

Controlled Document – Refer to NMIT website or intranet for latest version

PROCUREMENT POLICY

| | | | |
|----------------------|------------|--------------------------------|-----------------|
| Section | Finance | | |
| Approval Date | 18.10.2012 | Approved by | Council |
| Next Review | 15.09.2020 | Responsibility | Chief Executive |
| This review | 15.09.2016 | Key Evaluation Question | 6 |

PURPOSE

The purpose of this policy is to ensure a standard professional procurement practice for Nelson Marlborough Institute of Technology (NMIT).

NMIT's procurement must be undertaken in a professional, fair, transparent, efficient and effective manner.

This policy, (and the associated Procedures Manual which forms part of this policy), is designed to ensure that NMIT secures the required materials, supplies, equipment and services at the appropriate quality, in the most economically favourable terms and in a timely manner.

GUIDING PRINCIPLES

The following guiding principles must be applied when procuring materials, supplies, equipment and services of any value for the Institute:

- Public entities have a fundamental public law obligation to always act fairly and reasonably. The Institute therefore must be, and must be seen to be, impartial in its decision-making.
- Obtaining the best value for money over whole of life. This does not necessarily mean selecting the cheapest option. NMIT must ensure it achieves the right quality, quantity and price combination at the right place and time. "Whole of life" encompasses all the costs (private and social) that accrue to the initiation, provision, operation, maintenance, servicing and decommissioning, over the useful life of the service or product procured.
- The procurement process provides open and effective competition between potential suppliers where no preferred supplier exists.
- Procurement is undertaken in a manner that, *subject to the Institute's preferred supplier agreements*, ensures that all potential suppliers are treated fairly and reasonably and also given equal opportunity to submit quotes, proposals or tenders.
- The Institute will take into consideration improving business capability, including e-commerce capability when making procurement decisions.
- Procurement shall be conducted with honesty, integrity and transparency while protecting supplier's commercially sensitive information.
- Procurement decisions shall be recorded and accounted for in a manner that demonstrates compliance with good practice and with guidelines issued by government monitoring agencies.
- To be fair but demanding buyers, who will purchase from competitive domestic suppliers where they offer best value for money. The Institute will take into consideration the procurement of

environmentally friendly and energy-efficient goods and services. Environmental accreditation will be considered when evaluating suppliers' bids, and where possible the Institute will seek to adopt the recommendations approved by the Ministry for the Environment as part of the "Govt³" programme (for further information of "Govt³" refer to <http://www.mfe.govt.nz/issues/sustainable-industry/govt3/>).

This policy should also be seen in the wider state-sector initiatives on procurement (see <http://www.business.govt.nz/procurement>).

A refreshed statement of Principles of government procurement was approved by Cabinet in July 2012. It is expected that all state sector agencies will take the Principles into account when buying goods and services. The new statement of Principles is as follows.

-  1. Plan and manage for great results
-  2. Be fair to all suppliers
-  3. Get the right supplier
-  4. Get the best deal for everyone
-  5. Play by the rules

A more detailed one-page explanation of these principles can be found at the end of this policy document.

IN-SCOPE

This is an institute-wide policy and applies to all NMIT employees, contractors and consultants who purchase goods and/or services on behalf of NMIT. This policy applies to the engagement of consultants by the Institute.

This policy is based on the guidelines provided by the Controller and Auditor General's Good Practice Guide – *Procurement Guidance for Public Entities (June 2008)* available from:

<http://www.oag.govt.nz/2008/procurement-guide/docs/procurement-guide.pdf>

If there are any differences between the NMIT policy and the Auditor General's Guide, then the NMIT policy will apply.

OUT-OF-SCOPE

The hiring/engaging of teaching and non-teaching staff on fixed-term contracts is not covered by this policy and the associated Procurement Procedures Manual; engaging such staff is governed by the Institute's Human Resource Business Case process and procedures.

