreement creating the joint venture/ consortium or the status of the various joint ventures/ consortia.
6.4.5 Individuals	As for execution of a contract. The person giving the bond must be advised in writing to take independent advice before executing the bond.
6.4.6 Contractor	Both the contractor and the bond giver must execute the bond and the executions must be witnessed where required.

6.5 Assignment or novation of contracts

6.5.1 Introduction	<p>This section sets out the procedure Waka Kotahi will follow when a company:</p> <ol style="list-style-type: none"> 1. changes their name, or 2. seeks the permission of Waka Kotahi to assign (either wholly or in part) its rights or obligations under the contract to another consultant, or 3. has a material change in effective control of the consultant itself (e.g. its shares are sold to another party, or the company amalgamates with another) or where the current supplier's assets or key personnel, are bought out by another company. <p>Waka Kotahi may be at risk where there is ineffective or inappropriate assignment or novation of a contract rights that results in:</p> <ul style="list-style-type: none"> • non-transfer of contractual liabilities • breach of contract • the Waka Kotahi Procurement manual process being subverted. <p>Waka Kotahi should seek legal advice, or consult the Procurement Services team in all cases of doubt or difficulty, as failure to achieve the valid assignment or novation can leave Waka Kotahi without remedies, or in a weaker commercial position. Deed templates are available from the Procurement Services team.</p>
6.5.2 Change of name	<p>Where the supplier changes its name, but nothing else changes there are no legal consequences. The supplier has an obligation to:</p> <ol style="list-style-type: none"> 1. provide Waka Kotahi with notification in writing of its new name, and 2. provide Waka Kotahi with written confirmation that the change in name will have no effect on the substance and delivery of the contract. <p>The project manager/ network manager must ensure that where a change in name is observed the matter is followed up with the consultant to determine if a change in control has also occurred.</p>

PW: A change of name by itself means that there is no change in the legal entity, so there is no need to provide for the carryover of liabilities/bonds/insurance. A simple change of name is rare, as the change is normally an indication of a change of control. If a change of control has also occurred, change of control provisions below will be applicable.

6.5.3 Change in control after contract award

A buy-out of the supplier by another company (either shares or assets), an amalgamation, a transfer of majority shareholding or a change in the effective management or control of the consultant (including changes to a partnership) may impact upon the substance and delivery of the contract, particularly in the case where key personnel exit. The consultant has an obligation to do the following:

1. Fully inform the project manager/ network manager of the changes (as soon as practicable, and preferably before they take effect). Waka Kotahi may have the right to terminate the contract if it wishes and claim consequential costs and expenses from the supplier.
 2. Seek and obtain the prior consent of Waka Kotahi to any proposed assignment of contractual obligations or novation of the contract to the new party. If consent is not given in accordance with the specified process, Waka Kotahi has the rights specified in (1).
-

6.5.4 Assignment or novation

Waka Kotahi will only consent to assignment or novation if the process set out below is followed and it is satisfied that its interests, the integrity of the procurement process will not be compromised, and that any existing bonds and insurances are confirmed or appropriate substitutions made.

In an assignment the original supplier should ordinarily remain responsible for performance under the contract unless that is clearly inappropriate (e.g. the incoming party is stronger and willing to take on liability for past events) and that continued liability must be documented.

It is important that the assignment or novation is specifically addressed so that if there are difficulties later, there is not a dispute about whether it is the original party or the assignee that is liable. Specifically if the original party is excused, the new party must be expressly stated to be liable for past events. At this point, the assignment is materially the same as a novation.

In a novation the original supplier ceases to have any ongoing involvement. Issues as to the time when a liability arises can therefore be material. Generally, novation should not be accepted unless there is substitution of a clearly stronger party and there is no risk to the integrity of the procurement process. The incoming (or novated) party must acknowledge responsibility for everything done or not done by the original party.

6.5.5 Changes prior to contract awarded

Where the project manager/ network manager becomes aware of a material change or change in control of a tenderer, at any time during

the tender process before a contract has been awarded, the project manager/ network manager shall do the following:

1. Send a letter to the tenderer, asking them to confirm that the personnel named in the tender bid will remain the same and that there is no material change in circumstances that would affect the tenderer's ability to perform the contract it bid for and demonstrate how this is so.
 2. If there is a change of control, check whether the other relevant party has also tendered for the contract. If so, seek advice from the [Procurement Services team](#).
-

6.5.6 Changes after contract awarded

Where the project manager/ network manager becomes aware of a material change to or change in control of an existing supplier, or receives a request for Waka Kotahi to consent to assignment or novation of an existing contract the project manager/ network manager shall do the following:

1. Request details of the (proposed) change in control from the consultant and details of the proposed new key personnel.
2. Assess whether the new party is at least as able to perform the contract.

If so, the project manager/ network manager shall obtain the consent of their Senior Manager to request from the supplier a deed of assignment or novation of the contract for approval by Waka Kotahi (such approval to be given by the Senior Manager). This deed must clearly transfer all the rights and obligations of the contract to the new party, and state that from the date of the deed, Waka Kotahi is entitled to deal only with the new party in relation to all matters. The new party must be clearly bound in respect of past acts or omissions of the original party and liable for them and any rectification required as if it was the original party.

If it is assessed that the new party is not as able to perform the contract, the project manager/ network manager shall refer the matter to the appropriate Senior Manager. If the Senior Manager determines that it is appropriate, require the consultant to provide a deed of assignment or novation. In this case, the original party would not be fully released.

3. Check whether the new party unsuccessfully tendered for the contract. If so, seek advice from the [Procurement Services team](#).
4. Check that replacement bonds (if any) and insurances are in place or that the relevant deed assignment includes the assignment or novation (as appropriate) of existing bonds and insurances

It is very important to respond to notice, even informal, of any events that might amount to assignment or novation. This is because the consent of Waka Kotahi can be inferred from conduct or acquiescence, and in those cases its position might not be adequately protected.



Where approval of assignment or novation is not recommended legal advice should be sought regarding termination of the contract.

6.5.7 Where a change in control involves an assignment or novation, subcontracting

The consent of Waka Kotahi will ordinarily be required for a consultant to subcontract. The consent of Waka Kotahi to this should always expressly prohibit the subconsultant/subcontractor assigning or novating its rights and obligations in relation to the particular tender. The consent should require notice of changes of control and include a provision that Waka Kotahi may amend or withdraw its consent if those types of arrangements occur.



7 CONTRACT MANAGEMENT

7.1 Contract payments

This stage in the procurement process involves making contract payments.

PS: Contract payments, for work performed by a consultant, are made at the time and in the manner as set out in the general and special conditions in the contract documents.

PW: Contract payments, for work performed by a contractor, are made in the time and manner as set out in of *NZS 3910: 2013*, *NZS 3916: 2013* and *NZS 3917: 2013* and the contract documents, in accordance with the [Construction Contracts Act 2002](#). The *Contract payment voucher and tax invoice is entered directly into SAP by the consultant.*

7.2 Liquidated damages (PW only)

7.2.1 Introduction

Liquidated damages are daily amounts to be deducted from contract payments when practical completion is not achieved by the contract completion date as calculated from the direct daily costs of Waka Kotahi and provided for in the contract documents.

Under its general conditions Waka Kotahi has the right to deduct liquidated damages from any monies payable to the contractor in terms of the contract between them. Commercial judgement is to be used in deciding whether to recover liquidated damages or not while considering their actual value in relation to the cost of recovery and the maximisation of the value to the crown. Waka Kotahi, as the contract principal, has the sole authority to make deductions and therefore the discretionary power to vary the amount of liquidated damages to be deducted.

Note: liquidated damages for late completion of a contract are **not** subject to GST.

Liquidated damages are payable in the event the contractor does not complete the work on time. The monies are payable to compensate the Principal (Waka Kotahi) for the loss that would result from the delay in completion (clause 10.5.1 of Schedule 1 of *NZS 3910: 2013* and *NZS 3916: 2013*). The amounts are akin to damages payable upon breach of the terms and conditions of the construction contract. The monies do not appear to be consideration for a supply by Waka Kotahi to the contractor.

Although the liquidated damages reduce the amount payable by Waka Kotahi to the contractor (per the "cpv template"), this should not be considered a reduction in the price of the contractor's services to Waka Kotahi.

The reduction for liquidated damages on the buyer-created tax invoice is merely a "netting off" mechanism done for administrative



efficiency. In other words, both Contractor and Principal should account for GST on the gross / pre liquidated damages price of the work. For example, for "Payment No: 1" in the cpv template, the GST amount should be \$767,343.75 (i.e. certified claim amount of \$5,250,000 less retentions of \$134,375.00 = \$5,115,625 x 0.15 = GST of \$767,343.75).

7.2.2 Application of liquidated damages

Liquidated damages calculated by the project manager are to be approved by the Senior Manager prior to approval to proceed with the engagement of a contractor.

Under delegated authority of the general conditions of contract (NZS 391X series), the principal's representative (the Waka Kotahi project manager) applies liquidated damages at the contract rate when a contract proceeds beyond its completion date.

Liquidated damages proposed to be varied or waived by the project manager, must be approved by the Senior Manager and endorsed by the General Manager Transport Services.

7.3 Performance evaluation

The Waka Kotahi project manager should undertake regular performance evaluations of their PS consultants and PW contractors throughout the lifecycle of their contract. The performance evaluation requirements are provided in Waka Kotahi's [Minimum Standard Z/11 – Performance Evaluation](#).



8 CONTRACT CLOSE

8.1 Introduction

8.1.1 PS contract closure

Contract closure for a PS contract occurs with the issue of a PS contract completion notice, PSF/5b ([SM030](#)) to the consultant on satisfactory supply of all deliverables. A copy of this certificate should be retained on the contract file.

If for any reason the project manager/ network manager wishes to terminate a contract due to poor performance, before satisfactory supply of all deliverables, then a report must first be prepared setting out the reasons for such recommended action for the General Manager Transport Services' endorsement and the Waka Kotahi Chief Executive's approval. Without such approval a contract cannot be terminated.

8.1.2 PW contract closure

Contract closure for a PW contract occurs with the issue, by the engineer to the contract, of a final completion certificate for the contract works to the contractor and Waka Kotahi as set out in *NZS 3910:2013*, *NZS 3916: 2013* and *NZS 3917: 2013* and the contract documents.

Any other reports required by the PS contract, eg contract performance report shall be completed by the consultant and copies forwarded to Waka Kotahi.

If for any reason the project manager wishes to terminate a contract due to poor performance, before satisfactory supply of all deliverables, then a report must first be prepared setting out the reasons for such recommended action for the General Manager Transport Services endorsement and the Waka Kotahi Chief Executive's approval. Without such approval a contract cannot be terminated.

8.1.3 Release of bond

When Waka Kotahi receives a copy of the final completion certificate from the consultant, the Tender Secretary must obtain the agreement of the project manager prior to the release of the bond in lieu of retentions. The consultant should advise the project manager of the impending issue of a final completion certificate within five working days of the contractor's receipt of such certificate to ensure the release of the bond in lieu of retentions on issue of the final completion certificate.

The Tender Secretary must advise the contractor and the contractor's surety by written notice of their release from the bond in lieu of retentions on issue of the final completion certificate.

