

4 September 2013

Attention: Ben Yong
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OIA Request 2013/89

Please find attached a copy of our Procurement Policy [Appendix 1] as requested by you via email 15 August 2013 under the Official Information Act.

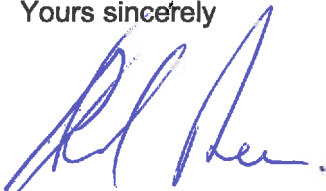
Further to your request regarding reference to the terms that relate to procuring goods and/or services from contracted members of staff I wish to advise that our Procurement Policy as such does not list such terms directly as these are normally covered through other terms including those within related DHB documents.

For example if such an arrangement was presented then guidance would be sought from clauses 12 & 13 of the "Procurement Policy", along with our "Conflict of Interest" Policy. If needed further advice would also be sought from our in-house Legal Services.

In regard to presented contractual proposals our in-depth tendering processes and subsequent audits would highlight situations where possible conflict or concern arise.

Should you require further information please feel free to contact me direct.

Yours sincerely



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Appendix 1

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Procurement Policy

Related documents

- *Code of Conduct*
- *Delegations of Authority*
- *Fraud*
- *Legislative compliance*
- *Risk management*
- *Procurement Guide*
- *Sponsorship and donor interaction with C&C DHB*

1. Policy statement

The purpose of this procurement policy is to state Capital and Coast District Health Board's ("C&C DHB") intentions, and inform staff and contractors of C&C DHB of the appropriate behaviour when conducting a procurement process.

2. Scope

This Procurement Policy covers all procurements entered into by C&C DHB staff and contractors for goods and services on behalf of C&C DHB.

This policy is not a procedure document. For guidance and procedures on "how to" do procurement and the associated templates, please refer to the C&C DHB Procurement Guide.

3. Exclusions

This policy does not apply to Human Resource contracts of employment or contracts undertaken by C&C DHB's Planning and Funding Directorate.

4. Compliance with Procurement Policy and Procedures

The C&C DHB Procurement Policy and associated guidelines reflect current government good practice. Inherent in the processes are options which allow tailoring to suit individual procurements. All C&C DHB staff and contractors must comply with these documents whenever a procurement exercise is undertaken unless:

- There is a compelling justification to diverge from the process, and
- The C&C DHB Executive Director – Operations, Clinical & Corporate Support or their approved designate approve a written business case justifying the divergence prior to the divergence being undertaken

The procurement of goods and services (excluding health services) should be discussed with a member of the C&C DHB Procurement Service. This avoids the potential for C&C DHB having

multiple contracts with the same supplier and / or duplication of effort, and will facilitate the effective management of the procurement of goods and services to ensure all processes are: transparent; objective; non discriminatory and measurable.

The Procurement Service will advise on the most appropriate procurement method and where applicable will either assist and / or develop a procurement plan to guide the process. Templates are available on request from Procurement Services which support the procurement of goods and services process.

5. Financial Threshold

The financial threshold requirement for C&C DHB to conduct an open and competitive tender process is \$100,000 New Zealand Dollars for the total value of the contract. However, a competitive process may be used for purchases under this value at any time. Contract values must not be structured or divided at any stage to fall under this threshold to avoid tendering.

6. Principles

In procuring good and services C&C DHB must:

- Comply with relevant Government procurement requirements
- Obtain best value for money over the whole of life (economic, efficiency and effectiveness)
- Encourage open and effective competition (accountability and transparency)
- Provide full and fair opportunity for domestic and foreign vendors
- Improve business capabilities
- Recognise of New Zealand's trade policy obligations to Australia, Singapore Brunei Darussalam and Chile under the Closer Economic Relationships and Closer Economic Partnerships, the Australia New Zealand Government Procurement Agreement and the Trans-Pacific Strategic Economic Partnership Agreement (P4 FTA)
- Consider sustainable produced goods and services wherever possible, having regard to economic, environmental and social impacts over their life cycle

7. Economic Considerations

As a government agency C&C DHB must be able to show that any procurement is efficient, effective and the best economic use of public money. All procurement activities should be properly planned and conducted and take into account the following economic considerations.

