

10.0 Rules

10.1 Overview

Introduction

This chapter lists the rules that are part of and govern the use of the procurement procedures contained in this manual. The rules can be varied by an approved organisation with the approval of the NZTA.

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10.2 Definitions

Introduction

In this chapter, the following terms are used:

- Rule - a mandatory requirement that must be complied with unless prior approval is obtained for a variation.
 - Guidelines - advice on how the rules should be applied and what actions should be taken in particular circumstances.
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10.3 Compliance with legal requirements

Rule

An approved organisation must ensure that, in addition to requirements under the LTMA, its procurement practices comply with all other relevant legal obligations.

Guidelines

While this manual cannot and does not attempt to remind approved organisations of their obligations under administrative law, contract law and other legislation, the NZTA requires approved organisations to comply with the wider legal framework to ensure that value for money outcomes are obtained.

10.4 Procurement strategies

Rule

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1. An approved organisation must have a procurement strategy that has been endorsed by the NZTA to assist it to comply with the procurement procedures set out in this manual.
 2. An approved organisation must assess and document the strategic context as it relates to each procurement activity as part of the design of a procurement procedure. At a minimum, the assessment must consider:
 - o whether the proposed procurement activity is consistent with value for money objectives
 - o whether the proposed procurement activity is consistent with any policies or constraints (where applicable) documented in the procurement strategy
 - o whether any changes in the procurement environment since the development of the procurement strategy will have a material effect on the procurement decisions to be made.
 3. An approved organisation must develop, maintain, use and regularly review its procurement strategy – at a minimum, once every three years.
 4. Where an approved organisation's procurement activities, choices and decisions are inconsistent with its strategic intent, the approved organisation must document the reasons for its decisions.
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10.5 Procurement procedure advanced components

Rule

1. An approved organisation must have the NZTA's approval to use an advanced delivery model or advanced supplier selection method.
 2. The delivery models and supplier selection method listed below are advanced components:
 - o shared risk delivery model
 - o supplier panel delivery model
 - o quality based supplier selection method (where the output being purchased is anything other than professional services).
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Guidelines

Approval will be made under s25 of the LTMA. In assessing an application, the NZTA will consider value for money implications, including the impact on competition and on competitive markets.

10.6 Documentation and publication requirements

Rule

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1. An approved organisation must develop, maintain and document procurement policies and procedures for, at a minimum:
 - o delegating authority, duties and responsibilities related to the use of the procurement procedures contained in this manual
 - o managing conflicts of interest, particularly in the supplier selection process
 - o publishing contracts let
 - o advising successful suppliers and unsuccessful suppliers of the reasons for their appointment or non-appointment and the detail of the information to be provided to each.
 2. An approved organisation must ensure that its procurement policies and procedures are publicly available and current at all times.
 3. An approved organisation must have available its procurement strategy, along with evidence of its endorsement by the NZTA and the date of its last review.
 4. An approved organisation must maintain records of its procurement activity. Records must contain, at a minimum:
 - o sufficient detail to demonstrate that procurement procedures approved under s25 of the LTMA have been used
 - o sufficient detail to permit review and meet the NZTA's audit requirements
 - o the reasons for decisions made, including, for each contract, the rationale for selecting a particular delivery model and supplier selection method.
 5. An approved organisation must publish all RFPs in a manner that allows the relevant supplier markets to respond in a timely and informed manner. Where an EOI or RFI stage (or both) is used, and precedes the preparation of an RFP, this requirement will be satisfied by publishing the first stage and then working only with those suppliers that respond. Where a prequalification system is used, this requirement will be satisfied by regularly publishing the existence of the system and inviting suppliers to apply for prequalification. This rule does not apply to closed contests or direct appointment. Refer to section 10.9 *Direct appointment and closed contest for low dollar value contracts*.
 6. An approved organisation must publish within one month details of all contracts let or direct appointments made under section 10.11 *Direct appointment where competition reduces value for money* that are valued at \$50,000 or more. Details must be available for a minimum of six months and must include the name of the supplier, the estimated value of the outputs and a brief description of the outputs to be delivered.
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10.6 Documentation and publication requirements continued

Guidelines

Approved organisations can generally satisfy the above requirements to 'publish' by publishing the information on their website.

Approved organisations should publish RFPs, EOIs, RFIs and invitations to suppliers to apply for prequalification on a recognised 'tenders' website. The central government GETS website (www.gets.govt.nz) and the local government LGTenders website (www.lgtenders.co.nz) are appropriate. Publication of RFPs in print media will sometimes be warranted, and approved organisations should consider publishing internationally for large or complex projects.

10.7 Emergency reinstatement

Rule

Approved organisations must use a procurement procedure in this manual to purchase the outputs required to permanently reinstate infrastructure following the completion of immediate response works.

Guidelines

To obtain the best value for money spent in all emergency reinstatement related activity (both immediate response and permanent reinstatement), the NZTA encourages approved organisations to make appropriate provisions within contracts for asset management and maintenance to deliver the works and services required to respond to emergencies. Those contract provisions should also allow the approved organisation to purchase additional resources (additional to those provided through established contracts for asset management and maintenance) to respond to an emergency event where necessary.

Whenever the scale of permanent reinstatement work is significant, the NZTA expects the approved organisation to consider the options available to it. Typically, the option of completing the work within established contracts for asset management and maintenance will exist. However, that option needs to be compared with the option of going to the market and seeking competitive proposals.

Immediate response work is defined in the NZTA's *Planning, programming and funding manual* and is exempt from procurement procedure requirements.