8.1.4 Release of Contractor's bond

When Waka Kotahi receives a copy of the practical completion certificate from the consultant, the Tender Secretary must obtain the agreement of the project manager prior to the release of the Contractor's bond (if one was required) The consultant should advise the project manager of the impending issue of a practical completion certificate within five working days of the contractor's receipt of such



certificate to ensure the release of the Contractor's bond (if one was required) on issue of the practical completion certificate.

The Tender Secretary must advise the contractor and the contractor's surety by written notice of their release from the Contractor's bond (if one was required) on issue of the practical completion certificate.

8.1.5 Release of Contractor's bond or bond in lieu of retentions under the Global bond

If the contractor is under a global bond scheme, the Tender Secretary shall notify globalbond@nzta.govt.nz that a release letter has been issued and the said contract can be removed from the global bond register.

PART B – CORPORATE PROCUREMENT PROCEDURES

Part B

Part B provides guidance on the procurement processes associated with the acquisition of goods, services and works not usually undertaken through NLTP funding (ie not state highways and roading). The guidance explains the processes, procedures and documents that apply to the planning, sourcing and managing of the procurement of goods, services and works for Waka Kotahi internal operations.

It also relates to the administration of contracts for internal operations. The procedures for each stage of this process are discussed in the following relevant sections.

Advice can be sought from the [Procurement team](#) on any stage of the procurement process in Part B of this manual.

Procurement process map

A detailed process map outlining the procurement process as outlined in Part B of this manual can be found [here](#).

It is strongly recommended that you review the process map prior to reviewing this manual.

Overarching governance

Waka Kotahi must apply the [Government Procurement Rules \(GPR\)](#) to all non-NLTP funded/corporate procurements. Part B has been designed to align with the *GPR* in order for Waka Kotahi to meet its government obligations.

Principles and the Government Charter

Waka Kotahi must be guided by the five [Principles of Government Procurement](#) and the [Government Procurement Charter](#) when undertaking procurement.

-  1. Plan and manage for great results
-  2. Be fair to all suppliers
-  3. Get the right supplier
-  4. Get the best deal for everyone
-  5. Play by the rules

Annual procurement plan (APP)

Annual procurement plans (APP), help inform strategic procurement across government. An APP is a rolling list of procurements that are planned to start in the next 12 months. Waka Kotahi is required to submit its APP to MBIE twice annually on 1 March and 1 October each year.

More information can be found [here](#) or on the [Procurement OnRamp page](#).

Significant services contract framework

This framework provides effective management of the contracts for significant services that are critical to agencies business objectives. Waka Kotahi is required to report to MBIE on its Significant service contracts twice annually on 1 March and 1 October each year.

More information can be found [here](#).

Procurement lifecycle

The following diagram identifies the stages in the procurement and contract management processes. A more detailed process flowchart for internal operations is provided on page 3.



Summary of templates referred to in Part B

Template name and internal link
Procurement plan lite
Procurement plan
Request for quote
Request for quote (response form)
Registration of interest
Registration of interest (response form)
Request for proposal
Request for proposal (quality response form)
Request for proposal (price response form)
Approval to release RFx on GETS
Exemption request flow chart
Exemption request form
Proposal receipt log
Proposal close off checklist
Notice to tenderer
Notice to specific tenderer
Reference check questions
Evaluation model template
Evaluation panel guide
Evaluation recommendation report
Negotiation checklist
Negotiation plan
Notification of outcome letter – successful
Notification of outcome letter – shortlisted
Notification of outcome letter – unsuccessful
GETS notice of contract award flow chart

[GETS notice of contract award guidance](#)

[Supplier debrief template](#)

[Supplier performance meeting agenda and minutes](#)

[Contract exit procedure checklist](#)

[Options paper](#)

Delegated authorities schedule – Part B

All procurement activity must be carried out in accordance with the procurement delegations as outlined on [OnRamp](#). The most commonly used procurement delegations are summarised below:

Activities and services contracts				
Value limit	Up to \$1 million	Up to \$5 million	Up to \$20 million	Over \$20 million
Procurement strategies (BR099-100)	Senior Manager (Tier 3*) / Chief Technology Officer* / Chief Data Officer* / Head of Cyber Security* / Chief Financial Officer*		General Manager / Director Office of the Chief Executive	
Open price files (and approval to name preferred) (BR101-102)	Manager (Tier 4**)	Senior Manager (Tier 3*) / Chief Technology Officer* / Chief Data Officer* / Head of Cyber Security* / Chief Financial Officer*	Senior Manager Procurement	
Award (approval and execution of contract) (BR 103-105)			General Manager / Director	Board
Activities and services variations				
Value limit	Up to \$1 million	Up to \$5 million	Up to \$20 million	Over \$20 million
Contract variations of original contract value (including execution of any written variation to give effect to the variation) (BR107-109)	Manager (Tier 4***)	Senior Manager (Tier 3***) / Chief Information Officer / Chief Financial Officer	General Manager / Director	Chief Executive

* who has Delegated financial authority (DFA) for the cost centre/ Work breakdown structure (WBS)

** Manager of the team undertaking the procurement

*** Manager of the team who has the contract manager and who has DFA for the cost centre/ WBS

Authority to procure and enter into contracts

Employees may undertake the purchase of goods, services and/or works provided that:

- such costs fall within the terms of reference or job description of that person's position and are within their delegated financial authority
- proper regard has been made to reasonable economy and efficiency
- the cost is based on the best possible estimates
- properly allocated funds are available in an approved budget to meet the costs
- the costs have been allocated to the correct expenditure code (as set out in Waka Kotahi [chart of accounts](#)) and that expenditure code is one to which their delegation applies
- the costs comply with all relevant Waka Kotahi instructions and directives
- a contract is entered in to with the preferred supplier (unless the purchase is completed with a credit card or purchasing card).

Where an individual exercises their financial delegation, they may also exercise their purchasing delegation provided at least two people are involved in each transaction to ensure appropriate separation of duties. In addition to getting approval to incur costs from someone with appropriate financial delegation, employees must also get approval from someone with the appropriate purchasing delegation.

9 PLANNING TO PROCEED WITH PURCHASING GOODS, SERVICES AND/OR WORKS

9.1 Procurement from established supplier panels and contracts

9.1.1 Established suppliers and panels

Waka Kotahi has established [supplier panels and contracts](#) that can be used to purchase commonly used goods, services and/or works, including:

- All-of-Government (AoG) contracts
- Common capability contracts
- Syndicated contracts
- Waka Kotahi panels of suppliers

For more information about these established supplier panels and contracts, see the [Procurement OnRamp page](#).

[Rule 14.9\(i\) of the GPR](#) means Waka Kotahi is exempt from the requirement to openly advertise individual contracts if it is procuring from one of the supplier panels and contracts listed above.

Waka Kotahi is **mandated** to purchase from:

- an existing AoG contract; or
- one of the [four ICT common capabilities contracts](#):
 - ICT security and related services panel (SRS panel)
 - Infrastructure as a Service (IaaS)
 - One.govt
 - RealMe

when they meet the needs of the procurement, unless there is a good reason not to do so.

Waka Kotahi is **encouraged** to purchase from common capability contracts, syndicated contracts or panel of suppliers before openly advertising.

9.1.2 Direct appointment from established suppliers and panels

Direct appointment occurs where Waka Kotahi asks a single supplier to submit a proposal for a contract opportunity, and the contract opportunity is not openly advertised.

It is recommended that direct appointment only be used when the procurement is deemed to be of low risk.

There is no maximum threshold value to use direct appointment when purchasing under [Waka Kotahi established supplier panels and contracts](#).

Waka Kotahi must request a formal proposal from the supplier and complete a proper evaluation of capacity, capability, risk, public value and due diligence.



To ensure all mandatory documentation, process and governance is complete in relation to a direct appointment, a checklist and document file has been created to assist with your procurement: [Direct appointment checklist and document pack](#)

9.1.3 Closed contests utilising established suppliers and panels

A closed contest involves selecting a number of suppliers (at least three, where available) and inviting them to each submit a proposal or quote.

It is important that a proper process is followed when using a Closed contest method. To do this, ensure:

- the invitation is in writing and contains key information and a specification of the work to be done
- where available, a minimum of three suppliers are invited to submit proposals or quotes
- a consistent and transparent evaluation method is outlined and used
- reasons for the decisions are recorded and maintained

There is no maximum threshold value to undertake a closed contest when purchasing from [Waka Kotahi established supplier panels and contracts](#)

9.1.4 Consultants and contractors

Where your procurement involves engaging a third party you will need to identify whether a Contractor or Consultant will best suit your needs. For more information on the difference between contractors and consultants can be found on [OnRamp](#).

If you are hiring a Contractor you must contact careers@nzta.govt.nz. If you are engaging a Consultant you must utilise the AoG Consultancy Services contract, unless there is justification not to.

9.2 Openly advertised procurement

9.2.1 Open advertising

Waka Kotahi is committed to purchasing from pre-approved suppliers and panels wherever possible. Therefore, Waka Kotahi will only openly advertise its contracts on GETS in line with [rule 13 of the GPR](#) if it is not possible to procure in accordance with [clause 9.1.1](#).

Where Waka Kotahi must openly advertise, one of the following RFx approaches will be used:

- [Request for information \(RFI\)](#): a formal market approach to gain a more detailed understanding of the supplier market and the range of solutions and technologies that may be available. **Note this process is informative only and must not be used to shortlist or select providers.**
 - [Request for quote \(RFQ\)](#): a formal market approach that seeks quotes from suppliers for specified goods, services and/or works. Normally used in low-risk procurements
-

where price is the main factor and the goods, services and/or works are easy to describe.

- [Registration of interest \(ROI\)](#): a formal process that enables Waka Kotahi to identify and shortlist potential suppliers. It seeks basic information from interested suppliers to allow an initial evaluation of their suitability. An ROI is generally the first stage of a multi-stage process (ie it is then followed by an RPF). Following the initial evaluation, shortlisted suppliers are asked to submit full proposals through the relevant RFx mechanism.
- [Request for proposal \(RFP\)](#): suppliers participate in a formal competitive process. Generally used for requirements where Waka Kotahi is open to innovation in the type of product or how the services are delivered. The outputs and outcomes are important, rather than the process that the supplier follows to deliver them. Can be used regardless of value, but the cost (for both Waka Kotahi and Suppliers) to conduct an RFP means it is less likely to be used for requirements where the value is under \$100,000.

If there are any doubts about whether a RFx process is necessary, the matter should be referred to the [Procurement team](#) for consideration. If the Procurement team requires further guidance (such as legal), it will refer the issue to the relevant party.

9.2.2 Direct appointment

Direct appointment, other than from a pre-approved supplier and panel, may only be used for goods, services or works of any description up to \$100,000.

Waka Kotahi must ensure that a [contract award notice is published on GETS](#) if a direct appointment is made from outside of pre-approved suppliers and panels.

Waka Kotahi must request a formal proposal from the supplier and complete a proper evaluation of capacity, capability, risk, public value and due diligence.

