

PROCUREMENT POLICY

Policy Statement

1. The FMA is committed to meeting the highest standards of integrity in its procurement work; and to ensuring that our spending is well-planned and well-executed so that we get the best public value from the procurement. Public value is assessed and calculated, with a wider view towards the cultural, economic, environmental and social outcomes for New Zealand, which can be achieved through procurement¹.
2. Procurement is an end to end process that covers all the business activities associated with the purchase and delivery of the goods, services and works the FMA uses to run our business. It starts with identifying the FMA's needs and planning the best way to meet them; continues through sourcing whatever is required and then managing the relevant contract; and only ends when the contract expires.

Purpose and scope

3. This policy (Policy) and FMA's Procurement Procedures (the Procedures) outline the approach that the FMA will take to planning and sourcing. A separate Contract and Relationship Management Policy and the accompanying Contract and Relationship Management procedures also applies to the work we do to monitor and evaluate the way our suppliers perform.
4. The Policy and Procedures must be followed by all our temporary and permanent employees, consultants and contractors (FMA staff). Any departure from the specified requirements must first be approved in writing by the manager or project sponsor responsible for the relevant procurement via a procurement plan and advised to the Manager, Internal Governance and Oversight
5. The Government Procurement Rules (4th Edition) apply and cover all FMA procurement activity.
6. The Policy and Procedures do not apply to the 'non-procurement activities' set out in Rule 11 of the Government Procurement Rules, which include:
 - employing staff (as opposed to contractors and consultants); and,
 - Core Crown Legal Matters (includes FMA Litigation Fund).

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¹ Rule 16

Objectives

7. The [Government Procurement Rules](#) (the Rules) focus on promoting public value and guiding public agencies to procure responsibly and achieve public value. FMA is committed to open, transparent and competitive government procurement that:
 - Delivers public value (including *Broader Outcomes*)
 - Does not discriminate against suppliers (whether domestic or international), and
 - Meets agreed international standard.

Broader Outcomes ([Rule 16](#))

8. FMA recognises that its procurement activities offer a unique opportunity to achieve broader cultural, economic, environmental and social outcomes that go beyond the immediate purchase of goods and services for New Zealand. Broader outcomes are the secondary benefits that are generated from the procurement activity. They can be environmental, social, economic or cultural benefits. and will deliver long-term public value for New Zealand. Broader outcomes require FMA to consider not only the whole-of-life cost of the procurement, but also the costs and benefits to society, the environment and the economy.
9. Of these broader outcomes, the Rules require us to incorporate or consider the following priority outcomes as part of our procurement opportunities:
 - increase New Zealand businesses' access, including Māori, Pasifika and regional businesses, as well as social enterprises, to government procurement ([Rule 17](#));
 - increase the size and skill level of the domestic construction sector workforce ([Rule 18](#));
 - increase quality employment opportunities for New Zealanders, particularly displaced workers and groups with traditionally high rates of unemployment or low labour force participation (specifically women, Māori, Pacific peoples, disabled people and youth. ([Rule 18A](#));
 - improve conditions for workers in government contracts ([Rule 19](#)); and
 - support the transition to a zero net emissions economy and assist the Government meet its goal of significant reduction in waste ([Rule 20](#)).

(the Priority Outcomes)

10. Consideration of Broader Outcomes should be included in tender documents and selection criteria. Where applicable, these should be assessed, measured and monitored post contract award, to ensure they have been achieved.
11. The Rules include the Government Procurement Charter ([the Charter](#)). The Charter sets out how we should conduct procurement activity to achieve public value and embeds the Broader Outcomes and the Priority Outcomes. The Charter directs agencies to:
 - a. Seek opportunities to include New Zealand businesses
 - b. Undertake initiatives to contribute to a low emissions economy and promote greater environmental responsibility
 - c. Look for new and innovative solutions
 - d. Engage with businesses with good employment practices
 - e. Promote inclusive economic development within New Zealand
 - f. Manage risk appropriately
 - g. Encourage collaboration for collective impact