The purchase of Artwork for NMIT's Artwork Collection is not covered by this policy and the associated Procurement Procedures Manual, as the Chief Operating Officer holds an annual budget to purchase artworks for

the Institute (generally from graduating students within the Creative Industries programme area). The purchase of artworks shall be consistent with the authorised spending level and delegated authority held by the Chief Operating Officer.

OBJECTIVES

The main objectives of NMIT's procurement activity are:

- To conserve funds through the reduction of costs and improvement in quality of goods and services purchased
- To minimise the Total Cost of Ownership
- To reduce the overhead cost of buying
- To reduce the volume and streamline the flow of paperwork and electronic records
- To provide procurement systems that are as simple and as standardised throughout NMIT as possible so that goods and services may be secured for all users
- To bring the sources of supply of goods and services geographically close to their point of use, consistent with economical purchasing
- Inclusion of health and safety related requirements in specifications and decision-making rationale.

PROCUREMENT AND RELATED BUSINESS/BUDGET PROCESSES

All procurement should be consistent with NMIT standard operating processes, procedures and policies, for example:

- Annual Capital Expenditure (CAPEX) Plan
- Budgets and Forecasting
- Purchasing and Approval of Payments
- Responsibilities and Accountabilities of the Budget Manager
- Business case processes etc.

CAPEX (BUDGETED)

Capital expenditure plans are prepared annually as part of the budget setting cycle.

Under the *Delegations to the Chief Executive* the following authorities are in place:

- The Chief Executive has authority to commit Capital Expenditure for individual projects/contracts previously approved by Council and within the Capital Expenditure budget approved by Council and report to next Council meeting.
- Full Council approval must be sought for proposals on any individual items over \$250,000.
- Any individual item in the Council approved annual capital expenditure budget with a budgeted value of less than \$250,000 may be substituted for another item, provided that the substitution does not cause total capital expenditure to exceed the annual approved budget.

All capital expenditure requires the approval of the Chief Operating Officer who, under delegated authority from the Chief Executive, may approve capital expenditure for individual projects/contracts previously approved by Council.

Strategic CAPEX procurements (for more than \$500,000) require business cases which include Net Present Value (NPV) and Discounted Cashflow modelling to inform the decision-making process. Major CAPEX procurements (for more than \$20,000) require NPV business cases where the spend is not part of an ongoing replacement programme for a previously approved business case.

The Institute's overall CAPEX budget is submitted to the Institute's Council and requires Council approval.

CAPEX (UNBUDGETED)

Under the *Delegations to the Chief Executive* policy a maximum of \$750,000 of unbudgeted capital expenditure may be incurred in any financial year.

The following authority levels may be exercised for unbudgeted capital expenditure:

- The Chief Executive may approve up to \$250,000 unbudgeted capital expenditure in aggregate, where there is urgent need;
- The Chief Executive and Chair of Council, and in his/her absence, the Deputy Chair of Council may approve a further \$500,000 unbudgeted capital expenditure in aggregate, where there is urgent need.

Unbudgeted capital expenditure authorised by the Chief Executive, or the Chief Operating Officer, or the Chair of Council, or Deputy Chair of Council shall be reported at the next meeting of the Council.

OPEX

Operational expenditure budgets are prepared annually as part of the budget setting cycle, actual performance against budgets is monitored and reviewed on a monthly basis and operational budgets are reviewed in the annual budget forecasting phase each year. The Institute's overall budget is submitted to the Institute's Council and requires Council approval.

ETHICAL CONSIDERATIONS

All staff involved in procurement must also apply NMIT's rules on ethical behaviour including the following principles:

- No staff member, contractor or consultant working on behalf of NMIT is permitted to derive, directly or indirectly, any indirect or direct pecuniary interest or benefit from NMIT's purchases except for usual NMIT salary and/or payments by NMIT for services. The highest ethical standards must be observed at all times and staff should not put themselves in situations whereby it could be construed that their impartiality has been or may be compromised.
- Staff must act fairly and in the best interests of the Institute in conducting business with suppliers.
- No staff member, contractor or consultant working on behalf of NMIT is permitted to be biased or to appear to be biased because of some relationship with the entity submitting quotes, the Proposer or Tenderer.
- Staff involved in purchasing decisions that have outside interests which are in actual or apparent conflict with the interests of the Institute, or who have close family members with such interests, must withdraw from participation in purchasing decisions so affected and must declare their interests to the Chief Operating Officer.
- Business gifts, other than items of very small intrinsic value, such as business diaries or calendars, should not be accepted. Modest hospitality is an accepted part of business relationships; however, care should be taken to ensure that the acceptance of hospitality couldn't be deemed by others to have influenced a business decision. As a rule, the frequency and scale of hospitality accepted should not be significantly greater than the Institute would provide in return.
- Any attempt by a supplier to gain an unethical advantage, such as the offer of a bribe or inducement in any form should be reported to the Chief Operating Officer.

PRE-APPROVED VENDORS/PREFERRED SUPPLIERS

NMIT is party to a number of preferred supplier/pre-approved vendor agreements - such agreements mean that competitive quotes are not needed for recurring purchases or categories of purchases, e.g. stationery supplies, fuel, electricity, travel, vehicles etc.

NMIT is party to a number of agreements through the All-of-Government State Sector Procurement initiative led by the Economic Development Group within the Ministry of Business, Innovation and Employment (formerly the Ministry of Economic Development); these have been rigorously negotiated and represent best value and will be periodically renegotiated by the Ministry.

The Chief Executive, and the Chief Operating Officer under delegated authority, may sign contracts for the procurement of goods or services on NMIT's behalf with an agreed preferred suppliers or pre-approved vendors.

DEFINITIONS

| | |
|-------------------------------------|--|
| CAPEX | As determined by the Chief Operating Officer but generally includes costs or expenditure incurred by NMIT usually for the acquisition or creation of a physical item (asset) that will be used over a period of time, normally more than 12 months, for a value greater than \$500 and includes all computer purchases, and project-related computer software, classroom furniture and equipment, building/facility improvements and/or additions. |
| CONTRACT | A contract in this policy means a written signed agreement between NMIT and another party for the supply of goods and/or services on particular terms and conditions. |
| MAJOR PROCUREMENT DECISIONS | Major procurement decisions are those relating to procurement of: <ul style="list-style-type: none">• Capital Expenditure (CAPEX) with an estimated whole of life value of \$20,000 or more• Goods and Services (OPEX) that are estimated to have an annual value of \$20,000 or more during the period of one calendar year. |
| OPEX | As determined by the Chief Operating Officer but generally operating expenditure includes costs or expenditure on goods and services incurred by NMIT that are utilised in the day-to-day operations and are generally consumed immediately or within a short period of time. |
| PREFERRED SUPPLIER AGREEMENT | An agreement with a goods or service provider usually after a competitive bid process for the provision of repetitively purchased goods or services leveraging off NMIT's purchasing power and lowering the total cost of goods and services, including transaction-processing costs. This Preferred Supplier Agreement is usually, but not always, on a NMIT template Contract for Services. |
| PROCUREMENT | Procurement comprises the business processes associated with the purchasing of required materials, supplies, equipment and services, 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. |
| PROFESSIONAL SERVICES | Accounting, legal, valuation, architectural and any other services classified from time to time by the Chief Executive to be Professional Services. |
| TENDER | A tender is an offer made in writing in response to an invitation to tender (i.e. supply specified goods or to perform services as set out in the relevant Request for Tender). |

| | |
|--------------------------------|---|
| TOTAL COST OF OWNERSHIP | Total Cost of Ownership includes the purchase price of an asset plus the additional costs of operation, including health and safety related requirements. |
| WHOLE OF LIFE | <p>This encompasses all the costs, both private and social, that accrue to the initiation, provision, operation, maintenance, servicing and decommissioning, over the useful life of the service or goods procured.</p> <p>The primary difference between OPEX and CAPEX is that OPEX is used for the day-to-day running of an organization and CAPEX is used for the purchase of assets which have a relatively long life. Accordingly, there are different rules that apply to the treatment of OPEX and CAPEX, and how they are budgeted for, approved of and accounted for.</p> |