To ensure all mandatory documentation, process and governance is complete in relation to a direct appointment, a checklist and document file has been created to assist with your procurement: [Direct appointment checklist and document pack](#)

9.2.3 Closed contest

Closed contest, where the suppliers are selected outside of a pre-approved supplier and panel, is generally used for goods, services or works of any description up to \$100,000.

It is important that a proper process is followed when using a Closed contest method. To do this, ensure:

- the invitation is in writing and contains key information and a specification of the work to be done
 - where available, a minimum of three suppliers are invited to submit proposals or quotes
-



-
- a consistent and transparent evaluation method is outlined and used
 - reasons for the decisions are recorded and maintained

Closed contest, where the suppliers are selected outside of a pre-approved supplier and panel, is generally used for goods, services and/or works of any description up to \$100,000.

Waka Kotahi must ensure that a [contract award notice is published on GETS](#) if a Closed contest process is undertaken using suppliers from outside of pre-approved suppliers and panels.

9.2.4 Direct appointment and closed contests over the \$100,000 threshold

Where there is **strong justification** for using direct appointment or for undertaking a closed contest for a procurement valued over \$100,000, an exemption from open advertising may be required. To request an exemption you are required to complete the [exemption from open advertising request form](#), specify which [exemption from rule 14.9](#) that you are relying on and provide justification for your request. Refer to [this flowchart](#) to determine whether you need to complete an exemption from open advertising request.

9.2.5 Open advertising evaluation methodology

Where you are openly advertising you must specify an evaluation methodology in your RFX. This ensures the market is aware of how you intend to determine which supplier to appoint.

You may select from one of the following evaluation methodologies:

- Lowest price
- Simple score
- Weighted evaluation criteria
- Purchaser nominated price (target price) method
- Brook's law method

More information on these methodologies can be found in [clause 13.5](#).

9.2.6 One or two envelope

Where you want to ensure that price does not influence the evaluation, a two envelope process can be used. In this case the supplier submits its offer in two sealed envelopes:

Envelope 1: the response to the requirements

Envelope 2: all pricing information.

It is essential that no pricing information is contained in the first envelope or seen by the Evaluation panel before the evaluation and scoring on the merits is complete. Only once the scoring is completed should the pricing information be disclosed to the Evaluation panel.



9.3 Other procurement options

9.3.1 Waka Kotahi Purchasing card

A Waka Kotahi Purchasing card should be used on low value, low risk purchases in accordance with the Waka Kotahi [Credit card policy](#).

Approval must be obtained from an employee's manager if they wish to purchase goods, services and/or works using their Waka Kotahi Purchasing card (refer to the [Credit Card policy](#)).

9.3.2 Emergency procurement

In some instances of genuine emergency, Waka Kotahi may be allowed to forgo routine procurement procedures in order to respond efficiently and effectively to the emergency. Waka Kotahi must follow MBIE's [Guide to emergency procurement](#) if an emergency does arise.

Urgent situations that are created by Waka Kotahi through a lack of planning or risk mitigation do not constitute an emergency.

If you believe that you need to undertake emergency procurement contact the [Procurement team](#).

9.4 Procurement planning

9.4.1 Introduction

A procurement plan must be completed and approved by the [Procurement team](#) for all procurement activities where the Whole of life cost is greater than \$100,000. However, it is recommended that you complete a procurement plan for all procurements.

The level of detail provided in the procurement plan should be scaled to reflect the risk/ complexity of the procurement. However, at a minimum these plans should include:

- a description of what is being purchased
- an assessment of the competition in the supplier market
- an assessment of the market's capability to deliver the outputs
- the proposed procurement approach
- the proposed approach to appointing a supplier and reasoning for the use of the one adopted
- the [evaluation methodology](#), including details of the weighted evaluation criteria and the proposed Evaluation panel
- the Governance structure, including Board members, where applicable
- an assessment of potential procurement and probity risks.

Procurement planning is a vital stage in the procurement lifecycle. Ensure that you have allowed adequate time to complete all planning requirements prior to sourcing.

It is important that your procurement plan aligns with the *GPR* and this manual, and that your RFX is carefully prepared and followed in accordance with your procurement plan. The consequences of failing to follow the RFX, the *GPR* and this manual may include:



-
- unsuccessful suppliers questioning the integrity of Waka Kotahi procedures
 - suppliers withdrawing from subsequent RFX processes
 - inappropriate approaches from suppliers during the RFX process (eg an offer to modify RFX prices or conditions)
 - Waka Kotahi not achieving the most cost-effective purchase
 - suppliers seeking legal redress for damages or recovery of RFX costs
 - formal complaints by suppliers or other parties to Waka Kotahi, the Ombudsman, the Office of the Attorney-General etc that require investigation by the Probity Auditor

If you require any assistance with your procurement planning, contact the [Procurement team](#).

9.4.2 Existing contracts

Where the procurement relates to an existing contract, check the [contract register](#) and [OnRamp](#) for a copy of the existing contract. If the existing contract covers the scope of your requirement, you must follow the process to engage the supplier as set out in that contract. Contact the [Procurement team](#) if you require further assistance.

9.4.3 Market analysis

Completing a market analysis allows you to develop an understanding of the nature of the market, how it works, and how this will impact the procurement approach you select and your overall procurement plan.

The level of analysis you will need to complete will vary depending on the size and complexity of your procurement, but will generally include analysis of:

- market structure;
- competition;
- supply chain dynamics;
- availability of substitute goods, services and/or works; and
- industry impact assessment.

Another way to conduct a market analysis may be through the use of a Request for information (RFI). An RFI is a market research tool that can be used to gather information from potential suppliers about the services currently available. An RFI cannot be used on its own to shortlist or select a supplier. An RFI must be followed by a suitable procurement approach.

Further guidance on completing market analysis can be found [here](#).

9.4.4 Procurement planning for contracts with an estimate of <\$100,000

Where the expected Whole of life cost of the procurement is <\$100,000 a full procurement plan is recommended, but not required.

It is recommended that you complete [Procurement plan lite](#). If you choose not to complete a procurement plan, you must email the

contract to be signed to the appropriate delegated financial authority using [this email template](#).

9.4.5 Procurement planning for contracts with an estimate of <\$300,000

Where the expected Whole of life cost of the procurement is greater than \$100,000 but less than \$300,000, a small procurement plan is required.

[Procurement plan lite](#) template can be used for this purpose and should be tailored to suit your specific procurement.

9.4.6 Procurement planning when selecting from pre-approved suppliers and panels

Where you are purchasing from a pre-approved supplier or panel, a small procurement plan is required.

[Procurement plan lite](#) template can be used for this purpose and should be tailored to suit your specific procurement.

9.4.7 Procurement planning for contracts with an estimate of >\$300,000

Where the expected Whole of life cost of the procurement is greater than \$300,000, a procurement plan is required.

[Procurement plan](#) template can be used for this purpose and should be tailored to suit your specific procurement.

9.4.8 Business case as an alternative to a procurement plan

An approved business case may replace a procurement plan where the business case:

- outlines the proposed procurement approach;
 - contains all of the required elements of a procurement plan as outlined in [clause 9.4.1](#) above; and
 - has been reviewed and endorsed by the [Procurement team](#).
-

9.4.9 Allocation of a contract number

Contract numbers must be obtained from the [contract register](#) during the procurement planning stage. The contract register should be updated in line with [clause 14.4.5](#) as necessary throughout the procurement process.

Further information about the contract register can be found on [OnRamp](#).

9.5 Engaging with Waka Kotahi

Depending on the scope of your project, you may need to engage some of the following key Waka Kotahi teams before commencing the procurement process:

- [Procurement team](#)
 - [Talent Acquisition team](#)
 - [IT team](#)
 - [Information Security team](#)
 - [Privacy team](#)
-



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- [Geospatial team](#)
 - [Cyber Security team](#)
 - [Enterprise Portfolio Management Office team](#)
 - [Legal team](#)
 - [Finance team](#)

Engaging with these teams will help you to ensure that you have considered and addressed those key issues that relate to the procurement but which may be outside the scope of your team.

It is recommended that you engage with the relevant key teams early in the process to allow adequate time for the team(s) to provide assistance.

9.6 Selecting members of the Evaluation panel

It is essential that appropriate evaluators are identified as early as possible so their involvement in the evaluation can be secured, and to allow for sufficient time to replace members of the panel if required (ie if they have a significant conflict of interest that can't be managed).

Requirements for the Evaluation panel are that it will:

- include at least one person who have the appropriate skills and experience for evaluations over \$100,000
- include a person that has an appropriate level of knowledge of the work being purchased under the contract (this is generally someone with a senior role on the Evaluation panel)
- not include any member who may have any interest in an organisation submitting a proposal for the project being evaluated.

The Evaluation panel must comprise of at least two Waka Kotahi employees. The Evaluation panel may also comprise of external third party specialists and/or contractors. Contractors will not be responsible for approving the outcome of the evaluation.

9.7 Liability and insurances

9.7.1 Insurance advisory committee

The Insurance advisory committee (IAC) reviews and endorses departures to standard insurance provisions in proformas/contracts for Waka Kotahi contracts with suppliers, including contracts that relate to all NPTP funded professional services and all contracts for non-NLTP funded procurement. For the avoidance of doubt, questions relating to physical works contracts are not dealt with by the IAC and should be sent to insurance@nzta.govt.nz.

The IAC does not hold a decision-making function. Its role is to review and endorse requests.

9.7.2 IAC process

- Engage the IAC by completing the [Request for approval of changes to standard insurance provisions form](#).
- Once the request form has been completed, an automated workflow will send your request to the IAC for endorsement.
- The workflow then sends your request to the delegated financial authority, nominated by you in the request, for their approval.
- You will be notified of the outcome via email.
- Record of the request and the outcome will be retained by the IAC.

9.7.3 General

Waka Kotahi requires that all suppliers, contractors and consultants carry adequate insurance coverage (particularly professional indemnity and/or public liability) to protect the interests of Waka Kotahi against any claim arising from the provision of services.

The default position for Waka Kotahi is that the standard clauses contained in our contract documents on OnRamp are used. Any proposed changes to the standard clauses must be approved by the appropriate delegated financial authority. Engage the IAC in accordance with clause 9.7.2 above.

9.7.4 Changed insurance requirements after award

If for any reason it is identified that insurance requirements should be amended during the life of any contract (eg if the value of the contract increases significantly) then advice should be sought from insurance@nzta.govt.nz. Any proposed changes to insurance requirements after award must be endorsed by the IAC and approved by the appropriate delegated financial authority. Engage the IAC in accordance with clause 9.7.2 above.

9.8 Conflict of interest

Anyone involved in a procurement activity (including, but not limited to, anyone who has input into the design, planning, participation in the evaluation process etc) must proactively declare any actual or potential conflicts of interest or risk of bias before the commencement of their role on the procurement activity using the [Conflict of interest and confidentiality agreement](#). This must be updated as and when any conflicts arise throughout the procurement process. It is important that both actual and perceived conflicts of interest are declared so that any identified risks can be appropriately managed.

Evaluation panel chairs have specific responsibilities and requirements alongside the general requirement to complete the [Conflict of interest and confidentiality agreement](#). See [clause 13.1.7](#) for further information.

