

20 January 2021

Official Information Request 8140007847
(Please quote this in any correspondence)

Dear 

Local Government Official Information and Meetings Act 1987 (LGOIMA)

Re: Contracts not tendered in 2020

I refer to your email, which we received on 7 December 2020 requesting information about contracts not tendered in 2020.

The specific details of your request and our response is below.

Request A:

- 1. The nominal amount (exclusive GST) contained in your Council's procurement policy at which point a competitive and open tender is required by default.**
- 2. The reasons listed in your procurement policy for exceptions and any process it lays out.**
- 3. The number of contracts awarded in the 2020 calendar year over that amount but were not tendered (i.e. the number of exceptions).**
- 4. For each of those exceptions:**
 - a. a description of the contract (services / products)**
 - b. the vendor**
 - c. the total value and timeframe of the contract**
 - d. any conflicts of interest disclosed and recorded as part of the decision making process**
 - e. the reasons the contract was not tendered**
 - f. the decision maker**
 - g. all advice provided to the decision maker in relation to the contract as it relates to the decision not to tender**
 - h. whether elected officials were made aware of the exception. If so, precisely how and when? Please provide us with the relevant communication (such as the relevant email or council report).**

Request B:

We also request a copy (PDF or URL) of the Council's procurement policy.

Response

Auckland Council has worked hard to mitigate the financial impact of Covid19 on Aucklanders. At the onset of the first lock-down period, we implemented a range of heightened controls on expenditure and procurement. These included:

- Introducing additional review steps by commercial managers when awarding contracts
- Increasing PO compliance monitoring with focus on identifying and preventing unnecessary non-urgent spend
- Placing non-urgent in-progress procurements on hold
- Negotiating discounted rates with existing contractors
- Early termination of temporary staff engagements (contingent workers)

1. The nominal amount (exclusive GST) contained in your Council's procurement policy at which point a competitive and open tender is required by default.

Please refer to the content of the Auckland Council Group Procurement Policy (see response to Request B below). Per section 4 of the policy:

"The way we procure will vary depending on the value, complexity and risks involved. The approach we apply will be tailored to best suit the individual procurement activity, in alignment with Auckland Council Procurement guidelines."

Auckland Council has chosen to endorse a flexible approach to managing individual procurements, with the required sourcing approach being determined based on an assessment of value, risk, complexity, category strategy, and market intelligence on a case-by-case basis.

The Auckland Council Procurement Guidelines referred to in the Policy exist as information on council's internal intranet site for staff involved with purchasing and procurement. The attachment below contains extracts of key information from these guidelines. As this information resides across multiple internal intranet pages and interactive web-elements, original formatting and internal links to documents have been removed and replaced with explanatory text and attachments. Please see **Attachment 1***.

It should be noted that we are drawing a distinction between competitive tender vs competitive and open tender. We do not maintain, either in our Auckland Council Group Procurement Policy or other internal procurement guidance documentation a nominal threshold amount where a competitive and *open* tender is required by default.

Instead, we have two main processes for awarding contracts dependent on Risk, Value and the other factors mentioned above:

- Our Low-Value Low-Risk (LVLR) sourcing approach can be used for direct-award of low-risk contracts with award value of up to \$300,000 NZD. Contracts meeting the all the criteria for the LVLR process can be awarded using a simplified contract template in our contract management system. These contracts do not require a Procurement Plan to be completed before contract award, but do include a Supplier Recommendation Report with rationale given for the procurement approach. Please refer to **Attachment 2*** which outlines criteria for using this approach. Please note that the Risk Committee of RFA have accepted the same policy as council but have slightly different thresholds under item 1.

* Attachment 1 and 2 have not been published as they are internal guidance documents under review.

