



**KIWIRAIL
PROCUREMENT PROCEDURES
MANUAL
GROUP PROCUREMENT**

DOCUMENT REVISION HISTORY

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DOCUMENT CONTENT AMENDMENTS HISTORY

| Issue Number | Application Date | Amendments Description (in relation to previous Issue) |
|--------------|------------------|---|
| 1 | April 2013 | Initial Version |
| 2 | Jan 2015 | Amendments not known |
| 3 | Jul 2015 | Amendments not known |
| 4 | Sept 2018 | Amendments not known |
| 5 | May 2020 | <ol style="list-style-type: none"> 1. Contract Management Section "I" has been added to the previous Version. 2. Annexure 4 with the Template of the Contract Management Plan has been added as a separate document. 3. Clause 17.9 has been added with the reference to the Tender Evaluation Methodologies Guide (Annexure 5); 4. Annexure 5 with Evaluation Methodologies has been added as a separate document. 5. Preamble to Section B specifying details around DFA matrix has been amended. 6. Clauses 18.1 – 18.2 have been amended with regards to the winning tenderer selection and approval processes. 7. References for Government Rules of Sourcing have been replaced with References to Government Procurement Rules. 8. Procurement Flowchart has been amended. 9. Information about Panel of Suppliers and Secondary procurement methods applicable while sourcing from the Panel has been added in the sections 6.4 – 6.6 and Definitions section has been updated accordingly. 10. Procurement Flowchart has been updated by changing thresholds of the procurement activities to: <ol style="list-style-type: none"> a. Procurement process to follow if the total value is below \$500,000. b. Procurement process to follow if the total value is between \$500,000 - \$700,000. c. Procurement process to follow if the total value is above \$700,000 |
| 6 | June 2020 | <ol style="list-style-type: none"> 1. The Document overall was updated with regards to approval and sign-off processes to be executed by authorized signatories which should be identified for each Project (if in doubt) with Group Procurement involvement. |

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| 7 | June 2021 | <ol style="list-style-type: none"> 1. The name of the present document “Procurement Manual” has been changed to the “Procurement Procedures Manual”. 2. Introduction Section has been updated completely and include now all new Sub-clauses from 1.1 to 1.6: <ul style="list-style-type: none"> - 1.1 Purpose of the procurement Procedures Manual - 1.2 Key Governance - 1.3 Objectives of Procurement at KiwiRail - 1.4 Strategic approach and Key Procurement Categories at KiwiRail - 1.5 Procurement Procedures Matrix (or where to start) - 1.6 Other Functions Involvement in Procurement (KiwiRail Treasury, Zero Harm team, Sustainability Team) 3. References to KiwiRail Procurement Intranet all over the document have been replaced with references to Procurement Portal on SharePoint. 4. Definitions of <i>Panels of Suppliers</i>, <i>All-of-Government Contracts</i>, <i>Syndicated Contracts</i> and <i>Common Capability Contracts</i> have been updated and further defined for clarity in accordance with Government Procurement Rules 2019 across the Manual. 5. List of regulations for conducting Tenders (Clause 16.1. g) has been updated. 6. List of KiwiRail policies which this Procurement Procedures Manual should be read in conjunction with (Clause 2.1) has been updated. 7. A new requirement to have Capital Committee endorsement for all procurements exceeding > \$700K & where exemptions from open advertising apply (Rule 14 of the GPR) is specified in the Introduction Section (Sub-Section 1.5) and Clause 7.1. 8. Clause 8.5 has been updated with new requirements applicable for procurements of locomotives and rolling stock requiring MECA involvement in the process. 9. Annexure 2 to the Procurement Procedures Manual – Probity involvement has been updated. |
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| | | <p>10. A new Annexure 6 with Zero Harm Process Flowchart has been incorporated.</p> <p>11. Clauses 23.9, 23.10, 23.11 related to Currency of the anticipated Contracts and considering embedded derivatives while concluding some contracts have been fully updated providing more guidance on those subjects.</p> |
| 8 | February 2022 | 1. Annexure 2 has been updated to reference the Probity in Procurement Policy |

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ANNEXURE 6: ZERO HARM PROCESS FLOW-CHART - ATTACHED AS A SEPARATE DOCUMENT

PROCUREMENT PROCEDURES MANUAL

1. INTRODUCTION

1.1 Purpose of the Procurement Procedures Manual

This Procurement Procedures Manual outlines the procedures to be followed for standard procurement at KiwiRail and provides guidance and instruction as to the template documents to be used at each stage of the process.

These guidelines, instructions and templates may be used for more complex or very high value procurements, but in those cases, input should be sought from Group Procurement and Legal at the outset of the project.


The appointment of Individual Contractors on fixed term contracts is not managed by Group Procurement and is outside the scope of this Procurement Procedures Manual.

1.2 Key Governance

The following table sets out the law and regulations, and other documents which govern how KiwiRail executes the procurement of goods and services for our business.

KiwiRail is also subject to annual audit and audit enquiries from time to time to verify compliance with our Procurement Policy. The audit might be followed by an investigation if the compliance has been compromised.

| Issuing Body | Regulation | Description |
|---|-------------------------------------|--|
| KiwiRail | Procurement Policy | Procurement Policy sets out the requirements which are to be followed by everyone involved in procurement activities. |
| Ministry of Business, Innovation and Employment | Government Procurement Rules | Provides government standards of good practice for the procurement stages and contain 71 Rules which cover all stages of the procurement process in detail. It is based on the Five Principles of Government Procurement, which are: <ul style="list-style-type: none"> - Plan and Manage for Great results - Be Fair to all suppliers |

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| | | <ul style="list-style-type: none"> - Get the right supplier - Get the best deal for everyone - Play by the Rules |
| KiwiRail | Deed Poll | By this Deed Poll, KiwiRail made a binding commitment to the Crown to apply the Government Procurement Rules, with the exception of particular Rules set out and listed in the Deed Poll. |
| Other KiwiRail policy and documents relevant to procurement by KiwiRail | | |
| KiwiRail | Conflicts Policy | The Conflicts Policy prohibits an employee being involved in any procurement where they have a material conflict of interest, and requires all employees involved in the process to disclose potential conflicts of interest and for them to be managed effectively. |
| KiwiRail | Privacy Policy | KiwiRail is bound by and will comply with the Privacy Act 2020 in the way it collects, holds, uses and discloses personal information about individuals. |
| KiwiRail | Delegated Financial Authority | The Delegated Financial Authority Policy sets out the level of financial delegated authority for KiwiRail staff. |
| KiwiRail | Corporate Responsibility Policy | The Corporate Responsibility Policy states KiwiRail continually seek to embed sustainability in procurement activities to create positive impacts that will benefit business, society and the environment. |
| KiwiRail | Gifts, Koha, Hospitality And Entertainment Policy | This policy sets out the rules to be followed by employees and contractors when making decisions about: <ul style="list-style-type: none"> • Gifts, hospitality and entertainment from external parties • Gifts, hospitality and entertainment to external parties • Internal gifts and entertainment • Donations and Koha |
| KiwiRail & RMTU | MECA | KiwiRail has committed to consult with the RMTU where engineering work undertaken by KiwiRail employees is outsourced, and to include certain information in the tender documents. See Clause 8.5 for more detail. |

| Other relevant law and guidance | | |
|---------------------------------|---|--|
| Auditor-General | Procurement Guidance for Public Entities | <p>The guide outlines the Auditor General’s view of good practice for public entities to apply when to procuring goods or services. The Guide contains basic principles that govern all public spending, which are:</p> <ul style="list-style-type: none"> - Value for Money - Accountability - Openness - Lawfulness - Fairness - Integrity <p>All KiwiRail contracts (and the procurement processes followed to procure those contracts) are potentially subject to an audit or investigation by the Office of the Auditor-General, to ensure KiwiRail is "spending public money wisely and well".</p> |
| New Zealand Parliament | Official Information Act 1982 (OIA) | <p>The Official Information Act 1982 (sometimes known by its acronym OIA) is a statute of the New Zealand Parliament which creates a public right of access to information held by government bodies. It is New Zealand's primary freedom of information law and part of New Zealand’s uncodified constitution.</p> <p>The guiding principle of the Act is that information should be made available unless there is good reason for withholding it. Requests to Government Departments or State agencies for information must be answered "as soon as reasonably practicable", and within 20 working days.</p> |

1.3 Objectives of Procurement at KiwiRail

KiwiRail is a purpose-driven State-Owned-Enterprise with a commercial mandate. We run our business efficiently and effectively while delivering significant economic benefits through taking trucks off the road, reducing carbon emissions and road maintenance costs, easing congestion in cities and making roads safer.

Our purpose “**Stronger Connections. Better New Zealand**” speaks to what our people, our customers, our stakeholders and the Government, our shareholder, want for KiwiRail: to be more connected: connected to our customers and the future needs of their businesses, connected to the communities we serve and operate in, Connected to each other, for the good of the country.

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Our purpose speaks to connected people, networks, journeys, experiences and ways of working that move KiwiRail, the transport sector and New Zealand forward.

KiwiRail, manages its infrastructure and assets and runs rail and ship operations as profitable businesses, guided by the strategic purpose.

The KiwiRail Group Procurement support Business Units in achieving the strategic purpose by ensuring the best possible outcome from the procurement projects is achieved.

The objectives of Procurement at KiwiRail are:


1. Getting best Public value – accounting for all costs and benefits over the lifetime of the goods or services and achieving the best available result for New Zealand for the money spent.
2. Ensuring timely and efficient provision of goods or services. Delays in delivery in the performance of services of supply of goods can impact the ability of KiwiRail to service customer requirements.
3. Reducing and managing potential risks faced by KiwiRail.
4. Developing competitive supplier markets by setting standards in quality, sustainability and technology through advertising contract opportunities at the open market.
5. Ensuring safety of staff, customers and contractors at all stages of the procurement process starting from planning, through execution and further operation of assets, systems and equipment.
6. Supporting execution of concluded supply agreements to ensure the best possible value is delivered.
7. To achieve where possible sustainable outcomes which can benefit environment, society, culture and economy.

1.4 Strategic approach & Key Procurement Categories in KiwiRail

KiwiRail owns and operates rail and ferry transport networks so that freight and passengers can be moved within New Zealand, and the KiwiRail Group Procurement function supports procurement for establishment, maintenance and operation of the infrastructure (rail) and fleet (trains and ships).

Core procurement categories at KiwiRail are:


- **Rail Networks and Operations** which includes goods and services related to establishment of rail infrastructure, maintenance of track, operations at container terminals and wider freight operations.
- **Rolling Stock Asset Services** which consists of goods and services required at different stages of asset management, starting from planning, design, engineering and commissioning and continuing through maintenance and further retirement of the fleet.

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- **Major Capital Projects and Asset Development:** Auckland Metro & CRL, Wellington Metro, National network upgrades, major Rolling stock procurement, iReX, Northland Rail Upgrade.
- **Interislander.** As well as providing a range of services in a tourism area, Interislander is a vital transport connection between New Zealand's North and South Islands. By carrying trucks and passenger vehicles, Interislander is a link for rail freight on our Auckland to Christchurch service.
- **Corporate services** include IT, Facilities management, Travel services, Marketing, Zero Harm, Sustainability, etc.