10.8 Competition for supply

Rule

1. Every supplier selection process must commence as an open competitive process in which all potential suppliers are invited to engage.
 2. Notwithstanding the above, procurement activity that meets the requirements for closed contest supplier selection or direct appointment is exempt from this requirement. Refer to section 10.9 *Direct appointment and closed contest for low dollar value contracts*.
 3. Approved organisations must make provision, in all RFPs, for potential suppliers who accept the invitation to engage in a supplier selection process to withdraw from the process.
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Guidelines

Any supplier selection process that is required, by this rule, to commence as an open competitive process may use a staged supplier selection process, which may involve shortlisting. Refer to section 5.3 *Staged supplier selection process*.

Where a supplier prequalification system is used, this rule is satisfied by regularly inviting suppliers to become prequalified. Refer to section 5.2 *Approach to supplier selection*.

Where a supplier panel delivery model is used, this rule is satisfied by an open contest to gain appointment to the panel.

If a point is reached in a supplier selection process where only one supplier remains both willing and able to supply the output(s) sought, the approved organisation may choose to negotiate the terms, including price, of a contract with that supplier using the direct appointment supplier selection method. Refer to appendix C *Supplier selection methods*.

10.9 Direct appointment and closed contest for low dollar value contracts

Rule

1. Direct appointment of a single willing and able supplier is permitted where the contract cost estimate is less than or equal to the limits set out in the table below.
2. Where appointment is direct, the terms of the contract, including price, must be negotiated in accordance with the direct appointment supplier selection method. Refer to appendix C Supplier selection methods.
3. A closed contest using a minimum of three willing and able suppliers is permitted where the contract cost estimate is less than or equal to the limits set out in the table below.
4. Where a closed contest is used, the preferred supplier must be selected using one of the supplier selection methods available in this manual. Refer to appendix C Supplier selection methods.

Contract for	Physical works	Professional services	Public transport services (gross contract price per year)
Direct appointment	\$100,000	\$100,000	\$100,000
Closed contest	\$200,000	\$200,000	\$200,000

Note: These dollar limits will be periodically reviewed and updated.

Guidelines

Where a closed contest identifies only two willing and able suppliers, despite reasonable efforts to identify a minimum of three, the supplier selection process may proceed with the two that have been identified using one of the available supplier selection methods.

If only one supplier is identified, then the approved organisation may negotiate the terms, including price, of a contract with that supplier using the direct appointment supplier selection method.

Approved organisations are encouraged to use registers to identify potential suppliers when a closed contest is used or the supplier is directly appointed. The use of a register mitigates some of the negative effects on open and competitive markets because all suppliers have the opportunity to indicate their interest and availability to potential purchasers.

10.10 Direct appointment of a monopoly supplier

Rule

1. In the monopoly supplier situations listed in appendix G Monopoly suppliers, an approved organisation may negotiate the contract terms, including price, with the monopoly supplier in accordance with the direct appointment supplier selection method (refer to appendix C Supplier selection methods).
2. Where contract terms, including price, are negotiated with a monopoly supplier, the approved organisation must ensure as far as possible that value for money is obtained.

Guidelines

A monopoly supplier situation exists where there is only one possible supplier of an output. Monopoly suppliers are therefore either a natural monopoly (such as the owner of land required to allow transport infrastructure development) or an entity that is in effect a monopoly for some structural reason (eg a service utility owner in a situation where a utility must be relocated to allow transport infrastructure development).

Where a monopoly supplier situation exists, but is not listed in appendix G Monopoly suppliers, approved organisations should seek the NZTA's approval to apply this rule.

An approved organisation should have mechanisms in place to ensure as far as possible that it obtains value for money from a monopoly supplier. Mechanisms may include:

- using data from similar contracts so that price, terms and conditions can be compared and benchmarked
- limiting the term of the contract or incorporating break points in the contract to permit the approved organisation to tender the contract in the event a competitive market is established
- using an independent expert to assess whether value for money is being obtained.

10.11 Direct appointment where competition reduces value for money

Rule

1. Direct appointment of a supplier, using the direct appointment supplier selection method (see appendix C Supplier selection methods), is permitted where the approved organisation has determined that a competition between potential suppliers will not help obtain best value for money.
2. The reasons for the direct appointment of a supplier must be documented. Refer to section 10.6 *Documentation and publication requirements*.
3. The approved organisation must publish the direct appointment of a supplier where the estimated value of the work is greater than \$50,000. Refer to section 10.6 *Documentation and publication requirements*.

Guidelines

This rule applies in situations where competition may reduce value for money. In these situations, the direct appointment supplier selection method should be used.

Examples include:

1. An approved organisation determines that there is only one practical supplier for an output and any competition will not help obtain value for money. This can occur when the output sought requires a proprietary product that is only available from one supplier. In many situations, it will be logical for an approved organisation to assess the availability of an alternative product through open engagement before directly appointing the proprietary product supplier.
2. An approved organisation requires outputs that a supplier contracted by another purchaser can deliver at a significantly lower cost than in any alternative way. The supplier contracted by the other purchaser has an advantage over all other potential suppliers in that best value for money will be obtained by negotiating with that supplier to deliver the outputs. The approved organisation should negotiate for a variation to the contract with the other purchaser to purchase the outputs. This situation can occur when a property developer has engaged a contractor to cut material that has to be disposed of and an approved organisation requires fill a short distance from the development. This provides the approved organisation with an opportunity to purchase the fill at the lowest cost through a variation to the developer's contract with the supplier.
3. An approved organisation has a contract with a supplier for defined outputs. The approved organisation determines that it requires additional outputs once the contract has been let and the additional outputs are outside the scope of the original contract. The wider supplier community could view the addition of these outputs to the original contract as depriving them of the opportunity to compete for work that they could reasonably expect to be able to compete for. However, the approved organisation determines that best value for money will be obtained by including the additional outputs in the original contract.