Suppliers are also required to declare any conflicts of interest. For any direct appointment, suppliers must complete the [COI supplier declaration for direct appointment of suppliers](#). For any appointment off an AoG panel, suppliers must complete [COI Supplier Declaration](#)

– [AOG Engagement Oct 2019](#). When consultants or contractors are engaged to undertake procurement activity on behalf of Waka Kotahi, the standard [Conflict of interest and confidentiality agreement](#) must be completed. For the avoidance of doubt, for any direct appointment or panel selection (eg for a consultancy to undertake the writing of an RFT) the following forms must be completed:

- [COI supplier declaration for direct appointment of suppliers](#) (company disclosure)
- Individual [Conflict of interest and confidentiality agreement](#) forms by each individual working on the on the project (individual disclosure)

More information about conflicts of interest (including types of potential conflicts of interest and recommended resolution actions) can be found on the [OnRamp Procurement page](#) or in the Waka Kotahi [Conflict of interest policy](#).



10 REQUEST FOR TENDER (RFX) PREPARATION

10.1 RFX content

10.1.1 Preparation of RFX

RFX documents should be carefully tailored to each procurement activity to ensure they are easily understood and clear to all potential suppliers.

If specific information is required, then it must be clearly stated as a requirement in the RFX documents.

RFX documents for goods, services and/or works are generally prepared by Waka Kotahi. Waka Kotahi may elect to use a Consultant or Contractor to undertake the preparation or assist in this process, ensuring they are contracted accordingly.

When preparing your RFX documentation in line with [GPR rule 38](#), make sure you:

- always use Waka Kotahi branded templates
- include the contract number in accordance with [clause 9.4.9](#) above.
- clearly describe the goods, services and/or works you want to purchase, including any broader outcomes you want to achieve
- define any limits to the scope of what you want to buy, eg if you are re-using existing goods, services and/or works that are related to the purchase
- use plain English and write as succinctly as possible. Avoid legalese, jargon and acronyms
- don't draft your requirements or specification in a way that creates unnecessary obstacles for suppliers or providers
- align your requirements, the evaluation criteria and the response form questions – eg if the supplier must have a particular accreditation, make sure there is a matching evaluation criterion and a response form question asking for details
- avoid asking for unnecessary information
- indicate whether a presentation may be required in accordance with [clause 13.1.12](#).
- outline the proposed frequency and scope of supplier meetings

10.1.2 RFX response forms

Along with the RFX, an [RFX response form](#) must be released on GETS. Providing response forms gives suppliers a clear indication of the information that Waka Kotahi is looking for. Response forms also assist the Evaluation panel because they help to standardise the information received from each supplier.

The [RFP response form](#) can be split into two parts – the quality response form and the price response form. If you have selected a two envelope approach, it is recommended that you provide both the quality response form and the price response form to suppliers.



10.1.3 RFX period

[Rule 34 of the GPR \(Rule 34\)](#) outlines the minimum number of Business days that must be allowed for the preparation of proposals. The default position is that 25 Business days must be allowed for the preparation of proposals. However, this timeframe may be reduced in accordance with Rule 34.

For the purposes of Rule 34, Waka Kotahi considers a Closed contest as equivalent to an RFQ.

10.1.4 Health and safety requirements

Waka Kotahi is committed to keeping our people safe. The [Health and Safety Policy](#) and the [Health and Safety Management Systems OnRamp page](#) contain key information relating to health and safety at Waka Kotahi.

Health and safety will be included as a requirement in RFX documentation, on a case by case basis. This will especially be the case where the tender is for services that require the employment of contractors to undertake activities where Waka Kotahi is the principal under the *Health and Safety at Work Act 2015*. Employees responsible for contracts must assess whether there is a requirement for health and safety to be included in the contract, prior to any tender being released.

Requirements should be confirmed with the Safety and Wellness team prior to RFX issue.

10.1.5 Security and privacy requirements

Before issuing a RFX, you must consider whether there are any privacy, information or security implications. There will be privacy, information or security implications if, during the RFX process or subsequent contract, the contractors or their employees will require access to personal information, or other information that is classified, or may view such material while performing the requirements of the contract (eg contractors working on an employee's database with access to personal file information).

If there are privacy, information or security implications, the supplier(s) concerned, and any subcontractors, may be required to undergo security vetting procedures to the appropriate level depending on the security classification given to the information. This vetting must be undertaken before contracts are signed. Occasionally, this may be necessary before issuing RFXs, if the process itself requires access to classified material. Employees should be aware that such clearances might take up to three months, depending on the level of clearance required.

Exposure of contractors or their employees to sensitive Waka Kotahi material, before security clearances are issued, is a breach of security.

Employees that suspect or are unsure if a proposed contract may have privacy, information or security implications should contact the [Privacy team](#) and/or [the Cyber Security team](#).



10.2 Inclusion of proposed contract in RFx

10.2.1 Introduction

The proposed contract must be included with the RFx. However, this does not restrict further negotiation.

For more information regarding the development of contracts after award, see [clause 14.3](#).

10.2.2 Default contract

The default position for Waka Kotahi is to use the contract templates as outlined on the [Procurement OnRamp page](#) (refer to the *Creating the contract* section). Waka Kotahi will not agree to using a supplier's standard terms and conditions unless these have been reviewed and approved by the Legal team.

If you wish to use a different contract template, contact the [Procurement team](#).

10.2.3 Draft key performance indicators

Draft key performance indicators (KPIs) should be contained in the proposed contract included with the RFx. The proposed method for reporting on KPIs should also be included.

When finalising the contract in accordance with [clause 14.3](#), the KPIs must also be finalised in consultation with the supplier and must be outlined in the signed contract.

More information regarding KPIs can be found in [clause 14.3.2](#).

10.3 Prior to the release of an RFx

10.3.1 Review of RFx documentation

If you require RFx documents to be reviewed by the [Procurement team](#), or any relevant subject matter experts, the documents must be provided to the relevant party with adequate time to allow for this review.

Contact the relevant party in advance to determine the time they need to conduct their review.

10.3.2 Approval of RFx documentation

The [Approval to release RFx on GETS](#) template must be completed and forwarded to the appropriate Delegated financial authority for their approval.

Once the Delegated financial authority has approved the proposed RFx, the [Approval to release RFx on GETS](#) template should be forwarded to the Tender Secretary to action the release of the RFx. All information required by the Tender Secretary to release the RFx should be found in the completed template.

10.3.3 Where a Consultant is used

Any Consultant or Contractor who prepares any documentation associated with the competitive process shall be precluded from bidding for that contract.



10.4 Dealing with enquiries or complaints received from suppliers

All enquiries or complaints by suppliers are to be directed to the point of contact as specified in the RFX, via GETS. If an enquiry or complaint is sent directly to the point of contact, they should instruct the supplier to resubmit the enquiry or complaint via GETS. The point of contact will respond to the supplier or escalate the enquiry or complaint as appropriate.

In addition, all RFX documentation includes the contact details for our Probity Auditor and suppliers are encouraged to make contact with the Probity Auditor if they have any concerns.

10.5 Interactive meetings

Interactive meetings provide a useful communication channel between Waka Kotahi and suppliers during the RFX period. Generally these will involve the relevant business units and may include the Evaluation panel.

The interactive meetings are commercial in confidence and non-contractual in nature.

Interactive meetings are generally used for large, complex, high risk procurements.

The key purpose of the meetings is to:

- clarify the intent of the contract, and ensure all parties are aligned on the specified requirements,
- provide a forum for an open exchange of information and ideas,
- allow additional information transfer to more clearly identify risk, so it can be better managed,
- align Waka Kotahi and supplier objectives, and
- allow the supplier to put forward conceptual design ideas to receive feedback on the designs' acceptability.

Where interactive meetings are used, the process proposed must be clearly documented in the RFX.

Suppliers may distribute information during the meeting but this must be returned to the supplier at the end of the meeting. It is important that all suppliers are offered equal time and access to the Evaluation panel during the interactive process.

Changes (or clarifications) identified by a supplier as a consequence of individual interactive meetings must be formally submitted by the supplier through a separate request for clarification. The Tender Secretary will subsequently issue a [Notice to tenderer \(NTT\)](#) or [Notice to specific tenderer \(NTST\)](#) as appropriate.

Generally, suppliers are provided with the RFX and invited to an initial combined inception meeting with the relevant business unit, advisors and occasionally the Evaluation panel, where the process to



be followed and the contract objectives are explained. Suppliers' initial queries are also discussed.

Following the combined inception meeting, a meeting timetable for interactive meetings will be agreed with suppliers.

Interactive meetings with individual suppliers should be timed logically within the RFX period. The timing should allow suppliers the opportunity to compile appropriate questions and to incorporate information received into their proposal.

A note should be recorded in the project file identifying the name of the Supplier, Waka Kotahi representatives present, location and time of the interactive meetings held.

10.6 Commercial in confidence

Meetings or other communications between potential and actual respondents and Waka Kotahi may be deemed to be commercial in confidence. Where a communication includes commercially sensitive, upon agreement of the Evaluation panel and/or the relevant business unit, the communication may be given commercial in confidence status and Waka Kotahi will respond directly to the supplier.

Suppliers must notify Waka Kotahi of the name and contact details of the person within their organisation to whom Waka Kotahi will direct all communications during the RFX period.

Communications that are commercial in confidence between a potential or actual supplier and Waka Kotahi must be in writing, issued separately and clearly marked that they are 'commercial in confidence', and for the attention of Waka Kotahi representative as listed in the RFX document.

Waka Kotahi will respect commercial in confidence communications. However, where a significant event arises, which in the opinion of Waka Kotahi threatens to frustrate or end the RFX and/or procurement process, Waka Kotahi reserves the right to inform all respondents, or to terminate the RFX process. If Waka Kotahi deems this to be the case it will communicate with the party who raised the commercial in confidence matter to seek their agreement (in writing) to relax the commercial in confidence status. If the party does not agree, Waka Kotahi will decide whether the communication should be the subject of a general communication to all potential or actual respondents.

11 ADVERTISING AND ISSUE OF RFX DOCUMENTS

11.1 Release of documents and information

11.1.1 Introduction

After the RFX has been prepared and approved it will be released by the Tender Secretary via GETS.

The Tender Secretary will be provided with information required to release the RFX with the signed Approval to release RFX on GETS in line with [clause 10.3.2](#).

11.1.2 Change to RFX documentation after issue

Suppliers must be notified of any changes to RFX documentation through an [NTT](#) issued via GETS. There must be strong justification for the proposed change. If the proposed change will have a material impact on a suppliers' proposal you must consider extending the submission date.

If you intend to make a change to RFX documentation you must contact the [Procurement team](#) for their advice and endorsement prior to making the change.

11.2 Communicating with suppliers

Communication during the RFX process, outside of a prescribed interactive meeting, will be in writing (this includes e-mail communication, which may include attachments). This will generally be via GETS. All communication with suppliers during the RFX process must be on Waka Kotahi branded templates.

Any requests from suppliers for technical guidance will be escalated appropriately in accordance with [clause 10.4](#).

To ensure fairness to all suppliers, all information should be shared with all suppliers unless there is a strong justification to withhold the information from some suppliers (ie it is commercially sensitive information, it is information only relevant and useful to one supplier).

