



Procurement Policy and Procedures

Date of Issue	Review Date
31/01/2018	01/05/2018
05/06/2018	01/09/2018
22/08/2018	22/08/2019
07/01/2019	07/01/2020
03/03/2020	30/06/2021

Introduction

The Pike River Recovery Agency (the **Agency**) has been set up to create and, if feasible, execute a plan for the manned re-entry of the Pike River coal mine drift. The responsible Minister approved the recommended option for re-entry and recovery of the mine drift on 14 November 2018. To deliver on this outcome the Agency will need to procure a range of goods and services. To support its objectives, the Agency must deliver good procurement outcomes and comply with the Government Procurement Rules and the Principles set out in those Rules, and is required to consider the expectations set out in the Government Procurement Charter. As it is spending public money, the Agency needs to act transparently, and in a manner that is appropriate for the relevant circumstances, in its procurements.

The Agency's procurement processes will ensure open and fair competition between suppliers and ensure high quality suppliers are engaged. The Agency will work with suppliers to monitor the delivery of commitments, including compliance with health and safety and employment standards and, where applicable, quarrying and mining regulations.

In keeping with the Government's initiatives for public agencies to share services and to secure efficiencies of scale, the Ministry of Business, Innovation and Employment (MBIE) provides some corporate services to the Agency. The Services include ICT systems and services, procurement and financial services and information and records management services.

Purpose

The purpose of the Agency's Procurement Policy is to maximise the value of goods, services and works that are purchased to meet the needs of the Agency and ensure that suppliers are treated fairly in accordance with applicable Rules and Principles, taking into account the unique work, location and environment in which the Agency is operating.

Scope

This policy applies to all Agency staff, employed or retained on any basis (including contractors), who are acquiring and delivering goods, services or works for use by, or to deliver an outcome for, the Agency. For the avoidance of doubt, this policy applies to procurement for both the Pike River mine and the Agency's office based in Greymouth.

This Policy does not apply to gifts, donations and unconditional grants. For assistance with these, refer to the



Public sector purchases, grants, and gifts: Managing funding arrangements with external parties guide published by the Office of the Auditor-General.

Contact for help

The Agency's Chief of Staff. The Chief of Staff will liaise with MBIE, New Zealand Government Procurement and Property (NZPP) and external legal providers to the extent required.

Definition of terms

Principles: The Principles of government procurement available at <https://www.procurement.govt.nz/procurement/principles-charter-and-rules/government-procurement-principles/>.

Procurement: All aspects of acquiring and delivering goods, services and works. It starts with identifying the need and finishes with either the end of a service contract or the end of the useful life and disposal of an asset, and includes arrangements where the acquired service is an agreed outcome.

Rules: The Government Procurement Rules (4th Ed), which are available at <https://www.procurement.govt.nz/procurement/principles-charter-and-rules/government-procurement-rules/> and in the main set out the standards for the sourcing stage of the procurement life cycle.

Unconditional grant: Financial assistance in the form of money paid by the government to an eligible organisation with no expectation that the funds will be paid back. The recipient has no specific obligations to perform in return for the money.

Works: A generic term which covers new construction works for a new build or refurbishment works to an existing construction, as further explained in the Rules.

Policy statements

- (a) Above all, good procurement requires utilising procurement strategies that are appropriate to the individual procurement.
- (b) Carry out all procurement in accordance with the Rules and five Principles, which are:
 - plan and manage for great results
 - be fair to all suppliers
 - get the right supplier
 - get the best deal for everyone
 - play by the rules.
- (c) Flowing on from these Principles, good procurement is to:
 - deliver value-for-money over the lifetime of the goods, services and works the Agency buys
 - ensure that the Agency's procurement activities are carried out responsibly, ethically, sustainably, lawfully and with integrity
 - ensure those involved in procurement decisions are impartial and any actual or perceived conflicts of interest are managed appropriately
 - ensure that suppliers have processes in place to meet employment and health and safety standards and legislation
 - apply appropriate strategies for each procurement after considering the nature, value, complexity and risk involved
 - be able to justify and stand behind procurement decisions in a transparent manner



- manage contracts to ensure they are delivering their intended objectives and outcomes, and suppliers are complying with their terms
 - promote and support good procurement practice.
- (d) The Rules also align with Government’s expectation that procurement can be leveraged to achieve broader outcomes. They focus on promoting public value, and include explicit requirements for agencies to incorporate or consider the priority outcomes as part of procurement opportunities. The current priority outcomes are:
- increasing New Zealand businesses’ access to government procurement
 - increasing the size and skill level of the domestic construction sector workforce
 - improving conditions for workers in government contracts, and
 - supporting the transition to a zero net emissions economy and assisting the Government to meet its goal of significant reduction in waste.