It is important to apply relevant strategies while executing procurement activities for a certain category. The key strategies include:

- Considering **Total Cost of Ownership** when procuring assets (CAPEX). Apart from the price proposed for the piece of equipment, software or machine, the following costs must be considered:
 - Costs of design, delivery, installation, commissioning and training (**acquisition costs**);
 - Costs related to possible change requests if contract to include design aspect (**change request costs**);
 - Costs of routing maintenance and periodic overhauls including spare parts over lifetime (**maintenance costs**);
 - Costs of energy and labour involved in running the equipment (**operating costs**);
 - Costs of time lost during breakdowns (**emergency costs**);
 - Costs of disposal at the end of the lifetime (**disposal costs**).
- **Consolidation of Procurements.** As maintenance of assets and property forms the substantial part of spend, it is worth to consider consolidation of similar services under one agreement. Expanding the scope of procurement and securing long term relationships may provide better value and ensure consistency while managing performance under the contract.
- **Utilizing existing Panels of Suppliers as well as All-of-Government Contracts, Syndicated Contracts and Common Capability Contract.** There are KiwiRail established Panels of suppliers and Government/Other agencies established Contracts (AOG, Syndicated and Common Capability) which KiwiRail may join or has already joined. The suppliers on those Panels/Contracts have been already pre-qualified and assessed for their ability to supply a range of goods and services. With a bit work to do – selecting a particular supplier from the Panel/Contract – this option saves time and effort which could be spend for other projects. Please engage with Group Procurement to see if there are any existing arrangements which would suit KiwiRail requirement.
- **Establishing Supplier Panels.** Where the good or service can be potentially supplied by more than one supplier on the market over time, it is recommended that a Panel of suppliers be established by concluding framework agreements with prospective Panel members. Each time a need arises, KiwiRail can seek a request for quotation from the Panel members and proceed with the best offer proposed. It saves time and effort compared to undertaking a full open/closed competitive process every time and supports competitiveness of supply markets.
- **Early Supplier Involvement.** In a fast-changing world, it is important to stay at the edge of innovations and follow recent trends. If KiwiRail is unfamiliar with procuring the particular good


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or service, it is recommended that we approach the market by inviting suppliers to provide Expressions of Interest (EOI). In this way, KiwiRail may expand its awareness of recent developments and trends in the railway industry.

1.5 Procurement Procedures Matrix (or Where to start)

The Procurement Procedures Matrix (Matrix) provides overview of the procurement procedures depending on the anticipated contract spend over the term.

At the start, it is important to assess **the anticipated contract value** correctly, to understand what actions are required to be taken. The Matrix **must be read in conjunction with clarifications provided at the end of the Matrix.**

| PROCUREMENT PROCEDURES MATRIX | | | |
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| Step / Document  | Anticipated Contract Value over the Contract Term | | |
| | Less than <\$500K | Between \$500K - \$700K | More than >\$700K |
| Group Procurement Involvement | Group Procurement is involved if required by End-Users | Group Procurement must be involved to ensure procurement process as required by Government Procurement Rules, KiwiRail Procurement Policy and the present Procurement Procedures Manual is followed | |
| Existing Agreements | This step checks whether other Business Units already source the same good or service from suppliers and if there is an opportunity to consolidate the requirements in order to get better value. Group Procurement can also advise if there is any KiwiRail – established Panels of Suppliers or Government/Other agencies established Contracts (AOG, Syndicated or Common Capability) , which KiwiRail may join (or have already joined) to procure the required good or service. If applicable, the specified process of joining the Panel or Contract must be followed and led by Group Procurement. | | |
| Procurement Methodology | Procurements must be either: a. tendered. b. selected on the basis of quotes. c. otherwise price tested. | CLOSED Tender | OPEN Tender |
| | | Pre-selected suppliers are invited to respond to an RFx | Procurement is advertised on GETS – Government Electronic Tenders Service www.gets.govt.nz |

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| Approvals | Written approval of the purchase from the applicable DFA holder must be received | The default for procurements exceeding \$500K is to conduct an OPEN Tender. A CLOSED Tender might be undertaken at the discretion of Group Procurement Manager | OPEN Tender only |
| Strategic Procurement Plan (SPP) | N/A | SPP is required for all procurements exceeding >\$500K. | |
| Exemptions from the Requirement to conduct Closed or Open Tender (Rule 14 of the GPR) | N/A | Recommendation to Select Supplier must be issued, specifying exemptions from the requirement to Openly advertise apply | Recommendation to Select Supplier along with GRP Exemption Form must be issued, specifying exemptions from the requirement to Openly advertise apply |
| Recommended Number of Proposals | It is recommended to get competitive quotes from 3 suppliers | Ideally, the proposals of 5 or more suppliers will be considered, depending on the market and goods/service specification | |
| Stages in the Procurement Process | ONE-STEP | | ONE-STEP or MULTI-STEP |
| | One-step Procurement Process to apply when there is KiwiRail knowledge and experience of the market, potential suppliers, confidence in requirements, etc. | | Multi-step procurement Process to apply when there is no knowledge or experience of the market, potential suppliers, industry trends, technologies, tendencies, etc. |
| Description of Procurement Processes | One Step: Getting competitive quotes from suppliers | One Step: issuing RFx | <p>Step 1. Expression of Interest (EOI). Suppliers are invited to express their interest in supplying goods or services and then shortlisted with application of pre-established evaluation criteria.</p> <p>Step 2. Request for "X" (RFx), where X is either "Proposal" or "Tender" or "Quotation". RFx is sent to suppliers shortlisted at the first step.</p> |
| | N/A | Recommendation to Select / Negotiate is an intermediate step between Tender (or Tender stages) and Contract Negotiations. It is where the procurement owner recommends a supplier(s) to proceed | |


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| Recommendation to Select / Negotiate | | further with contract negotiations or where the procurement owner recommends suppliers to be invited to participate in the procurement process. |
| KiwiRail Contract Template to be used for standard procurements | <p>If contract amount is below <\$100K over the term, KiwiRail Short Form Supply Agreement can be used.</p> <p>For the contract where amount exceeds >\$100K, KiwiRail Long Form Supply Agreement to be used (applies for Goods and Services) or KiwiRail Service Supply Agreement to be used (applies for Services supply only).</p> | <p>KiwiRail Long Form Supply Agreement to be used (applies for Goods and Services) or KiwiRail Service Supply Agreement to be used (applies for Services supply only).</p> |
| Concluding Contract on Supplier Terms (or changes to KiwiRail terms) | If the contract is proposed to be concluded on supplier terms, or if supplier proposes changes to KiwiRail standard terms, regardless of the total amount, it must be reviewed by legal. | |
| Contract Execution Request Form (CERF) | The Contract Execution Request Form (CERF), outlines the key contract terms, risks and mitigations for approvers and the signatory to review. The CERF must be signed, and the contract must be executed in accordance with KiwiRail DFA Policy. | |
| Execution of the Contract / Managing delivery under the concluded Contract | The lead responsibility for contract management & managing the delivery under the contract in KiwiRail resides in the function/business unit which require the most collaboration, co-ordination and information exchange with the supplier in order to avoid delays and misunderstanding from routine of communication through a third-party function; Please refer to the Annexure 4 to this Manual with the Template of the Contract Management Plan. The Plan also identifies situations where other functions should be involved in the Contract execution. | |

- **How to determine Contract Value over the Contract Term**

Apart from the price for the primary good or service which is expected to be delivered under the proposed agreement, consider other potential costs which may arise over the contract term. Those costs may include costs of delivery, installation, commissioning; costs of the maintenance and overhauls; costs of the unscheduled maintenance and repair; costs of the spare parts and consumables. Those costs might be specific for the particular project so the input should be sought from a supplier and similar procurements executed by KiwiRail in the past. Establish the potential contract term and multiply if applicable annual costs by number of years the contract will be in effect.

- **Approvals in accordance with KiwiRail DFA Policy**

Approvals for all procurements and key documents supporting procurement decisions need to be sought in accordance with KiwiRail DFA Policy.

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- **Strategic Procurement Plan**

A Strategic Procurement Plan is required for all procurements where the value of proposed agreement exceeds \$500K over the contract term. The Strategic Procurement Plan must be issued and approved prior to commencing any procurement activity. The template for the Strategic Procurement Plan can be found on the Procurement Portal on SharePoint. The Strategic Procurement Plan covers the following key areas: scope of procurement, current situation, objectives of the procurement. The Strategic Procurement Plan, the procurement and contracting strategy, proposed evaluation panel members and their input, proposed evaluation criteria and their weighting/importance, risks and mitigation strategies, etc.

Where a Procurement refers to CAPEX, the Project Execution Request Form (PERF) including approved amount of procurement, has to be received prior commencing Strategic Procurement Plan development.

- **Exemptions to conducting Open or Closed Tender. Justification & Approvals for Exemptions.**

Rule 14 of the Government Procurement Rules identifies situations where a procurement can be exempted from being put to Open Tender.

Where one or more exemptions apply for an anticipated procurement activity with the value **between \$500K - \$700K** over the contract term, a Recommendation to Select a Supplier must be issued and approved by appropriate DFA Holder and Group Procurement Manager.


For procurements exceeding > \$700K over the contract term, a GPR Exception Form must be issued in addition to the Recommendation to Select a Supplier, and both documents must be approved by an appropriate DFA holder and GGM **and endorsed by the Capital Committee.**

Both the Recommendation to Select a Supplier and the GPR Exception Form templates can be found on the Procurement Portal on SharePoint.

The List of Exemptions is as follows:


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

- b. **Following an open competitive process:** An agency may use a closed competitive process or direct source process to procure goods, services and works if:
 - i. it has openly advertised the contract opportunity in the last 12 months, and
 - ii. it has not substantially changed the core procurement requirements, and
 - iii. the first time the opportunity was advertised it:
 - (a) did not receive any responses, or
 - (b) did not receive any responses that complied with the pre-conditions (Rule 28 or

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conformed with or met the requirements (including quantity), or (c) received responses from suppliers who it has reasonable grounds to believe have colluded, and this can be verified, and no other responses complied with the pre-conditions (Rule 28) or conformed with or met the requirements.

- c. Only one supplier:** If the goods, services or works can be supplied by only one supplier and there is no reasonable alternative or substitute because:
- i. for technical reasons there is no real competition, or
 - ii. the procurement relates to the acquisition of intellectual property or rights to intellectual property (including patents or copyrights), or other exclusive rights, or
 - iii. the procurement is for a work of art.
- d. Additional goods, services or works:** Goods, services or works additional to the original requirements that are necessary for complete delivery. This rule applies where all three of the following conditions are met:
- i. the original contract was openly advertised, and
 - ii. a change of supplier cannot be made for economic or technical reasons, and
 - iii. a change of supplier would cause significant inconvenience or substantial duplication of costs for the agency.
- e. Prototype:** Purchasing a prototype for research, experiment, study or original development. Original development may include a limited production or supply if this is necessary to:
- i. carry out field tests and incorporate the findings, or
 - ii. prove that the good or service or works can be produced or supplied in large numbers to an agreed quality standard. This exemption does not apply to quantity production or supply to establish commercial viability or to recover research and development costs. Once the contract for the prototype has been fulfilled, an agency must openly advertise any subsequent procurement of the same goods, services or works.
- f. Commodity market:** Goods purchased on a commodity market.
- g. Exceptionally advantageous conditions:** For purchases made in exceptionally advantageous conditions that only arise in the very short term. This exemption does not cover routine purchases from regular suppliers.
- h. Design contest:** Where a contract is awarded to the winner of a design contest. To meet this exemption:
- i. the design contest **must** have been organised in a manner that is consistent with the Rules, and

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- ii. the contest **must** be judged by a panel whose members understand that the winner will be awarded a contract, and
 - iii. members of the panel do not have any conflict of interest in carrying out the judging of the contest.
- i. **Secondary procurement:** Where an agency has established a panel of suppliers (in accordance with Rule 57) or is purchasing under an All-of-Government contract (Rule 58), Syndicated contract (Rule 59) or Common Capability contract (Rule 60), it does not need to openly advertise individual contract opportunities that are awarded through that arrangement.
- j. **Unsolicited unique proposal:** Where an agency receives an unsolicited proposal, as described in MBIE’s Guide to unsolicited unique proposals, and all of the following apply:
- i. the proposal is unique
 - ii. the proposal aligns with government objectives
 - iii. the goods, services or works are not otherwise readily available in the marketplace
 - iv. the proposal represents public value.