Value for Money

C&C DHB will be committed to the best value approach when procuring goods and services. Best value means that the bid optimises the combination of the whole of life costs with due regard to C&C DHB's strategic objectives and capital investments.

The determination of value for money includes the consideration of:

- a) Unit price
- b) The capability of the vendor
- c) A complete understanding of the total costs
- d) An assessment of risk
- e) Quality conformance
- f) Service levels

Total Cost of Ownership (“Whole of Life” Cost)

When assessing a procurement proposal, personnel are to be aware of the “whole of life” cost of the goods and services they are procuring.

Often, the acquisition cost of a product is only a small proportion of the total cost of ownership. Generally, most of the total cost lies in the operation and maintenance of the product over its life. This makes it important to base a procurement decision not only on the acquisition price but also on the costs associated with supporting the product and then the eventual disposal of the product. When assessing “whole of life” cost, an analysis must be conducted to take into consideration any one-off costs and recurring costs. One-off costs are “sunk” and are generally predictable once the acquisition is made. Recurring costs are costs that are incurred throughout the life of the product, and can increase with time if the product is liable to wear and tear. This could result in increased costs.

The whole of life costing model considers the following:

- a) Initial purchase price
- b) Costs of using the equipment
 - maintenance costs
 - running costs
 - training costs
 - infrastructure costs
 - IT costs
 - Costs of upgrades
- c) Costs associated with the conduct of business
 - Travel costs
 - E-procurement
- d) Disposal costs or residual value

8. Communications

To ensure selection of the right clinical equipment, consumables and / or service, Procurement will undertake to communicate, consult and / or keep informed the appropriate clinical areas, where necessary.

9. Full and Fair Opportunity

C&C DHB is obligated to promote open and effective competition in the market place, and provide full and fair opportunity to New Zealand suppliers. In particular, potential suppliers:

- Must not be unreasonably denied the opportunity to bid for C&C DHB’s business; and
- All bids received must be evaluated and selected in a fair and unbiased manner.

Australia and New Zealand Government Procurement Agreement

The Government’s procurement policy recognises the mutual commitment by New Zealand and Australia under the Australia and New Zealand Government Procurement Agreement (ANZGPA). This agreement sees both governments committed to giving Australian and New Zealand goods, services and suppliers’ equal treatment and opportunity to compete on the basis of value for money in a single trans-Tasman government procurement market.

Closer Economic Partnership Agreement

This agreement is based on the concept of a single New Zealand / Singapore government procurement market. Like the ANZGPA agreement New Zealand and Singapore have agreed to provide to each other's suppliers, goods and services equal opportunity to compete on the basis of value for money.

Trans-Pacific Strategic Economic Partnership Agreement (P4 FTA)

This free trade agreement between New Zealand, Brunei, Chile and Singapore where the countries agree to provide each other's goods, services and suppliers treatment no less favorable than that provided to their domestic goods, services and suppliers. Offsets (conditions requiring domestic content, licensing of technology, investment, counter-trade or similar requirements to encourage local development or improve the balance of payments) are prohibited.

10. Financial Delegations

The financial authorities stated in C&C DHB's Delegations of Authorities policy are to be adhered to when conducting any procurement process for C&C DHB.

11. Legal

C&C DHB has to consider its legal risks when procuring. It may be necessary to obtain legal advice, when and where necessary.

12. Ethical Considerations

All C&C DHB procurement processes can be subject to scrutiny and therefore must be undertaken to the highest ethical and probity standards.

C&C DHB is committed to dealing with suppliers in a fair and equitable way. All C&C DHB employees and contractors must act, and be seen to be acting, in a fair, open and unbiased manner when involved in any aspect of the procurement of goods and services.