When undertaking any procurement, the Agency must consider these priority outcomes, any broader outcomes than can reasonably be required to be achieved and, as part of the evaluation phase, the overall public value of the quotes and/or proposals received. The Rules include reference to certain “designated contracts”. If the Agency is undertaking a procurement in relation to a “designated contract”, it must include in its procurement the aspects specified in the Rules.

- (e) The Agency is also required to consider the Government Procurement Charter, which sets out expectations from the Government. The Agency is required to identify its key priorities and seek to meet as many of the expectations in the Government Procurement Charter as practical.

Key responsibilities

Key responsibilities for the Agency’s Procurement Policy are set out in the table below:

Role	Accountabilities and Responsibilities
Chief Executive	Overarching accountability for all Agency procurement decisions.
Agency Chief of Staff supported by NZGPP, MBIE Procurement and external legal advice	Policy owner Responsible for: <ul style="list-style-type: none"> • providing assurance to the Chief Executive that procurement is undertaken in compliance with the policy statements above • considering requests for exemptions under the Rules and advising accordingly • providing advice and support to help achieve good procurement outcomes • ensuring this Policy remains fit for purpose • providing assurance to the Chief Executive that contracts entered into are legally appropriate.
Financial delegation holders	Accountable for the financial aspects of procurement outcomes, contracts and spend in accordance with their delegation level.



Role	Accountabilities and Responsibilities
Managers and staff	Accountable for ensuring that they and all new and existing staff in their teams are made aware of this Policy and that they comply with it for all procurement activities.
MBIE New Zealand Government Procurement and Property	As requested by the Agency's Chief Executive, Chief Operating Officer or Chief of Staff: <ul style="list-style-type: none">• manage procurements with an estimated whole of life cost of \$500,000 (plus GST) or more• manage procurements which are low value but high profile• provide general procurement advice.

Procurement procedures

MBIE Procurement Services is supporting the Agency for most of its significant procurement activity, i.e., preparation of procurement plans, notices of procurement, evaluation of responses and assistance with preparation and negotiation of contracts (together with the Agency's external legal advisors). Procurement decisions remain with the Agency.

In all such cases, MBIE is expected to follow its own internal procurement procedures, in consultation with the Agency where necessary or desirable, and the Agency reviews draft documentation to ensure it is comfortable with it. In addition, for all purchases of goods and services with a whole of life value of \$100,000 or more (or construction works with a whole of life value of \$9 million or more), the Government Procurement Rules must be complied with. Whilst MBIE Procurement is assisting and supporting the Agency, compliance with these Rules is the Agency's responsibility.

Where the Agency is managing a procurement of goods or services by itself, it will apply the procurement processes and standards expected of a department of the Crown, including by reference to MBIE's NZ Government Procurement-published [Guide to Procurement](#)¹, and drawing on MBIE's resources and external advisors when required.

Method of procurement

Depending on the nature of the procurement, there are various methods of approaching the market, including:

- **Sole sourcing.** In this process, only one supplier is given an opportunity to participate by the Agency. Under the Rules and Principles, sole sourcing is only permitted in limited circumstances.
- **Extension of contract.** This is permitted provided the extension is with the scope of the initial procurement. For example, if the contract was established competitively, the duration of any extension must be within the term that was initially advertised.
- **Competitive quotes.** These are usually permitted for low value procurements only, where quotes must be obtained from at least three different suppliers (assuming there are three potential appropriate suppliers in the market). For quotes to be effective, the Agency's requirements will need to be well understood by

¹ Available at <https://www.procurement.govt.nz/procurement/guide-to-procurement/>



the suppliers and the quotes will largely be limited to price and other simple details.