RESPONSIBILITIES

| | |
|--|---|
| NMIT Council | <p>The Council of NMIT is responsible for approving the Institute's overall budget and capital expenditure of over \$250,000.</p> <p>The Council Chair is responsible for approving unbudgeted capital expenditure of up to a further \$500,000 in conjunction with the Chief Executive.</p> |
| Chief Executive and Directorate | <p>The Chief Executive and Directorate have day-to-day responsibility for ensuring that procurement on behalf of the Institute is consistent with approved Institute policies, processes and procedures.</p> <p>The Chief Executive is responsible for approving unbudgeted capital expenditure of up to a further \$500,000 in conjunction with the Council Chair.</p> |
| Chief Operating Officer | All capital expenditure requires the approval of the Chief Operating Officer who, under delegated authority from the Chief Executive, may approve the Council approved budget. |
| Head of Department/Business Support Managers/Team Leaders | Responsible for procurement planning and abiding by this policy and associated policies, procedures and processes. |
| NMIT staff, contractors and consultants | Responsible for abiding by this policy and associated policies, procedures and processes. |

POLICY STATEMENTS GENERAL

- All procurement of goods and/or services at NMIT will comply with the requirements outlined in the Procurement Procedures and this Policy.
- All purchasing must comply with all relevant legislation, and NMIT specific policies and procedures (e.g. Credit Card policy, and Purchasing and Approval of Payments policy, etc.). See Appendix 1 for some legal requirements, and *References (Internal)* for relevant and related NMIT policies.
- All procurement estimated at being less than \$20,000 Total Cost of Ownership can be through existing Preferred Suppliers Agreements if such exist, or through obtaining a number of competitive quotes. Major procurements (as described in the Procurement Procedures Manual) require the approval of the Chief Executive or the Chief Operating Officer under delegated authority.

- Strategic procurements will be through a contestable tender or proposal process. A Business Case approved by the Chief Operating Officer, the Chief Executive and the Council Chair will be required before staff can proceed with the contestable process.
- In line with government policy, NMIT purchases will be guided by the following principles:
 - Provide the best value for money over total cost of ownership
 - Allow for open and effective competition
 - Provide fair opportunity for all eligible suppliers
 - Improve business capability, including e-commerce capability
 - Recognise New Zealand's international trade obligations and interests
 - Require sustainably produced goods and services wherever possible, having regard to economic, environmental, and social impacts over their life cycle
 - Be either characteristic of polytechnics or be appropriate for ITP (refer to Education Act 1989, Section 192 (2) (b) (i) and (ii)).
- NMIT Procurement Procedures, (as described in the Procurement Manual, which is attached to this Policy document), must be followed to ensure the procurement is conducted in a fair and transparent manner and to reduce the risk of fraud, bribery, corruption or impropriety. Staff discovering, or suspecting, instances of fraud, bribery or corruption are expected to report such matters for investigation and may utilise the Protected Disclosures Policy to do so; alternatively, they may inform their Director and/or the Police (if appropriate). Employing past employees as contractors or consultants involved in procurement can increase the risk potential of fraud and must be managed carefully by NMIT Directors.
- Procurement planning must be included as part of each Business Case approval process for major procurement decisions. The Business Case preparation should include an appropriate level of market research to provide an informed decision on the procurement process to be used. The scale and complexity of the Business Case should be proportionate to the risk and value of the procurement.
- Procurement must be managed in line with the NMIT Procurement Procedure. Accurate records will be created and maintained for the entire procurement procedure.

CONSULTANCY SERVICES

- Procurement of Consultancy Services will be referred to the Chief Executive.