12 RFX CLOSING PROCEDURES

12.1 Proposal receipt log and eTender box

12.1.1 Proposal receipt log	A Proposal receipt log must be maintained by the Tender Secretary or Procurement lead. The Tender Secretary or Procurement lead shall take care to ensure this register is kept confidential (especially from other suppliers).
12.1.2 eTender box	All proposals are to be received electronically via the GETS eTender box. Direct appointments are exempt from this requirement.
12.1.3 Maintaining the eTender box	The Tender Secretary or Procurement lead shall be responsible for the security of the proposals and access thereto. The Tender Secretary shall be responsible for ensuring any proposals received after the closing time are appropriately managed.

12.2 Receipt of proposals

12.2.1 Introduction	<p>Proposals will be received in electronic format via the GETS eTender box. Note that proposals submitted in a form not allowed for under the RFX may not be accepted.</p> <p>The RFX specifies the number of copies of each proposal that must be submitted. This will typically be a single electronic file. The Tender Secretary will provide members of the Evaluation panel with access to the proposal files. Making additional copies of proposals received is undesirable and should be avoided as far as possible.</p>
12.2.2 Receiving tenders	The table below shows what to do when receiving proposals that are not submitted via GETS.

If a proposal is received...	then...
by mail, courier or in person and is endorsed to the effect that it contains a proposal	advise that proposal cannot be received. Proposal to be returned unopened upon receipt.
by email	advise Procurement lead and the Procurement team. The Procurement team will recommend the appropriate action to be taken in relation to the emailed proposal
late	refer to clause 12.3 of this manual.

12.3 Processing of late proposals

All documentation required as part of a proposal must be received in the GETS eTender box by the proposal closing time.

Where a late proposal is received, the Tender Secretary or Procurement lead will mark the tender as “late” in the [Proposal receipt log](#). The Tender Secretary will advise the Procurement team

and the Procurement lead of the late proposal. The Procurement team will recommend the appropriate action to take in relation to the late proposal.

The advice of the Probity Auditor may be sought in relation to the late proposal and this advice will be retained on the project file (as required).

In addition, where it is decided that a late proposal should not be evaluated, a recommendation to that effect should be made to the delegated financial authority in accordance with [clause 12.5.5](#) below.

12.4 Opening of proposals

12.4.1 Introduction

Opening of proposals is completed in conjunction with the preparation of a [Proposal receipt log](#) for the proposals received. These procedures relate to the security of the proposals during the opening process.

12.4.2 Procedure

The Tender Secretary or Procurement lead must download the electronic proposal files from GETS and open them in the presence of a witnessing officer.

The witnessing officer can be any Waka Kotahi employee who is not involved in the procurement, and who does not have a conflict of interest. The witnessing officer must be present from the time the files are downloaded from the GETS eTender box until the proposals are saved to a secure InfoHub folder.

12.4.3 One envelope approach

If you have selected a one envelope approach, the Evaluation panel can be provided with both the price and quality information by the Tender Secretary at the same time.

12.4.4 Two envelope approach

If you have selected a two envelope approach, the Evaluation panel must fully evaluate and record their final moderated scores for the quality evaluation criteria before receiving the price envelope.

The Evaluation panel can only receive the price envelope with approval in accordance with the [Delegated authorities schedule – Part B](#).

For assistance with conducting a two envelope approach contact the [Procurement team](#).

12.5 Pre-evaluation checks

12.5.1 Introduction

Within 24 hours of the RFx closing, the Tender Secretary or Procurement lead may prepare a [Proposal close off checklist](#) for each proposal received.

12.5.2 Policy

If completed, the [Proposal close off checklist](#) must be treated as confidential and kept from perusal by staff members not involved in the pre-evaluation administration, and the public.

Where in conjunction with the conforming proposal, alternatives are offered by a supplier, the entire proposal must count as one proposal. This is for the purpose of noting the number of proposals received.

12.5.3 Procedure

The Tender Secretary or Procurement lead shall complete the following procedure.

Step	Action
1	Complete a Proposal receipt log to include price for a one envelope process only.
2	Together with witnessing officer initial the Proposal receipt log .
3	Save the Proposal receipt log and originals of information from suppliers in the project file.
4	The Tender Secretary may choose to complete a Proposal close off checklist for each proposal. If completed, this should be saved in the project file.
5	Save the following documentation in the secure folder in InfoHub: <ul style="list-style-type: none"> • copy of the completed Proposal receipt log • copy of the completed Proposal close off checklist (if applicable) • copies of any information that a supplier has provided
6	Where the Tender Secretary has completed this process, email the InfoHub folder link to the Procurement lead.
7	Change the status of the RFx advert in GETS to “Evaluation”.

Prior to RFx evaluation the Tender Secretary or Procurement lead should do the following checks (and may choose to record these checks in a [Proposal close off checklist](#)):

- Check each proposal to identify any obvious non-conformity with the RFx or this manual.
 - Where, in a two-file evaluation procedure, the price has been included in the non-price file the proposal is prima facie non-conforming and may be rejected in consultation with the Procurement lead, Probity Auditor and delegated financial authority as appropriate.
 - Where the Tender Secretary or Procurement lead identifies such price information and believes it has been included by mistake, they may, with the authority of the supplier, remove all references to the price contained in the non-price file before forwarding the non-price information to the evaluation team.
 - If the price is not detected by the Tender Secretary or Procurement and gets to the Evaluation panel then the proposal will be non-conforming and must be rejected by the Evaluation panel.
 - Suppliers are not entitled to rely on the Tender Secretary or Procurement lead to correct the supplier’s errors.
- Check that each proposal received conforms to the page limit specified in the RFx. Where the proposal has more than the

specified number of pages of information the Tender Secretary or Procurement lead must extract the last additional page(s) to the specified limit and save these as a separate file without the Evaluation panel seeing them. The Evaluation panel chair should not be provided with the additional pages until after the relevant evaluation scores have been finalised.

- Check that each proposal received conforms to the font size specified in the RFX. Where the proposal does not conform to the font size, the Tender Secretary or Procurement lead should assess the submission with a view to determine the number of additional pages. These additional pages should be extracted to the specified limit and saved as a separate file without the Evaluation panel seeing them. The Evaluation panel chair should not be provided with the additional pages until after the relevant evaluation scores have been finalised.
- Check additional pages removed do not contain any page(s) that are clearly identified as assumptions (tags) and clarifications. If such pages are identified, ensure that they are noted to the Evaluation panel chair.
 - The additional pages will be given to the Evaluation panel chair after the relevant evaluation scores have been
 - .finalised. All pages (including those additional to the limit) of the accepted supplier's proposal will form part of the contract agreement with the successful supplier.
- Note any assumptions (tags) that are clearly identified (additional and less obvious assumptions (tags) included within the proposal information might only be able to be identified by the Evaluation panel).
- Any obvious non-conformances or additional information identified in the checklist must be noted on the checklist.

Where the Tender Secretary and/or the Procurement lead considers that a proposal should be rejected on the basis of non-compliance with the requirements as outlined above, they should contact the Probity Auditor for advice prior to making the recommendation to reject.

In addition, where it is decided that a proposal should be rejected on the basis of non-compliance with the requirements as outlined above, a recommendation to that effect should be made to the delegated financial authority in accordance with [clause 12.5.5](#) below.

12.5.4 Pre-conditions

Pre-conditions are conditions that a supplier must meet to be considered for a particular contract opportunity.

All pre-conditions as outlined in the RFX must be met. The Procurement lead will be responsible for conducting this check.

Where a proposal fails to meet all pre-conditions and the Procurement lead or the Procurement team considers the proposal should not be evaluated further, a recommendation to that effect should be made to the delegated financial authority in accordance with [clause 12.5.5](#) below.



12.5.5 DFA approval to stop evaluation of a proposal

Where the Tender Secretary, the Procurement lead and/or the Evaluation panel consider that a proposal should not be evaluated (or should not be evaluated further) for any reason, a recommendation to that effect should be made to the delegated financial authority. The delegated financial authority will determine whether to approve that recommendation.

The Tender Secretary, the Procurement lead and/or the Evaluation panel may consider that the above recommendation to the delegated financial authority should be made for the following reasons (not an exhaustive list):

- Lateness of the proposal (see [clause 12.3](#))
 - Non-compliance with the requirements as outlined in [12.5.3](#)
 - Failure to meet the pre-conditions outlined in the RFX (see [clause 12.5.4](#))
 - The proposal received a score that is below the minimum acceptable quality evaluation score as outlined in the procurement plan (see [clause 13.5.5](#))
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12.6 Opening the price file

12.6.1 Opening the price file

On receipt of both electronic files, the Tender Secretary or Procurement lead will register that both files have been received. The price file may be released to a Waka Kotahi specialist (who may be a business analyst or member of the finance team) for their analysis of the price file including thorough sensitivity analysis (if relevant). This analysis remains confidential to the Evaluation panel until price is evaluated.

Note: Refer to the [Delegated authorities schedule – Part B](#) for approval required to open the price file(s).

12.6.2 Assumptions (tags) in the price file

If the price file is found to contain assumptions (tags) that appear to constitute an unauthorised alteration or qualification of the RFX, the Tender Secretary should consult with the Procurement lead. With the consent of the Procurement lead, the Tender Secretary should request the supplier to remove unacceptable assumptions (tags). Refusal to remove unacceptable assumptions (tags) may result in the proposal being rejected.

12.6.3 Errors in the price file

In the event that obvious errors and/or omissions in the price file are discovered, the supplier may be requested to either confirm the price without correction or withdraw their proposal.

12.7 Modification and withdrawal of proposals

12.7.1 Modification of proposals

A supplier may modify their proposal provided the modification is in writing and received prior to the closing time.



12.7.2 Modification of proposals due to market change

An offer by a supplier to alter the price and/ or the terms of their original proposal, which would place the proposal in a more advantageous position, may be accepted where the market has changed, and these savings are merely being passed on to Waka Kotahi. In such cases, all suppliers should be invited (through the Tender Secretary with the approval of the Procurement lead) to review their proposals, based on the new information.

12.7.3 Withdrawal of proposals

A supplier may withdraw their proposal at any time prior to issue of a proposal acceptance notice.

13 PROPOSAL EVALUATION

13.1 Evaluation policy – general

13.1.1 Introduction

An evaluation process is necessary to ensure all willing suppliers have an equal opportunity to compete for procurements. Therefore, the evaluation process must be conducted with integrity and probity. To ensure this, Waka Kotahi and the Evaluation panel must:

- act in good faith
- act fairly as between suppliers
- provide the same information to all suppliers
- not ignore or depart from manual processes
- assume every action and inaction will be publicly scrutinised
- always be aware that they will be judged with the benefit of hindsight.

In achieving its objective, the Waka Kotahi Procurement lead must ensure:

- selection of appropriate people for the Evaluation panel
- implementation by those people in a way that demonstrably delivers integrity
- any conflicts between the manuals being used are identified and resolved
- lack of knowledge of the process requirements by any member of the Evaluation panel are identified and addressed.

13.1.2 Evaluation process and policy

The evaluation must be undertaken fairly and impartially in accordance with the requirements of the following (in no particular order):

- the *GPR*,
- the RFX document(s), and
- this manual.

