

# Procurement in the Public Sector

Learnings from audit findings

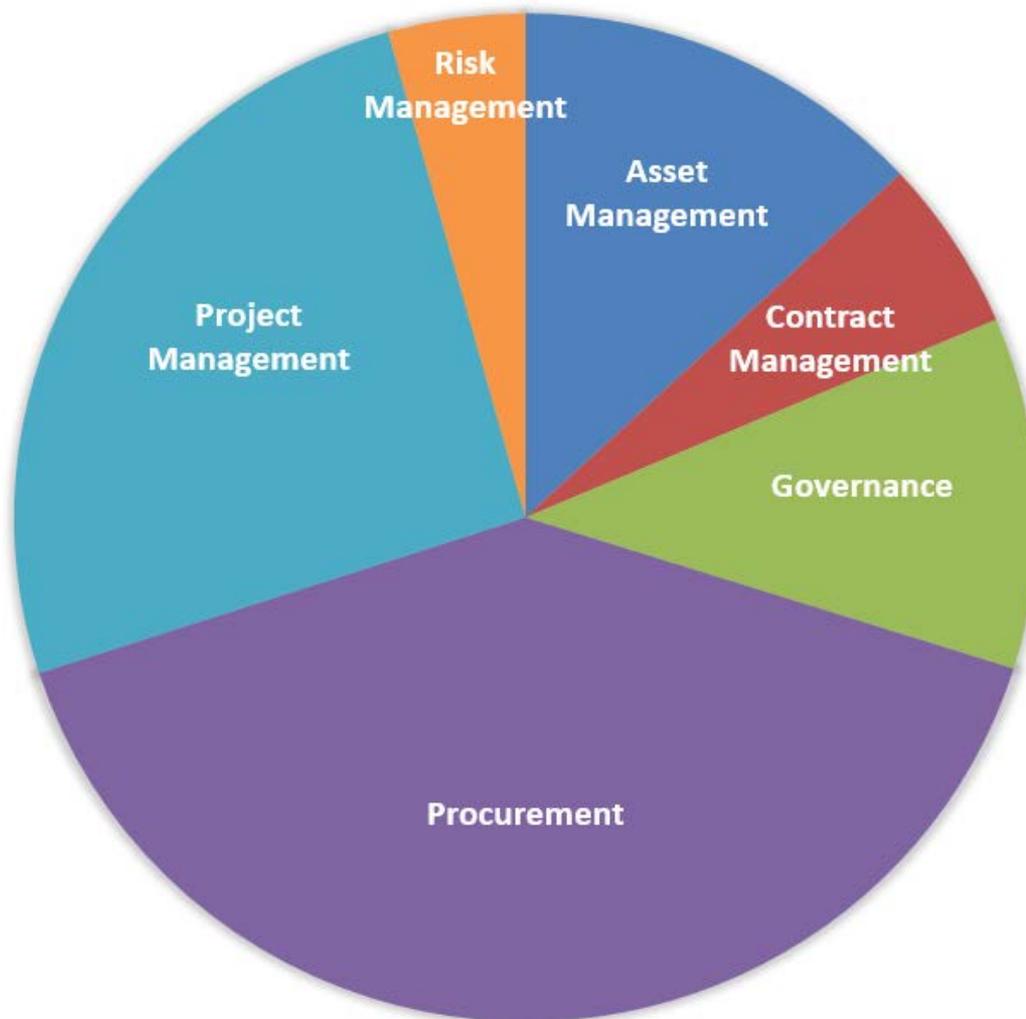
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AUDIT NEW ZEALAND  
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# Audit and Assurance Services