- **Established arrangements.** The Agency is able to adopt various All-of-Government, syndicated, common capability or panel supplier agreements that are already established under approved procurement processes. Under these agreements, “secondary procurement” by the Agency is permitted via a simplified process.
- **Competitive process.** In a competitive process, suppliers compete to meet the Agency’s requirements. A competitive process may be:
 - Open or closed. A closed approach means the opportunity is advertised to selected suppliers only, and only those suppliers can submit a proposal. An open approach means the opportunity is advertised openly (usually on the Government Electronic Tender Service (**GETS**)) and any supplier or provider can submit a proposal.
 - Single or multi-stage. Multi-stage processes are helpful when the market is complex and you are looking to procure high-risk, high-value or unique goods and services. They involve:
 - Advertising an initial opportunity, such as a Registration of Interest (**ROI**). ROIs require less effort to answer, meaning more suppliers are likely to respond.
 - Inviting a shortlist from the ROI responses to submit full proposals. Unsuitable suppliers don’t waste their time preparing detailed proposals, and starting with a shortlist should make evaluation faster.
 - Request for Quotes (**RFQ**) or Request for Proposals (**RFP**). RFQs are intended to elicit supplier offers that are capable of acceptance by the Agency without further negotiation. They are only appropriate when requirements are clear and delivery options limited, and usually focus on the submission of prices. On the other hand, RFPs are intended to elicit offers that will likely require further negotiation before being acceptable to the Agency.

A key focus of the Rules is the importance of open competition – giving all businesses the chance to participate, and giving them enough time to respond to opportunities properly. For procurements with a total estimated whole of life value of \$100,000 (plus GST) or more (or construction procurement with a whole of life value of \$9 million or more), the Government Procurement Rules will usually require an open competitive process, unless an exception applies or the Agency is able to source through an existing All-of-Government, syndicated or common capability contract. Rule 12 describes situations where the Agency may conduct an “opt out” procurement, and Rule 14 describes situations where the Agency may utilise an “exemption from open advertising”. Even if an exemption is utilised, some of the Rules will still apply to the procurement and the Principles will always apply. If an exemption is utilised, the staff member running the procurement must document the reasoning for the exemption and get approval from a senior manager.

Staff must act in good faith and use good judgement to estimate the total value of a procurement. Staff should consider the total value over the whole-of-life of all of the contracts that may result from the procurement, excluding GST. Staff must include items such as expenses and commissions. Staff may in some cases need to consider the effect on related procurements or spend or costs to achieve a realistic view of value. The same considerations should also be applied to the planned approach to analysing and comparing suppliers’ prices.

The method of procurement must be appropriate to the situation, taking into account the specific guidance in the following table. All procurement activities of a more than minor nature must be properly planned and



approved. For procurements above a total estimated value of \$10,000 (plus GST), the plan must be documented. All procurement plans over \$10,000 (plus GST) require the written approval of the Chief Executive or the Chief of Staff (as noted below for each value band) using the appropriate template.

Total value of procurement (plus GST)	Possible methods ²	Procurement Plan Template
Less than \$10,000	<p>The preferred method is to seek <i>simple quotes</i> from three or more pre-selected suppliers, where the procurement is of a more than minor nature.</p> <p>Any other method (including sole sourcing or a competitive process) is acceptable if justified against the above policy statements. For example: Pre-qualified supplier provided services to Solid Energy Ltd regarding the Pike River mine.</p> <p>Where a procurement is low risk and low value (e.g., less than \$2,500), sole sourcing may be undertaken from a suitable supplier approved by the Chief of Staff or Chief Operating Officer. In such cases, receipts must still be obtained.</p>	None
\$10,000 - \$50,000	<p>The preferred method is to use a <i>well-documented closed</i> competitive process with three or more pre-selected suppliers. An open competitive process is also possible if justified against the above policy statements.</p> <p>Any other method (including sole sourcing or three quotes) is acceptable, but only if it can be justified against the above policy statements. The final selection should be documented in writing in the procurement plan and approved by either the Chief Executive or the Chief of Staff and filed in MAKO.</p>	<p>Procurement plan template</p> <p>Between \$10,000 and \$50,000</p>
\$50,000 - \$100,000	<p>The preferred method is to use a well-documented <i>open or closed</i> competitive process, depending on the situation.</p> <p>Any other method (including sole sourcing) is acceptable, but only if the risks can be justified against the above policy statements.</p> <p>The final selection should be documented in writing in the procurement plan and approved by the Chief Executive and filed in MAKO.</p>	<p>Procurement plan template</p> <p>Between \$50,000 and \$100,000</p>
Greater than \$100,000	<p>The preferred method is to openly advertise via the Government Electronic Tendering Service (GETS).</p> <p>The only exceptions are those acceptable under the Rules (refer to Rule 12 for the situations where an “opt out” procurement may be acceptable, and Rule 14 for exceptions to the open tendering requirement), but if it is permitted in accordance with the Rules, the exception should be</p>	<p>Procurement plan template</p> <p>\$100,000 and above</p>