- **Recommendation to Select / Negotiate**

Recommendation to Select a supplier (or suppliers) or **Recommendation to Negotiate** with the chosen supplier have to be issued at the intermediate stages of the procurement process where supplier(s) have been shortlisted/selected to proceed further to the next stage of the procurement process which could be: second step of the Multi-Step Tender process or negotiation of the contract. Templates of both the documents can be found on the Procurement Portal on SharePoint.

- **KiwiRail Contract Templates**


KiwiRail contract templates to be used for negotiating and concluding contracts with suppliers can be found under *Precedents, Contracts and Guides* found on the Legal Section of the Procurement Portal on SharePoint.

- **Contract Execution Request Form (CERF)**

The Contract Execution Request Form (CERF) is the approval document circulated with the contract which outlines the key contract terms, risks and mitigations for the approvers’ and signatory’s review. The CERF must be signed, and the contract must be executed in accordance with KiwiRail DFA Policy The template CERF can be found on the Procurement Portal on SharePoint.

1.6 Other Functions Involvement in Procurement

1.6.1. KiwiRail Treasury

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KiwiRail Treasury are to be consulted in case any of the following aspects relate or might impact achieving the value of Procurement:

- Goods and services procured in foreign currency.
- Good and services procured from offshore but priced in NZD.
- Goods procured which are a commodity (i.e. oil, steel), or good which are predominantly made up of commodities.
- Goods and services which have an embedded financing component (i.e. equipment leases);
- Insurance related aspects.
- Pricing benchmarks.

See Clauses 23.9 – 23.11 for more detail.

1.6.2 Zero Harm Team

The Zero Harm function supports Group Procurement’s due diligence activities by carrying out a health and safety assessment of potential suppliers, and the goods and services proposed to be supplied.

The supplier will be asked to complete the SHE Questionnaire, which can be either short-form or long-form. The SHE assessment is performed by Zero Harm prior to the supply contract being awarded. Zero Harm continues to monitor health and safety compliance via its network of Zero Harm Advisors.

To determine which questionnaire is to be used, please refer to the **Procurement SHE Flow-chart** in the Annexure 6 to the Manual. Both SHE Questionnaires (long-form and short-form) can also be found there.

Please contact Zero Harm for further information.

1.6.3. Sustainability Team


Sustainable procurement aligns with KiwiRail’s corporate responsibility approach and is one of the key principles of the KiwiRail Corporate Responsibility Policy. When undertaking any procurement process, KiwiRail will continually seek to embed sustainability in procurement activities to create positive impacts that will benefit not only our business, but also the environment, society and the economy.

Procurement activities wherever possible support KiwiRail’s sustainability objectives which are to:

- Be a leader in low emissions for transport;
- Minimise our impact and enhance environmental quality;
- Be valued by communities across New Zealand;
- Attract, develop and nurture great talent;
- Grow the prosperity of New Zealand’s economy;
- Leverage our value chain to create sustainable value.

The KiwiRail Procurement Policy also requires that when making purchasing decisions, KiwiRail employees are expected to consider the following key principles of sustainable procurement when procuring goods, works or services:

- Strategies to avoid unnecessary consumption and manage demand;

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- Minimising environmental impacts of the goods and services over the whole of life of the goods and services (i.e. considering carbon emissions);
- Suppliers' socially responsible practices including compliance with legislative obligations to employees; and value for money over the whole-of-life of the goods and services, rather than just initial cost; suppliers must comply with all relevant laws and regulations subject to the Law of New Zealand in relation to all environmental and health and safety regulations.

Where appropriate, these key sustainability objectives and principles will be considered formally as part of the procurement process. The KiwiRail Sustainability Procurement Questionnaire is available to use during this process and additional sustainability questions/criteria can be included as necessary. A copy of the questionnaire can be found at procurement portal on SharePoint.

2. HOW TO USE THIS DOCUMENT

KiwiRail policies


- 2.1 This document should be read in conjunction with KiwiRail's policies, as specified in the Introduction Section to this Manual as well as with the following policies and procedures:
- (a) Delegated Financial Authorities (“DFA”) Policy;
 - (b) Whistle-blower “Speak Up” Policy;
 - (c) KiwiRail Enterprise Risk Management Framework.
- 2.2 This document provides guidance and instructions. Accordingly, to the extent that there is any inconsistency between this document and any of KiwiRail's policies, KiwiRail's policies will usually prevail. In the event of any such inconsistency, input should be sought from Group Procurement.
- 2.3 Further best practice guidance is also available from the Office of the Auditor-General and the Government Procurement Rules.
- 2.4 The documents referred to in the Procurement Procedures Manual can be found at Procurement Portal on SharePoint or in Group Procurement.

Specific application


- 2.5 The guidelines and instructions provided in this document are necessarily generic in nature and are intended to complement the competencies, training and experience of those involved in Procurement for KiwiRail. If you have any queries, or require any advice, regarding any specific Procurement you are involved in, in the first instance, contact the Process Owner.

Contents of this document

- 2.6 This document is divided into various sections and is to be used as a reference manual for those involved in Procurement for KiwiRail. Once you are familiar with KiwiRail's Procurement framework in general, you will only need to refer to the specific sections of this document applicable to the specific stage of your Procurement.

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- 2.7 Sections A and B of this document explain the procurement framework and the different types of procurement processes available. Sections C to G explain the various steps involved in a procurement process, from its planning stages to its conclusion and implementation stages. Section H contains additional considerations drawn from the Government Procurement Rules.
- 2.8 All template documents referred to are available via the hyperlink (where applicable), on the Procurement Portal on SharePoint.

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2.9 Should you require any clarification or assistance on Procurement please contact:

Hemal Shah – (Acting) Group Procurement Manager KiwiRail
hemal.shah@kiwirail.co.nz
+64 9 363 8238 (internal extn 91238)

3. DEFINITIONS

All-of-Government Contract (or AOG) is a type of approved collaborative contract. AOGs establish supply agreements with approved suppliers for selected common goods or services purchased across government. AOGs are developed under the oversight of the Procurement Functional Leader and managed by appointed procurement Centres of Expertise Information about AOG Contracts which KiwiRail have joined can be found at Procurement Portal on SharePoint in Group Procurement.

Business Case means a documented justification for an investment decision in line with KiwiRail's business process at the time and is sometimes referred to as a Strategic Project Plan or Strategic Procurement Plan.

CE means KiwiRail's Chief Executive.

Clear Business Day means one full business day from 9am to 5pm.

Common Capability contract (CC) is a type of approved collaborative contract. CCs establish various supply agreements with approved suppliers for selected common goods or services or works purchased across government. CCs may be established by a Functional Leader's agency or by another lead agency that is approved and overseen by a Functional Leader, with prior approval from the Procurement Functional Leader.

DFA means delegated financial authority.

Direct Procurement means an exception to the Open Tender process (refer section A).

EOI means Expression of Interest. EOI is used to identify suppliers interested in, and capable of, delivering the required goods or services. EOI has the same meaning as ROI. (Registration of Interest)

GGM means the relevant KiwiRail General Manager, being one of the CE's direct reports.

GETS means the Government Electronic Tender Service at www.gets.govt.nz.


Government Procurement Rules means the rules which represent the government's standards of good practice for procurement planning, approaching the market and contracting.

Group Procurement Manager means Lisa Richardson or her successor, if applicable.

KiwiRail means KiwiRail Holdings Limited and its subsidiaries.

KiwiRail Legal means a member of the KiwiRail legal team.

KiwiRail Treasury means a member of the KiwiRail treasury team.

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Major Procurement(s) means any procurement for goods or services where the estimate of whole of contract value is equal or greater to \$700,000 or for goods or services for construction of new works where the estimated value is equal to or greater than \$9,000,000 or one that has a sensitive nature or involves high risk for the company.

NTR means notice to Respondents

Open Tender means an RFx conducted to the open market via the GETS system.

Panel of suppliers is a list of suppliers KiwiRail has pre-approved to supply particular goods or services from and who have agreed to the KiwiRail's terms and conditions for supply. Please contact Group Procurement to find out about existing and planned Panels.

Process Owner means the KiwiRail staff, contractor or consultant leading the relevant Procurement. This role will usually be assigned as the Tender Manager.

Procurement means the process or processes by which KiwiRail purchases goods and/ or services, spanning the whole cycle from the identification of business requirements (needs) to the end of a contract for goods and/or services or the end of life and disposal of an asset. Procurement excludes employment of staff.

RFI means Request for Information. RFI is a formal request for information to gain a more detailed understanding of the supplier market and the range of solutions and technologies that might be available.

RFP means Request for Proposal. RFP is a formal means of seeking proposals from the market for goods or services where KiwiRail is open to supplier innovation.

RFQ means Request for Quotation. RFQ is a formal means of seeking quotations from the market for goods or services, where price is the main criterion.

RFS means Request for Service. RFS is a formal mean of seeking proposals from a Panel of existing suppliers that already have contracts with KiwiRail as well as AOG, Syndicated and Common Capability Contracts which KiwiRail have joined to provide defined services.

RFT means Request for Tender. RFT is a formal means of seeking tenders from the market to provide goods or services where KiwiRail's specification or requirements are clearly defined.


RFx means any procurement process, EOI, RFQ, RFI, RFP, RFS and RFT.

ROI has the same meaning as EOI.

Secondary procurement is where KiwiRail purchases goods, services or works from a Panel of suppliers, an All-of-Government Contract, Common Capabilities Contract or Syndicated Contract.

Sustainability means meeting the needs of today, without adversely affecting the needs of tomorrow. In a business sense, the key messages of sustainability lie in sound business practices, such as building efficiency, minimising waste, and maximising resources. See also KiwiRail Procurement Policy and KiwiRail Supplier Code of Ethics.

Syndicated Contract is a type of approved collaborative contract. Syndicated contracts typically involve a group of agencies aggregating their respective needs and collectively going to market for goods, services or works.

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Tender Evaluation Guidelines means the agreed written instructions given to the evaluation panel members to guide them in applying the evaluation methodology.

Tender Manager means the person designated by KiwiRail as the tender manager for a particular procurement project.

Public Value according to Government Procurement Rules means the best available result for New Zealand for the money spent. It includes using resources effectively, economically and responsibly, and taking into account:

- the procurement's contribution to the results you are trying to achieve, including any Broader Outcomes you are trying to achieve and
- the total costs and benefits of a procurement (total cost of ownership).

The principle of public value when procuring goods, services or works does not mean selecting the lowest price but rather the best possible outcome for the total cost of ownership (over the whole-of-life of the goods, services or works).

Selecting the most appropriate procurement process that is proportionate to the value, risk and complexity of the procurement will help achieve public value.

SECTION A: OVERVIEW OF KIWIRAIL PROCUREMENT

4. KIWIRAIL PROCUREMENT PROCESS

4.1 As stated in the Controller and Auditor-General's Procurement Guidance for Public Entities, the basic principles that govern all public spending are:


- (a) Public Value;
- (b) accountability;
- (c) openness;
- (d) lawfulness;
- (e) fairness; and
- (f) integrity.

4.2 KiwiRail's procurement processes seek to achieve the basic principles outlined in 4.1. Additionally, the procurement of goods and services must be guided by the five principles of Government procurement (see Rule 1 of the Government Procurement Rules).