Direct appointment under this rule should not be used as a routine way of purchasing, as it can deprive suppliers of the opportunity to compete.

10.12 RFP contents and conformity

Rule

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1. An approved organisation must ensure that every RFP contains, at a minimum:
 - o a clear statement of the scope of the procurement activity and intended outcome
 - o a description of the delivery model to be used
 - o the supplier selection method to be used
 - o the attributes against which proposals will be assessed, including (where applicable) the weights for price and non-price attributes
 - o a description of how price will be used in the proposal evaluation process (where applicable), including a description of how any proposal price may be modified
 - o whether alternative proposals are permitted and, if not, why
 - o whether a conforming proposal is required when an alternative proposal is submitted
 - o a statement about how variations to the contract will be managed
 - o proposed contract terms and conditions, including (where applicable) the proposed standard form of contract
 - o a statement that personnel listed in any proposal must be available to provide the services
 - o a statement about the quality assurance system requirements
 - o any proposed arrangements for bonds and retentions and for testing the financial viability of participants in a supplier selection process
 - o a statement about the proposed limit on the liability of the supplier(s) (only where professional services are being sought)
 - o a statement about the process to be followed in the event of errors or omissions in proposal documents
 - o the approved organisation's policy on late proposals
 - o a proposed schedule for the process, including contract award and contract commencement dates
 - o a description of the method (if any) for contract price adjustment for cost fluctuations.
 2. An approved organisation must not, during a supplier selection process, act in a manner that is materially inconsistent with the process set out in the RFP.
 3. An approved organisation must not let a contract that is materially different from that described in the RFP.
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10.12 RFP contents and conformity continued

Guidelines

Every RFP must set out in sufficient detail:

- what the approved organisation wishes to purchase (the output)
- how price will be determined
- what will be valued in the anticipated relationship
- how proposals will be evaluated
- what the proposed contract terms and conditions will be (the proposed form of the contract).

Having set out these details in the RFP, the approved organisation must then select the supplier and let the contract in accordance with the process described in the RFP.

To encourage competition and innovation, the RFP should generally avoid specifying the methods to be used to achieve the outcomes. Specifying outcomes sets the non-negotiable boundaries, such as resource consent conditions, client-imposed conditions and conditions related to land and allows room for alternative proposals within these boundaries.

Specifying outcomes allows RFP respondents to decide how the outcomes will be achieved. For example, an RFP may specify 'No potholes to remain unfilled for more than X hours', but would not specify how the contractor should go about achieving that outcome.

10.13 Using an available supplier selection method

Rule

An approved organisation must use an available supplier selection method and follow the proposal evaluation procedure set out in each supplier selection method. Refer to appendix C Supplier selection methods.

An approved organisation must only enter into a contract with the preferred supplier identified by the chosen supplier selection method.

Guidelines

In the event that an approved organisation wishes to contract with a supplier other than the preferred supplier identified by the chosen supplier selection method and the conditions of tendering allow this, it must first obtain the NZTA's approval. This event is only likely to occur in exceptional circumstances.

Before approving such a variation to the above rule, the NZTA must be satisfied that the proposed approach is both legally acceptable and will enable the approved organisation to obtain best value for money.

10.14 Non-price proposal evaluation attributes

Rule	<ol style="list-style-type: none"> 1. For any supplier selection method, an approved organisation must evaluate proposals using the following three non-price attributes as a minimum: <ul style="list-style-type: none"> o relevant experience o relevant skills o methodology. 2. An approved organisation may use additional non-price attributes to evaluate proposals, including: <ul style="list-style-type: none"> o track record o resources o financial viability. 3. An approved organisation must reject all proposals that fail on the evaluation of any non-price attribute or score below a nominated grade for any non-price attribute. 4. The RFP must describe the non-price attributes to be used in the proposal evaluation. The descriptions must be specific to the outputs for which proposals are sought, must explain what the purchaser values in each attribute, and must be consistent with the attribute definitions in this manual. See section 10.12 <i>RFP contents and conformity</i>. 5. The RFP must explain how each non-price attribute will be evaluated, including stating which attributes will be evaluated on a pass or fail basis alone and which (where the supplier selection method allows) will also be graded (given a points score between 0 and 100). 6. The RFP must explain when an approved organisation will reject a proposal for either failing on the evaluation of any non-price attribute or scoring below a nominated grade for any non-price attribute. 7. The RFP must give the numerical weight to be applied to each of the non-price attributes that are to be graded. 8. When the supplier selection method used requires that any attribute (non-price or price) be given a weight, the sum of all weights (non-price and price) must be 100.
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Guidelines

Non-price attribute definitions

- Relevant experience
The supplier's previous experience in areas relevant to the outputs being purchased.
- Relevant skills
The competence of the personnel that the supplier proposes to use, with particular regard to their skills and experience in areas relevant to the outputs being purchased.

10.14 Non-price proposal evaluation attributes continued

Guidelines continued

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- **Methodology**
The procedures the supplier proposes to use to achieve the specified end result.
 - **Track record**
The supplier's record of delivering works or services to the quality standards required, on time and within budget.
 - **Resources**
The equipment, including facilities and intellectual property, that the supplier proposes to use to deliver the outputs.
 - **Financial viability**
The supplier's ability to access the financial resources required to deliver the outputs to be purchased.

