

QLDC Council
25 February 2021**Report for Agenda Item | Rīpoata moto e Rāraki take : 1****Department: Property & Infrastructure****Title | Taitara Interim Changes to the Procurement Guidelines****PURPOSE OF THE REPORT | TE TAKE MŌ TE PŪRONGO**

The purpose of this report is to highlight a number of issues with the Procurement Guidelines (Guidelines) and to propose an interim approach to allow time to undertake a full review of the Procurement Policy (Policy) and Guidelines.

RECOMMENDATION | NGĀ TŪTOHUNGA

That Council:

1. **Note** the contents of this report and the issues faced with the existing Procurement Guidelines;
2. **Note** that the proposed changes are interim only and not intended to replace the full review of the Policy or Guidelines;
3. **Confirm** that the operation and use of a number of activities, existing procurement methods and contract types are compliant with the Guidelines;
4. **Approve** the addition of Direct Appointment / Sole Source Negotiation as accepted procurement method;
5. **Approve** amendments to the Guidelines:
 - a. Financial Threshold table to explicitly provide for Direct Appointment / Sole Source Negotiation up to \$10,000; and
 - b. Include an addendum of classes of activities, existing procurement methods and contract types that are compliant with the Guidelines.

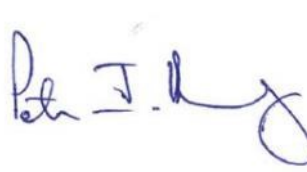
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23/02/2021

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CONTEXT | HOROPAKI

- 1 At the 2 July 2020 meeting of the Audit, Finance & Risk Committee (AFRC) staff signalled that a review of the Policy and Guidelines was needed and provided the framework for a full review and timing of key activities (Review Pathway).
- 2 Unfortunately the onset of Covid-19, the subsequent infrastructure stimulus and setting up of the Whakatipu Transport Programme Alliance have delayed this review.
- 3 In parallel, the Mayor’s recent report on procurement practice, and specifically ZQN.7, refocused attention on the Policy and the Guidelines and the common misconception by staff that direct appointing lower value contracts without a competitive process or documented and approved departure, was acceptable.
- 4 At a Council Workshop on 15 February 2021 staff:
 - a. Set out areas of the Policy and Guidelines that were contradictory
 - b. Proposed an updated education of staff in the operation of the Guidelines
 - c. Proposed that staff take a report to the March meeting of the AFRC seeking endorsement and recommendation, and subsequently seek approval by the full Council, for an “Interim review of the guidelines (especially direct sourcing) and align with the Policy”.
- 5 On further investigation staff believe that it is not practicable to operate the organisation under the current Guidelines and that interim changes are needed in advance of the AFRC March meeting.
- 6 For clarity, it is still intended to provide AFRC with an updated the Review Pathway.

ANALYSIS AND ADVICE | TATĀRITANGA ME NGĀ TOHUTOHU

Existing Activities Deemed Compliant with the Guidelines

- 7 Literal interpretation of the Guidelines may be problematic for a number of areas of general operations.
- 8 Arguably caught by the literal interpretation of the Guidelines are payments for non-controllable spend, such statutory payments (eg IRD, ACC, MBIE, ORC, etc) and grants (eg Destination Queenstown, Lake Wanaka Tourism, Wilding Conifer Control, etc). For clarity these payments should not be captured by the Guidelines as they do not represent a situation where Council undertakes a procurement per se.
- 9 There are also activities, existing procurement methods and contract types that may be prevented from operating as intended due to the wording within the Guidelines. The majority of these activities and methods have been through robust, open market, procurement processes (either by QLDC or Central Government).