13.1.3 Confidentiality of evaluation process

Information relating to the examination, clarification, evaluation and comparison of proposals and recommendations concerning the award of contracts shall not be disclosed to supplier or other persons not officially concerned with such processes, until award of the contract to the successful supplier has been announced. The information disclosed shall then be only as prescribed in [clause 14](#). This information will be held securely by Waka Kotahi.

Any effort by a supplier to influence Waka Kotahi in the process of examination, clarification, evaluation and comparison of proposal, and in decisions concerning award of contract, may result in the rejection of the proposal concerned by Waka Kotahi.

All communication with supplier from the date the RFX closes until the award of the contract shall be through the Tender Secretary except where, during the course of the evaluation, the Evaluation panel may request additional information or clarification as described in [clause 13.2.2](#).

13.1.4 Prior to the commencement of the evaluation process

Each member of the Evaluation panel and each advisor to the Evaluation panel must be properly familiar with the following:

- the evaluation procedure which is to be used, and the precise criteria for evaluating tenders by this method.
- the RFX and all other documents that are applicable to the tender evaluation, and, in particular, the specific provisions of these documents.
- his/her individual responsibilities in relation to the tender evaluation.
- the restrictions on the Evaluation panel which prevent it redefining attributes or creating new ones.

Further, each Evaluation panel member, and any other individual who will be involved in the evaluation process, must:

- be informed on the roles and processes before the evaluation commences.
 - take reasonable steps to ensure that there are adequate procedures in place to ensure that his/her obligations under the relevant documents can be performed (eg do they have all the relevant manuals, sufficient time and availability to meet as an Evaluation panel, etc).
 - update their *Conflict of interest and confidentiality agreement* and submit to the Evaluation panel chair in accordance with [clause 13.1.7](#).
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13.1.5 Evaluation panel guide

The [Evaluation panel guide](#) should be completed by the Evaluation panel chair or Procurement lead (as appropriate) and provided to the Evaluation panel prior to commencing evaluations.

13.1.6 Role of the Evaluation panel

In conducting the evaluation, the Evaluation panel will:

- independently read and evaluate the proposals then score the quality evaluation criteria noting their overall rating for each criteria. Each Evaluation panel member records their reasoning behind their score allocation and the key differentiations.

Note: Sufficient time must be allowed for this step prior to the Evaluation panel meeting.

- agree by consensus the score for each criteria for each supplier and recorded in the highlighted box.

The essential reasoning behind the agreed score of each weighted evaluation criteria should be summarised and recorded.

This will be used to inform the [Evaluation recommendation report](#) as outlined in [clause 13.6](#).

Note: All documentation used during the evaluation process and all documents written or received by the Evaluation panel during the evaluation, should be returned to the Tender Secretary to be retained on the project file to ensure suppliers can properly receive feedback on their proposal if requested. All such documentation is to be retained for a period of seven years after completion of evaluation after which it may be destroyed unless notice of any claim or dispute relating to the Evaluation panel process has been received.

13.1.7 Managing conflict of interest on the Evaluation panel

All members of the Evaluation panel and advisors to the Evaluation panel are required to complete the *Conflict of interest and confidentiality agreement* as provided for in [clause 9.8](#). This form shall be provided to the Evaluation panel chair.

The Evaluation panel chair is responsible for ensuring that all Evaluation panel members and advisors have completed the *Conflict of interest and confidentiality agreement* so that any identified risks can be appropriately managed. The Evaluation panel chair can determine the appropriate resolution action (if any).

Where the conflict of interest or risk of bias concerns the Evaluation panel chair, continued involvement as the Evaluation panel chair must be approved by the [Manager Procurement Services](#). If necessary, the [Manager Procurement Services](#) will discuss any issues or concerns with the probity auditor.

If there is a conflict of interest which requires a change in the Evaluation panel members, then this must be addressed immediately to replace the Evaluation panel member.

13.1.8 Evaluation process to be complied with

In undertaking the evaluation, the Evaluation panel must ensure that the evaluation process as described and detailed in the RFX is followed and documented as required.

13.1.9 Details to be recorded

Details of any phone call, discussion or meeting between an Evaluation panel member and any other person (eg referees, other Evaluation panel members, supplier representatives) **which relates to the evaluation of the proposal** must be kept on file as a file note duly dated and signed by its author. Evaluation panel members should take care to ensure that all such written material or file records do not contain comments which are derogatory to any supplier.

13.1.10 Referee checks

Where a supplier is required by the RFX to provide the names of any referees in support of their proposal, a Waka Kotahi representative is encouraged to contact all such referees. This will normally be done by telephone. Ideally, these referees provided should not be members of the Evaluation panel.

The [Reference check questions](#) may be used and modified as necessary. In making reference check with referees, the Waka Kotahi representative should ensure that:

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- where the initial effort to contact a referee is unsuccessful, at least one more attempt is made to contact that referee
 - a detailed record is kept
 - where an individual member of the Evaluation panel contacts the referee, that team member reports back to the rest of the team on the referee's comments.
 - detailed notes are kept of any comment or opinion offered by a referee.
 - neutral and balanced questions are asked, and the referee is not led in any way.

Evaluation panel members should not conduct their own additional reference checks (including but not limited to social media posts, external media checks etc) outside of the formal reference check process.

13.1.11 During the evaluation process

Each member of the Evaluation panel must be familiar with the principles of fairness and acting in good faith, which include ensuring that:

- all information is accurate and up to date. Where information comes from outside the proposal documents, it must be assessed for reliability.
 - only relevant information is considered and irrelevant information is excluded (to be determined by reference to the RFX, and the relevant evaluation manuals).
 - views about suppliers, which are relied upon in the decision-making process can be substantiated.
 - information before the Evaluation panel that is not considered relevant is clearly identified as having been disregarded.
 - the evaluation procedure is being applied in a consistent manner to each supplier's proposal.
 - all proposals are kept secure at all times, including when they are being worked on away from Waka Kotahi premises.
 - evaluation of each proposal is completed in the time allocated and based on the content of the proposal against the previously agreed criteria.
 - no discussion is to be held with another member of the Evaluation panel, the supplier or any other supplier, in relation to the proposals.
 - the Evaluation panel and other Waka Kotahi personnel involved in the evaluation are familiar with the difference between clarification of proposals, as opposed to negotiation, which may lead to the improper improvement of bids during the evaluation stage.
 - the Evaluation panel and other Waka Kotahi personnel involved in the evaluation are taking care to ensure that the evaluation process is properly documented.
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- the Evaluation panel evaluation reports are accurate, and not made inaccurate by omissions or selective quoting.
 - others not on the Evaluation panel do not become involved in the process.
 - they do not engage in any practice that may give one proposal an advantage over another.
-

13.1.12 Presentation of proposals

If the RFX allows for presentations sufficient notice must be given to suppliers to enable them to prepare for their presentation.

The objective of the presentation is to:

- highlight key aspects of the supplier's proposal.
- introduce key team members.

Suppliers shall not provide new information in their presentations. Participants in the presentation may distribute resources during the meeting but these must be returned to the supplier at the end of the session.

Each supplier shall conduct their presentation on the assumption that the Evaluation panel has no knowledge of the content of the supplier's proposal.

The Evaluation panel will be permitted to ask questions seeking clarification only.

A note should be recorded in the project file identifying the name of the supplier, Evaluation panel members present, location and time of the presentations held.

13.1.13 One conforming proposal

Should only one proposal be received for a project, or there is only one conforming proposal, the evaluation process as stated in the RFX shall be followed to ensure the proposal is acceptable.

Negotiation with the supplier is acceptable provided the scope of work is not altered and the final negotiated price does not exceed the price outlined in the proposal.

13.1.14 Evaluation time frame

If the evaluation of proposals has not been completed within the period specified in the RFX, the Procurement lead must ensure that all suppliers are advised in writing whether or not each of their proposals are still under consideration.

13.1.15 Public sector entities tendering for Waka Kotahi contracts

There is no legal restriction on Public sector entities tendering for Waka Kotahi contracts. Waka Kotahi is bound to consider all conforming proposals that are submitted, regardless of whether they are submitted by a private contractor or by a Public sector entity.



13.2 Assumptions (tags) and clarifications

13.2.1 Review of assumptions (tags)

Assumptions (tags) as outlined in a supplier's response form shall be dealt with in accordance with the requirements of the RFX or in the absence of any specific requirements, they shall be dealt with as follows:

- The supplier shall be requested to remove assumptions (tags) that are unacceptable to Waka Kotahi, without amendment to the proposal price. The proposal is to be rejected if the supplier refuses to remove unacceptable tags.

13.2.2 Clarification

Clarification of a proposal to establish conformity with the RFX or for any other reason can be obtained during proposal evaluation.

Clarification cannot provide an advantage or disadvantage to a supplier in any way and any additional information provided which attempts to improve the proposal shall not be included for evaluation purposes. Clarification cannot include any change to the price or substance of the proposal.

However, should a proposal not include information of a minor nature requested in the RFX and which is required to complete the evaluation, then the supplier should be advised and invited to supply it. In considering the additional information the Evaluation panel should take page limit requirements into account.

Any request for clarification or additional information should be sent out in writing, and should include:

- specific request for information including reference to RFX clause(s) where relevant,
- the form that the information is required in, and
- the time within which the information must be received.

If the Evaluation panel is unable to undertake a meaningful evaluation because a significant amount of information requested in the RFX has not been supplied and/or there is a record of the supplier being continually requested to submit further details by way of clarification, then the proposal may be rejected or deemed non-conforming. The supply of an entire attribute cannot, on any sensible interpretation, be called clarification. The Evaluation panel must consider the integrity of the process and the possible prejudice of other suppliers in providing their proposals by a deadline.

13.3 Supplier's key personnel

Once proposals have been submitted, supplier requests for substitution of named key personnel shall only be considered after award of the contract. Approval of a substitution may be granted if replacement is by a person of equivalent or better skills and qualifications and is to the satisfaction of Waka Kotahi.

Following contract award, key personnel may be changed in accordance with the conditions specified in the contract.

13.4 Subconsultants, subcontractors and consortia

13.4.1 Subconsultants and subcontractors

When assessing attributes, the attributes of the subconsultants/subcontractors must be included. The detail expected in the proposal should be in proportion to the amount of work to be carried out. For example, a short statement in a general section could cover a minor subconsultant's/subcontractor's attributes.

A supplier who proposes to subcontract any significant portion of the work should still have an appropriate organisational and management structure.

13.4.2 Consortia

This is similar to the subconsultant situation except that the consortium would jointly sign the tender and therefore have a closer involvement in the management and organisation of the contract. Although close evaluation is necessary, a group of suppliers may complement each other well and enhance the quality of the overall proposal.

13.5 Evaluation methodologies

13.5.1 Introduction

There are numerous evaluation models available. The most commonly used are:

- Lowest price
- Simple score
- Weighted evaluation criteria
- Purchaser nominated price (target price)
- Brook's law

The appropriate evaluation methodology will depend on the nature, scope, value, level of risk and complexity of each procurement.