- Sourcing activity/contracts identified as a Medium or High procurement risk, or with an expected award value of over \$300,000 NZD should go through our full procurement process which includes a procurement planning phase requiring preparation and approval of a Procurement Plan which outlines the proposed Procurement approach and methodology. Procurement Plans are approved by a Commercial Manager (who has oversight of budget commitments) and the Delegated Financial Approver (budget holder with requisite financial authority) and both Procurement and Probity may also be required to review, depending on value. There is no requirement for all sourcing activity using our full procurement process to use a competitive process, but the intended process must be justified in the Procurement Plan, and when we do conduct competitive sourcing activity it should be using the full procurement process (requiring a procurement plan).

In-order-to ensure value and maintain efficiency, many of our competitive tenders are conducted as *invited* tenders to existing procurement panel members, or other identified suppliers with proven track-records. To ensure we are not locking suppliers out of the market we actively work with many of our larger contractors to help build the capability of new or smaller suppliers as subcontractors. In cases where we require additional market-intelligence to identify suppliers with appropriate products, capability and resources, we may run an open and competitive Request for Information (RFI) process, followed by an invited Request for Proposal (RPF) issued as appropriate to suppliers who participated in the RFI.

2. The reasons listed in your procurement policy for exceptions and any process it lays out.

Section 7 – ‘Policy exemptions’ of our AC Group Procurement Policy states:

The Auckland Council Group Procurement Policy states:

“On occasion an exemption to this policy may be required to align with third party agreements and regulations.”

However, we always make decisions based on Our Charter principles.

The Office of the Auditor General’s Procurement Guidance for Public Entities include the following guidance on Direct Award:

“4.10 We expect that, for higher risk and higher value procurement, a public entity will normally use a competitive process (for example, a quote or tender). However, there are circumstances where a public entity will be justified in procuring from a selected supplier. Examples include where:

- *the goods or services require specialised skills or are very complex and there is a limited number of qualified suppliers;*
- *the required goods or services are available from only one source;*
- *only one supplier has the capacity to deliver at the time required, and this can be adequately attested;*
- *standardisation or compatibility with existing equipment or services is necessary, and can be achieved through only one supplier.*

4.11 We expect selective procurement decisions to be supported by a properly developed business case and market research to reveal those suppliers that have the appropriate level of skill to provide the goods or services.”

As explained in our response to Question 1, our full procurement process (required for medium and high-risk procurements and procurements over \$300,000) includes a procurement planning stage where justification for the proposed sourcing approach is required.

The Policy also sets an expectation that all staff to abide by the principles of our other relevant internal policies (collectively known as Our Charter), which includes specific guidance on Spending Money (see **Attachment 3**) and Sensitive Expenditure (see **Attachment 4**) .

3. The number of contracts awarded in the 2020 calendar year over that amount but were not tendered (i.e. the number of exceptions).

We do not have a nominal threshold amount set in the Auckland Council Group Procurement Policy (or elsewhere in process documentation) that determines when an open and competitive tender process is required. As such we have not identified any exceptions based on the specified criteria. We are therefore unable to provide a response to your further questions in accordance with section 17 (g) of the LGOIMA, that that the information requested is not held by Auckland Council.

If you have further related questions after reviewing the Auckland Council Group Procurement Policy and the information we have provided above, we encourage you to submit a further LGOIMA request.

Request B:

We also request a copy (PDF or URL) of the Council's procurement policy.

The Auckland Council Group Procurement Policy is available on our website, located here:

<https://www.aucklandcouncil.govt.nz/plans-projects-policies-reports-bylaws/our-policies/Pages/procurement-strategy-policy.aspx>

You can find additional documents relating to Procurement Strategy here

<https://www.aucklandcouncil.govt.nz/plans-projects-policies-reports-bylaws/our-policies/Pages/procurement-strategy-policy.aspx>

Decisions relating to the information that is being released to you were made by Jazz Singh, General Manager, Procurement.

You have the right to seek an investigation and review of this response by the Ombudsman. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602.

If you have any further queries, please contact me on 09 301 0101 quoting official information request number 8140007847.

Yours sincerely



Samantha Sinclair
Privacy & LGOIMA Business Partner
Democracy Services