

## Tendering Policy (District)

This policy covers tendering requirements for Southern District Health Board (Southern DHB) and must be followed when new equipment is to be purchased.

**Policy Applies to** All employees and board members of Southern District Health Board (Southern DHB), including temporary employees and contractors, must comply with this policy.

It also applies to any person who is involved in the operation of Southern DHB, including joint appointments, volunteers and those people with honorary or unpaid staff status.

**Policy Summary** This policy covers tendering processes for goods and services and health service contracting within the organisation.

It is essential that parties responding to invitations to provide goods and services, interested groups, and the public at large, are able to have confidence that Southern DHB's normal procurement, purchasing, tendering and selection processes have been impartial and fair, with no party being given advantage over another or discriminated against.

**Definitions** For the purposes of this document Southern DHB will be referred to as the DHB.

A **conflict of interest** refers to a situation in which private interests or personal considerations may affect an employee's judgement and/or ability to act in the best interests of the DHB.

It includes using an employee's position, confidential information or employer's time, material or facilities for private gain or advancement, or the expectation of private gain or advancement either directly or indirectly.

It is also where an employee's position with the organisation may be compromised due to their relationship with, or position within, an external agency or organisation, particularly if the needs of both organisations are conflicting.

A conflict may also occur when an interest benefits any member of the employee's family (whānau), friends or business associates.

**Probity** is defined as uprightness, honesty, proper and ethical conduct.

**Contestable process** is a market-based process where two or more suppliers are able to bid competitively for goods or services. In some cases a single supplier may be involved if they have been established as a preferred supplier as a result of any previous contestable process.

**Expression of interest (EOI) and registration of interest (ROI)** occur when parties are invited to register their interest in being involved in a further tender process. Either may be used to shortlist for a closed tender.

**Request for information (RFI)** is a formal request for information to gain a more detailed understanding of the supplier market and the range of solutions and technologies that may be available. RFI can be used in preparation of a formal business case.

**Request for tender (RFT)** is an invitation to parties to offer a service or product. It is generally more specific and highly prescribed. The parties should be able to tender specifically for the items or service provided.

**Request for proposal (RFP)** is an invitation to a party to offer a service or product where the specifications are less distinct than a tender requirement. This is used for offers when the desired product or service is not so clearly defined and the proposal is to explore or test the market, or a request for a solution to a problem from the market.

**Request for quotation (RFQ)** is a non-binding invitation to parties to quote a service or product. It is generally more specific and highly prescribed. The parties should be able to quote specifically for the items or service requested.

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**Note:** RFX is a generic term for RFI, RFP, RFQ, RFT.

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**GETS** is an abbreviation of the Government Electronic Tenders Service website ([www.gets.govt.nz](http://www.gets.govt.nz)) where all government RFX documents and invitations are placed.

A **non-government organisation (NGO)** is one that is independent or outside of government control (either central or local government). In relation to this policy, it means those organisations that deliver health services but are not government owned.

All values quoted in this policy are GST exclusive.

## Expectations

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### Fiscal Responsibility

The DHB is committed to ensuring that contracts entered into under its name represent value for money, present an assessed risk to the organisation, and are stored in a safe environment.

The DHB is also committed to ensuring that it is not exposed financially owing to expired contracts that have not been renegotiated.

**Non-compliance**

Failure to follow relevant policies and requirements for procurement practice may constitute a breach of the DHB's Code of Conduct and Integrity (District) and/or Disciplinary Policy (District) (55569).

**Probity**

There are five essential principles to promote probity. Staff must comply with these principles throughout all stages of the procurement and contracting process. The five principles are:

- Use of a competitive process
- Transparency of the process
- Identification and resolution of conflicts of interest
- Fairness and impartiality
- Security and confidentiality

The issue of probity in the sourcing and contracting process is the responsibility of all stakeholders involved in the process. The objectives of this process are to:

- Ensure conformity to process designed to achieve value for money.
- Provide accountability.
- Encourage commercial competition on the basis that all proposals will be assessed against the same criteria.
- Preserve public and supplier confidence in the process.
- Improve defensibility of decisions to potential legal challenge.

A conflict of interest form will be issued by the procurement project leader and must be completed for all participants of any RFx. Refer any conflicts or potential conflicts to the procurement project leader during any tendering process. Refer to the Conflict of Interest Policy (District) (27894).