13.5.2 Lowest price

This is the most basic methodology also known as 'lowest-price conforming'. Proposals are evaluated on the merits without price being disclosed to the panel. Only those suppliers who are clearly able to fully deliver against the requirements are shortlisted.

The assessment is made on a strict selection of only those proposals which meet all prerequisite requirements. Start by determining which proposals meet the requirements and are eligible to be selected. Look at the total price for each proposal. The lowest priced eligible (conforming) proposal is ranked first.

This methodology is appropriate if any additional quality, over and above the prerequisite requirements, is not deemed important – that is, it does not offer greater value for money.

13.5.3 Simple score

This is a basic methodology which can be used if all criteria have roughly the same degree of importance. Agree a Rating Scale and score each

proposal against the criteria. Add the total scores for each proposal. The highest scored proposal is ranked first.

13.5.4 Weighted evaluation criteria

This is the most common methodology used in public sector procurement. It is used when criteria have different levels of importance.

Start by ranking the criteria in order of importance then decide a weighting for each. This is usually a % with the total weightings for all criteria adding to 100%. Agree a Rating Scale and score each offer against the criteria to obtain raw scores. Apply the weightings to the raw scores to obtain the weighted scores. Add the total weighted scores for each proposal. The proposal with the highest total weighted score is ranked first.

Example: weighted attribute model

Criteria	Weighting	Raw Score (out of 10)	Weighted score
Criterion #1	40%	8	3.2
Criterion #2	35%	7	2.5
Criterion #3	25%	9	2.3
Total weighted score (out of 10)			8

Some methodologies include price as a weighted criterion. Others do not have price as a weighted criterion and treat the evaluation of price separately.

Options where price is not a weighted criterion

Where price is not a weighted criterion price information is usually kept from the Evaluation panel until after the evaluation on the merits and scoring is finalised. A process to assess value-for-money is then undertaken.

a. Short listed mean/average price (two envelope approach)

This model involves reviewing the weighted scores and shortlisting only those proposals that are clearly able to fully deliver against the requirements. Then disclose the price for the shortlisted proposals and calculate the mean/average price.

Initiate negotiations with the supplier who has the highest score on the merits with the aim of achieving agreement at the mean/average price or within a pre-set % of that price (as determined by the team). If no agreement on price is reached the second ranked supplier is invited to negotiate with the same objective of reaching agreement at the mean/average price or within a % of the price. The process continues until a satisfactory agreement is negotiated. A supplier, once rejected from the process, should not be recalled for further negotiations.

Example: median price negotiation range

Short listed supplier	Total weighted score	Price	Order or negotiation
A	7	\$135,000	2 nd (if not successful with B)
B	9	\$140,000	1 st
C	6	\$100,000	3 rd (if not successful with B & A)
total		\$375,000	
median price		\$125,000	± 10% (negotiation range = \$112,500 to \$137,500)

b. Cost-effectiveness ratio (two envelope approach)

This method is purely mathematically based. The total cost of the proposal (cost dimension) is divided by the total of the total weighted score (effectiveness dimension). The proposal with the lowest cost-effectiveness ratio is selected as the best value for money.

Example: (in this example the most cost effective offer is from supplier A)

Supplier	Total weighted Score	Price	Cost-effectiveness Ratio
A	9	\$100,000	1 : 1.1
B	9	\$150,000	1 : 1.6
C	9	\$200,000	1 : 2.2
D	5	\$100,000	1 : 2.0

c. Value-add price analysis (two envelope approach)

This model involves shortlisting (from the total weighted scores on the merits) only those suppliers who are clearly able to fully deliver against the requirements. Disclose the price for all shortlisted proposals. The Evaluation panel is then invited to identify differences between the proposal that represent value-add and compare the relative prices. This discussion focuses on whether items of value-add are worth the additional cost. The Evaluation panel is invited to reach a consensus on which short listed offer represents the best value for money.

Price is a weighted criterion

If price is a weighted criterion it is important to carry out some level of sensitivity analysis to ensure that the level of weighting is appropriate. Also, consideration should be given to the risk of unreasonable and unrealistically low priced proposals achieving the highest overall weighted score where it is clear that the goods, services and/or works cannot be delivered within the quoted price and the proposal has been structured to take advantage of the weighted price approach.

13.5.5 Scoring of quality evaluation criteria

Each of the quality evaluation criteria will be scored using the scoring methodology as outlined in the [Procurement plan](#). The [Evaluation model template](#) can be used by the Evaluation panel to record both individual and moderated scores and comments.

The [Procurement plan](#) will outline the minimum acceptable quality evaluation score. Generally, where a supplier is scored below this minimum acceptable quality evaluation score either in relation to one evaluation criteria or section or overall, the proposal will be considered to be non-conforming in relation to that quality evaluation criteria.

Where this occurs, a recommendation that no further evaluation of that supplier's proposal is undertaken should be made to the delegated financial authority in accordance with [clause 12.5.5](#) above.

13.5.6 Purchaser nominated price (target price)

The purchaser nominated price (target price) model is useful when it is genuinely difficult to define the scope of the work in the specification of requirements or in situations where the budget that is available is the main constraint. In such instances, the agency would be likely to receive a range of proposals with prices that are not easily compared, and that may exceed the available budget. The solution is to make the suppliers aware of the available budget (the 'target price') in the RFX as a guide for defining the scope of the goods, services and/or works, and then inviting suppliers to specify what they can deliver for that price. The focus of the evaluation is then on the quality and quantity of the goods, services and/or works to be provided rather than price.

13.5.7 Brook's law

The Brooks' Law model is useful where quality is the most important factor. Proposals are evaluated on the merits without price being disclosed to the panel. Only those suppliers who are clearly able to fully deliver against the requirements are short listed.

The highest ranked supplier is invited to negotiate. At this point the price for this supplier is disclosed. All other prices remain unopened. If the negotiation is successful the supplier is awarded the contract.

If no agreement is reached, the second ranked supplier is invited to negotiate. At this point the price for that supplier is disclosed. All other prices remain unopened. The process continues until a satisfactory agreement is negotiated. A supplier, once rejected, should not be recalled for further negotiations.

13.6 Evaluation recommendation report

The [Evaluation recommendation report](#) to the appropriate delegated financial authority must be completed with enough detail to enable the Waka Kotahi representative to debrief successful and unsuccessful suppliers.

Once completed and signed by the delegated financial authority, the report should be forwarded to the Procurement team and the relevant business units.

13.7 Due diligence

13.7.1 Introduction

Due diligence involves undertaking activities to independently verify that a supplier:

- is who they claim to be
 - has the financial ability to deliver, and
 - has the necessary capacity and capability to deliver over the life of the contract.
-



Due diligence should be conducted on the preferred supplier prior to awarding the contract, and may be done concurrently with negotiations.

Formal due diligence is usually unnecessary for simple, routine procurements. However, if you consider that due diligence may be necessary, you must notify suppliers in the RFx documentation.

13.7.2 Due diligence process

The due diligence process involves planning your due diligence, conducting the due diligence, and dealing with any issues that may have arisen.

You can find more information on how to conduct due diligence [here](#).

13.8 Negotiations

13.8.1 Purpose of negotiation

Negotiations are best conducted prior to making any announcement to suppliers. Negotiating post announcements can weaken our position.

Negotiations are an effective risk management tool. Their primary objective should be to:

- test the understandings and underlying assumptions that have influenced a supplier in preparing its costings, and
- achieve cost reductions through operational refinements or enhancements.

Please contact the [Procurement team](#) if you require assistance with conducting negotiations.

13.8.2 Simple negotiations or smaller procurements

For simple or smaller negotiations (generally relating to low value, low risk procurements), you should:

- consider who should be involved
- identify your own objectives and priorities as well as those of the supplier
- consider what you know and what you don't yet
- identify the variables, eg service delivery methods, client volumes, reporting, pricing
- decide your strategy and approach to the negotiations. The approach you take should mirror the intended relationship for the engagement — eg if the relationship is to be highly collaborative then the negotiation approach should reflect this.

The [Negotiation checklist](#) is a useful tool to guide you through planning for your negotiation.

13.8.3 Complex negotiations or high value/high risk procurements

Where your procurement is high value and/or high risk, or you anticipate the negotiations may be complex, it is recommended you develop a detailed [Negotiation plan](#) to use alongside the [Negotiation checklist](#). A [Negotiation plan](#):

- details the desired outcomes for the negotiation
-

- considers price versus budget
- lists key deliverables, performance indicators, milestones and timeline for delivery
- identifies payment options
- records the proposed contract terms and conditions and acceptable variances
- may address transitional measures from current supply arrangements if required
- may include an exit strategy to be applied at the end of the contract term.

The [Negotiation checklist](#) is a useful tool to guide you through planning for your negotiation. This [Negotiation plan](#) should also be used as a starting point but should be tailored to your procurement as appropriate.

13.9 Approval to award contract

13.9.1 Procedure

The following procedure applies when accepting a proposal and awarding a contract. The Tender Secretary undertakes this task from step 4.

Step	Action						
1	The Procurement lead should ensure that sufficient financial approval is held to cover the accepted price including provisional sums and contingencies (except price contingency). If the contract price exceeds the available allocation the contract cannot be awarded until additional funding is sought and approval given.						
2	<table border="1"> <thead> <tr> <th>If the acceptance ...</th> <th>then the Procurement lead must...</th> </tr> </thead> <tbody> <tr> <td>of a proposal does not require Senior Manager approval</td> <td>submit all required information to the Manager for approval. Once approval has been given go to step 3.</td> </tr> <tr> <td>of a proposal requires Senior Manager approval</td> <td>send all required information to the Senior Manager with the appropriate delegated financial authority.</td> </tr> </tbody> </table>	If the acceptance ...	then the Procurement lead must...	of a proposal does not require Senior Manager approval	submit all required information to the Manager for approval. Once approval has been given go to step 3.	of a proposal requires Senior Manager approval	send all required information to the Senior Manager with the appropriate delegated financial authority.
	If the acceptance ...	then the Procurement lead must...					
of a proposal does not require Senior Manager approval	submit all required information to the Manager for approval. Once approval has been given go to step 3.						
of a proposal requires Senior Manager approval	send all required information to the Senior Manager with the appropriate delegated financial authority.						
3	<p>The Procurement lead must draft the appropriate notification of outcome letter:</p> <ul style="list-style-type: none"> • Notification of outcome letter - successful • Notification of outcome letter - shortlisted • Notification of outcome letter - unsuccessful 						
4	<p>The Tender Secretary emails a copy of the appropriate Notification of outcome letter to each supplier.</p> <p>If any supplier does not have an email address, post their Notification of outcome letter.</p>						



5	The Tender Secretary updates the status of advert on GETS to “Awarded” if required and provides the information outlined in clause 13.9.2 . Refer to this flowchart to determine whether you are required to post an award notice to GETS.
6	One complete copy of each suppliers’ documentation including pricing schedules shall be archived in accordance with the Information and data management policy . Contract documents shall be retained on the project file and on completion of the contract shall be retained in line with clause 14.4.5 .

13.9.2 Information required for an award notice

The information that must be included in the award notice published to GETS is outlined in rule 48 of the *GPR*. Using the [GETS Contract award notice guidance](#) will help to ensure you have provided the necessary information in line with rule 48. Waka Kotahi may include additional information to that required in rule 48 at its discretion.