Rejecting a proposal through a 'fail' on a non-price attribute

It is standard practice to establish through the RFP that any proposal may be rejected at the sole discretion of the purchaser. In addition, the above rule refers to the need to establish, through the RFP, that a 'fail' on a non-price attribute will be a sufficient reason to reject a proposal.

Historically, under the *Competitive pricing procedures manual* rules, when the supplier selection method required that a non-price attribute be graded, a score of 35 or less was a 'fail' score for that attribute. Approved organisations should not depart from this well-established practice without good reason. They must also make their intentions clear through the RFP.

Rejecting a proposal through failure to meet a minimum required standard

It is also important to clearly establish in the RFP what features of a proposal will make it unacceptable or 'non-conforming' and result in its rejection. Where a proposal must meet certain minimum standards (eg where a supplier must be certified as meeting a particular quality standard) or an input must meet a particular standard specification, then this must be made clear to prevent potential suppliers from investing effort in preparing a proposal when that supplier cannot meet the required minimum standard.

Selecting non-price attributes

Part 1 of the above rule requires that three attributes (relevant experience, relevant skills and methodology) be used as a minimum. These three attributes are mandatory because best value for money spent is more likely to be obtained if the selected supplier has the relevant skills and experience, combined with a well thought through methodology. Note that these three non-price attributes are the ones focused most directly on the works or services to be delivered and on the skills and experience required to deliver, and are therefore an absolute minimum.

However, these attributes alone will often be insufficient to ensure that the supplier who will deliver the best value for money will be selected.

Purchasers are free to choose as many additional attributes from among those listed in part 2 of the rule or to add other attributes. Attributes (beyond the minimum three) should only be added when they will enhance the supplier selection process and help to obtain better value for money.

10.14 Non-price proposal evaluation attributes continued

Guidelines continued

Where the supplier selection method allows grading of the non-price attributes, the purchaser must decide whether each attribute should be evaluated on the basis of pass or fail only or whether they should be graded.

Adding relevant non-price attributes that are to be evaluated on a pass or fail basis is only sensible where the purchaser simply wishes to ensure that a potential supplier meets a given minimum standard. Adding attributes that are also to be graded must be considered more carefully.

A large number of attributes (or sub-attributes) that are to be graded tends to lead to a reduced range of the weighted sums of the non-price attribute grades and a reduced degree of 'separation' of proposals.

Setting non-price attribute weights

Appropriate attention must be given to setting the weights for the non-price attributes. They impact on the outcome of the proposal evaluation process by establishing the relative importance of the non-price attributes that are to be graded. Weights must be advised through the RFP.

See section 5.4 *Supplier selection methods* for guidelines on choosing weights.

Grading scale for non-price attributes

A scale of 0 to 100 is used when grading non-price attributes. To help achieve consistency of practice, the NZTA recommends that grades be awarded in steps of five and that the following grading scale be used.

90, 95 or 100	Demonstrates exceptional compliance or ability to convey exceptional provision of the requirement
75, 80 or 85	Requirements are fully covered in all material aspects
60, 65 or 70	Requirements are adequately covered
50 or 55	Adequate, with some deficiencies that are not likely to have any adverse effect
40 or 45	Barely adequate and would need considerable improvement in this attribute, if selected
35 or less	Total non-compliance or inability to convey provision of the requirement

10.15 Price and price weight

Rule

1. The price to be used in the supplier selection process must be defined in the RFP. See section 10.12 *RFP contents and conformity*.
 2. When using the price quality supplier selection method, the price weight must be set within the range of 10 to 70.
 3. When using the price quality supplier selection method, the RFP must give the weight to be applied to price. See section 10.12 *RFP contents and conformity*.
 4. When the supplier selection method used requires that any attribute (non-price or price) be given a weight, the sum of all weights (non-price and price) must be 100.
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Guidelines

Defining price

Typically, the price used in the supplier selection process is the unmodified price taken from each proposal. However, in some situations the proposed price will be modified before it is used in the supplier selection process. For example, where the supplier is to be paid an initial sum and over a period of years further amounts (eg for the maintenance or operation of an asset), then it may be appropriate to discount the later payments to give a net present value to be used in the supplier selection process.

When the price quality supplier selection method is used, a supplier quality premium value will 'modify' the proposal price (see appendix C Supplier selection methods). Where alternative proposals are permitted, an added value premium may modify a proposal price (see section 10.16 *Alternative proposals* and section 10.17 *Added value premium*).

Whenever proposal prices are modified in any way by the supplier selection process, the description of that process must be made clear in the RFP.

For some contract types, the price sought through the RFP, and used in the supplier selection process, may only be indirectly related to the final price. For example, it may be the total of a proxy schedule that is to be used to calculate the actual price to be paid, or a margin where the supplier is to be paid in the basis of actual cost plus a margin. Again, the RFP must describe how this will be done.

Choosing the price and non-price attribute weights

When using the price quality supplier selection method, the weights assigned to the price attribute and to those non-price attributes to be graded in the evaluation process are set at the discretion of the approved organisation, within the limits noted above.

See section 5.4 *Supplier selection methods* for guidelines on choosing weights.