4.3 It is KiwiRail's policy that:

- (a) Procurement will be guided by the procurement principles detailed in the procurement policy and this document; and
- (b) where practicable and efficient, Procurement is to be performed by a competitive process in accordance with the templates in this document, except where direct procurement is appropriate and has been approved by the Group Procurement Manager.

4.4 All KiwiRail contracts (and the procurement processes behind those contracts) are potentially subject to an audit or investigation by the Office of the Auditor-General, to

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ensure that KiwiRail is "spending public money wisely and well". One of KiwiRail's primary aims in the procurement process is therefore to obtain the best Public Value it can.

4.5 The type of procurement process to be used will depend on various considerations, including:

- (a) the value of the goods/services;
- (b) the type (e.g. custom-made or "off-the-shelf") and nature (e.g. operation critical) of the goods/services required;
- (c) KiwiRail's knowledge about the scope of the goods/services and its ability to specifically define such goods/services;
- (d) the number of suppliers in the market;
- (e) the risk inherent in the goods and services provision - including but not limited to operational, technical and commercial risk;
- (f) whether there is a need for the procurement to be confidential; and
- (g) whether there is a genuine limitation on the time available for procurement. It should be noted that lack of time will not normally be a valid reason for allowing an exception to competitive procurement as a properly planned Procurement should allow adequate time to follow due process.

4.6 **Annexure 1** provides an overview of the procurement process.

5. TYPES OF PROCUREMENT


5.1 Once the need for KiwiRail to procure goods and/or services has been established, there are 4 main options available to KiwiRail for the procurement of such goods and/or services:

- (a) single stage open tender;
- (b) multistage open tender;
- (c) direct purchase under an existing contract (or existing Contracts with Suppliers from KiwiRail pre-established Panels of Suppliers or Government/Other Agencies established Contracts (AOG, Syndicated and Common Capability which KiwiRail have joined); and
- (d) direct procurement.

5.2 Section B describes the different types of procurement processes listed above in paragraph 5.1 (including a discussion of the differences between them).

5.3 **Annexure 3** provides a summary of the guidance contained in Section B as to the selection of the type(s) of procurement process suitable for your proposed purchase.

5.4 In addition to the different types of procurement processes listed above in paragraph 5.1, as a state-owned enterprise, KiwiRail has the opportunity to join a range of Government and syndicated contracts. Therefore, where it is applicable and practical, KiwiRail should

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consider joining such agreements. Information about Contract and Panels which KiwiRail have established or already joined is available at Procurement Portal on SharePoint or in Group Procurement.

5.5 For further information on:

- (a) direct purchase under an existing contract - see section B(6).
- (b) direct procurement – see section B(7).
- (c) single stage and multi stage open tenders – see section B(8).
- (d) RFI or Request for Information - see section B(9).
- (e) EOI or Expression of Interest - see section B(10).
- (f) RFP or Request for Proposal - see section B(11).
- (g) RFT or Request for Tender - see section B(12).
- (h) RFQ or Request for Quotation - see section B(13).
- (i) RFS or Request for Service - see section B(14).

SECTION B: TYPES OF PROCUREMENT AND SELECTION OF A PROCESS

KiwiRail's default position is that an Open Tender procurement process should be used for all Major Procurements unless there is good reason not to (see paragraphs 6 and 7 below). Any concerns or queries about this figure should be directed to Group Procurement. This section outlines different types of procurement process. If you are unsure which process to use, please consult with the Group Procurement Manager.

If you are unsure of who is required to sign off your various procurement documents, please consult with the relevant Procurement Manager to assist with this process.


6. DIRECT PURCHASE UNDER AN EXISTING CONTRACT

6.1 Where KiwiRail has an existing (current) contract with a supplier for the provision of goods and services, KiwiRail may purchase goods or services directly from that supplier. Where a procurement relates to goods/services that are the subject of an existing AoG arrangement that KiwiRail has not yet joined, please consult with Group Procurement.

6.2 However the decision to use an existing contract should still be made having regard to the considerations in paragraph 4.4.

6.3 The process is usually as follows:

- (a) check existing contract terms are appropriate;
- (b) agree price (by reference to agreed catalogue/price list/rate card or by obtaining a quotation from the supplier); and
- (c) agree clear and unambiguous contract deliverables.

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6.4 Where KiwiRail has existing (current) contracts with Suppliers from the Panels of Suppliers for the provision of goods and services, KiwiRail may purchase goods or services from those Suppliers. Appointment of a supplier from a Panel should be made as a result of a Secondary Procurement. Accepted selection methods for Secondary Procurement processes include:

- a. competitive quotes which could be based on the supplier's expertise, proposed solution and/or best public value: Ask for quotes from some or all Panel suppliers and award the opportunity to the supplier who has the right level of expertise, can offer the best public value and deliver on time
- b. direct source, based on the best fit for purpose: Fair evaluation of all Panel Suppliers and selection of the supplier who has the right capacity and capability to fulfil the opportunity and offers the best public value at the time of the purchase
- c. rotation: Award opportunities to each supplier in turn regardless of their expertise, public value or delivery time
- d. equal division of the work: Fix an upper limit for the amount of work that can be awarded to each supplier and award opportunities on a rotational basis. When a supplier reaches the upper limit, the agency chooses the next supplier from the Panel
- e. preferred supplier basis: Identify a preferred supplier from the Panel. This supplier receives most of the opportunities unless it has a conflict of interest or is unable to supply. If this happens, the agency will award the opportunity to the next-ranked supplier from the Panel
- f. location: Award opportunities to the supplier who is best able to deliver based on their location and the location of the work.

6.5 Secondary Procurement methods applicable for each Panel are specified by KiwiRail at the Panel establishing stage. Please contact Group procurement to find out the current and planned panels and secondary procurement methods applicable to each Panel.

6.6 An RFS may be used to seek proposals from a Panel of existing suppliers that already have contracts with KiwiRail. See section B (14).

7. DIRECT PROCUREMENT

7.1 In some instances, open competitive tenders might not be possible to conduct for procurement of goods/services. Any departure from open competitive tendering (other than direct purchasing under an existing contract) must have the prior approval of the relevant financial delegation holder and the Group Procurement Manager. Where the value of the potential contract exceeds \$700K, additional approval must be received from GGM and endorsed by Capital Committee.

7.2 Direct Procurement will usually only be justified if exemptions from open advertising listed in the Rule 14 of the GPR (see Introduction to this Manual) apply.

7.3 Any decision to use direct procurement, other than in a genuine emergency or crisis, must be supported by a Recommendation to Select Supplier, signed by the appropriate signatory and market research to:

- (a) show that direct procurement is appropriate;
- (b) demonstrate the capability of the supplier to deliver the goods and services or confirm that only one supplier is available to deliver the goods and services; and
- (c) confirm that KiwiRail is obtaining the best Public Value.

8. SINGLE STAGE AND MULTISTAGE OPEN TENDERS

8.1 A single stage open tender is generally used where KiwiRail's requirement for goods and services is clearly understood and a multistage tender process is unnecessary.

8.2 An open tender will usually take the form of an RFT, RFQ or RFP.

8.3 Minimum time periods should be adhered to for suppliers to respond for all tenders. The time allowed should be realistic and set timelines that are fair to all suppliers and reflect the nature and complexity of the information that KiwiRail is seeking.

- (a) Time periods considered should be based on Clear Business Day excluding Saturdays and Sundays, New Zealand public holidays and all days between Boxing Day and the day after New Year's Day. For avoidance of doubt a Clear Business Day is a full day from 9am to 5pm. The day a Notice of Procurement is submitted for publication is not a clear business day. The time starts on the next business day at 9am
- (b) Following minimum time periods must be applied to all open tenders

Single Stage Process:

| Process type | Open Clear Business Days | Discount for electronic distribution and submission | Resultant Open Clear Business Days required |
|--------------|--------------------------|---|---|
| RFQ | 13 days | 4 days | 9 days |
| RFT or RFP | 25 days | 7 days | 18 days |

Multi Step Process:

| Process type | Open Clear Business Days | Discount for electronic distribution and submission | Resultant Open Clear Business Days required |
|---------------------|---------------------------------|--|--|
| EOI or RFI or ITP | 20 days | 7 days | 13 days |
| RFT or RFP | 25 days | 10 days | 15 days |

8.4 The process should be as follows:

- (a) issue RFP, RFT or RFQ on GETS;
- (b) evaluate responses received and, as part of that, perform due diligence, if required;
- (c) short list responses (where appropriate);
- (d) select a preferred tenderer; and
- (e) finalise contract.


8.5 Paragraphs 11, 12 and 13 below provide more information on the RFP, RFT and RFQ documents.

For the procurement of locomotives and rolling stock, KiwiRail will ensure the following is contained in tender documentation, and be confirmed to the RMTU:

- where practicable, warranty work will be undertaken by KiwiRail employees;
- where, for genuine reason it is not practicable for KiwiRail to carry out warranty works, the rates of pay shall be no less than the rates of pay in the MECA; and
- tender documentation shall require the supplier to confirm the rates of pay for work to be performed, and the rates of pay shall be not less than the MECA.

8.6 A multistage open tender is similar to the single stage process but involves the following initial steps in the process. The decision on application of single stage or multistage process has to be justified in Strategic Procurement Plan.

- (a) issue RFI or EOI on GETS;
- (b) evaluate responses received; and
- (c) where appropriate, short list responses before issuing a RFP, RFT or RFQ on GETS or to a closed shortlist, based on the results of the RFI or EOI.

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8.7 Paragraphs 9 and 10 below provide more information on the RFI and EOI documents.

9. REQUEST FOR INFORMATION (RFI)

9.1 An RFI is used when more information is required to assist KiwiRail to write accurate specifications to use in a subsequent tendering process or to provide KiwiRail with market insights.

9.2 Accordingly, the RFI process is a tool used to gather information from the market. It is normally used to obtain technical information about a product or service-based project. An RFI is not evaluated in the sense of selecting one supplier over another. The information received is used to produce detailed specifications and requirements, upon which to base a subsequent tender process.

9.3 It is not compulsory to use the RFI stage of the process and, where appropriate (e.g. when KiwiRail does not require any additional market information to assist its formulation of an RFP or RFT), KiwiRail can go straight to a single stage open tender. In most straightforward procurement exercises, an RFI is probably not needed.

9.4 In contrast to an EOI (which is normally used only when KiwiRail is certain of its need for specific goods and services), an RFI can be used to enable KiwiRail to seek further information in a competitive environment, without KiwiRail being necessarily committed to any purchase of any goods/services.

10. EXPRESSION OF INTEREST (EOI) / REGISTRATION OF INTEREST (ROI)


10.1 An EOI (sometimes referred to as an "ROI" or "Registration of Interest") is usually used to identify prospective suppliers of goods/services and to create a supplier shortlist by asking for responses to specific questions concerning the experience, capability and capacity of potential suppliers.

10.2 The process shortlists a manageable number of potential suppliers who could all, theoretically, be capable of providing the required goods/services.

10.3 For example, an EOI should be used prior to the RFP, RFT or RFQ process, to:

- (a) identify tenderers that are capable of providing the goods/services required;
- (b) identify whether and which tenderers are capable of providing the goods/services within a specified timeframe;
- (c) identify tenderers that are capable of meeting KiwiRail's project needs, possibly in innovative ways when faced with a new situation; and
- (d) shortlist tenderers capable of providing the goods/services and invite them to respond to a more detailed RFP, RFT or RFQ process which will usually be a closed process.

