

# Procurement Policy

PR01-01 (Jan14)

## Policy Statement

Auckland Transport (AT) is a significant procurer of services and goods and is ultimately accountable to the ratepayers of Auckland and taxpayers of New Zealand, through its funding arrangements with Auckland Council (AC) and the New Zealand Transport Agency (NZTA). Therefore, it is critical that all AT procurement activities are undertaken in a clearly-defined, ethical and transparent manner, following what is considered good practice for spending public money whilst being consistent with its statutory obligations.

## Scope and Purpose

This policy applies to all procurement activities and personnel of AT and supports the delivery of AT’s procurement aim **“To achieve sustainable ‘value for money’ through collaborative relationships that encourage and foster fair competition and innovation in the delivery of Auckland Transport’s objectives to the satisfaction of its customers”**.

The purpose of this policy is to ensure that a consistent procurement practice is applied across all AT procurement activities. This policy reflects the overarching principle guiding AT procurement, being: **“Sustainable ‘value for money’ through the ‘whole of life’ of an asset or service”**. This will be achieved by:

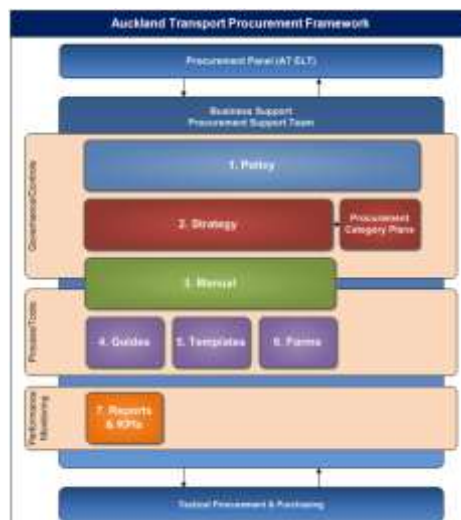
- Being customer and output focussed;
- Supporting sustainable supplier markets;
- Where applicable, supporting innovative and collaborative relationships;
- Acting with integrity in an open, fair and transparent manner; and
- Minimising transaction costs.

**Procurement** - is all the business processes associated with purchasing, spanning the whole cycle from the identification of needs to the end of a service contract or the end of the useful life and subsequent disposal of an asset.

**Whole of life** – requires taking a long term view of the total cost attributable to an activity and not simply the initial purchase cost. A whole of life cost assessment will consider the social, environmental and economic impact of the outputs, any on-going maintenance and operation costs of the asset or service, and any costs associated with its disposal.

## Strategic Alignment and Principles

This Policy, the Procurement Strategy and associated Procurement Category Plans, the Procurement Manual and accompanying Guides, Templates, Forms and Reports all combine to form the AT Procurement Framework.



Governance and overall accountability for the AT Procurement Framework sits with the AT Head of Procurement.

The Head of Procurement will also approve/endorse key Procurement Framework documents, activities, as detailed in the AT Procurement Manual and approve variations to Procurement Manual procedures.

The Procurement Support Team, which reports to the Head of Procurement, acts as a centre of excellence on procurement matters, and is accountable for the development and maintenance of the Procurement Framework, including setting of policy, production of the AT procurement strategy, approval of procurement category plans and development of procurement processes. The Procurement Support Team will also provide specialist guidance and advice to business departments on procurement policies and processes to ensure they are consistent with best practice, NZTA and probity requirements.

AT's Procurement Strategy sets out how the principles of this Policy will be delivered within its operational procurement activity.

## Basic Principles

Ensuring probity of action is everyone's responsibility when conducting procurement activities. The following are the basic principles that govern the use of public funds and must be adhered to by AT when procuring services and goods. By applying these principles sensibly, AT will be able to demonstrate that it is spending public money wisely, and properly managing the process for spending it:

**Accountability** - AT will be accountable for its performance and be able to give complete and accurate accounts of the use to which it has put public funds, including funds passed on to others for particular purposes. It will also have suitable governance and management arrangements in place to oversee procurement arrangements.

**Openness** - AT will be transparent in its administration of procurement activities, both to support accountability and to promote clarity and shared understanding of respective roles and obligations between AT and any external parties entering into procurement arrangements.

**Value for money** - AT will use resources effectively, economically, and without waste, with due regard for the total costs and benefits of a procurement arrangement, including its contribution to the outcomes AT is trying to achieve. The principle of value for money for procuring services or goods does not necessarily mean selecting the lowest price, but rather the best possible outcome for the total cost of ownership (or whole-of-life cost).

**Fairness** – AT has a general public law obligation to act fairly and reasonably. AT must be, and must be seen to be, impartial in its decision-making. AT may also at times need to consider the imbalance of power in some procurement arrangements, and whether it is significant enough to require a different approach to the procurement relationship.