PREFERRED SUPPLIER AGREEMENTS

- Procurements of goods or services purchased with regularity, through Preferred Suppliers or pre-approved vendors, for example: OfficeMax for stationery supplies; Orbit Travel for travel, accommodation and rental cars; Mobil for fuel supplies; Contact Energy for electricity supplies etc. do not require competitive quotes, such suppliers may be used as a matter of course. Staff should contact the office of the Chief Operating Officer if they are unsure if a preferred supplier exists for the category of goods or services required.
- The terms and conditions of existing preferred supplier agreements must be periodically tested against the market; this is expected to happen every 3 years at a minimum. The implementation of this policy will ensure NMIT achieves the best prices available for given levels of services and quality on an on-going basis. The process may range from obtaining competitive quotes to competitive tendering depending on the total cost of ownership of the products or services.

TRADE-INS

- As part of the negotiations for a purchase of replacement assets an existing asset excluding land may be offered as a trade-in subject to Section 192(4)(e) or Section 192(5) of the Education Act 1989.

LATE TENDER

- NMIT reserves the right to accept late tenders under exceptional circumstances.

OVERSEAS PURCHASES

- Overseas purchases are only to be made when price and quality are competitive and the goods or services are unavailable in New Zealand at those prices or quality. Risk factors need to be considered including foreign exchange fluctuations, legislative framework and after-sales servicing. Non Resident Contractors Withholding Tax may need to be deducted if an overseas contract provides services in New Zealand. Advice should be sought from the Chief Operating Officer before committing to an overseas purchase.

TRADE DISCOUNTS

- NMIT may enter into an agreement with a supplier under which it receives a trade discount or preferential pricing on Institute purchases. These agreements apply to Institute purchases only. Institute staff members are not entitled to, and must not request, the NMIT trade discount or preferential pricing when making personal purchases from the supplier.

STAFF DISCOUNTS

- A supplier may offer a separate discount or preferential prices to NMIT staff members on personal purchases. These personal purchases must be conducted directly between the supplier and the relevant staff member. They must not be made through the Institute's procurement processes. Suppliers will determine from the appropriate production of staff member's identification whether the discount or preferential pricing will apply.

RELEVANT LEGISLATION

- Building Act 2004
- Commerce Act 1986
- Consumer Guarantees Act 1993
- Crown Entities Act 2004
- Fair Trading Act 1986
- Health and Safety at Work Act 2015 and associated Regulations
- Local Governments Act 2002
- Official Information Act 1982
- Public Finance Act 1989
- Public Records Act 2005
- Sale of Goods Act 1908

REFERENCES (EXTERNAL)

- Controller and Auditor-General. (June, 2008). *Good practice guide: Procurement guidance for public entities*.
- Controller and Auditor-General. (February, 2007). *Controlling sensitive expenditure: Guidelines for public Entities*.
- Ministry of Economic Development. (August 2007). *Government procurement in New Zealand: Policy guide for purchasers*.
- Ministry of Economic Development. (March 2011). *Mastering procurement: A structured approach to strategic procurement*.

REFERENCES (INTERNAL) – NMIT POLICY DOCUMENTS

- Annual Capital Expenditure (CAPEX) Plan
- Budgets and Forecasting
- Credit Cards
- Delegations to the Chief Executive

- Fraud
- Procurement Procedure
- Protected Disclosure Policy
- Provision of Goods or Services
- Purchasing and Approval of Payments
- Responsibilities and Accountabilities of the Budget Manager
- Sustainability
- Travel Bookings, Accommodation, Allowances and Expenses

APPENDIX 1 – LEGAL ASPECTS

All NMIT staff involved in purchasing goods and services must be aware of and comply with the relevant legislative framework. This Appendix provides some brief guidance on areas of law which may impact on the purchasing function. Any situation which raises doubt should result in more specialised advice being sought. There are numerous other Acts of Parliament which apply to specific goods and/or services.

Building Act 2004

The Act is designed to improve building controls and building practices in the New Zealand building industry. It is about ensuring that buildings are designed and built right the first time. The maximum penalties are \$200,000 in addition \$20,000 per day for using an unsafe building or failing to comply with any notices issued under the Act.