14 CONTRACT AWARD PROCEDURE

14.1 Supplier debrief meetings

After the RFx process is complete and the contract is awarded, it is important that all suppliers are given the opportunity to discuss their proposals with a Waka Kotahi representative. This will benefit all parties to the process and provide opportunity for continuous improvement in participants' approach to the process.

The Procurement lead, in consultation with the Evaluation panel and using the [Evaluation report](#), should complete the [Supplier debrief template](#) prior to the debrief meeting(s). The completed [Supplier debrief template](#) shouldn't be provided to suppliers but can be used as the basis for discussion.

14.2 Contract format and alternatives

14.2.1 Finalising the contract

Once negotiations have been completed and contract award has been announced, the formal contract must be finalised in consultation with the supplier.

The default position regarding the format of the contract is set out in [clause 10.2.2](#) above. In line with [clause 10.2.2](#), if a supplier proposes an alternate contract form, please contact Legal team.

Once the formal contract has been agreed to it must be signed by a Waka Kotahi employee with the appropriate delegated financial authority, and by the supplier in accordance with [clause 14.4](#) below.

14.2.2 Contract alternatives: Deeds

A deed is normally headed 'Deed' and is a formal legal document required when a specific legal right is created. They include every transaction relating to land (including leases but not licences), guarantees, power of attorney, and acknowledgement of debt and gifts.

If a supplier requests a Deed instead of a formal contract, please contact Legal team.

14.2.3 Contract alternatives: Letter of intent

Where it is impossible, from a practical perspective, to present the contract document for signing prior to the supplier starting to deliver the supply or services, a letter of intent may be issued.

A letter of intent should clearly outline:

- the key contractual elements that have already been agreed
 - the key contractual elements that are still being negotiated (if any)
 - the parts of the letter that are intended to be legally binding
 - the parts of the letter that are not intended to be legally binding
 - all relevant contract documentation that is yet to be signed
-

A letter of intent does not replace a formal contract. The formal contract must be signed by both parties as soon as practicable after the issue of the letter of intent.

Contact the [Procurement team](#) if you are considering issuing a letter of intent.

14.3 Contract content

14.3.1 Introduction

In addition to the standard terms contained in the Waka Kotahi default contracts outlined in [clause 10.2.2](#) above, the following clauses contain key information that must be included in every contract.

14.3.2 Key performance indicators

Each contract must have a set of clear deliverables and measures for establishing whether or not the supplier is providing the service or goods to the standard specified within the contract.

The [Procurement team](#) can provide guidance to the Procurement lead through the development of the key performance indicators (KPIs) which are to be used by the Procurement lead to establish whether or not Waka Kotahi is receiving the goods, services and/or works contracted. These KPIs form part of the contract.

In addition to developing KPIs you must also confirm the method of reporting on whether a supplier is meeting the KPIs. This may be written reporting or through supplier performance meetings as outlined in [clause 15.1.2](#).

14.3.3 Transition plan

A transition plan must be prepared if the transition is likely to affect Waka Kotahi service delivery. Transition expectations may be relevant to document in a high risk transition contract.

A transition plan will be most likely required where the supplier is providing complex or high-value services (eg advertising, printing and design services, and bulk mail-outs), or high-volume, core business goods (eg licence plates, drivers licences or publications).

Employees responsible for a contract should ensure that a transition plan is in place or is required in a proposal to a RFx.

The amount of detail needed in the plan will depend on what is being supplied. For example a relatively minor, routine contract may require only a statement outlining the adequacy of existing procurement procedures, while an outsourcing contract may require a detailed transition plan that identifies the schedule of tasks or activities that the parties will perform during the transition period, and sets out the responsibilities, resources, policies and procedures necessary to enable effective management of the transition.

Depending on the complexity of the transition and the services being provided, the plan may also need to address:

- any organisational restructuring resulting from the contract
 - any new training requirements
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- matters connected with Waka Kotahi fixed assets, eg the impact of the contract on land, facilities, equipment or machinery, and intellectual property
 - identifying and assigning responsibilities such as ownership, insurance, access, usage, transfer, and liabilities of a financial, legal, safety, or environmental nature
 - any effect on customers, including
the need for a customer communication strategy
consultation to identify any customer needs during the transition period
 - the need to notify any interim arrangements, or changes to staff and service delivery schedules.
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14.4 Signing of the contract agreement

14.4.1 Introduction

Once you have finalised the contract format and content (see [clauses 14.2](#) and [14.3](#)), the contract must be signed by a Waka Kotahi representative with the appropriate delegated financial authority (see the [Delegated authorities schedule – Part B](#)) and by the supplier in accordance with [clause 14.4.4](#).

14.4.2 Technology-related contracts

Where a contract or agreement is related to the purchase of computer hardware, software or services, any security related services (IT or physical), or an Data or Information services, this must be signed by the Chief Technology Officer (CTO), the Chief Data Officer (CDO) or Head of Security.

Irrespective of whether another individual holds the appropriate delegated financial authority in relation to the Whole of life cost, these contracts or agreements can only be executed by the CTO, CDO or Head of Security.

14.4.3 Supplier contract signing process

[Clause 6.3](#) of Part A of this manual outlines the procedure to follow when signing the contract agreement where the supplier is a:

- company
- partnership
- joint venture
- consortium, or
- individual

Refer to [clause 6.3](#) of Part A for detailed instructions for the signing of contract agreements by suppliers. In all cases of doubt or difficulty, get legal advice as failure to achieve binding execution can leave Waka Kotahi without remedies.

14.4.4 Contract register updates

Once a contract has been signed by all parties, a copy of that fully signed contract must be saved to InfoHub in accordance [clause 14.6.1](#) and the InfoHub link saved in the contract register. The



mandatory fields must also be completed at this point. The recommended fields may be updated as relevant.

More information on the contracts register can be found on [OnRamp](#).

14.5 Assignment or novation of contracts

14.5.1 Assignment or novation

[Clause 6.5](#) of Part A of this manual outlines the procedure Waka Kotahi will follow when a supplier proposes an assignment or novation of a contract.

Refer to [clause 6.5](#) of Part A for detailed instructions and please note that legal advice should generally be sought regarding the assignment, novation or termination of a contract.

14.6 Project file and record keeping

14.6.1 Introduction

It is important that we maintain electronic copies of all information, communications, documentation relating to the procurement. These electronic copies must be saved to the project file on InfoHub.

Where you receive a physical copy of a signed document (eg a contract, statement of work) this must be scanned and saved to the project file on InfoHub. The original physical copy should then be stored in accordance with your business unit's processes for the required retention period. Contact [Corporate records and information team](#) for assistance with determining the length of the required retention period past the expiry date of the contract.

14.6.2 Information in project file

The Procurement lead must maintain a project file which contains all relevant information to the procurement process and administering of the resulting contract including, but not limited to:

- [Procurement plan](#).
 - Copies of all [Notices to supplier](#).
 - [Proposal receipt log](#)
 - Copies of all successful and unsuccessful proposals
 - [Evaluation recommendation report](#)
 - Copy of the [Notification of outcome letters](#)
 - The signed contract documentation
 - All relevant correspondence.
 - All completed conflict of interest and confidentiality agreements
-



15 CONTRACT MANAGEMENT

15.1 Process for managing contracts

15.1.1 Introduction

Contract managers should ensure that they:

- are able to identify performance issues and any problems with the conduct of the contract, which may result in appropriate remedial action and negotiated solutions
- have regular reporting on the performance of the contract, and
- implement a contingency plan, to address continuity of service/supply in the event of contract failure.

A contingency plan should be prepared before the contract takes effect.

For low-value or low-risk services, the plan may simply recognise that some delay could occur in restoring services, or dealing with problems, should the contract fail.

15.1.2 Supplier performance

Contract managers must monitor the contractor's performance regularly (monthly for high value or high risk or core goods, services and/or works; quarterly for medium value or medium risk or key goods, services and/or works; bi-annually or annually for other goods, services and/or works), to ensure that standards set out in the contract are met, particularly that:

- the contracted service is delivered
- the associated risks are managed, and
- effective communication is maintained between all parties.

Contract managers must also assess the contractor's performance against criteria that are included in the contract.

The monitoring procedures should enable the Contract Manager to:

- take prompt action if a contractor's performance falls below the agreed criteria
- make the contractor aware of problems as they occur (if necessary, in writing)
- clearly identify issues to be addressed by all parties, providing an opportunity for the contractor to improve performance during the period of the contract, and
- collect information to inform any subsequent extension or renewal of the contract.

Meetings to review contract performance will vary in scope and frequency. Contract managers may utilise [Supplier performance meeting agenda and minutes](#) when conducting these meetings. The types of meeting may include the following:

- Regular progress meetings – involve the contractor, the contract management team, other key staff from Waka Kotahi, and end users. The purpose of these meetings is to discuss performance,
-

contract events or milestones, changes to user demands, and proposed actions or proposals to current or potential problems.

- Technical meetings – as required, involve specialist technical representatives of the Contract Management team and the contractor. The purpose of these meetings is to review technical reports and performance data, and discuss technical issues.
- Longer-term reviews and audits – the purpose of these is to consider
 - the achievement of objectives,
 - out-turn versus budget,
 - user satisfaction,
 - future opportunities and process improvement,
 - the extent to which value for money is being achieved and requirements met, and
 - how to address any emerging need for changes.

Contract Managers must ensure that a reporting system, such as KPIs, is in place to allow enough relevant, succinct and timely information to:

- manage the project, and
- monitor performance and risk.

Relevant information may relate to:

- the cost of the project
 - technical aspects, including standards of reliability, safety, availability of equipment, and other performance criteria
 - performance against specifications, allocation of resources, costs of work performance, and other contractor evaluation reports.
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15.2 Contract variations

Where changes become necessary during the period of the contract a formal variation must be put in place. Variations must be signed in accordance with the [Delegated authorities schedule – Part B](#).

Once signed, variations to a contract must be recorded in the contract register as part of the original contract record.

In accordance with the Government Procurement Rules, an exemption request may be required for the variation and must be completed in accordance with [clause 9.2.4](#).

If you require advice on a contract variation, contact the [Procurement team](#).



16 CONTRACT CLOSE

16.1 Contract evaluation reviews

Performance reviews should be conducted by the Contract Manager at any time if there is an identified problem or at pre-determined periods during a project.

Where the term is greater than one year, annual reviews are to be conducted on the effectiveness of the contract. These reviews are to canvass Waka Kotahi end users and supplier.

For one off project contracts a wrap up evaluation should to be conducted on the completion of the project, to determine the overall effectiveness of the project.

16.2 Contract close

When the contract is due to expire and no rights of renewal or variation will be entered into, the contract should be closed.

The contract exit procedure checklist outlines key factors that require consideration including (but not exclusively):

- end of contract reviews if different from routine contract management reviews referred to
- long-term record retention
- intellectual property requirements
- final payments.

Where a service is being re-advertised and the incumbent supplier is unsuccessful or a contract is to be terminated early, a transition plan may need to be implemented to enable a seamless transition for Waka Kotahi.