In a tender situation, the conflict of interest form must be completed and any conflicts dealt with before evaluation criteria are discussed and before the opening of any tender documentation from suppliers.

Previous employees could be perceived as having preferential consideration for any selection process if they are a potential supplier.

This includes the ex-employee being the person responding to an invitation to tender or may be an ex-employee who is now the local company representative. To offset any perception of preferential treatment:

- When the ex-employee is the company representative for the DHB then extra care must be taken in the development of the specifications and criteria. It is preferable that there is a member of the evaluation team that has not directly worked with the representative.
- If the ex-employee is wishing to contract directly with the DHB, approval must be sought from the group manager, Supply Chain, with evidence of the evaluation process and the members of the team and relationship (including working relationship) with the ex-employee. All attempts should be made to ensure none of the personnel on an evaluating panel has ever directly worked with the employee in order to ensure impartiality.

**Intellectual Property**

The provision of information to Southern DHB for the evaluation of proposals and for the negotiation of any resulting contract will not be used improperly by the organisation as doing so would be in breach of any intellectual property rights held by those supplying the information.

**Legal Considerations**

DHBs can be subject to judicial review proceedings, Ombudsman investigations and other types of review or legal action. It is important that procurement practices comply with relevant statutory and legal requirements at all times. Failure to adhere to appropriate requirements can have serious financial and reputable consequences for the DHB.

DHBs can only act in accordance with their statutory powers under the New Zealand Public Health and Disability Act 2000 and other enabling legislation. To this end, Southern DHB representatives can only exercise financial delegations and other functions in accordance with the statutory powers and for the purpose of achieving the DHB's goals and policy.

**Contractual Term**

Each procurement process and resulting contract can vary in its terms depending on the nature of the item, the competitive environment, and complexity of the procurement plan.

The DHB will generally contract for periods of two to three years, however, Procurement can advise on the appropriate strategy to ensure best value for money. Contracts may be for longer periods to encourage strong supplier relationships and where the cost of change is high, or significant investment or innovation is expected from the supplier or NGO.

Any contractual term above three years (including any right-of-renewals) requires specific board approval regardless of the value of the contract. This will exclude all national contracts as per the Delegation of Authority Policy (District) (21584).

Purchasers should take care when dealing with NGOs and whether they have the legal capacity to contract. This should not exclude them from activities but may require further information in understanding the DHB's liability. The legal form of the NGO may be relevant, e.g. trusts.

Rollover of a contract is when a contract has expired and the practice in the DHB has continued as if it were still in force, or an expired contract is copied and re-signed without an appropriate process. Rollover of contracts is not allowed. If required, a new contract based on an expiring contract, can be renegotiated with new contract expiry dates.

This is different from a contract that has allowed for a further term based on variables, such as performance. For example, a contract that has a two-year plus extension of two years if the expected performance has been achieved. For the purpose of delegation, this is a four-year contract term. This is often described as 'a right of renewal clause'.

## **Consultation**

DHBs have specific legal responsibilities to undertake consultation in relation to a number of activities, including proposed significant changes to the range and type of services offered, access to those services, policies, outputs and funding.

There are also general obligations under the New Zealand Public Health and Disability Act 2000 which may mean that consultation is required in other situations.

DHBs also have consultation requirements with various union groups where service changes may be planned.

DHBs also have responsibilities under the Employment Relations Act 2000 with respect to vulnerable employees where tenders are necessary for those services.

Prior to undertaking any procurement process, careful consideration must be given to the nature and extent of any consultation that may be required.

Expert advice should be sought and related DHB consultation or community engagement policy must be closely followed. This is particularly relevant to planning and funding activities and may include notification to current or potential suppliers in the market.

**Due Diligence**

From time to time (e.g. with new market entrants), it will be necessary to conduct a formal process by which an assessment is carried out on a project or entity. This usually refers to a commercial appraisal of a variety of circumstances in order to support decision making such as entering into a contract.

Any due diligence process should be agreed with the service concerned and clearly documented to ensure that clinical and service needs and requirements are adequately addressed.