Commerce Act 1986

Prohibits the restriction of competition and price fixing arrangements. This Act deals with abuse of a dominant position in a market, price fixing, and refusal to supply goods, with the Act's overall objective of ensuring an open and competitive market. Breaches can result in criminal penalties of up to \$500,000 for individuals and \$5,000,000 for corporate bodies.

Consumer Guarantees Act 1993

This Act sets up a set of rules relating to the quality of goods and services for those who meet the definition of a consumer. This will depend upon the nature of the goods or services being acquired. Suppliers cannot bypass the provisions of the Act when dealing with consumers unless the goods are being supplied to a business, then a clause must be written into the contract which excludes the Act. Attempting to unlawfully bypass the Act can lead to civil claims for damages. Also a false claim that the Act does not apply is a breach of the Fair Trading Act, with resulting criminal penalties under that Act.

Fair Trading Act 1986

Prohibits misleading or deceptive conduct and the making of false claims in respect to goods or services. Breaches can result in civil claims of unlimited amounts, and criminal penalties of up to \$200,000 for individuals or \$600,000 per offence for corporate bodies (this includes the Institute).

Health and Safety at Work Act 2015 and associated Regulations

These set out the health and safety requirements for services, designers, manufacturers and suppliers. It imposes requirements on both the supplier and consumer.

Official Information Act 1982

The objectives of the Official Information Act 1982 are:

- To increase public access to official information to enable more effective participation in the making of laws and policies, and to promote the accountability of Ministers and officials
- To give persons access to official information about them; and
- At the same time to protect the public interest and safeguard personal privacy
- The impact on the Nelson Marlborough Institute of Technology is as follows:
 - An awareness of what information (if any) has to be made available on request
 - The charges that should be levied cost per page etc. for providing the requested information

- There is a need to keep adequate records of all orders and negotiations in a form that can be produced as required. Verbal discussions can be vital and accordingly notes should be made straight after the discussion
- If this is further challenged the matter should be referred to the Chief Operating Officer
- Note: All unsuccessful tenderers should be advised promptly, but beyond advising who the successful tenderer was no other information should be given out.

Privacy Act 1993

This Act requires most personal information to be kept confidential, but also requires that on request, disclosure to a person of all information about that person must be made. Breaches can lead to civil and criminal claims for which the Complaints Review Tribunal can award relief in the form of: a declaration that the privacy has been interfered with; a restraining order; or damages to a limit of \$200,000. It should also be noted that it is no defence that the breach was unintentional or was without negligence.

Every organisation is required to have a Privacy Officer to ensure compliance with the Act and any queries of this nature or requests for personal information should be referred to the Chief Executive in the first instance. The Chief Executive is the Privacy Officer for the Nelson Marlborough Institute of Technology.

Public Finance Act 1989

This Act provides the core legislative framework within which the Government can borrow money or spend public money. This framework provides for both the rights of Parliament to give informed authority for, and scrutiny of, government borrowing and activity, and the need for the Executive to have sufficient ability to effectively and responsively manage the affairs of Government.

Resource Management Act 1991

The legislation sets out how we should manage our environment. It is based on the idea of the sustainable management of our resources, and it encourages us (as communities and as individuals) to plan for the future of our environment. For more detailed information refer to:

<http://www.mfe.govt.nz/publications/rma/everyday/overview/index.html>

Breaches of the RMA can result in a maximum of two years in prison or a fine of \$300,000 plus a fine of \$10,000 per day for every day or part of day for which the offence continues.

Sale of Goods Act 1908

Applies to all sales of goods (except certain sections which do not apply where the Consumer Guarantees Act applies). The Sale of Goods Act may be contracted out of. This sets up a system of rules relating to goods, (for example, when ownership is transferred, who is responsible for the damage to goods) and generally deals with the contract for the sale of goods. It does not provide criminal penalties, but breaches can lead to the right to reject goods or civil claims for damages. Most organisations however write their own contracts to vary or exclude the Act.

There are numerous other statutes that may apply relevant to the goods or services purchased.