

## School Property Procurement Direct Source and Closed Tender Guide

### Purpose and Scope

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This guide sets out the process and provides good practice guidance for the conducting of school property related direct sources (obtain a single quote) and closed tenders (seek three quotes) by:

- school boards of trustees (boards) (5YA funded)
- The Ministry of Education's (the Ministry) Education Infrastructure Service (EIS).

Direct source is the minimum required Approach to Market method for procurements with a Procurement Value of over \$10,000 – under \$50,000. Closed tender is the minimum required Approach to Market method for procurements with a Procurement Value of \$50,000 – under \$100,000.

This guide should be read in conjunction with the school property procurement framework (process, templates and guidance) available at:

[www.education.govt.nz/procurement-templates-and-guides](http://www.education.govt.nz/procurement-templates-and-guides)

The School property procurement framework is summarised in the [School Property Procurement Quick Guide](#).

### Abbreviations and Terms

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COI	Conflict of Interest	DFA	Delegated Financial Authority
EIS	Education Infrastructure Service	ET	Evaluation Team
MoE	Ministry of Education	RFQ	Request for Quotes

Approach to Market	The process of advertising or inviting responses to a RFQ
Buyer	The recipient of the procurement (EIS or a board)
Tender	A contract opportunity described in an RFQ
Tenderer	A potential supplier that has submitted a response (e.g. quote) to an Approach to Market.

### Introduction

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The school property procurement framework is to be applied for all school property related procurement including open tenders. The purpose of the school property procurement framework is to ensure that:

- value for money outcomes are achieved
- suppliers and potential suppliers are treated fairly
- procurements are characterised by accountability and transparency
- procurements are conducted impartially, lawfully, responsibly and with integrity
- procurement decision-making is rational, reasonable, evidence based and defensible.

The school property procurement framework is at [www.education.govt.nz](http://www.education.govt.nz) search "procurement for school property projects". The school property procurement framework aligns with the [Principles of Government Procurement](#) and which are to be applied by boards and the Ministry when undertaking open tenders.

### The Procurement Process

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For direct source or closed tenders, the procurement process is:

### Stage 1: Initiate

1. Confirm the need to undertake a procurement:
  - Is there a valid need for the goods/services/works?
  - Is there an existing contract or supply arrangement that could be used (e.g. a panel of suppliers)?
2. Confirm that there is appropriate written approval to undertake the procurement (e.g. business case, 5YA)
3. Prepare a high level statement of requirements including the outcomes sought and the nature, size and scope of the requirement.
4. Determine the Procurement Value (Maximum Total Estimated Value). The Procurement Value is used to determine the appropriate approach to market method (e.g. under \$50k: direct source). The Procurement value must include:
  - the initial contract quantity/term and all likely extensions, renewals and variations
  - all potential follow-on engagements/contracts that may result (directly or indirectly) from the procurement or initial engagement/contract
  - all revenue that suppliers may receive as a result of the procurement.

### Stage 2: Identify Needs and Analyse the Market

1. Allocate/confirm key roles:
  - Procurement Officer manages and administers the procurement (e.g. Project Manager)
  - Procurement Owner represents the Buyer (e.g. School Principal or Delivery Manager)
  - Procurement Leader provides procurement probity oversight. The Procurement Leader role is:
    - for board (5YA) procurement: the school's Ministry Property Advisor
    - for Ministry procurement: a member of the EIS Commercial Procurement Team
  - Procurement Sponsor provides governance over and has ultimate responsibility for the procurement. The Procurement Sponsor role is:
    - for board (5YA) procurement: the board member with DFA. Delegation of the Project Sponsor must be formally agreed and minuted at a board meeting
    - for Ministry procurement: the appropriate cost centre owner.
2. For closed tenders (\$50k – under \$100k), obtain Conflict of Interest and Confidentiality Agreements (COI form) from everyone involved in the procurement at the commencement of their involvement. Additionally, for all procurements regardless of value:
  - anyone involved in the procurement must immediately report any instance where personal interests, obligations or relationships may (actual/potential/perceived) conflict with the responsibilities of their role in the procurement
  - COI declarations should be updated at key points in the procurement process (e.g. after closing date when Tenderers have been confirmed)
  - a COI management plan must be approved by the Procurement Sponsor for every COI declared/identified (COI management plan is part of the COI form).
3. Undertake needs analysis including:



- stakeholder consultation:
  - within the board or EIS
  - other business units/schools
  - MoE advisory functions (e.g. School Property Advisor, procurement)
  - external advisory/regulatory entities
- analysis of:
  - previous projects/spend (previous, current and projected)
  - current supply arrangements
  - current contractual arrangements
- market research and engagement:
  - potential suppliers (including encouraging potential suppliers' participation)
  - industry associations
  - other buyers (e.g. similar institutional buyers)
  - industry experts.

Needs analysis assists with determining:

- nature, size and scope of the requirement
- availability of potential solutions and suppliers
- considerations for evaluation.

Needs analysis informs the statement of requirements and procurement strategy including:

- Approach to Market method
- evaluation plan
- intended supply/contract arrangement
- RFX content (e.g. questions in the Form of Registration/Tender/Proposal).