# We work across the entire Public Sector



**PROCUREMENT**



**RESPONDING TO YOUR POOR  
PLANNING SINCE 1805**

# Why procurement matters (1)

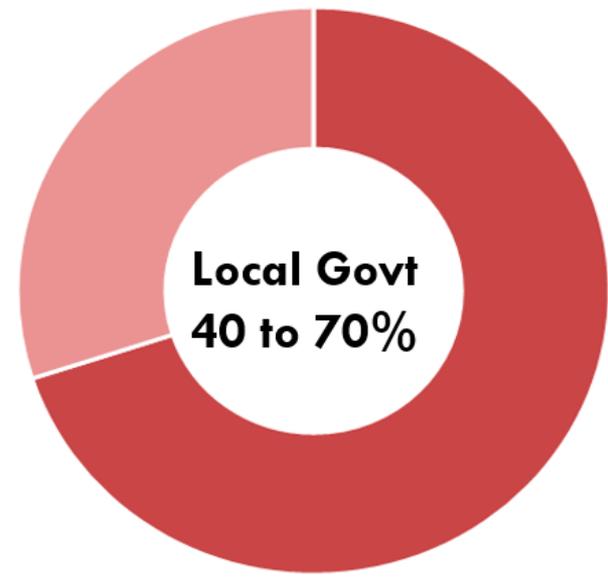
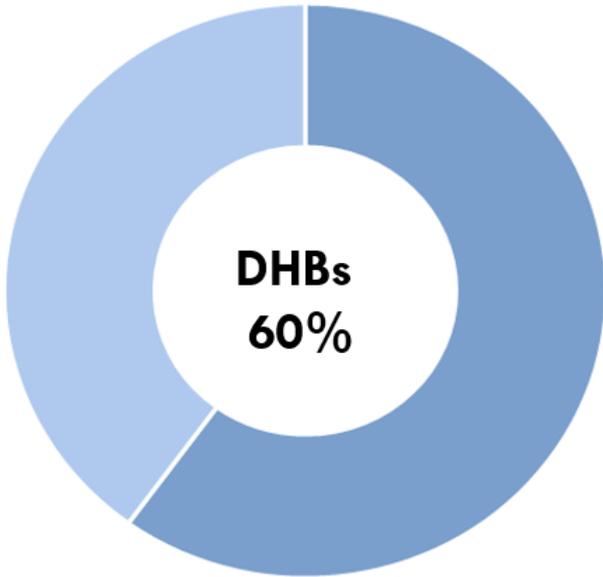
Procurement is a cross cutting activity.  
It occurs within nearly all sections, groups, divisions  
and directorates within an organisation.



- Procurement is a major activity for most public sector entities.
- Carries high risk in terms of costs, public and political profile and business reputation and performance.
- Many organisations have large numbers of contracts in place and are constantly in the market for more, for example DHBs.

# Why procurement matters (2)

## Procurement spend



- The value of some contracts is huge – for example NZTA's Transmission Gully.
- The total spend on procurement is often significant.