² Note that the appropriate use of pre-existing All-of-Government, Syndicated, Common Capability, Panel or Preferred Supplier arrangements is always preferred (where feasible in relation to the unique goods and services required at Pike River mine site including mine drift) and none of the statements in the table preclude those approaches.



Total value of procurement (plus GST)	Possible methods ²	Procurement Plan Template
	documented in writing in the procurement plan, approved by the Chief Executive and filed in MAKO.	

As part of the procurement process, a written contract prepared by the Agency's legal advisors will need to be entered into with the successful supplier. In most cases, the proposed form of contract will be included in the procurement package that is released to suppliers for submission of responses (e.g., as part of the RFQ or RFP based on which respondents submit quotes or proposals). In the case of a sole sourcing, the Agency may consider requesting the potential supplier to submit its own contract terms for the Agency's consideration, although in most cases a supplier's terms are not acceptable as they contain terms the Agency cannot accept as a Government department (e.g., indemnities) or do not sufficiently commit the supplier to stand behind their product or services. In either case, the procurement planning process should allow sufficient time for the contract terms to be negotiated between the parties and finalised.

Where a procurement is for goods or services that are low risk and low value (e.g., purchasing lunch for a workshop, and where the price is less than \$2,500), the Agency may undertake this purchase on a cash sale basis (obtaining receipts each time), rather than entering into a written contract for the purchase. This also applies with respect to small, off the shelf purchases from retail stores (again, where the total purchase price is less than \$2,500), where the Agency does not have a standing contract or written terms of trade. However, where the Agency is likely to undertake more than one-off or irregular purchases from a particular retailer, it should seek, where possible, to enter into a written contract governing all future purchases (terms of trade), in order to benefit from any price discounts for purchases that are available to trade customers.

Emergency procurement

In an emergency, it may not be possible to satisfy the principle of open and effective competition throughout the procurement process. Parts of the procurement process may therefore be dispensed with to react quickly to genuinely unforeseen urgent circumstances. Urgent situations that are created by an agency, such as lack of advance planning, do not constitute an emergency. Relevant criteria are:

- Life, property or equipment is immediately at risk; or
- Standards of health, welfare or safety need to be re-established without delay at the Pike River Mine site due to natural disaster.

The Agency must still act lawfully and with integrity, be prepared to account for all emergency procurements and act within delegated authority. The Agency acknowledges that in emergency situations there can be a higher risk of fraud, bribery, corruption and inflated prices. The Agency will seek to take action to safeguard against these possibilities.

See MBIE's Quick Guide to Emergency Procurement for more information.

Related policies and documents

The following documents and policies are related to this Policy. This is not an exhaustive list and other policies and documents may apply depending on the nature of the good, service or work being procured:

- [MBIE's online Guide to Planning Your Procurement](#)



- [The Government Procurement Rules](#) (MBIE Fourth Edition, June 2019)
- [Government Procurement Charter](#)
- [MBIE's Implementing Broader Outcomes](#)
- [MBIE's Quick Guide to Emergency Procurement](#)
- Delegations Policy
- Conflicts of Interest Policy.

Relevant legislation and Regulation

The following legislation is related to this Policy. This is not an exhaustive list and other legislation or regulation is likely to apply depending on the nature of the goods, services or work being procured:

- Fair Trading Act 1986
- Commerce Act 1986
- Health and Safety at Work Act 2015
- Public Finance Act 1989.

Compliance Management

The application of this Policy will be assessed by undertaking relevant financial and other analysis, and reviews or audits, as required. Procurement activity undertaken outside of this Policy will be recorded and reported on a regular basis, and as soon as possible for serious breaches, to the Chief Executive.

Training and Communication

Communications will be issued periodically to remind applicable staff of their obligations under this document.

All staff should have access to the Agency's policies either by being referred to a hard copy held on site, to the Agency's document management system (MAKO) or on the intranet.