**Contestable Process**

As outlined in the Procurement and Purchasing Policy (District) (11400), a contestable process is required for all goods and services where total external annual costs exceed \$10,000 (excluding GST) and for health services contracting where the annual contract value exceeds \$300,000 or \$100,000 where new funding is provided.

**Departure from Contestable Process**

Southern DHB aims to treat all potential suppliers fairly and all reasonable steps will be taken, relevant to circumstances, to ensure that an appropriate provider selection process is adopted, given the information available about the goods and/or services required. However, at times, the need to enter into a tender process is not required.

These situations include:

**Recent tender process:** If the equivalent goods or services have gone through a contestable process in the last six months, the same supplier can be selected as was selected in the prior process.

**Emergency procurement:** For clinical or employee safety reasons, to address other risk issues urgently or if the DHB is likely to suffer financially because of the emergency situation. Note that poor planning is not in itself a sufficient reason for not conducting a contestable process if it would otherwise be required.

**Closed RFP:** Selected suppliers are invited to submit proposals for goods or services. (Frequently the result of a RFI process.) If not preceded by a contestable RFI process then there must be very good reasons for limiting the number of potential respondents to an RFP/Q.

**Monopolistic market:** Only one supplier available in the market place and there is adequate evidence to demonstrate that this is the case.

**Optimising aggregation of volumes:** This may be done as part of a procurement process and may also be added to or subtracted from a contract during a term contract, where additional products or services are identified and are associated logically with an existing supplier or contract.

This also applies to items that are purchased from a preferred supplier not under contract, bundled to become part of an existing contract. In order to maximise the benefits of a contract it may be appropriate to disaggregate services (unbundled) and/or aggregate volumes (bundled).

**Upgrade, replacement parts, or continuing services of specialised products:** This is where there are additional deliveries by the original supplier, which are intended either as replacement parts, extensions or continuing services for, or upgrades of, existing equipment, software, services or installations where a change of supplier would compel the Procurement Department to procure goods or services not meeting requirements of interchangeability with existing equipment, software, services or installations, or conditions under original supplier warranties (Information Systems upgrades being one example).

**Relational purchases:** This is likely only to relate to health service contracting via the Finance and Funding Department and to the purchase of 'outputs' rather than the traditional 'input' procurement.

There is an expectation that the DHB will use a collaborative approach that acknowledges its relationship with NGOs. However there is a tension between the ideal of collaborative partnership and the need for accountability of the stewardship of public resources.

Even in a collaborative relationship, it is important to acknowledge the accountability of the public entity for flow through to the NGO, and for that to be reflected in the contractual relationship. Refer to "types of funding arrangements and relationships with NGOs" in the Office of the Auditor General guidelines Government Procurement in New Zealand - Policy Guide for Purchasers.

A relational approach to contracts may mean it is not appropriate to test the market

There may be policy goals that support a relational approach to support a NGO or to build strategic relationships or build capacity or capability in some part of the wider health sector.

Examples of this are social support services, where the funding arrangement may need to provide stability for end users over many years, e.g: residential care service, or an innovative or fledgling service that is aligned to the DHB's strategic goals and may need support.

A request to depart from a contestable process for relational reasons must address the following questions:

- Will members of the public be harmed or disadvantaged by a change of supplier?
- Would a change of supplier disrupt a larger strategy?
- Is there any reason that another supplier could not provide the same services as the current supplier?
- Are there specific reasons that the DHB would wish to support a specific supplier to meet the organisation's wider strategy?

### Strategic Decisions

Southern DHB has a strategy of standardisation and alignment. In some instances the DHB may choose to align a past decision throughout other sites of the DHB. This may be acceptable if it is not practical to seek a new decision through RFX.

An example is software purchased and installed at one DHB site that is purchased and extended to users at another DHB site. This does not include consumables where there is no commitment at any particular site.

If a contestable procurement process is not undertaken for any reason (e.g. monopolistic market), every endeavour must be undertaken to ensure 'open book pricing' is achieved and there should be evidence that steps have been taken to secure the best value for money possible in the circumstances (e.g. negotiations over terms and conditions of the contract). The purpose of this is to ensure confidence that value for money is obtained and that the process is as transparent as possible.

Where variation to the standard contestable process is necessary, specific sign-off must be obtained from the group manager, Supply Chain. If the variation is for purchase of health services by Planning and Funding, specific sign-off must be obtained by the general manager (GM), Finance & Funding.