Requirements

12. We must always apply the [Principles of Government Procurement](#) (the Principles) and the Charter in carrying out procurement (whether or not any of the Rules affect the particular procurement involved). All FMA staff involved in procurement should familiarize themselves with the Principles and the Charter, and apply them as appropriate in carrying out procurement activities.
13. We must also apply any of the Rules that affect the particular procurement involved (including both rules that set out compulsory requirements and rules that simply indicate good practice). For some procurements, this includes the Rules that require open advertising.
14. The way we buy goods, services and works will vary depending on the value and level of risk involved. We will apply the approach best-suited to the individual purchase, within the framework of this Policy, the Procedures, the Principles, the Charter and the Rules, including encouraging competitive tendering whenever possible.
15. All FMA staff must comply with the Procedures, the Charter and any additional Rules², which apply to a particular procurement, in carrying out procurement work. The Procedures set out four different processes that apply to any procurement that does not involve All-of-Government, syndicated or other collaborative contracts. The processes are based on the 'maximum total estimated value' of the procurement:
 - Under \$10,000 – buy directly from a suitable supplier, or by open or closed tender if more appropriate;
 - \$10,000 – \$49,999 – buy directly from a suitable supplier, or by open or closed tender if more appropriate;
 - \$50,000 - \$99,999– three quotes or tender (either closed or open); and,
 - \$100,000 or more – open tendering, using the Government Electronic Tender Service (GETS), unless an exemption applies.
16. In addition to complying with the relevant process, the manager responsible for any procurement for services with a total estimated value of \$100,000 or more must provide the relevant contract to the Manager, Internal Governance and Oversight for a determination on whether it is a 'significant service contract'³ and/or a significant procurement for the purposes of Rule 71 of the Rules.

Planning

17. When planning procurement projects, we will:
 - Produce a procurement plan where necessary;
 - Seek to understand whether there are Broader Outcomes that could easily be delivered through the procurement, and if it makes sense from a public value perspective, include mechanisms within the procurement to deliver the Broader Outcomes;
 - Where appropriate, involve suppliers early in the process to explain our needs, learn about them and explore opportunities for new solutions before going to market;
 - If FMA include pre-conditions for participation in its procurement process, FMA must limit pre-conditions to only legal capacity, financial capacity, commercial or operational capacity or capability to deliver and appropriate technical skills or expertise or relevant experience.

² The Procedures cover some, but not all of the Rules. For example, there are Rules on providing suppliers with sufficient time and on open advertising that are not covered by the Procedures.

³ Significant service contracts are the important contracts that your agency manages. These contracts are for goods and/or services that are critically important to the delivery of business objectives and pose a significant risk and/or significant impact in the event of supplier or supply failure.

FMA will not make it a pre-condition that a supplier has previously worked with FMA or the government.

- Ensure we have a financial approval aligned with the FMA's financial delegations (at least in principle) before going to market;
- Consider whether there is any procurement response measures (as per Rule 12A) and how procurement can help achieve specific outcomes and drive positive change across the government procurement system;
- If an exception to the Procedure applies, ensure we have approval in writing from the relevant manager or project sponsor;
- If an exemption from the Rules applies⁴, ensure we have approval in writing from the relevant manager or project sponsor; and,
- If we decide to opt out⁵ of the Rules, ensure we have approval in writing from the relevant manager or project sponsor and have complied with the requirements of the Rules.

Sourcing

18. When we buy goods, services or works, we will:

- Purchase off All of Government contracts or the FMA's existing supply contracts if they can meet all necessary requirements;
- Give all suppliers a full and fair opportunity to compete – we will not discriminate on the basis of where suppliers come from or whether they have prior experience of working with government;
- Choose suppliers that have demonstrated their ability to meet our requirements and offer the best public value over the lifetime of the goods, services or works, including taking into account:
 - all the costs of ownership over that lifetime;
 - whether suppliers adhere to Supplier Code of Conduct and whether this commitment can be incorporated into our contracts;
 - the suppliers' ability to deliver what we need at a fair price and on time; and
 - the Boarder Outcomes and the Priority Outcomes.
- Not purchase procurement advice from a supplier that has an interest in the contract opportunity as this may prejudice fair competition (for example if a supplier is asked to write the contract requirements and then bids for the contract opportunity);
- Allow sufficient time for suppliers to respond to any procurement opportunities;
- Use any applicable government model contracts or FMA templates as our default tender and contract documents;
- Consider how we can create employment opportunities for New Zealanders and increase the diversity of suppliers, particularly for Māori businesses; and
- Have an approved purchase order/agreement in place before the supplier starts delivering goods/services/works.

Te Kupenga Hao Pāuaua⁶ -Progressive Procurement

19. Te Puni Kōkiri⁷ and MBIE⁸ have worked in partnership to develop the progressive procurement approach aimed at increasing the diversity of government suppliers, starting with Māori businesses. Government agencies must increase the diversity of suppliers by changing their practices to increase procurement opportunities for Māori businesses. This approach aims to improve Māori participation in the economy and improve economic and social outcomes for the wider community.

⁴ Exemptions from the Rules on open advertising are dealt with in Rule 14.

⁵ Opt outs from the Rules are dealt with in Rule 12

⁶ Translated Te Kupenga Hao Pāuaua means to cast the fishing net wide and be enterprising.