10.15 Price and price weight continued

Guidelines continued

Documentation of the rationale for choice of price weight

When an approved organisation chooses to use a price weight over 20, less than 70 or any combination of price and non-price weights that it has not previously used when purchasing a similar output, the NZTA requires that the rationale for the choice of price weight be documented. Refer to section 10.6 *Documentation and publication requirements*.

Choosing a price weight for a professional services contract

Under the above rule, weights up to 70 are allowed. An approved organisation proposing to use a weight over 20 for a contract for professional services needs to have tested that proposal before use. See section 5.4 *Supplier selection methods*.

Choosing a price weight for contracts other than professional services contracts

Under the above rule, weights as low as 10 are allowed. An approved organisation proposing to use a weight less than 70 for a contract other than professional services needs to have tested that proposal before use. See section 5.4 *Supplier selection methods*.

10.16 Alternative proposals

Rule

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1. Approved organisations must clearly specify in all RFPs whether alternative proposals:
 - o are permitted
 - o must be accompanied by a conforming proposal.
 2. Approved organisations must clearly justify and document their reasons for not permitting alternative proposals.
 3. Approved organisations must request the submitters of alternative proposals (where alternative proposals are permitted) to specify how their alternative proposal differs from the outputs specified in detail in the RFP, and demonstrate how better value for money can be obtained through the alternative.
 4. Approved organisations must not consider alternative proposals that:
 - o are outside the scope or requirements of the RFP
 - o vary the term, start date or end date of a contract, unless the approved organisation has stated in the RFP that it will consider alternative proposals that relate to these matters
 - o vary the term of a term service contract (refer to section 10.21 *Maximum term of a term service contract for infrastructure or planning and advice* and section 10.24 *Maximum term of a term service contract for public transport services*).
 5. Approved organisations must document decisions in relation to the evaluation of alternative proposals. See section 5.5 *Evaluation of proposals*.
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Guidelines

An approved organisation should exercise care when specifying the scope and requirements of an RFP and the level of detail used to describe the outputs. Where the outputs are narrowly specified, consider the benefits of broadening the scope of the RFP to encourage innovation through alternative proposals. For example, if an RFP specifies that the output is a retaining wall and provides detailed drawings and specifications, then the submission of alternatives will be encouraged by broadly specifying the desired outcome in the RFP and deliberately stating that alternative proposals will be considered.

Where the scope and requirements of an RFP and the outputs are all broadly specified, then it will generally not be necessary to allow alternative proposals. All proposals submitted are effectively alternative ways to deliver the broadly defined outcome. Where the output is a professional service, it will typically be specified in the RFP in broad terms and an alternative proposal is therefore unlikely to add further value.

Approved organisations may reserve the right (through the RFP) to reject any alternative proposal, regardless of the outcome of the evaluation.

10.16 Alternative proposals continued

Guidelines continued

When an alternative proposal is outside the scope of the RFP but offers a better outcome, the approved organisation should consider declining all proposals and issuing a revised RFP that will accommodate the alternative. To be fair to the supplier offering the alternative, the approved organisation should not reveal the detail of any innovative idea used in the alternative proposal. Approved organisations should exercise caution when declining all proposals and requesting new proposals, and specific legal advice should always be obtained.

Approved organisations are not required to request an accompanying 'non-alternative' proposal with any alternative proposal. Where an approved organisation requests two proposals, careful consideration must be given to the purpose of the request to ensure that unnecessary costs are not placed on potential suppliers.

10.17 Added value premium

Rule

6. Approved organisations must calculate any added value premium consistently with the NZTA's funding policy, as outlined in the NZTA's *Planning, programming and funding manual*.
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Guidelines

An added value premium is defined in this manual (see appendix H Definition of terms) as the amount more that the approved organisation is prepared to pay for the output offered by an alternative proposal.

Where the approved organisation receives an alternative proposal and considers that it may significantly improve whole-of-life value for money, then it should consider whether an added value premium should be determined.

An alternative proposal may have both a supplier quality premium and an added value premium associated with it if the price quality supplier selection method is used. The supplier quality premium relates to the characteristics of the supplier and the added value premium relates to the output offered by the alternative proposal. The supplier quality premium is defined (see appendix H Definition of terms) as the amount more that the approved organisation is prepared to pay for a higher-quality supplier.

Being aware of the distinction between the supplier quality premium and the added value premium helps an approved organisation to avoid paying a premium twice for the same potential to enhance value for money.

Where an alternative proposal affects the cost to the purchaser, the added value premium should be based on the discounted difference in whole-of-life cost for the alternative. Where it would affect the benefits to be obtained, the added value premium should be based on the discounted difference in benefits for the alternative. The benefit value would be divided by the incremental benefit to cost ratio (BCR) to determine the added value premium figure.

Determining an added value premium is a comparative exercise. The added value premium is the difference in the amount that the approved organisation is prepared to pay to purchase the output offered by an alternative proposal, rather than the minimum standard output specified in the RFP. If the alternative proposal offers more than the minimum standard output, the added value premium will be positive. If it offers less, the premium will be negative.

10.18 Use of negotiation in a supplier selection process

Rule

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1. Approved organisations are permitted to negotiate with the preferred supplier on contract terms, including price, before a contract is let provided the right to do so has been reserved in the RFP.
 2. Any negotiation between the approved organisation and the preferred supplier must be consistent with the negotiation process outlined in the RFP.
 3. Where more than one proposal meets the requirement of an RFP, any negotiated change in price with the preferred supplier must be accompanied by a proportionate change in the outputs to be delivered.
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Guidelines

Best value for money is not likely to be obtained if suppliers expect that negotiation will be used to reduce their price when a competitive process has already been used to encourage suppliers to offer their best price.