**Integrity** – All AT employees who are managing public resources must do so with the utmost integrity. The standards applying to AT employees will also apply to contractors engaged by, and other organisations funded by AT.

## Practical considerations

When deciding how to give effect to the principles set out above AT should consider:

**The outcome** - It is important that AT focuses on what it is trying to achieve. The procurement process should not dominate at the expense of the outcome.

**Simplicity and proportionality** - The requirements put in place for the procurement arrangement should be as simple and practical as possible, considering the amounts involved, the complexity, and the level of risk. It is appropriate to consider compliance costs for both parties, and seek to reduce

them where possible.

**The context** - Any procurement arrangements need to fit with the overall context of AT's funding arrangements.

**The risk** - AT must identify risks in or around the procurement arrangement and articulate how it will manage those risks. This should not be seen as encouragement to be overly risk averse. The key is to get the correct balance between risk and expected benefit, and to do so consciously.

**The nature of the parties** - The needs and standards of AT (for example, for accountability or transparency) may be quite different from those that the external party usually encounters. Equally, the external party's needs may be quite different from those of AT. Procurement relationships are likely to proceed more constructively and effectively if each party understands the needs of the other and the consequences of those needs for them.

## Policy

### Competent people

AT will ensure that each employee, consultant or agent involved in a procurement process has the required skills for the type and level of procurement. When engaging a consultant or agent, AT also needs to ensure that an experienced employee with the necessary delegated authority works with the consultant or agent.

### Using consultants or procurement agents

If AT engages a consultant or an agent to assist in the procurement process, the contract of engagement should require the consultant or agent to observe the same ethical standards, principles, and behaviour that apply to AT's employees. This includes the consultant or agent complying with AT's procurement policies and procedures, and AT appropriately managing any conflicts of interest on the part of the consultant or agent.

### Fraud and impropriety

All staff involved in the procurement process must comply with AT's Fraud policy.

### Managing conflicts of interest

As part of the general obligation to act fairly, AT must take care that their decision-making processes cannot be challenged on the basis of actual or potential bias and/or conflicts of interest.

AT's conflict of interest policy sets out conditions which may lead to actual or perceived conflict of interest, and the procedures for addressing them. All AT staff involved in the procurement process must comply with these requirements.

### Confidentiality

Confidentiality is an important aspect of any competitive procurement process, and AT must take particular care when handling commercially sensitive information. Confidentiality obligations apply throughout the entire procurement process and also after the contract has terminated or expired.

In situations where AT may need to balance confidentiality requirements with statutory requirements for disclosure and consultation, it is recommended that legal advice is sought. For example, AT has disclosure obligations under the Local Government Official Information and Meetings Act 1987 which means that it is not able to give comprehensive assurances about the protection of sensitive information. There are relevant grounds for withholding information under this Act, such as unreasonable prejudice to the commercial position of a potential supplier, but these can be overridden if there is a greater public interest in disclosing the information.

## Keeping records

AT must keep adequate records of all procurement decisions. The Public Records Act 2005 requires public entities to maintain full and accurate records in keeping with normal, prudent business practice. The value and risk of the procurement will determine the nature and amount of documentation that is required. However, AT must keep adequate records to:

- Show that it followed due process and observed the basic principles set out in this policy;
- Establish that it identified and appropriately managed potential conflicts of interest issues;
- Respond to queries from unsuccessful suppliers;
- Record the outcome of meetings during the procurement process;
- Provide evidence for accountability and audit purposes; and
- Plan any subsequent procurement.

AT will keep procurement records in a central location that facilitates audit and other processes of accountability. This includes ensuring that records of all decisions and supporting documentation are available for audit.

## Accuracy and use of information

AT staff must:

- Respect the confidentiality of information received in the course of their work;
- Not use this information for personal gain, or for any other purpose other than the purpose for which it was obtained; and
- Always communicate information accurately, impartially, and in a manner not designed to mislead, to all interested participants.

AT will respect the sensitivity of information provided by participants during the procurement process and will not use confidential information to influence or advantage other participants.

## Contact with participants during the procurement process

AT will have a clear and single point of contact in its organisation for participants to use during a procurement process. This may require the point of contact arranging for others in the organisation to deal with technical queries. This will reduce the risk of any potential supplier extracting an advantage by playing off one member of AT's staff with another.

Procurement documentation will stipulate that participants may not contact any member, director, employee, or adviser of AT about the procurement other than the person nominated, as informal communication between evaluation personnel and participants could prejudice the integrity of the evaluation.

During the contract renewal process, current suppliers may be perceived to have an advantage in their knowledge of AT and its requirements. AT will therefore implement a formal process to govern contact with any current supplier when tendering for future contracts. This process will include a requirement that the current supplier must not discuss requirements and contents of any new tender with AT staff or members of the evaluation panel, unless the discussion forms part of the formal procurement process.