# Why procurement matters (3)



The level of procurement activity within the public sector continues to grow

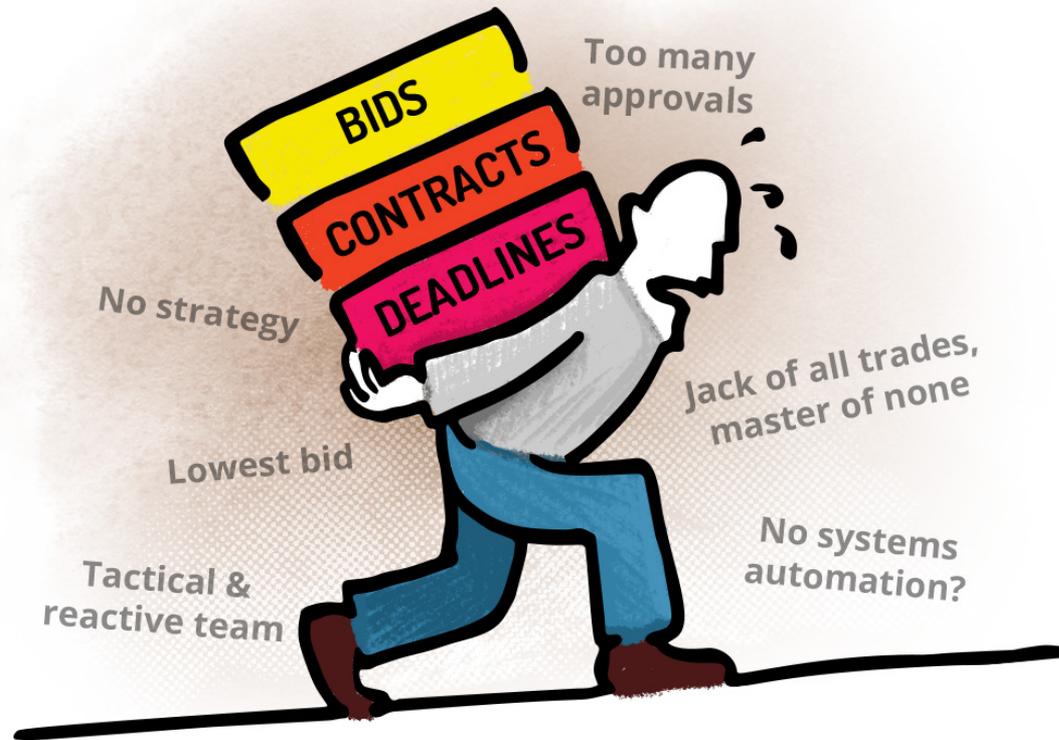


The risks are probably increasing due to the scale and value of some of the procurement

- Many organisations don't understand the extent of their procurement work nor the risks involved.
- Significant frauds and performance issues have arisen – note the Auckland Transport and Ministry of Transport frauds.

# Some recent issues

## theProblem



# Early planning

Get the planning right and there is a very good chance of a successful outcome for the tender process

- Many of the issues that we encounter with tender processes can be put down to poor planning at the commencement.
- The planning may not have occurred early enough putting a lot of pressure on the timetable for the tender process.
- This can result in short tendering periods and accelerated evaluation of tenders and approvals.
- The strategy and design for the process may be flawed. We still get asked by entities if they are able to award a contract from an RFI process.



# Costs of tender processes



Tender processes can be very costly for the purchasing agency and for the vendors



Processes should be designed to recognise this cost.  
Complex lengthy processes will create market concern and disinterest.

Shortlisting vendors in a first stage process (ROI, EOI) will reduce the overall vendor costs while ensuring that only the best vendors are taken forward

Designing a tender process with 50 odd evaluation criteria creates a lot of work for everyone

Running 8 one day interactives for each of 3 vendors is an enormous commitment

# Defining the requirements

We reviewed a tender process which did not result in any contract



The purchasing entity had not understood its requirements well enough and it only become aware of this towards the end of the tender evaluation process.

The process had been a lengthy and costly two stage tender process.

The entity returned to the market at a later time when it was satisfied that it understood its requirements.

Unfortunately the market was gun shy and vendor participation in the new tender process was poor.

# ICT contracts

**We would caution that this is an area of some concern for us**



**We are all aware of various ICT projects that have not gone well**

- Where failures have occurred issues can be identified at the planning stage with the procurement strategy & in the definition of requirements and later with the contract management.
- A less obvious issue has been that senior management and governance groups were not familiar with the risks and technical aspects associated with ICT projects.
- The ICT industry on occasions exhibits behaviours that may not be consistent with public sector expectations.

# Impact of tendering on bau

Major procurements can have a significant impact on the budgets and time demands on organisations



Tender evaluation panels usually consist of existing staff. It is not unusual for evaluation panels to include 1<sup>st</sup> and 2<sup>nd</sup> tier staff from the organisation.

Sometimes staff struggle to come free of their bau responsibilities and commit to the onerous task of tender evaluation.

This can seriously compromise the robustness of the process.

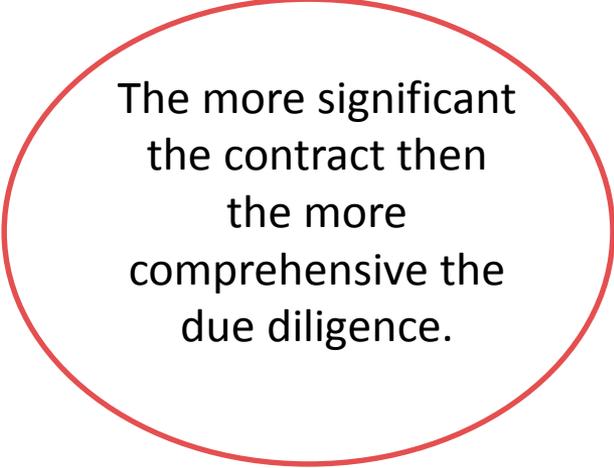
# Undertaking due diligence



Due diligence



Find serious issues  
with contractors  
before award, not  
after.



The more significant  
the contract then  
the more  
comprehensive the  
due diligence.