A register containing the rationale / justification of the decision will be kept by the Procurement Department for this purpose. A similar but separate register will be kept by Planning and Funding.

The information is retained as part of the contract brief documentation within the contract approval process as detailed in the Planning & Funding Standard Operating Procedures Manual.

## **Procurement Methods (Processes)**

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<b>Request for Information/ Expression of Interest/ Registration of Interest</b>	<p>Refer to the Procurement Sourcing Process - Flowchart (District) (46545) required for contestable processes for goods (including capital asset items) and services over \$10,000 per annum (excluding GST).</p> <p>If it is not clear which products or services are available in the market a request for information (RFI), or an expression of interest (EOI) can be released prior to conducting a RFP/Q/T. A EOI may not lead to a contractual arrangement, but is potentially the first step in a procurement process that can be followed by an RFP/Q/T to potential suppliers who have met the criteria and been pre-selected from the EOI process.</p> <p>A RFI is more often used to develop an understanding towards a resolution in the tender process. It can be used as part of a multi-stage tender process, but is generally applied when understanding of an issue requires more investigation before decisions are made. It should not be used as a selection process for suppliers.</p> <p>This process will be supported by the Procurement Department team to which requests should be referred.</p>
<b>Request for Quotation Required</b>	<p>All purchases of goods and services over \$10,000 but less than \$100,000 are required to undergo a contestable process. Procurement Department staff will be able to advise on the appropriate procurement strategy Three quotations are required, where possible.</p> <p>This process will be supported by the Procurement Department team. The majority of RFQs are for capital items; this is to be initiated through the online capital process. If it is not for a capital item, applicants should contact the Procurement Department for assistance.</p>

**Request for Proposal/  
Tender Required**

Where expenditure is greater than \$100,000 (\$300,000 for health services contracting or \$100,000 for new health services funding), a full sourcing process is required, including publication of the details through the Government Electronic Tenders Service (GETS). All questions and answers given to suppliers must be made public in a timely manner on that website throughout the period in which the tender is open.

Lack of experience or capability in tendering must be considered in the tender process for NGOs. They must not be disadvantaged by this.

Late applications for tender are not accepted unless authorised specifically by the group manager, Supply Chain or the Planning and Funding GM.

Applicants should refer requests to the Procurement Department team.

**Risk Assessment  
During Procurement  
Process**

A risk register of all procurement projects over \$100,000 will be kept.

Generally risk identification of issues requires an assessment of the likelihood and impact of the particular risk along with risk mitigation strategies.

Where suppliers change, particularly for services contracts, service continuity risk is a key requirement that requires detailed risk mitigation planning. The operational departments are primarily responsible for ensuring this is managed during the period of change.

**Negotiation Guidelines**

These guidelines are related to formal contractual negotiations for any non-employee related contracts. All negotiations should involve two DHB staff members, with at least one of them skilled in negotiation. The level of skill required should be appropriate for the value, risk and complexity of the negotiation. Two people are required to ensure transparency in the negotiation, and support and note taking is to be provided by the second staff member.

The negotiation objective is:

- To test the understanding and assumptions of participants that may have been made when evaluating the proposals or services/goods offered.
- Achieve a reduction in total cost, if appropriate.

In negotiations the DHB is to:

- Ensure it does not use its negotiating power in any way considered to be unfair.
- Ensure it is not solely focused on reducing bottom line, that sustainability and quality are also considered.

At each negotiating meeting, both parties are to be made aware of the:

- Authority the negotiating party has to make any agreements.

Each negotiation requires documentation:

- A negotiation plan which includes the party's most desired outcome and the outcome that is unacceptable (in order to understand the negotiating parameters).
- Minutes of the negotiation meeting. This should include all agreements that are made during the meeting and names of the participants involved.

**Procurement Record-keeping for RFX Processes**

Full and accurate records are to be kept of all aspects of the procurement process, in accordance with the relevant legislation and this policy.