## Intellectual property risks

AT must consider the risks associated with developing intellectual property during procurement activities. The value of any intellectual property rights need to be considered, including whether these rights should be held by the supplier or AT. Relevant factors may include any effect on the price of the contract and the on-going ability of the parties to develop innovations. In any case, AT should:

- Identify all intellectual property likely to be developed or created during a procurement activity;
- Seek legal advice on how to secure its continuing right to use intellectual property as required, including situations where AT might procure future services or goods from a different supplier;

- Be clear about the difference between what is intellectual property and what is said commercially in confidence; and
- Determine the owners of any intellectual property.

## Liability

When contracting for services or goods, a supplier may wish to exclude or limit its liability under the contract. It is not uncommon for suppliers to:

- Propose excluding their liability for any losses that are not the direct result of their acts or omissions (for example, for indirect loss, consequential loss, loss of profits); and/or
- Limit their liability to an amount that is a specified multiple of the value of the contract.

AT will take a risk-based approach to considering whether to agree to exclusion or limitation on liability by a supplier (an important aspect of achieving value for money). AT will ensure that the relevant contract is very clear as to the scope and extent of exclusion or limitation. AT will take associated costs into account when considering a particular supplier's services or goods.

Before considering whether to negotiate exclusions or limitations of liability and assessing risks, business departments should seek the assistance of both Procurement and legal counsel.

## Insurance

When contracting for services or goods AT will require suppliers to obtain and maintain appropriate insurance.

The level of insurance will be determined by assessing the risks involved in delivering the services or goods. Business departments should seek the assistance of both Procurement and legal counsel if amending AT's standard contract insurance provisions

## Sustainability

The Local Government Act 2002 requires local authorities to take a sustainable development approach, by taking into account;

- The social, economic, environmental, and cultural well-being of people and communities;
- The need to maintain and enhance the quality of the environment; and
- The needs of future generations.

AT must demonstrate that considerations of sustainability occurred throughout the entire procurement process, including:

- Specifying products and services considered to be sustainable;
- Verifying suppliers' sustainable management standards;
- Including a sustainability clause in contracts;
- Rating supplier performance against sustainability criteria;
- Insisting on sustainability improvement targets for suppliers;
- Assisting suppliers to improve their sustainability performance; and
- Encouraging sustainable innovation in the supply of goods or services.

## Monitoring and Review

This policy will be reviewed annually by the policy owner and on an as required basis as a result of changes to the AT Procurement Framework or as a result of changes to relevant legislation.

## Related Policies

This policy should be used in conjunction with the following AT policies:

- Financial Delegations of Authority Policy;



- Expenditure Policy;
- Code of Conduct Policy;
- Conflict of Interest Policy
- Fraud Policy;
- Gifts and Inducements Policy;
- Protected Disclosures Policy.

The following relevant legislation has an impact on this policy:

- the Official Information Act 1982;
- the Local Government Official Information and Meetings Act 1987;
- the Commerce Act 1986;
- the Fair Trading Act 1986;
- the Dumping and Countervailing Duties Act 1988;
- the Public Records Act 2005;
- the Local Government Act 2002;
- the Local Authorities (Members' Interests) Act 1968;
- the Public Finance Act 1989;
- the Electronic Transactions Act 2002;
- the Land Transport Management Act 2003; and
- the Public Transport Management Act 2008.

In addition, this policy is based on the recommended procedures and principles outlined in the following publications:

**Procurement Guidance for Public Entities: Good Practice Guide** - published by the Office of the Auditor General (OAG), June 2008;

**Government Procurement in New Zealand: Policy Guide for Purchases** – published by the Ministry of Economic Development (MED), 2007;

**Procurement Manual** – published by the New Zealand Transport Agency (NZTA), July 2009.

## Authority and Classification

Owner (contact for updates, clarity etc.)	Chief Financial Officer Head of Procurement	Ext: (48) 9436 Email : procurement@aucklandtransport.govt.nz
Responsible department	Business Support Procurement	
Stakeholders for consultation	Procurement Panel, All AT Business Units	
Authorised by:	AT Board / AT Finance & Risk Committee	07/2012      Minutes ref: 10(v)
Version no:	1.0	
Issue date:	07/2012	
Review date:	12/2014	
Document ref no:	PR01-01	Intranet ref:
Category	Policy	

ROLES AND RESPONSIBILITIES	
Policy user	Adherence and compliance with this policy and guidelines
All managers and senior officers	<ul style="list-style-type: none"> <li>• Promote the principles of this policy.</li> <li>• Notify applicable staff of the requirements of the policy and guidelines.</li> </ul>
Policy owner	<ul style="list-style-type: none"> <li>• Develop, consult, seek approval of, and implement policy for all business units of Auckland Transport.</li> <li>• Communicate and support policy to all relevant stakeholders.</li> <li>• Administer requirements of policy relating to Procurement.</li> <li>• Monitoring and updating of this policy, procedure, guidelines and rules.</li> </ul>