10.4 It is not compulsory to use the EOI stage of the process, and where appropriate (e.g. when it is known that there are a limited number of suppliers or there is a genuine limitation on the time available), KiwiRail can go straight to a single stage open tender. In most straightforward procurement exercises, an EOI is probably not needed.

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10.5 In contrast to an RFI (which can be used to enable KiwiRail to obtain further information from the market without KiwiRail committing to purchase any goods/ services), an EOI should only be used when KiwiRail intends to purchase the relevant goods/services (subject to acceptable contractual terms being agreed with the selected supplier).

11. REQUEST FOR PROPOSAL (RFP)

11.1 An RFP invites prospective tenderers to suggest ways in which they could achieve the project's objectives. An RFP should not be used if KiwiRail has prescriptive requirements, when flexibility is not an advantage (in such case, the use of an RFT would be more appropriate).

11.2 For example, an RFP could be used for the design and build of a new signalling system or the supply of legal or other professional/technical services where there could be significant differences between the proposals offered by potential suppliers, e.g. different expertise, technical solutions, and other qualitative aspects of the service solution.

11.3 The RFP process allows tenderers to be innovative and offer different:

- (a) approaches to deliver the goods/services; or
- (b) pricing.

An RFP also gives tenderers a greater degree of flexibility in respect of the structure of their responses than that offered by an RFT process.

11.4 An RFP is usually used to:


- (a) identify tenderers that are capable of providing the goods/services required;
- (b) identify whether and which tenderers are capable of providing the goods/services within a specified timeframe;
- (c) identify tenderers that are capable of meeting KiwiRail's project needs, possibly in innovative ways when faced with a new situation;
- (d) find out how those tenderers propose to meet KiwiRail's requirements; and
- (e) discover the market price for KiwiRail's requirements,

all of which should result in KiwiRail selecting a tenderer capable of providing the goods/services who offers the best Public Value.

11.5 The RFP process is usually an open process but may be closed, in appropriate circumstances. In such circumstances, section C of this Manual must be followed, and care should be taken when selecting the group of closed potential tenderers.

12. REQUEST FOR TENDER (RFT)

12.1 An RFT process invites prospective tenderers to make offers based on a specific and well-defined statement of requirements.

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12.2 This requires tenderers to comply with a relatively rigid and prescriptive set of rules and requirements and is to be used when KiwiRail knows exactly what it wants to purchase, and the outcomes/deliverables are capable of being fully specified e.g. supplying ballast.

12.3 An RFT is usually used to:

- (a) identify tenderers that are capable of providing the goods/services required;
- (b) identify whether and which tenderers are capable of providing the goods/services within a specified timeframe; and
- (c) discover the market price for KiwiRail's requirements,

all of which should result in KiwiRail selecting a tenderer capable of providing the goods/services who offers the best value to KiwiRail in a way that best meets KiwiRail's other objectives, e.g. safety, quality and timelines.

12.4 The RFT process should not be used if the specific requirements/specifications have not been determined prior to approaching the market (in such case, use an RFP, whether or not in conjunction with an RFI or EOI).

12.5 The RFT process is usually an open process but may be closed, in appropriate circumstances.

13. REQUEST FOR QUOTATION (RFQ)

13.1 An RFQ is a relatively quick method to use to determine availability, price and supply terms and is reliant on the scope of work being correct.


13.2 It may only be used where there will be no advantage to KiwiRail from running a fully competitive RFT or RFP process. That is, a RFQ process cannot be used at the expense of good procurement practice. If there is any doubt as to whether this test is met, approval must be sought from the Group Procurement Manager.

13.3 When using the RFQ method, KiwiRail must seek a minimum of three written quotes from potential suppliers if it is practicable to do so. In doing so, KiwiRail should:

- (a) include in the request for the quotation a clear written statement of the requirements;
- (b) seek written quotations based on those requirements;
- (c) evaluate responses and select a provider; and
- (d) advise the decision to both successful and unsuccessful participants.

14. REQUEST FOR SERVICE (RFS)

14.1 An RFS is a relatively quick method to use to determine availability and pricing from a group of suppliers already appointed to an existing Panel of Suppliers and is reliant on the scope of work being correct. It is a closed secondary procurement process because the group of suppliers has already been identified.


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- 14.2 An RFS may only be used where there will be no advantage to KiwiRail from running a fully competitive open RFT or RFP process. That is, an RFS process cannot be used at the expense of good procurement practice. If there is any doubt as to whether this test is met, approval must be sought from the Group Procurement Manager.
- 14.3 When using the RFS method, KiwiRail must seek proposals from Panel members on the relevant Panel. In doing so, KiwiRail should:
- (a) include in the RFS a clear written statement of the requirements;
 - (b) seek written proposals based on those requirements;
 - (c) evaluate responses and select a provider; and
 - (d) advise the decision to both successful and unsuccessful participants.

SECTION C: TENDER INITIATION

15. PREPARING TO TENDER

- 15.1 **Initial steps:** To prepare for the tender, the Process Owner will initially need to:
- (a) contact Group Procurement so that Project Number is generated for the Procurement. The Project Number is also a number of the potential agreement concluded as a result of the procurement. Original (or PDF copy) of the agreement will need to be provided to contract admin in KiwiRail to be saved under the same Project Number.
 - (b) identify the appropriate tendering process (as described in Section B);
 - (c) liaise with all relevant internal and external stakeholders (as described in more detail below); and
 - (d) have the proposal to purchase (i.e. the Business case) signed by the appropriate signatory. Contact Group procurement to identify right signoffs for the Project you are working on.
- 15.2 **Next steps:** Once approval has been obtained for the process; the Process Owner will then need to:
- (a) establish an evaluation panel (as described in more detail below);
 - (b) establish the level of probity involvement (light, medium or heavy) by reference to the Probity Policy that are available at Annexure two;
 - (c) define the evaluation methodology and criteria and weightings associated with such criteria (as described in more detail below);
 - (d) obtain signed conflict of interest and confidentiality declarations from the relevant people (as described in more detail below);

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- (e) comply with, and ensure that the evaluation panel (and any other relevant people) are aware of, all relevant policies;
- (f) prepare the relevant documentation based on the approved templates that are available;
- (g) establish a tender register (as described in more detail below); and
- (h) create a tender file (as described in more detail below).

15.3 **Liaison with stakeholders:** Where appropriate, the Process Owner must make sure that all relevant internal and external stakeholders are considered (as part of the Business Case process), consulted and fully briefed at each stage of the procurement process. Specifically, consideration must be given to:

- (a) internal parties such as the business unit(s) affected and the relevant corporate teams (e.g. legal, treasury, tax, accounting and procurement); and
- (b) external parties such as stakeholders that have an interest in the procurement (making sure that any such engagement does not treat any bidder(s) unfairly).


15.4 **Establishing an evaluation panel:** The Process Owner must establish an evaluation panel to review and score the responses, which must be detailed in the Business Case. The panel should consist of individuals who are competent and experienced in the goods/services being tendered. Where possible, the panel must include an individual(s) with specific procurement experience, e.g. financial and contracting expertise. Depending on the level of probity involvement, there may also be a need to involve the Group Procurement Manager, KiwiRail Legal and an independent probity auditor. A chairperson of the panel (often the Process Owner) should be appointed to resolve any disputes between panel members and to guide the evaluation process through to its conclusion.

15.5 **Evaluation methodology and criteria:** Appropriate evaluation methodology, criteria and weightings must be agreed by the evaluation panel prior to the release of the procurement documentation. Care should be taken so that the evaluation criteria are fair, and consideration should also be given to how these criteria will be applied (for instance the relative weighting of price and non-price attributes).

15.6 **Conflicts of interest and confidentiality declarations:** Each evaluation panel member and any other person(s) who plays a material role in the process must sign a conflict of interest and confidentiality declaration (COI Form) identifying any potential conflicts of interest that they might have, prior to the commencement of the tender evaluation process. Additional check can be implemented after Responses received and Respondents are known. Should any conflicts be declared, the Process Owner and the Group Procurement Manager should be notified, and the conflict managed as follows:

- (a) if the conflict is material, the individual will be excluded from the panel; or
- (b) if the conflict is not material, the individual will continue to participate, provided that mitigating action is recorded and signed on a 'one-up' basis.

A tender register should be established, and potential conflicts should be declared and monitored/mitigated throughout the process.

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15.7 The Process Owner must send acknowledgement receipt to the respondents and record any late tenders if any.


15.8 **Tender file:** The Process Owner must create an electronic tender file, which clearly shows the decision-making process and the logic applied in the evaluation of the responses. The tender file must contain (where relevant):

- (a) a copy of the approved Business Case;
- (b) the tender evaluation methodology and criteria;
- (c) all material published by KiwiRail in relation to the tender process, including NTRs;
- (d) all material submitted by tenderers;
- (e) a copy of the Tender Evaluation Guidelines;
- (f) signed conflict of interest and confidentiality declarations from each individual member of the evaluation panel;
- (g) details of all meetings, presentations, telephone calls, emails, site visits and any other correspondence between the tenderers and any person from KiwiRail during the tendering process;
- (h) all reference-checking correspondence relating to tenderers;
- (i) each panel member's individual scoring sheets (if any) and any associated notes and correspondence;
- (j) detailed explanations of any cost estimates or judgements made about any tenders as part of the evaluation process;
- (k) the panel's final evaluation scoring sheets, signed and dated by all evaluation panel members or with their email approvals;
- (l) the recommendation to select signed by the appropriate signatory. Contact Group Procurement to identify right signoffs for the Project you are working on.
- (m) a record of all other tendering decisions and underlying reasons or assumptions;
- (n) Maintain copy of acceptance and decline letters;
- (o) Retain or draft version of contract showing contract negotiation changes;

SUMMARY

When preparing to tender, please remember:

- (a) **DO:**
 - (i) identify the appropriate tendering process and evaluation criteria in advance;

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- (ii) engage Group Procurement to advise or at minimum peer review;
 - (iii) determine the appropriate level of probity involvement;
 - (iv) use the approved templates and tailor them to suit the procurement (with input from KiwiRail Legal) where necessary;
 - (v) consult with internal and external stakeholders as required; and
 - (vi) comply with the relevant KiwiRail policies;
- (b) **DO NOT:**
- (i) forget to obtain signed conflict of interest declarations from the evaluation panel members; or
 - (ii) forget to consult the Group Procurement Manager for further guidance.


SECTION D: TENDER PROCESS

16. CONDUCTING THE TENDER

General

16.1 KiwiRail must:

- (a) take care when conducting a tender to avoid inadvertently creating a contractual situation during the process;
- (b) take care not to advantage/disadvantage any potential tenderer (for example, KiwiRail must not give information to one tenderer that it has not provided to all others and should not withhold unforeseen events or a change in circumstances from potential tenderers);
- (c) not communicate with tenderers outside the tender communication process;
- (d) ensure that any intellectual property that belongs to a supplier is not shared before, during or after the procurement process;
- (e) ensure (in conjunction with KiwiRail Legal) that any contracting documentation adequately deals with any intellectual property used or developed during a contracting period;
- (f) be conscious of the public nature of KiwiRail's status and operations. Every decision that it makes is potentially reviewable by a number of authorities, including Audit New Zealand, the Ombudsman and through court-based judicial review. This is a particular risk because of the potentially large amounts of public money involved and the public interest associated with procurement decisions including potential social and economic consequences;
- (g) be aware of its other legal considerations, including (without limitation) its obligations under the:

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- (i) Fair Trading Act 1986;
 - (ii) Privacy Act 2020;
 - (iii) Commerce Act 1986;
 - (iv) Health and Safety at Work Act 2015;
 - (v) Construction Contracts Act 2002;
 - (vi) Official Information Act 1982;
 - (vii) Public Audit Act 2001; and
 - (viii) Ombudsmen Act 1975;
- (h) follow the tender process rules, procedures and any evaluation methodology and criteria specified in the tender documents;
 - (i) ensure that any additional material information relating to the tender documents is conveyed to all tenderers in a timely manner; and
 - (j) conduct a process that is fair and reasonable from an objective, external perspective and demonstrates that KiwiRail has obtained the best Public Value.