This rule applies to negotiation with the preferred supplier prior to a contract being let. It does not apply to negotiation when using the quality based or direct appointment supplier selection methods or the negotiation or consultation processes that are part of an early dialogue or interactive tendering process.

10.19 Qualifications of proposal evaluators

Rule

1. For contracts with an estimated total value exceeding \$200,000, approved organisations must ensure that at least one member of the proposal evaluation team:
 - o holds either the National Certificate in Civil Engineering – Asset Management (Competitive Pricing Procedures) or the National Certificate in NZTA Procurement procedures, or
 - o holds another relevant qualification approved by the NZTA, or
 - o is approved by the NZTA as a proposal evaluator.
2. The competence of the proposal evaluation team member who meets the requirements of part 1 of this rule must be current to the satisfaction of the NZTA.

Guidelines

Section 5.5 *Evaluation of proposals* discusses the integrity of supplier selection processes, including the need for the proposal evaluation team to understand both technical issues and more general legal obligations that the purchaser has to proposal submitters.

10.20 Business units proposing to undertake minor and ancillary works

Rule

1. Where an approved organisation receives a proposal from its business unit for minor and ancillary works, it must ensure that any person(s) involved in the evaluation of the proposals is not involved in the management or operation of the business unit.
2. An approved organisation must ensure that all processes for managing proposals from its business units do not disadvantage any other proposal submitter(s).

Guidelines

Section E3.4 of the NZTA's *Planning, programming and funding manual* defines those activities that are classified as minor and ancillary works and establishes the requirements that must be met by an approved organisation before it can purchase minor and ancillary works from its own business unit.

Approved organisations must be fair in all their dealings with proposal submitters. This is especially important when an approved organisation's business unit is involved, either as a potential supplier or as a sub-contractor to one or more of the other proposal submitters. The approved organisation must always ensure that it acts in a fair and transparent manner.

10.21 Maximum term of a term service contract for infrastructure or planning and advice

Rule

1. An approved organisation must not let a term service contract for a term greater than five years, including any initial term plus any optional term extension(s).
 2. An approved organisation must not:
 - o let a term service contract with term arrangements (initial term plus any optional term extension(s)) different from that set out in the RFP
 - o vary the term arrangements of a term service contract once it has been let.
 3. Notwithstanding the above, the term of a term service contract may be extended within the following limits and circumstances:
 - o up to three months, where the approved organisation has experienced unexpected difficulties in re-tendering
 - o up to two years, to bring together or stagger contract expiry dates when a significant restructure of services is required under a procurement strategy that has been endorsed by the NZTA.
-

Guidelines

The term of term service contracts should be chosen with care. For large-value term service contracts, the term and the termination dates should be determined in the approved organisation's procurement strategy.

The following matters should be considered when deciding the term of each of these contracts (and the degree of aggregation and bundling of services within each contract):

- the impact of these decisions on the competitive nature of the affected markets
- the capability and capacity of the supply market (and of the purchaser)
- the life of assets to be used by the supplier in delivering the service
- economies of scale.

Term service contracts can be let under a simple fixed-term arrangement (eg two or four years). Approved organisations should consider the advantages (and disadvantages) of letting a contract for an initial term with optional term extensions as an alternative to a simple fixed term. Under such an arrangement, a term extension is normally conditional on supplier performance and can, therefore, provide an incentive to perform well. However, it can also inflate the proposal price to cover the risk of early termination.

10.21 Maximum term of a term service contract for infrastructure or planning and advice continued

Guidelines continued

Longer-term contracts

The NZTA will consider applications to vary this rule to allow a contract term longer than five years (eg where the purchaser wishes to establish a 10-year PSMC).

An approved organisation must document in its procurement strategy the rationale for seeking approval of a contract term beyond the five-year maximum term.

Non-tendered renewal of term service contracts

The NZTA will consider applications to vary this rule to allow a contract term extension to take the total term beyond the term advised through the RFP (non-tendered renewal).

An approved organisation must document its rationale for seeking approval to extend a contract beyond the term advised through the RFP in its procurement strategy.

When applying for a contract term extension, the purchaser must show that they have considered all options, including the option of re-tendering the work in an open competition. The NZTA expects that any application to approve a contract term extension beyond the term advised through the RFP will include:

- a review of how the supplier market(s) will be affected by the contract extension
- evidence that the contractual arrangement has been reviewed to identify ways to improve value for money and to ensure that performance under the contract will continue to improve
- evidence that the supplier market(s) has been advised of the proposal to extend the contract and that it may not be re-tendered at the end of the original contract expiry date.

The approved organisation should advise potential suppliers that a contract may be extended as soon as possible and update these suppliers on the status of its plans to extend at least annually.

If the purchaser considers that a contract may be extended beyond the term advised in the RFP when it is issued, they should indicate this at the time.

10.22 Supplier bonds

Rule

1. Approved organisations must not require a bond payable by the supplier that is greater than the reasonably expected loss to the approved organisation in the event the supplier defaults on the contract.
 2. Bonds in relation to professional services contracts are not permitted.
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Guidelines

Under some circumstances, approved organisations can protect themselves from the risks associated with supplier performance by specifying a bond payable if the supplier defaults.

Approved organisations should exercise caution when requiring bonds, as they can act as a barrier to competition and deter capable suppliers from participating in the supplier selection process.