The following principles are to be followed by all C&C DHB staff and contractors in respect of the management of or involvement in any procurement process:

- a) **Beyond Suspicion** - Individuals should not allow their conduct to warrant any suspicion of conflict between their official duty and their private interests. A person's behaviour should not be influenced by a gift, hospitality, benefit or other consideration to show favour or disfavour to any person or to give this impression to a third party
- b) **Honesty**. Dealing with current and potential vendors should be conducted in an honest, fair and impartial way at all times
- c) **Transparency**. All actions must be transparent at all times
- d) **Conduct**. C&C DHB is not to engage in deceptive or misleading conduct
- e) **Price fixing**. C&C DHB is not to engage in any price fixing

13. Conflict of Interest

Conflict of Interest arises when one's personal interest interferes or, has the potential to interfere or may be perceived as interfering with their official public duty.

C&C DHB staff and contractors need to take great care to avoid situations where they could be accused of using their position to further their personal interests. Public perception is important and it is not enough that C&C DHB staff and contractors are honest and fair, they need to be **seen** to be so. Impartiality and transparency during procurement processes is essential to maintaining the integrity of C&C DHB.

14. Confidentiality

All discussions, meetings, written and electronic material relating to any procurement activity are confidential and are not to be divulged to any person not directly involved in the relevant procurement activity. Particular care and attention is to be given to ensuring that no commercially sensitive information, e.g. the make up of an overall price, design information or intellectual property, is disclosed either during or after a tender process.

All C&C DHB staff and contractors are to ensure that they:

- Respect the confidentiality of information they receive in the course of their work
- Do not use information for personal gain
- Always communicate information accurately, impartially, and in a manner not designed to mislead

Any breach of this section will be considered serious misconduct and may result in disciplinary action.

15. Gifts and Hospitality

C&C DHB staff and contractors are not to accept any gifts, hospitality, promotional products and / or services from any potential tenderer during the procurement process.

- Refer to Sponsorship and donor interaction with C&C DHB for all guidance on gifts and hospitality in other instances

16. Risk Management

C&C DHB must identify potential and actual risks relating to each particular procurement process prior to its commencement. Steps to mitigate risks should be taken wherever possible. Risks could include but not be limited to:

- Inadvertently creating a premature contractual relationship
- A business risk to C&C DHB
- A legal risk to C&C DHB (e.g. Intellectual Property Rights)

C&C DHB risk framework should be used, where necessary. This framework assesses the likelihood and impact and enables the development of appropriate mitigations plans. Depending on the nature of the procurement, this risk may also need to be identified on C&C DHB's risk register.

17. Market Effects

Achieving value for money depends on competition among suppliers of goods and services. Competition, in turn, requires a number of suppliers. As part of the procurement decision consideration is to be given to the effect the procurement may have on the market and the supplier base e.g. entering into a long term contract with a supplier might push other suppliers out of the market and therefore C&C DHB has created a monopolistic market place.

18. Environmental Factors

As part of its commitment to Sustainability, the Government has adopted a number of strategies to enforce awareness of this issue. These strategies set national targets for increased efficiency in energy and resource use in all sectors of society. Government agencies are expected to take account of these strategies and targets in their procurement in ways that are consistent with the value for money and other policy and good practice considerations set out in this policy guide. International moves to limit and reduce emissions of greenhouse gases, and the use of illegally sourced timber and wood products are likely to result in additional incentives for the adoption of sustainably produced and energy efficient products, processes and technologies.

All procurement should take into consideration the national targets for efficiency and sustainability in the use of energy and resources within the health sector.

19. Maximising Leverage

C&C DHB must ensure that it maximises its organisational leverage when conducting competitive tender processes. C&C DHB is a large organisation and should be able to demand a leveraged position within the market to reflect this.