Requests for additional information and clarification

16.2 KiwiRail should ensure that it:

- (a) has only one authorised Process Owner to act as contact person during the conduct of the tender (this person needs to be identified in the tendering documents);
- (b) gives consistent answers to all questions;
- (c) distributes all material answers to all tenderers by way of NTR, subject to confidentiality;
- (d) distribute all material answers to all tenderers by the way of NTR published on GETS by the authorised representative from Group Procurement;
- (e) treats all tenderers in a fair and equitable manner; and
- (f) immediately elevates any complaints relating to the tender process to the Process Owner.

Extensions of time for tenders

16.3 The tender period may only be extended if there is no discrimination or unfairness to other tenderers. KiwiRail should not agree to a request by an individual tenderer to extend the time for submitting their tender, except in exceptional circumstances and where such rights are reserved in the original tender documents.

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16.4 Any extension granted should be advised by means of a NTR and managed to ensure that tenderers are treated fairly (e.g. an extension should apply to all tenderers and if a tenderer has already submitted its response prior to the extension being granted, KiwiRail should provide that tenderer an opportunity to resubmit its tender within the further extension period).

16.5 If in any doubt, contact the Group Procurement Manager to discuss.

Receiving and registering tenders

16.6 The method for delivery of tenders must be specified in the tendering documents. Consideration should be given to the merits of a two-envelope process i.e. one for price and the other for non-price elements.

16.7 Once received by KiwiRail, tenders should be stored securely and remain closed until after the tender closing time.

16.8 Where electronic tender responses have been stipulated these should be sent to and electronically logged by the authorised representative who is acting as contact person for the purposes of the tender. A secure inbox tenders@kiwirail.co.nz has been established, which has restricted access (controlled by the Group Procurement Manager) and is available to the authorised representative during the procurement process. There may also be a requirement for original hard copies of the tenders to also be submitted within a set timeline, e.g. 24 hours after the closing date and time. An additional consistency check between the e-mailed copy and the original hard copy of the tender response should be carried out by the Process Owner and recorded accordingly. In the event of any inconsistency, the original hardcopy of the tender shall prevail. Should the size of the incoming responses exceed KiwiRail's mailing system limits, please contact Group Procurement to discuss alternative ways of receiving responses before advising the Supplier.

16.9 Faxing tenders is not acceptable to KiwiRail.

Amendments after closing


16.10 Amendments to tenders submitted, or additional information or comments, cannot be made to submitted tender responses after the tender closing date and time.

16.11 However, this does not exclude clarifications sought by KiwiRail during the evaluation process (please see paragraphs 17.13 and 17.14). It should be noted though that such clarifications need to be handled carefully to ensure that a tenderer is not unfairly advantaged by being given the opportunity to provide to KiwiRail new/further information to supplement the tender (i.e. as opposed to clarifying existing information within the tender response). If in any doubt, contact either the Group Procurement Manager or KiwiRail Legal to discuss.

Late tenders

16.12 As a rule, late tenders will not be accepted by KiwiRail, unless in exceptional circumstances; for example:

- (a) the extra time taken by a tenderer to submit their tender (for reasons outside of their control) is insufficient to give the late tenderer an undue advantage over other tenderers; or

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- (b) KiwiRail can be certain that there is no possibility of collusion or the late tenderer having knowledge of other tenders;

and only then if the late tender conforms to the criteria set out in the tender documents.

- 16.13 Late tenders can only be accepted with the prior approval of the Process Owner (if there is any doubt, advice should be sought from the Group Procurement Manager) and appropriate notes should be made & retained to document decisions made.
- 16.14 Details of any late tenders should be noted on the tender closing register (including date and time of receipt of any such late tenders).

Confidentiality

- 16.15 Information provided by tenderers to KiwiRail should be kept confidential at all times, unless KiwiRail is required by law (such as the Official Information Act 1982) to release certain information. Any such requests should be discussed with KiwiRail Legal prior to release of the information.


Cancelling/suspending Process

- 16.16 See paragraph 21 in this Manual for information on the process for cancelling or suspending the tender process.

SUMMARY

When conducting the tender, please remember:

- (a) **DO:**
- (i) conduct a process that is fair and reasonable from an objective, internal & external perspective and achieves the best Public Value; and
 - (ii) keep tenderers' information confidential; and
 - (iii) acknowledge receipt of tenders.
- (b) **DO NOT:**
- (i) accept late tenders or amendments (unless there are exceptional circumstances); or
 - (ii) extend the deadline for one tenderer without giving the other tenderers the same extension and (where applicable) an opportunity to resubmit their tender.

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SECTION E: TENDER EVALUATION


17. EVALUATING THE RESPONSE

Evaluation process

- 17.1 The evaluation process must be fair, impartial and capable of withstanding a full internal and external review or audit. The process and the evaluation criteria must be determined *before* the release of the relevant documentation (which will describe the evaluation criteria) and be recorded in the Tender Evaluation Guidelines for the procurement. The Process Owner is responsible for ensuring this happens.
- 17.2 If assistance is needed to complete the Tender Evaluation Guidelines or to establish the evaluation criteria please contact Group Procurement.
- 17.3 The evaluation process could either be by independent evaluation by individual panel members, which is then consolidated, or by the panel as a whole through panel discussions, resulting in a panel consensus on the outcome.
- 17.4 Where evaluation is undertaken by individual panel members by way of independent evaluation, each person should record their individual scores and then there should be an evaluation meeting (refer to 17.11)
- 17.5 The evaluation must be conducted according to the process set out in the tender documents and the Tender Evaluation Guidelines. When evaluating any contract that permits KiwiRail staff to access the goods/services in their private capacity, any discounts for staff must not form part of the evaluation.
- 17.6 Each member of the evaluation panel is to receive a copy of the Tender Evaluation Guidelines and tender evaluation form (in conjunction with the tender responses received). A minimum of two members of the evaluation team should review each tender.
- 17.7 The tender evaluation form must identify key comparison factors/evaluation criteria that will be used to assess each tender response. The tender evaluation form is to be completed for each tender response.
- 17.8 Individual panel members must return to the Process Owner all tender documentation (including individual tender evaluation forms) for filing in the Tender File.
- 17.9 To assist with choosing evaluation methodology, the **Tender Evaluation Methodologies Guide** can be used as a guidance where various approaches and methodologies are considered and described in detail (**Annexure 5** to the Procurement Procedures Manual).

Evaluation panel's responsibilities

- 17.10 If the agreed process is to evaluate independently then each member of the tender evaluation panel must complete tender evaluations (and record such evaluation in their individual tender evaluation forms), prior to any panel meeting to review the tender responses and the initial evaluation scores.
- 17.11 The independent evaluations will be sent to the Process Owner to incorporate into a consolidated matrix, which will be presented to the evaluation panel at the panel evaluation meeting.

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Evaluation meeting

- 17.12 The evaluation meeting is held so that the Process Owner can facilitate a scoring process and present the consolidated evaluation matrix to the evaluation panel during the meeting. Each member of the evaluation panel will be given the opportunity to discuss their scoring with the panel, particularly focusing on any wider variances or outlying scores. The evaluation panel members may amend their scoring to reflect

further information obtained during the discussion with other panel members during the evaluation meeting. The objective of the Evaluation meeting is to normalise/ moderate the scores of all individual panel members as close as possible. Where a two-envelope tender process is being used, the non-price evaluation must be completed and agreed prior to the pricing being opened by the evaluation panel.

- 17.13 The Process Owner is to document all evaluation meetings and any changes to the evaluation scores, and the reasons for each of the changes.

Clarification of tender submissions

- 17.14 During the evaluation process, which may be prior to the evaluation meeting, there may be a need to seek clarification from tenderers on their submission.

- 17.15 This is a formal process and must be conducted in writing by the Process Owner. KiwiRail will document the points from the tender submission that need clarification and release it to the tenderer for response within a certain timeframe. The further response will then be used to assist with the evaluation of the tenderer's submission.

Due diligence

- 17.16 This is a process whereby KiwiRail requires tenderers to disclose certain financial and other information about themselves and KiwiRail will then verify this information. Where it is necessary, it should be part of the evaluation process so that KiwiRail can satisfy itself about the suitability of the tenderer. KiwiRail financial staff can be asked to help evaluate a tenderer's financials and tender pricing.


- 17.17 Formal due diligence is normally used for complex, high-value procurements or disposals. It is not frequently used and usually unnecessary for simple, routine procurements. Any intention to conduct formal due diligence should be notified in the proposal documents.

- 17.18 Issues that would usually be considered as part of the due diligence process include:

- (a) ability to deliver the goods or services for the price tendered;
- (b) the financial viability of the tenderer;
- (c) the experience of either the tenderer /or any proposed sub-contractor in providing similar goods or services; and
- (d) credit and reference checks.

Site visits

- 17.19 If the tender evaluation process includes site visits (to inspect the tenderer's site, etc) these should be undertaken by all members of the tender evaluation panel, if practicable.

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Information gathered should be evaluated in the same manner as information gained at presentations (see below).

Presentations by tenderers

- 17.20 KiwiRail may, as part of its tender evaluation process, invite each tenderer or shortlisted tenderer to make a presentation to expand on or clarify its tender. If presentations are being held, all tenderers (not just some) should be offered this opportunity, unless presentations are to take place after shortlisting process, where limited number of suppliers will compete and subjected to further evaluation. All tenderers should be advised prior to their presentation of the questions/topics to be addressed so that all tenderers are treated fairly and have equal opportunity to address the issues.
- 17.21 If tenderers are invited to make a presentation, KiwiRail may limit the number of tenderer personnel attending the presentations.
- 17.22 It is important that KiwiRail treats all tenderers fairly and equitably in relation to their presentations. Each tenderer should be provided with sufficient notice of the time and date of the presentation, and the same presentation brief, and the same allotted amount of presentation time. The evaluation should primarily assess the content of the presentation (by reference to the Tender Evaluation Guidelines), rather than the method or form of presentation.

Shortlisting tenderers

- 17.23 KiwiRail can shortlist from an EOI or an RFP/RFT process.
- 17.24 The Process Owner must seek the approval (in writing by issuing Recommendation to Shortlist document) of the Head of the Business Unit and Procurement Manager prior to finalising the shortlist and informing the respondents of the outcome of the process.
- 17.25 Tenderers may be notified by telephone of the outcome of the process, but the Process Owner will also need to follow up the verbal notification with a letter.


Final evaluations

- 17.26 If presentations or site visits by tenderers are carried out after an evaluation process has been carried out (for example under a shortlisting process) the evaluation panel should meet to reassess the initial evaluation scores and make any changes they see as necessary based on the tender presentations.
- 17.27 All reasons for amending any scores (by reference to the Tender Evaluation Guidelines) should be recorded and kept with the evaluation documents by the Process Owner. Original scores must also be recorded.

18. APPROVAL PHASE

Approval of preferred tenderer

- 18.1 All Recommendations to select a supplier (or a panel of suppliers or preferred tenderer to enter into negotiations with) must be made in writing. Recommendations must be signed off by the appropriate signatory. Please contact Group Procurement to identify the right signoffs for the Project you are working on. The purpose of the Recommendation to Select is to assist with electing a contract winner. This is undertaken by the business unit owner

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and a panel of judges who, after due diligence and calculation, select a supplier to negotiate a contract with, that is in the best interest to KiwiRail.