10.23 Lead-in times for public transport services contracts

Rule

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1. For contracts providing for 20 or fewer buses, the time between contract award and commencement of service must be no less than four months.
 2. For contracts providing for more than 20 buses, the time between contract award and commencement of service must be no less than nine months.
-

10.24 Maximum term of a term service contract for public transport services

Rule

1. An approved organisation must not let a term service contract for a term greater than 12 years, including any initial term plus any optional term extension(s).
2. An approved organisation must not:
 - o let a term service contract with term arrangements (initial term plus any optional term extension(s)) different from that set out in the RFP
 - o vary the term arrangements of a term service contract once it has been let.
3. Notwithstanding the above, the term of a term service contract may be extended within the following limits and circumstances:
 - o up to three months, where the approved organisation has experienced unexpected difficulties in re-tendering
 - o up to two years to a maximum of 12 years, to bring together or stagger contract expiry dates when a significant restructure of services is required under a procurement strategy that has been endorsed by the NZTA.

Guidelines

The term of term service contracts should be chosen with care. For large-value term service contracts, the term and the termination dates should be determined in the approved organisation's procurement strategy.

The following matters should be considered when deciding the term of each of these contracts (and the degree of aggregation and bundling of services within each contract):

- the impact of these decisions on the competitive nature of the affected markets
- the capability and capacity of the supply market (and of the purchaser)
- the life of assets to be used by the supplier in delivering the service
- economies of scale.

Term service contracts can be let under a simple fixed-term arrangement (eg two or four years). Approved organisations should consider the advantages (and disadvantages) of letting a contract for an initial term with optional term extensions as an alternative to a simple fixed term. Under such an arrangement, a term extension is normally conditional on supplier performance and can, therefore, provide an incentive to perform well. However, it can also inflate the proposal price to cover the risk of early termination. Contracts may be shorter than 12 years to meet service planning needs as set out in the RPTP. Termination dates should be staged to ensure that there is a regular flow of RFPs available to the market. As a general guide, approximately 25 percent of the services in a region should be offered to the market within a three-year interval.

10.24 Maximum term of a term service contract for public transport services continued

Guidelines continued

Contracts with a term of six years or more should be for an initial term of approximately half the total term, with extension subject to satisfactory achievement of the key performance indicators. For example, for a 12-year contract, the initial term could be five, six or seven years. The key performance indicators used to determine whether the contract will be extended should be designed to assess the contractor's service delivery performance.

The term of emergency contracts, established without using an approved procurement procedure in terms of s26 of the LTMA, is limited to six months.

10.25 Maximum contract size for public transport services

Rule

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1. The maximum contract size for inclusion in a single RFP must be no greater than 60 buses.
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10.26 Contract service level changes for public transport services

Rule

1. All contracts with a term of 12 months or more must include mechanisms for negotiating service level changes.
2. Contract service level changes must be limited to an increase or decrease of not more than 50 percent of the initial gross contract price established at the time of contract award adjusted by NZTA indexation for the change in input costs.
3. Where a contract includes an extension provision, and the contract is renewed or extended, the new gross contract price will be reset based on the contract award gross price adjusted by indexation plus any service level changes agreed prior to the date the extension commences.
4. In the case of net contracts, any change in contract price following a service level change will be assessed for revenue effects.

Guidelines

Service level changes are likely to be incremental over the life of the contract. Each increment, and the reason for it, is to be documented and retained on the contract file. The accumulated incremental change to contract service levels is to be measured against the initial gross contract price (including indexation) up to 50 percent.

An approved organisation should consider cancelling the contract if service levels reduce by 50 percent or more.

The contract should provide appropriate mechanisms to accommodate changes that are foreseeable and reasonably likely to occur, such as patronage growth.

All contracts with a term of two years or more should specify separate methods for small (eg less than 10 percent) and large contract price adjustments that result from service level changes.

For service level changes that are less than 10 percent, an approved organisation could use the schedule of prices provided with the proposal and adjusted by the NZTA index.

For service level changes greater than 10 percent, the contract price adjustment mechanism should account for changes in costs resulting from reconfigured or additional routes, additional buses or other resources. In these cases, the schedule of prices provided with the proposal and adjusted by the NZTA index may not fairly compensate for the changes in costs arising from the variation.

Population growth, changes to routes to serve community needs and travel demand management measures are likely to require significant changes to service levels over the term of a 12-year contract. The 50 percent change limit is considered appropriate for contracts with terms of approximately five years. The ability to reset the 'gross contract price' at the date of the extension provides reasonable flexibility for changes that arise during the term of the extension.

10.27 Contract price adjustment for input price variation public transport services

Rule

1. Contracts of more than a term of 12 months must provide for price adjustment to compensate for input price fluctuation (inflation and deflation) using the appropriate index provided by the NZTA:
 - Price adjustments must be paid on a quarterly basis, from the commencement of the service operation.
 - Price adjustments must reflect movements in the index, from the quarter in which tenders closed.
 - Both gross and net contracts must be adjusted for inflation on the gross cost, and the basis for determining the gross cost must be published in the tender documents.
 - The most recent version of the indices will always apply, including any changes to the composition or weighting of index components.

Guidelines

Approved organisations must adjust contract prices to compensate for fluctuations in the price of inputs (eg wage rates, fuel prices) for any contract with a term of 12 months or more. This is undertaken on a quarterly basis using a standard index provided by the NZTA. There are separate indices for diesel bus and ferry contracts. The NZTA will make available a spreadsheet template that demonstrates the method to be followed.

Approved organisations should use the standard procedure for inflation adjustment for contracts with terms of less than 12 months where input prices are difficult to predict.