⁷ Ministry of Māori Development

⁸ Ministry of Business, Innovation and Employment

20. When we buy goods, services, we will consider progressive procurement policy and its main features are:

- The definition of a Māori business is a Māori authority (as classified by the Inland Revenue Department) or a business with a minimum 50% Māori ownership.
- A target of 5 percent of the total number of buyer (mandated government agencies) procurement contracts are awarded to Māori businesses.
- Intermediary organisations to act as a broker, matching and connection buyers and suppliers to realise procurement opportunities. Further, to assist with verifying supplier businesses as meeting the definition of Māori business.
- Supporting sustainable, long term behavioural change of government agencies and businesses procurement practices.

21. Further guidance about progressive procurement is provided in FMA's Procurement Procedure.

Meeting Expectations

22. To build effective relationships with suppliers we will:

- Treat them all fairly and with respect;
- Be consistent, transparent, fair and accountable in the way we work;
- Be clear about what we require and how we will assess them before going to market.
- Give sufficient response time for our requests;
- Protect their commercially sensitive information and intellectual property;
- Offer a debrief to unsuccessful bidders for procurements with a maximum total estimated value of \$100,000 or over, and wherever reasonably practicable for other procurements. Information about debriefing is discussed in the Procurement Procedures; and,
- Pay invoices promptly.

Playing by the rules

23. Our decisions and practices must be able to withstand public scrutiny at all times. Throughout our procurement activities we will:

- Clearly record our planning, processes and decisions so they can easily be audited;
- Document and manage conflicts of interest in accordance with the FMA Conflicts of Interests policy;
- Identify risks and get the right person to manage them; and,
- Act lawfully, ethically and responsibly.

Supplier Complaints

24. A supplier may complain to FMA if it believes that the FMA has not followed the Rules or if it has any concerns.

25. If a complaint is received, FMA must follow its 'Complaints about the FMA' policy (Complaints Policy).

26. In addition to complying with FMA's Complaints Policy, we must also comply with Rule 50 which states that FMA must:

- consider and respond promptly and impartially to a complaint.
- try to resolve any complaints in good faith.

- not prejudice the supplier's ongoing or future participation in contract opportunities or affect any right the supplier may have to a judicial review or other remedy.
- keep good records of its procurement process and decisions.
- fully cooperate in any review or hearing of a supplier's complaint by a competent authority (eg the Office of the Auditor-General, the Ombudsman, the Commerce Commission, or a court of law).

Roles and responsibilities

27. FMA's Executive Leadership Team (ELT), Directors, Heads and Chiefs are responsible for:

- Managing their business unit's procurements with a maximum total estimated value of less than \$100,000; and
- Ensuring their staff apply FMA's Procurement Policy and Procedures.

28. Responsibility for procurements with a maximum total estimated value of \$100,000 or more is held by the project sponsor or by the ELT of the business unit managing the procurement.

29. All purchases of \$100,000 or more require an approved procurement plan outlining all aspects of the expenditure and its purpose in terms of the FMA's functions to inform the procurement decision. This needs to document the reasons for the procurement and be approved by the relevant ELT or project sponsor.

30. All procurement must be incurred within applicable budgets and approved by the manager with the relevant financial delegation. Written records must be maintained for all procurements at a level of detail that is commensurate with the value, complexity and risk profile of the particular procurement involved. The documentation must be sufficient to provide a clear audit trail of the procurement activities undertaken by the FMA, and all associated decision making.

31. The Governance team will facilitate review of all contracts with a maximum total estimated value of \$100,000 or more. The team will also facilitate review of other contracts where there is a business case or good reason for doing so such as:

- matters likely to attract public attention.
- Potential ongoing contracts that may increase in value in the future and exceed the value of \$100,000 or more. Contracts involving significant commercial risk or potential impact on FMA's reputation.
- Matters that are novel and complex.
- Privacy issues concerning individuals.

32. If it is unclear whether a contract should be legally reviewed by the Governance team, the staff can discuss with Manager, Governance in the first instance regarding the issue and whether legal review is appropriate.

33. All staff are required to comply with this procurement Policy and the Procedures.

Related procurement information

34. Relevant procedures, policies and guidance include:

- FMA's Financial Delegations
- FMA's Credit Card Policy
- FMA's Expenses Claims Policy
- FMA's Code of Conduct

- FMA's Conflicts of Interest Policy
- FMA's Sensitive Expenditure and Gifts Policy
- Government Procurement Rules
- Principles of Government Procurement
- Procurement Guidance for Public Entities, Office of the Auditor General Mastering procurement – a structured approach to strategic procurement

35. Relevant laws include:

- Public Finance Act 1989
- Crown Entities Act 2004

Assistance with Procurement

36. If you have questions about this Policy please contact the Internal Governance and Oversight Team.