Procurement will keep the following records:

- Tender document placed on GETS
- Evaluation template and decision
- Any tender responses
- All questions and their answers placed on GETS, and communication with suppliers during the tender process
- Signed interest declarations

Table 1.	Standard forms to be completed for RFX processes (where applicable)	
	1.	RFX procedures checklist
	2.	Request for information (RFI)
	3.	Request for expressions of interest (EOI)
	4.	Request for quotation (RFQ)
	5.	Request for tender (RFT)
	6.	Request for proposal (RFP)
	7.	Central Tenders Register
	8.	Central Register for approved departures from standard procurement practice
	9.	Response to questions from prospective providers (RFP/T/I)
	10.	Notification of additional information for prospective providers (RFP/T/I)
	11.	Notification of time frame extension for competitive bid (RFP/T/I)
	12.	Notification of successful shortlisting (RFI)
	13.	Notification of successful shortlisting (RFP/T)

	14.	Notification of unsuccessful bid (RFP/T)
	15.	Confirmation of invitation to present (RFP/T)
	16.	Conflict of interest declaration (RFP/T)
	17.	Evaluation pack for the evaluation panel
	18.	Notification of re-advertisement, cancellation or additional RFP/T or EOI
	19.	Evaluation of responses template (RFP/T/I)
	20	Standard Contractual Form
		These templates are held at the Procurement Department

### Tendering Workflow (RFP/Q/T)

#### Responsibilities

Many RFX will be initiated by the Procurement Department team, whether by capital approval process, contract renewal requirements or other opportunities identified by Procurement or the service

Managers are responsible for contacting Procurement for contract renewal. Contractual information is held in a centralised electronic contracts database that is available from the Intranet. Refer to the Contract Approval Policy (District) (45386).

Planning and Funding is responsible for initiating the contract renewal process for its service contracts. Planning and Funding staff should contact Procurement when it is decided that the service will follow a contestable process for contracts over \$300,000 or \$100,000 for new funding allocations. Where this is not the case, then the contract brief must be signed with appropriate rationale/justification for departure from this policy.

In other instances, Procurement should be contacted for advice and initiation of a RFX by service managers or budget holders.

A project initiation document should be completed for all RFP/TPs. This document should include a short explanation covering need for purchase. The document should be clear on scope, project participants, and those with the authority to make decisions. Anticipated costs and time frames should be estimated. Risks and methods of communication detailed. The document should be sent to all project participants with approval from the project sponsor.

Evaluation criteria will be decided before the writing of the tender document, which must include those expectations in the specifications.

If the final negotiations result in a significantly different specification, consideration should be given to allowing re-bidding by the other bidders for the contract. Refer to the Procurement Sourcing Flowchart (District) (46545).

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**Note:** Each party responsible should expedite workflow duties in as timely a manner as possible to prevent any undue delay in sourcing supplies and getting contracts approved.

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In many cases of complex procurement, the end users/departments will need to assign a project leader for the working party of stakeholders to manage the overall process and operational aspects of the item being procured.

Procurement Department is to support the procurement process and ensure adherence to this policy, as well as providing expertise throughout the procurement process and contract negotiations.

The procurement manager will hold overall responsibility for the adherence to this policy for the DHB.

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**Associated Documents:**

- Procurement Sourcing Flowchart (District) Flowchart (District) (46545)
- Capital Expenditure Policy (District) (14479)
- Contracts Approval Policy (District) (45386)
- Code of Conduct and Integrity (District) (18679)
- Delegation of Authority Policy (District) (21584)
- Internal Audit Policy (District) (44704)
- Protected Disclosures / Whistle-blowing Policy (District) (19708)
- Conflict of Interest Policy (27894)
- Sensitive Expenditure Policy (District) (48567)
- Clinical Product and Device Management Policy (16111)

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**References:**

- Office of the Auditor General. 2008. *Government Procurement in New Zealand - Policy Guide for Purchasers*. <http://www.oag.govt.nz/2008/procurement-guide>
- Ministry for Economic Development. 2006. *Mandatory Rules for Procurement by Departments*. <http://www.med.govt.nz/upload/35084/rules.pdf>
- Office of the Auditor General. 2007. *Managing Conflicts Of Interest: Guidance for Public Sector Entities*. <http://www.oag.govt.nz/2007/conflicts-public-entities/appendix1.htm>
- Government Electronic Tenders Service - [www.gets.govt.nz](http://www.gets.govt.nz)

*This document is in a policy template and contains a mixture of policy, procedure and chart information.*