- 18.2 The Recommendation to Select is assisted via the Strategic Procurement Plan (SPP). The SPP is used at the beginning of a Procurement once a need has been identified and the relevant business units affected are selected. The purpose of the SPP is to assist with measuring risk and understanding the value relating to high value contracts and begin conducting the procurement process in identifying a supplier(s) for the required need.

19. PRIVATE USE OF SUPPLIERS

- 19.1 Some supply contracts may permit KiwiRail staff to access the goods/services in their private capacity. Where KiwiRail agrees to such a contract, invoicing must be directly to the staff member purchasing unless otherwise approved by that person's GM or the CE.

SUMMARY


In evaluating the responses, please remember:

(a) **DO:**

- (i) remember that the evaluation process is reviewable;
- (ii) treat all tenderers fairly; and
- (iii) carry out due diligence to satisfy yourself about the suitability of the supplier.

(b) **DO NOT:**

- (i) make handwritten notes on the tender response - use the tender evaluation form; or
- (ii) ignore significant discrepancies between the evaluations team's scores; or
- (iii) use criteria to evaluate the responses that are outside of the Tender Evaluation Guidelines.

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SECTION F: TENDER AWARD

20. ADVISING TENDERERS OF THE OUTCOME

20.1 All tenderers are to be notified of the outcome of the tender process for which they have submitted a tender as soon as reasonably practical. The outcome should also be notified on GETS where the tender has been initially advertised on GETS (i.e. Closed and Direct Procurements are usually not, so manual notification has to be done).

Notifying unsuccessful tenderers

20.2 Each unsuccessful tenderer will be:

- (a) informed that their tender was not successful;
- (b) offered an opportunity to be provided with a debriefing; and
- (c) if appropriate, provided with brief reasons why their tender was not successful and the name of the successful tenderer.

20.3 Where the tender process is a two-stage process, tenderers who are not shortlisted after the first stage should be informed of this, but all debriefings should be deferred until after the completion of the final stage and award of the tender.

Notifying the successful tenderer

20.4 KiwiRail may (when notifying unsuccessful tenderers) notify the successful tenderer of its status as preferred bidder, subject to agreement of satisfactory contractual terms and conditions of supply. Before accepting any tender, KiwiRail must first reach agreement with the preferred tenderer on the contractual terms and conditions of supply.


20.5 Care needs to be taken to avoid prematurely creating a contract and correspondence should be marked "subject to contract". See section G for more information on contract negotiations and award.

Debriefing tenderers

20.6 It is KiwiRail's policy to offer a debriefing session to unsuccessful tenderers. It is at the sole discretion of the unsuccessful tenderer if they would like to be debriefed.

20.7 Should an unsuccessful tenderer request a debriefing session, then consult with the Group Procurement Manager or KiwiRail Legal who will confirm if KiwiRail should provide the following information:

- (a) a summary of their tender evaluation together with the range of the scores achieved by all tenderers (only the specific tenderer will be discussed in detail);
- (b) the relative score placement of the unsuccessful tenderers; and
- (c) the advantages of the tender that was accepted (at a high level).

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- 20.8 Debriefing should not be undertaken until the tendering process has been completed (i.e. debriefing should be the last step in the entire tender process) and should occur within **30 business days** of the date the contract was signed by all parties, or the date of the request being made, whichever is later. Care must be taken not to disclose commercially sensitive information.

What does KiwiRail do with the tenders?

- 20.9 All original copies of the tenders remain the property of KiwiRail. Some tenderers ask for their tender submissions to be returned but it is KiwiRail's policy not to return tender submissions to the tenderers. All tender documentation received by KiwiRail must be retained until its disposal is permitted by law.

21. WITHDRAWING, SUSPENDING, CANCELLING OR VARYING THE TENDER PROCESS

What if a tenderer wants to withdraw from the process?

- 21.1 The tender process requires a tenderer to keep its offer open for a defined period (usually 3 months). If a tenderer wants to withdraw from the tender process after they have submitted a tender, they must get KiwiRail's written approval.

KiwiRail's right to suspend, cancel or vary the process

- 21.2 KiwiRail, in its tender documents, reserves the right to suspend, cancel or vary the tendering process. Approval of the relevant GM and the Group Procurement Manager needs to be sought before suspending, cancelling or varying a tender process. There may be legal implications in suspending, cancelling or varying a tender process.

- 21.3 Careful consideration of all options needs to be undertaken before doing so and suspension, cancellation or variation are normally only considered where:


- (a) the original requirement/specification for the tender has changed significantly since tender documents were made available;
- (b) all the tenders received do not comply with KiwiRail's tender request;
- (c) the tenders received cannot be adequately or fairly compared or evaluated during the evaluation process; or
- (d) none of the tenders received adequately fulfil KiwiRail's criteria (e.g. all are too expensive or too risky).

- 21.4 If this occurs, then KiwiRail must advise all tenderers in writing as soon as reasonably practical.

SUMMARY

In awarding the tender, please remember:

- (a) **DO:**

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- (i) advise tenderers of the outcome as soon as reasonably practical; (ii) consult with Group Procurement where a debrief is requested; and
- (iii) seek approval to suspend, cancel or vary the tender process.
- (b) **DO NOT:**
 - (i) forget to mark any correspondence with the successful tenderer “subject to contract” until the contract is entered into; or
 - (ii) return tender submissions to a tenderer.

SECTION G: CONTRACT NEGOTIATIONS AND AWARD

22. POST TENDER NEGOTIATIONS

Introduction

22.1 The primary objectives of post-tender negotiations with the preferred bidder should be to:

- (a) test the understandings and underlying assumptions that have influenced a tenderer in preparing its costings/prices. The negotiation should clarify or correct any assumptions;
- (b) achieve cost reductions including added value (cash/non-cash) through operational refinements or enhancements;
- (c) ensure that commercial risks and liabilities of each of the parties for those risks are understood, agreed and documented in the contract and that appropriate insurance and risk mitigations are put in place; and
- (d) finalise contract details and sign contracts.

Negotiations not to depart substantially from original requirements

22.2 KiwiRail should ensure that it does not potentially disadvantage other tenderers by negotiating a contract that is materially different in scope from that proposed in the tender documents.

What if negotiations fail?

22.3 Unfortunately, at times, negotiations do fail, or it may not be possible to agree appropriate contract terms. Should the outcome of the negotiations be unsatisfactory, KiwiRail should reassess its position and decide whether it should negotiate with the next highest-ranked tenderer (subject to the approval of the Business Unit, Group Procurement Manager, financial delegation holder and Group CFO should the total amount of the potential agreement exceeds \$5,000,000). If in any doubt, contact Group Procurement to discuss.

23. THE CONTRACT

Introduction

23.1 A contract is a legally binding agreement which usually commits two or more parties to carry out agreed activities, by an agreed future date, for an agreed price. It is important, to avoid any potential future dispute over the terms of the agreement, that KiwiRail's contracts are in writing and signed by an appropriate signatory from each party.

The contract

23.2 The contract should:

- (a) protect KiwiRail and be robust;
- (b) clearly set out a comprehensive description of the goods/services;
- (c) define the rights and obligations of the parties;
- (d) define the duration of the contract;
- (e) record the agreed price for the goods/services; and
- (f) where applicable, make provision for an extension of the maturing contract.

Standard terms

23.3 Contracts will normally be on KiwiRail's standard terms and conditions, which can be found through a link at Procurement Portal on SharePoint.

23.4 You should use these wherever possible as they are up to date and have had quality assurance. Do not use a contract that you (or someone else in your team) has used previously, even if it is based on the approved precedent, as it will likely have negotiated amendments. Start each negotiation from the approved precedent.

23.5 The contract must either be on one of the approved legal precedents or another form approved by KiwiRail Legal. Where no standard terms exist or significant variations to standard terms are proposed, consultation and approval with KiwiRail Legal will be required.


23.6 You should always plan and allow sufficient time for appropriate legal/ tax/ financial etc. reviews to be undertaken. They do not happen "overnight", so please allow adequate time. Check with KiwiRail Legal in advance if you are unsure about the timing.

23.7 The appropriate form of contract should be identified prior to tender documents being released and included as part of those tender documents, where applicable.

23.8 Note that variations from the usual insurance arrangements (for the type, nature and scale of the contract) require the approval of KiwiRail Legal.

23.9 Determining a Currency for a Contract.

There are many considerations in determining the currency for the contract, such as where is the vendor located, what is the vendor supplying, and where did the goods/services the vendor is supplying originate from.

| | | | |
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For overseas based vendors, we would expect the contract to be in foreign currency.

For New Zealand based vendors, we need to consider the goods/services being supplied. If they originated from overseas, we would expect the contract to be in foreign currency. If they originated from New Zealand, we would expect the contract to be in NZD.

If a contract is executed in foreign currency, please contact Treasury to discuss hedging requirements.

Treasury also welcomes any questions that you may have.

Below questionnaire is here to help you navigate recommended currency for your Contract.

- Where is the vendor located?
 - Overseas – Yes, contract is expected to be in foreign currency.
 - New Zealand
 - Did the vendor source goods / services from overseas?
 - Yes - Contract is expected to be in foreign currency.
 - No, contract is expected to be in local currency.

23.10 Considering other Embedded Derivatives. Embedded Derivatives are factors which might impact goods or services price as they are components of the Price. They include such examples as: exchange rates (see 23.9), commodity costs (fuel, metals, etc.) and price indexes. If there is a contract term that includes an embedded derivative, the approach to manage such risks (specified in relevant contract terms) must be approved by KiwiRail Treasury. An embedded derivative can modify the cashflows of the contract based on the variable cost of an underlying, external factor.

23.11 Contract with embedded finance and leasing. In accordance with KiwiRail DFA Policy, all contracts for rent, lease, operating lease and loans must be approved by KiwiRail Treasury prior signing. Allow for as much up-front communication on these types of contracts as possible to prevent unnecessary delays at the end of a procurement process.


Awarding the contract

23.12 Once negotiations are completed, the contract must be signed by both parties *prior* to the commencement of agreed work or purchase or sale of goods/services.

23.13 Any contract between KiwiRail and an external party must be signed by the relevant person under the DFA Policy. The DFA also provides that contracts over certain materiality thresholds need to be approved by the Group CFO, Legal and Treasury so as to ensure appropriate legal/ tax/ financial etc. reviews are undertaken.

23.14 If there are provisions in the Agreement which allow for digital signing of PDF copies by one or both Parties, that type of signing can be executed.

23.15 When contracts are to be executed, they must be accompanied with a Contract Execution Request Form (CERF). The CERF can be found at Procurement Portal on SharePoint.

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Filing of final contract

- 23.16 The original signed copy of the contract (or a PDF copy if an original is allowed and agreed in the Contract) must be sent to the central contracts register, or email scanned copy to Contract Admin contractadmin@kiwirail.co.nz with the fully completed CERF, Contract Management Plan (if required) for filing in a secure location.
- 23.17 Some business units also maintain their own register, but it is essential that the central contracts register holds details of all contracts. The KiwiRail Admin Assistant will log all relevant details on the Contracts Register. A PDF copy of the contract will also be saved.

SUMMARY

During contract negotiations and award, please remember:

- (a) **DO:**
- (i) make sure that a robust contract is signed before the relevant works or goods/services start; and
 - (ii) plan and allow sufficient time for appropriate legal and other corporate reviews to be undertaken.
- (b) **DO NOT:**
- (i) depart from KiwiRail's standard terms and conditions without the relevant corporate approvals;
 - (ii) use a supplier's own terms and conditions, unless approved by KiwiRail Legal; or
 - (iii) forget to send the original signed contract (or a PDF) to the KiwiRail Admin Assistant, for the contracts register.