20. Syndicated Procurement

Syndicated procurement is a process whereby agencies aggregate their requirements prior to going to the market or may have the opportunity to "piggy back" on another agency's contract for the same goods or services. This approach avoids duplication of effort across agencies and also increased the buying power of the tendering agencies.

C&C DHB has access to a number of buying groups and syndicated procurement should be considered prior to undertaking any substantial purchase. C&C DHB also may from time to time become entitled to purchase certain goods or services (known as Privity) as part of a national and/or regional DHB procurement arrangement with some or all of the other DHBs.

21. Panel Contracts

A panel contract (or panel arrangement or standing offer) is a contractual arrangement with a group of suppliers to provide services as and when required, under a schedule of rates for each supplier or based on a quotation. Panel contracts will be established through a competitive process.

22. Record Keeping

C&C DHB should keep adequate records of procurement decisions. The Public Records Act 2005 requires C&C DHB 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 desirable. However, C&C DHB should keep adequate records to:

- show that it followed due process
- establish that it identified and appropriately managed potential conflict 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
- plan any subsequent procurement

23. Legislation

C&C DHB must comply with all applicable legislation throughout the procurement process. The legislation includes, but is not limited to the following:

- Health Act 1956
- Official Information Act 1982
- The Commerce Act 1986
- The Fair Trading Act 1986
- Consumer Guarantees Act 1993

- Contractual Mistakes Act 1977
- Sale of Goods Act 1908
- Contracts (Privity) Act 1982
- Contracts Enforcement Act 1956
- Contractual Remedies Act 1979
- C&C DHB legislative compliance policy

24. Intellectual Property

In the course of conducting a procurement process C&C DHB must consider all risks associated with the development of any intellectual property. In all cases C&C DHB should:

- Identify all intellectual property likely to be developed as a result of a procurement exercise.
- Consider the value of the intellectual property ownership. In some cases it might be more cost effective to leave ownership with the supplier in return for a lower price.
- Seek legal advice from C&C DHB's legal department on how to secure the right to use the intellectual property on an ongoing basis. This is especially important if the contract is eventually re-tendered and awarded to a different supplier in the future.

25. Definitions

Gifts

A gift is something which you are given by current or potential vendors to show friendship or say thank you e.g. a present, use of corporate box, morning teas, lunches or any privileged access to goods and services.

Hospitality

Hospitality relates to food, drink, entertainment, etc. that a vendor or potential vendor provides to clients, C&C DHB employees, contractor and their families.

Conflict of Interest

Where one's personal interest interferes with their official public duty.

Leverage

The maximisation of C&C DHB's collective purchasing power.

26. Indications

This policy is to be followed at all times.

27. Contra-indications

Any deviations from this policy must be justified in a written business case and approved by the C&C DHB Executive Director – Operations, Clinical & Corporate Support Directorate or their approved designate.

28. References

For further information relating to procurement in the public sector refer to the following guidance.

- *Procurement Guidance for Public Entities (2008)*. Office of the Auditor General
- *Mandatory Rules for Departments (2006)*. Ministry of Economic Development
- *Guidelines for Contracting with Non-Government Organisations for Services Sought by the Crown (2003)*. The Treasury
- *Managing Conflicts of Interest: Guidance for Public Entities (2005)*. Office of the Auditor General
- *Closer Economic Partnerships/Free Trade Agreements (2005)*. Ministry of Economic Development
- *New Zealand Public Service Code of Conduct - State Services Commission*
- *Going Green: Your Easy Guide to an Environmentally Friendly Office*. Ministry for the Environment
- *NZ Waste Strategy*. Ministry for the Environment
- *Guidelines for Contracting with Non-Government Organisations for Services Sought by the Crown (2003)*. The Treasury
- *Managing Conflicts of Interest: Guidance for Public Entities (2005)*. Office of the Auditor General
- *GOVT3: Towards Sustainable Practice*. Ministry for the Environment
- *Closer Economic Partnerships/Free Trade Agreements (2005)*. Ministry of Economic Development

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