Price adjustment should be calculated and paid in arrears as soon as practicable after the publication of the index for the related quarter (eg the index for the March quarter that is published in late May should be paid in June).

An approved organisation should determine the gross cost for net contracts using actual patronage and revenue data where these are available. The estimated farebox revenue should be published in tender documents.

These provisions transfer input price risk from suppliers to the purchasers.

The NZTA will use survey information from suppliers on cost structures to review the index formula approximately every five years. The latest version of the indices will apply to contracts, including any changes to the composition and weighting of the index (ie the version of the indices that existed when the contract was let will not necessarily apply for the term of the contract, if it changes as a result of the NZTA's review).

Contract price adjustment is intended to cover all inflation (or deflation) that occurs from the quarter that tenders close, including the interval between the close of tenders and the commencement of the service (ie the adjustment reflects the fluctuation in input prices between the quarter in which services are priced and each quarter in which services are delivered).

Suppliers do not need to forecast inflation for the period leading up to the commencement of the contract, nor for any initial contract period.

The *Cost indices for public transport tool* provides the latest index values and describes their derivation and use.

10.28 Fare adjustments – public transport services (net contracts)

Rule

1. Approved organisations must develop and use a standard procedure for calculating revised contract amounts to account for changes in fares from the first year.
2. Approved organisations must allow suppliers to give notice of the cancellation of any net contract within three months of any change in fares, provided that the supplier gives a minimum of 90 days notice.

Guidelines

Revisions according to the standard procedures should be made on the basis that suppliers are no better or worse off as a result of fare reviews.

The NZTA's current recommended value for elasticity of demand is -0.4. However, the elasticity will vary with the time travelled, the mode used and the length of the trip. It is recommended that only one elasticity value is applied.

Elasticity of demand should be applied to real, not nominal, changes in fares (ie consumer price inflation should be subtracted from the nominal fare change). For example, if the change in average fare is 10 percent, but inflation since the previous fare increase has been 3 percent, then this is a 7 percent real change in fares. This also applies to decreases or a zero change in nominal fares. In the previous example, a zero nominal change would equate to a 3 percent decrease in real terms. If nominal fares remain unchanged, then this adjustment should be made at least every two years but not more often than annually.

A useful formula is as follows:

$$\text{Proportionate change in revenue} = (1 + \Delta Fn) \times [1 + (\Delta Fr \times Ed)] - 1$$

where ΔFn = nominal change in fare, ΔFr = real change in fare, and Ed = elasticity of demand.

In the above example, $\Delta Fn = 10\%$, $\Delta Fr = 7\%$, and $Ed = -0.4$.

Therefore, $\Delta \text{Revenue} = (1+0.1) \times [1 + (0.07 \times -0.4)] - 1 = (1.10) \times (0.972) - 1 = 0.0692$ or 6.92%.

10.29 Key performance indicators for public transport (bus) contracts

Rule

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1. All bus contracts must include, as a minimum, the key performance indicators specified in the performance measurement and monitoring chapter of this manual (refer to chapter 11 *Performance measurement and monitoring*).
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10.30 Requirements for urban bus contracts

Rule

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1. All urban bus contracts must incorporate the requirements as published by the NZTA in *Requirements for urban buses in New Zealand (2008)*.
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Guidelines

All urban bus contracts should consider the guidance material and best practice as set out in *Requirements for urban buses in New Zealand*.

If an approved organisation specifies additional or higher vehicle requirements than set out in *Requirements for urban buses in New Zealand*, they must document their reasons for doing so, including the incremental 'value for money' benefits that will be obtained. Approved organisations may specify ferry quality standards that they consider appropriate.

10.31 Public transport fare subsidy schemes

Rule

1. For all payments made, details of concessionary fares scheme(s) including eligible services and fares must be determined through the preparation of the RPTP.
2. In finalising the procurement procedure detail, an approved organisation must publicly engage with members of the community who are eligible to use a subsidised fare scheme and the suppliers of the required services.
3. The maximum concessionary fare reimbursement must be no more than the full adult fare.
4. The maximum reimbursement for SuperGold schemes must be 75 percent of the average full adult fare for each route or zone per supplier.
5. The SuperGold scheme is for off-peak travel for services specified in the RPTP.
6. An approved organisation must allow all suppliers who meet the criteria to join the fare subsidy scheme.
7. The detail of the procurement procedure for any fare subsidy scheme must be reviewed at least once every three years or sooner if a materially significant change is made to one or more of the factors that determines the detail of the procurement procedure.
8. When considering the procurement of additional or replacement wheelchair hoists, an approved organisation must publicly engage with members of the community who are eligible to use a subsidised fare scheme and the suppliers of the required services.

Guidelines

Contracts for fare subsidy schemes should allow for modifications to the scheme that result from amendments to the RPTP.

The approved organisation is responsible for determining the average fare. If there are no existing public transport or taxi operations on which to base the average fare, the determination should be based on comparable services in similar areas.

Approved organisations should be satisfied that their contribution to the total reimbursement for Total Mobility services does not exceed the average taxi fare being charged in the area covered by the service.

Where services use voluntary input, the sum of the donation paid and subsidy received should be less than the average taxi fare.

Off-peak for the SuperGold scheme is defined by the Government as 9:00am to 3:00pm, then 6:30pm to the end of service, and all services on weekends and public holidays. Eligible hours will be set to time of boarding. A 10-minute buffer around the off-peak start and finish times on ticketing machines is acceptable.