SECTION H: ADDITIONAL CONSIDERATIONS

24. ADDITIONAL CONSIDERATIONS

All-of-Government contracts

- 24.1 AoGs establish supply agreements with approved suppliers for selected common goods and services purchased across Government. Terms and conditions are agreed by MBIE (or its nominated agent) as the lead agency for all AoG contracts.
- 24.2 KiwiRail may wish to purchase from AoG contracts. A link to the current AOG contracts can be found here <http://www.business.govt.nz/procurement/all-of-governmentcontracts/current-all-of-government-contracts>. Guidance should be sought from Group Procurement when wanting to access these contracts.
- 24.3 Information about AoG Contracts, which KiwiRail have already joined is available at Procurement Portal on SharePoint or in Group Procurement.
- 24.4 Alliancing or Private Public Partnership is subject to the consultation with Group Procurement.

Complaints from tenderers

- 24.5 A participating supplier may complain to KiwiRail if it believes that it has not acted properly. KiwiRail should try to resolve the complaint promptly and in good faith, without prejudice to the suppliers' ongoing participation in contract opportunities and without affecting any right the supplier may have to judicial review or other remedy.
- 24.6 Any complaints (and the suggested resolution process) should at least be notified to Group Procurement Manager and KiwiRail Legal as soon as possible.

SECTION I: CONTRACT MANAGEMENT

25. CONTRACT MANAGEMENT IN KIWIRAIL

- 25.1 The aim of the Contract Management is to ensure that goods and/or services are delivered on time, at the agreed cost, to the specified requirements and that the best possible value of the contract is received.
- 25.2 Contract management includes tracking and monitoring day-to-day operational activities, measuring performance, building and managing relationships with Supplier and completing or extending Agreement at the end of the term;
- 25.3 The lead responsibility for contract management in KiwiRail resides in the function/business unit which require the most collaboration, co-ordination and information exchange with the supplier in order to avoid delays and misunderstanding from routine of communication through a third-party function.
- 25.4 Contract Owner – is the representative from the function/department/business unit, which is responsible for the contract management.

26. RESPONSIBILITIES OF THE CONTRACT MANAGER

- 26.1 Responsibilities of the Contract Owner are as follows:
- To act as a single point of contract for all commercial and legal correspondence relating to the contract (and involving Legal department and others if necessary);
 - To maintain the specification of contract performance measures (KPIs or SLAs);
 - To monitor contract performance and report on overall service levels;
 - To represent buyer's interest to the supplier;
 - To oversee operation and administration of the contract;
 - To determine and take remedial actions, in agreement with the supplier, on any problems that arise;
 - To negotiate remedies with the supplier, in the event of breach of contractual terms;
 - To escalate contract disputes to the higher levels;
 - To maintain revised and updated contract specifications;
 - To advise and support operational managers in other functions, to whom day-to-day management and monitoring of contracts which affect them may be devolved (as discussed earlier).

27. CONTRACT MANAGEMENT BLOCKS AND PLAN

- 27.1 Contract Management Plan (Annexure 4 to the Procurement Procedures Manual) is recommended for all long-term, high value, strategic projects and contracts;
- 27.2 Contract Management Plan needs to be completed by Contract Owner and submitted for approval by the Contract Owner's Manager along with the CERF and the Contract;

- 27.3 Contract management plan specifies activities required to manage a contract effectively. The content and amount of detail in the plan can be and must be tailored to the individual contract prior the Plan is approved;
- 27.4 Contract Management Plan contains 4 Key Elements (Areas of Control) consisting of 16 blocks:

| KEY ELEMENTS | BUILDING BLOCKS |
|---|---|
| 1. CONTRACT ADMINISTRATION | 1.1 Planning and Resource Management |
| | 1.2 Contract Maintenance, updating and change control |
| | 1.3 Transition plan (from another Supplier) |
| | 1.4 Contract Price and Finance Management |
| | 1.5 Contract Integration Management |
| | 1.6 Managing the Scope |
| | 1.7 Time Management |
| | 1.8 Quality Management |
| | 1.9. Reporting Management |
| 2. MANAGING CONTRACT PERFORMANCE | 2.1 Risk Management |
| | 2.2 Measuring Performance |
| | 2.3 Continuous Improvement |
| 3. RELATIONSHIP MANAGEMENT | 3.1 Responsibilities and Communication |
| | 3.2 Building Partnership |
| | 3.3 Dispute resolution |
| 4. END OF THE CONTRACT | 4.1 Contract Renewal or Termination |

- 27.5 The purpose of each Key Element (4) is as follows:

1) Contract Administration is about day-to-day operational activities executed under the contract and includes such activities as:

- maintaining documentation relating to the contract
- regulating change control
- monitoring budgets and costs
- checking invoices and authorizing payment
- reviewing reports and requesting information
- asset management
- managing contract variations.

2) Managing Contract Performance aims to monitor the performance under the contract and take remedial actions if require and if any of the foreseen risks arise;

3) Relationships Management is about building relationships with Internal and External stakeholders which aim to contribute to the overall contract performance;

4) End of the Contract strategy allows to plan and execute closing of the contract or to extend it further if required with improvements.

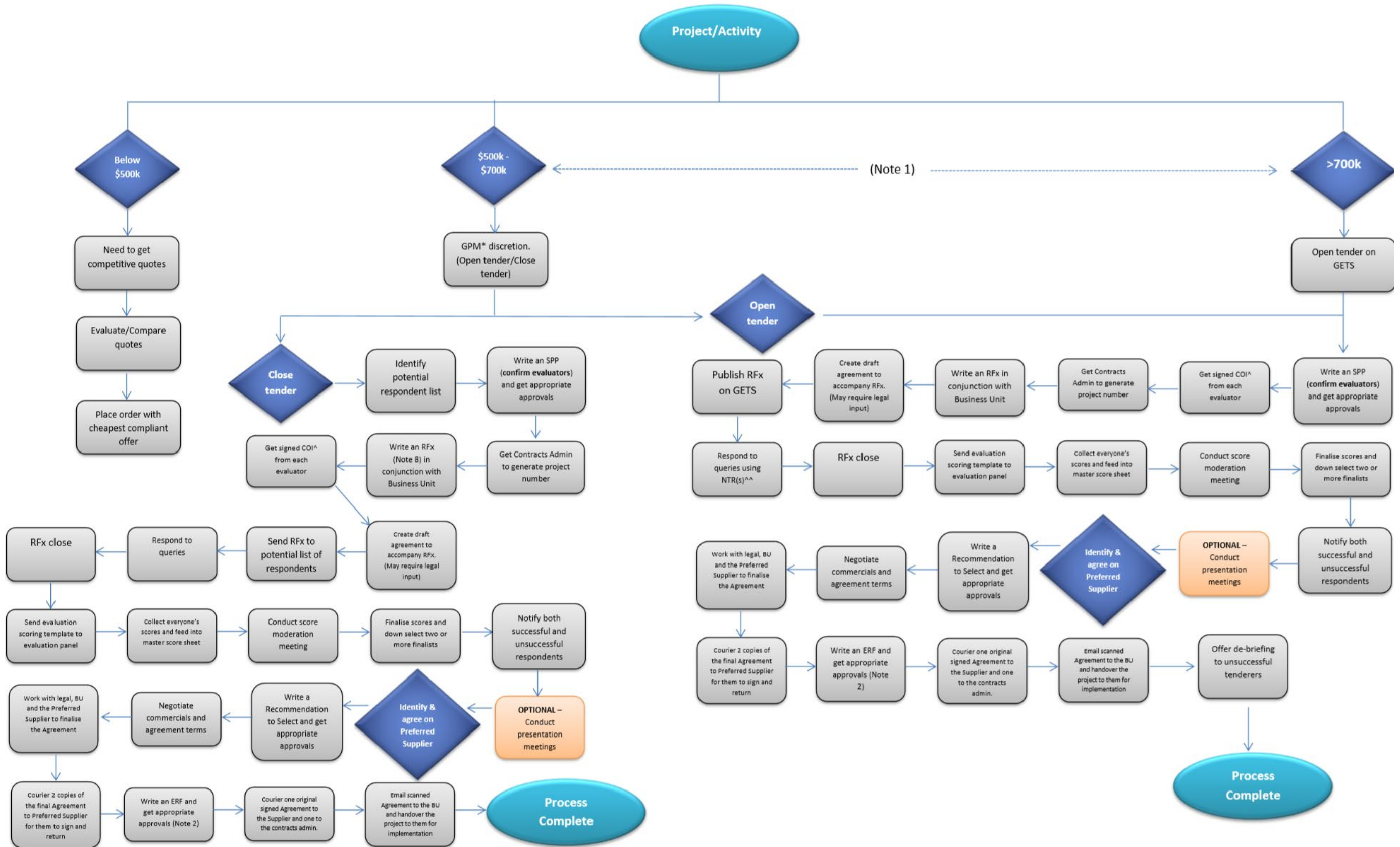
ANNEXURE 1: OVERVIEW OF PROCUREMENT PROCESS

ANNEXURE 2: –PROBITY IN PROCUREMENT POLICY

The Probity in Procurement Policy is attached as a separate document.

ANNEXURE 3: PROCUREMENT PROCESS FLOW CHART

PROCUREMENT PROCESS FLOW CHART



NOTES:

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* GPM – Group Procurement Manager

^ COI – Conflict of Interest Form

^^ NTR – Notice to Respondents



⇒ Start/Stop points



⇒ Process Step



⇒ Point of Decision Making



⇒ Optional step

1. At this point, you can also explore the possibility of using the MBIE contract or a syndicate contract if one exists for the category you are dealing with. This needs to be presented as an option to the business right at the beginning and get their consent to use it if such an agreement exists. If not, then you need to go through the procurement process.
2. ERF – When you circulate the Execution Request Form for approvals, it should also include the two signed copies of the Agreement for the KiwiRail authorized signatory to sign off on. The final authorized signatory signs both the ERF form as well as the actual Agreements at the same time.
3. Procurement documents including agreement templates can be found at Procurement Portal on SharePoint.
4. Refer to the latest DFA policy to determine who can be the final sign-off on Contracts as this is driven by the TOTAL CONTRACT VALUE of the project. For instance, if the annual value of the contract is \$2 million and it is a three year contract, then only someone with a DFA of \$6M or higher can act as a final sign-off / authorised signatory
5. Notification to Respondents (1) – When you notify the unsuccessful respondents always let them know that they can be re-engaged into discussions in case things do not work out with the Round 2 respondents.
6. Notification to Respondents (2) – In some instances, the notification of the outcome can be communicated to all unsuccessful respondents at the very end after the agreement is fully signed with the successful respondent. This can apply to procurement projects where there are four or less respondents and only one of them is taken to the second round. This allows the business to have a fall back option in case things do not work out with the finalist.
7. Always scan fully signed versions of all documents (SPP/Recommendation to Select/ERF/Agreement) and keep the copies in your Procurement working folder.
8. RFx – This can be either an RFP (Request for Proposal), RFT (Request for Tender), RFQ (Request for Quote) or RFS (Request for Service). This can also be a two-step process, i.e., an EOI followed with an RFx. The EOI is normally an open EOI on GETS followed with a closed RFx, however, on rare occasions the open EOI can also be followed with an open RFx.

Annexure 4 – Contract Management Plan Template is attached as a separate Document

Annexure 5 – Tender Evaluation Methodologies Guide is attached a separate Document