10 Hence, for the continued, efficient operation of the organisation, the following examples are deemed to be compliant with Guidelines, i.e. the Guidelines are not intended to override or preclude the use of:

- a. All of Government contracts
- b. Transport activity subsidised by NZTA (i.e. the NZTA Procurement Manual applies)
- c. Professional development, training, conferences and professional memberships where there is no practical market
- d. Currently operating term / service contracts that consider both programmed and reactive activities, by way of example these would cover:
 - i. Enterprise software and core operating/communication systems
 - ii. Regulatory (Harbourmaster, Security)
 - iii. Facilities (cleaning services, cleaning consumables, property services)
 - iv. High Profile Turf
 - v. Tracks & Trails
 - vi. Open Spaces
 - vii. Roading Network
 - viii. Water & Wastewater Network Maintenance; and
 - ix. Solid Waste.
- e. P-Cards (these are managed through separate policies)
- f. Donations and Koha
- g. QLDC Panels (where the commencement of the procurement was an open-market approach and where secondary procurement processes have been agreed with Panel Members)
- h. Appointment of senior legal counsel for complex matters, and expert witnesses who are required to give evidence in response to claims brought against the Council.

11 An addendum will be added to the interim Guidelines to record the above.

Amendment to Guidelines to provide for Direct Appointment or Sole Source Negotiation

12 As noted in the 15 February Council Workshop on procurement practice, there is a common misconception by staff that direct appointing lower value contracts without a competitive process is acceptable.

- 13 Direct appointing or undertaking a sole source negotiation is not on its own an approved procurement method. An Approved Procurement Plan would first be needed.
- 14 To maintain an efficient and effective organisation some degree of direct appointment or sole source negotiations (for goods, works and services), without first completing an Approved Procurement Plan, is considered sound business practice.
- 15 Explicitly enabling direct appointment or sole source negotiation would also provide greater alignment with the Policy’s principles that seek to align the extent and nature procurement with proportionality of value and risk.
- 16 In the 2019/20 financial year the following purchase orders (PO’s) were issued:

2019/20 Purchase Order Summary			
Spend Bracket	PO's issued	To Suppliers	For \$
Less than \$50k	3411	1036	\$14m
Less than \$25k	3213	1002	\$9.4m
Less than \$10k	2950	939	\$5.3m

- 17 At the “Less than \$10k” line above (and putting aside lower levels of activity in December and January) this equates to some 300 PO’s a month. This equates to approximately 4% of our procurement spend.
- 18 With the strict interpretation of the existing Guidelines, the majority of those 300 PO’s each month would first require three quotes and/or the completion by staff of an Approved Procurement Plan. This would then require a subsequent review and approval by General Managers or the Chief Executive.
- 19 The additional effort required may be tolerable for a very short period of time, but would soon create inefficiency, a slowing pace of work and frustration, to the point stifling an already extremely busy organisation.
- 20 To allow the organisation to keep operating at a sustainable level updating the Guidelines’ “Financial Thresholds” table to allow a minimum threshold, greater than \$0, is imperative.
- 21 An interim and temporary change to the Guidelines to this effect, pending (and without prejudice to) a full review of the Policy and Guidelines, needs to happen quickly and be communicated clearly to all staff.
- 22 An updated Financial Thresholds table would need to make two key changes:
 - a. Adding Direct Appointment / Sole Source Negotiation to the Procurement Methods; and
 - b. Creating a new spend threshold and adjusting the following threshold.

23 A revised Threshold Table, highlighting proposed changes, could look as follows:

Estimated Total Contract Value		Up to \$10,000	\$10,001 to \$50,000	\$50,001 to \$100,000	Greater than \$100,001
Procurement methods	Direct Appointment / Sole Source Negotiation	✓	X	X	X
	Preferred Supplier or 3 Quotes	✓	✓	X	X
	Restricted Tender	✓	✓	✓	X
	Open Tender	✓	✓	✓	✓
	Procurement Departure Request (Approved Procurement Plan)	✓	✓	✓	✓

24 **Option 1 – Do Nothing, i.e. make no changes to the Guidelines**

Advantages:

25 Would maintain the literal interpretation of the Guidelines.

Disadvantages:

26 An increase in administration and compliance cost for QLDC.

27 An increase in administration and compliance cost for suppliers.

28 Would stifle the operating rhythm of QLDC.

29 **Option 2 – undertake interim updates to the Guidelines by adding Direct Appointment / Sole Source Negotiation for the procurement of goods, works or services, up to \$10,000, as an approved procurement method and corresponding amendments to the Guideline’s Financial Threshold table.**

Advantages:

30 Having the ability to direct appoint suppliers is an efficient and effective way to maintain QLDC’s operating rhythm.

31 Provides a lower administrative burden and compliance cost for QLDC.

32 Provides a lower administrative burden and compliance cost for suppliers.

33 An amended Financial Threshold table would provide greater clarity for staff.

34 Greater clarity from the Guidelines would enable better compliance reporting and accountability.

Disadvantages:

35 The \$10,000 limit may be too low.

- 36 For clarity, option 2 highlights interim updates to the Guidelines and still anticipates a full review of the Policy and Guidelines - including exploring making contracts awarded a matter of public record and addressing contract splitting.
- 37 This report recommends **Option 2** for addressing the matter because of the greater alignment with sound business practice and the lower administrative burden for QLDC and suppliers.

CONSULTATION PROCESS | HĀTEPE MATAPAKI:

> SIGNIFICANCE AND ENGAGEMENT | TE WHAKAMAHI I KĀ WHAKAARO HIRAKA

- 38 This matter is of low significance, as determined by reference to the Council's Significance and Engagement Policy because the change will be operational in nature and will not reduce a Level of Service.
- 39 The persons who are affected by or interested in this matter are:
- Elected members
 - Suppliers – “local”, existing, panel members and new suppliers
 - Staff
 - Queenstown Lakes District community.

> MĀORI CONSULTATION | IWI RŪNANGA

- 40 The Council has not undertaken any specific iwi consultation.

RISK AND MITIGATIONS | NGĀ RARU TŪPONO ME NGĀ WHAKAMAURUTANGA

- 41 This matter relates to the Regulatory/Legal/Compliance risk category. It is associated with RISK00022 “Ineffective procurement process” within the QLDC Risk Register. This risk has been assessed as having a moderate inherent risk rating.
- 42 The approval of the recommended option will support the Council by allowing for the implementation of additional controls for this risk. This shall be achieved by providing fit for purpose controls, relevant to financial delegations and the associated risk.

FINANCIAL IMPLICATIONS | NGĀ RITENGA Ā-PŪTEA

- 43 Both options will have an impact on staff time and efficiency as they are both more restrictive than the status quo (acknowledging that the status quo is non-compliant with a strict interpretation of the guidelines).
- 44 Option 1 will have a significant time and cost impact on our ability to maintain the operating rhythm of the organisation.
- 45 There are no capital expenditure requirements.

COUNCIL EFFECTS AND VIEWS | NGĀ WHAKAAWEAWE ME NGĀ TIROHANGA A TE KAUNIHERA

46 The following Council policies, strategies and bylaws were considered:

- Procurement Policy
- Procurement Guidelines
- P-Card Policy
- Sensitive Expenditure Policy

47 The recommended option is consistent with the principles set out in the named policy/policies.

LOCAL GOVERNMENT ACT 2002 PURPOSE PROVISIONS | TE WHAKATURETURE 2002 O TE KĀWANATAKA Ā-KĀIKA

48 The recommended option:

- Will help meet LGA compliance to undertake commercial transactions in accordance with sound business practices;
- Will help meet the current and future needs of communities for timely, good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses by enabling procurement controls commensurate with levels of financial delegation and risk;
- Can be implemented through current funding under the Ten Year Plan and Annual Plan;
- Is consistent with the Council's plans and policies; and
- Would not alter significantly the intended level of service provision for any significant activity undertaken by or on behalf of the Council, or transfer the ownership or control of a strategic asset to or from the Council.