# Undertaking due diligence cont'd



Due diligence might include

Financial checking

Checks for health and safety performance

Checks for recent or pending legal proceedings

Checks for governance

Checks for market reputation

Referee checking

Visits to reference sites in NZ or overseas

Due diligence needs to be planned, resourced and sufficient time needs to be allowed in the programme to complete it.

The engagement of external support to undertake parts of the due diligence may be necessary.

The results of due diligence should be reported to the governance group for the project.

# Conflict of interest



The “*I can wear two hats*” claim

- Conflict of interest issues are the most common issue that we find with procurement processes.
- It needs to be managed.
- It needs to be documented.
- The process protects both the organisation and the individual concerned.

**Disclosure** →

Disclosure should occur at all levels including the approving authority for the procurement. The method of disclosure may differ but the disclosure should still occur.

# Probity in a tender process

The consequences of not properly considering probity in a tender process can be significant:

There is a risk of legal challenge. The recent MOH issue (problem gambling) and the earlier Auckland DHBs (lab tests) actions are examples of this.

The legal challenge may not be successful but significant delay and costs still arise.

Even if legal challenge is avoided there can still be damage to an entity's reputation and to personal reputations.

There can also be damage to the market such that vendors are unwilling to participate again.



# Process rigidity (1)

Recently a tenderer included some pricing information in its non price submission. We had to discourage the entity from applying a rigid approach to the process as it would seriously compromise the outcome.

## Problem

The entity proposed to reject the tender and not evaluate it on the grounds that it was not compliant with submission requirements.

Compliance checking was being undertaken by staff who were not involved in the evaluation.

## Solution

Provided the entity relocated the offending material there was no risk that the non price evaluation could be influenced by knowledge of price.

The entity accepted our advice that the material should be relocated and that the tender should be evaluated.

This approach was important in this instance because of the limited market response to the tender opportunity.

# Process rigidity (2)

Another example of probity nearly over-riding an outcome was a recent procurement by a Council.

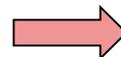
## Problem



The Council only received two tenders for its road maintenance contracts.

However, one tender significantly exceeded the page limitation set out in the RFT.

## Solution



The Council proposed to remove the excess pages (a typical response to an issue like this). However, this would have rendered the tender submission as next to useless.

We pointed out that the RFT requirement referred to page limitation as a preference. It was not a mandatory requirement.

We advised that to not evaluate the tender in full would in itself have created a significant probity issue. We also noted that the outcome could be significantly impacted if there was effectively only one tender to evaluate.



The Council accepted this advice. Both tenders were fully evaluated.

# Contract management



It seems ironic that an organisation can undertake a good purchasing process & then fail to manage the resulting contract.

Contracts don't manage themselves even if some people think they do.

Areas of serious weakness that need to be addressed:

- Poor reporting by both the contractor and the agency's staff
- Payments in advance of progress
- Late or no signing of contract documents
- Insufficient skilled resources to manage the contract
- No contract management policy
- No guidance or procedures
- No contract management system

# Managing procurement within a new agency or on a new project (1)

Potential issues can arise when a new agency is established or where a major new project is to be undertaken.



# Managing procurement within a new agency or on a new project (2)

Some considerations for a new agency or a new project:



# Managing procurement within a new agency or on a new project (3)

There needs to be leadership at the top of the organisation on these matters



It is not unusual for start up agencies or projects to adopt policies and procedures from other or parent organisations. That is Ok but they need to be checked for “fit”



Sound governance practices and in particular regular reporting needs to be put in place



Early implementation of conflict of interest disclosure processes is important

# Engagement of consultants (1)



A common issue that we encounter is when a consultant is engaged early in the life of a project to assist an agency with the development of a business case

The consultant subsequently advises an intention to be a tenderer or to support a tenderer in the tender process.

We are concerned about the potential for unfair advantage in the tender process should this consultant be permitted to support the tenderer.

Generally we would expect the consultant to be precluded from supporting any tenderer and this should be written into the consultant's services agreement (but often is not).

# Engagement of consultants (2)



If an agency is considering permitting the consultant to tender then it should also consider the following:

Some mitigations are available but the probity risks cannot be entirely removed.

Mitigations may include separation of the consultants staffing resources and offices, internal controls within the consultants office on access to information and IT, confidentiality undertakings etc.

The agency may also need to assess the information held by the agency that the Consultant has had access to and make this information available to all participants in the tender process (an information stocktake).

# In conclusion