### **Stage 3: Specify Requirements**

1. Draft a detailed statement of requirements including:
  - required solution including:
    - the nature of the Contract Works or services (e.g. architectural design services, demolition, main building contractor for new build/re-development/remediation)
    - key deliverables (e.g. what is to be designed/constructed)
    - materials and methods
    - drawings and specifications
    - sub works involved in order to clarify scope (e.g. demolition, framing, roofing, foundation work, paving and landscaping)
    - special requirements (e.g. lift installation)
    - site considerations
    - hazards (e.g. asbestos) and special conditions (e.g. school open during construction period)
    - timeframes:
      - anticipated/required start date
      - milestones
      - limitations (e.g. work to be completed during school holidays)
      - anticipated/required completion date]
  - supplier capability: skills and expertise of the organisation and Key Personnel as evidenced by:
    - qualifications/certifications/accreditations
    - memberships of professional bodies/associations
    - experience (comparable and recent)
    - track record (as evidence by referees and/or direct experience with the Buyer)



- supplier capacity (organisational and of Key Personnel)
  - sufficiency of resources
  - availability
  - back-up (contingency) resources
- scope of the procurement (what is in scope and what is out of scope)
- draft contract.

#### Stage 4: Plan Approach to Market and Evaluation

1. Confirm the Procurement Value and identify the minimum Approach to Market method:

Procurement Value	Minimum Approach to Market Method
Under \$10,000	Non-competitive purchase
\$10,000 – under \$50,000	Direct source: Obtain one written quotation
\$50,000 – under \$100,000	Closed tender: Seek three written quotations
<b>\$100,000 or more</b>	<b>Open tender: advertised on GETS</b>

2. Determine the potential supplier(s) to be invited to submit a quote. Potential suppliers may be identified by using market research and previous experience and inclusion should be based on potential suppliers' capability (skills and expertise) and capacity (available resources). The process undertaken to identify potential suppliers and the reasons for their inclusion must be documented in the Procurement Plan.
3. Draft and obtain endorsements/approval for the Procurement Plan (Short) including:
  - Procurement Value and confirmation of budget availability and approval
  - a detailed statement of requirements
  - the procurement strategy
  - evaluation plan
  - procurement process timetable
  - risk register and probity considerations.
4. Draft and obtain endorsements/approval for the RFQ (template compulsory for \$50k - under \$100k and optional for \$10k - under \$50k).

#### Stage 5: Approach the Market and Select

1. Issue the RFQ to selected potential suppliers.
2. Respond to requests for clarification. Generally, supplier questions and the Buyer's responses should be published to all potential suppliers.
3. Following the response deadline, register responses. Late responses may be accepted in exceptional circumstances and the circumstances/rationale for acceptance must be documented. A late response should only be accepted if:
  - there is no risk/perception that any Respondent may be materially advantaged/disadvantaged (e.g. late Respondent having additional time to prepare their response, perception that the lowest price has been communicated to the late respondent)
  - or
  - the delay is solely the Buyer's fault.
4. The Procurement Officer and ET Chair conduct an initial review of responses for:
  - compliance with the RFQ process terms and conditions



- initial due diligence (e.g. insurance requirements)
- compliance with pre-conditions (if any).

Written approval of the Procurement Sponsor is required to exclude a response from evaluation (i.e. exclusion from being evaluated as opposed to exclusion from being selected as preferred).

5. Brief the ET:
  - advise the ET of the participating Respondents and update COI declarations
  - provide specific evaluation instructions
  - provide copies of:
    - Responses
    - Evaluation workbook
    - Procurement Plan
    - RFQ.
6. ET members conduct separate/individual evaluation of responses for non-price criteria.
7. Procurement Officer conducts separate price analysis.
8. Hold ET meeting to:
  - a. review individual evaluations and price analysis
  - b. agree ET consensus evaluation and select a preferred quote:
    - closed tender: shortlist quotes that conform to all minimum non-price requirements and select the quote that represents best value for money
    - direct source: confirm that the quote conforms to minimum requirements and represents value for money.
9. Draft and approval of a recommendation report summarising the evaluation and recommending the preferred quote.

## **Stage 6: Negotiate and Award**

1. As soon as practical, notify all Tenderers that they have been either successful or unsuccessful.
2. Confirm the terms of the engagement with the preferred Respondent and draft the contract.
3. Obtain written approval of the DFA for the final form of contract.
4. Contract signing:
  - a. the preferred Tenderer signs multiple original copies, then
  - b. the DFA signs the original copies, then
  - c. one or more original copy is returned to the supplier, and
  - d. one or more original copy is retained (for EIS procurement over \$50k: entered into Ariba).
5. Keep records for seven years including:
  - COI declarations, COI management plans and all related correspondence
  - approved Procurement Plan
  - RFQ
  - supplier clarification requests and notices/correspondence in tender
  - summary evaluation workbook and/or ET meeting minutes (ET scores and commentary/rationale)
  - a copy of all proposals
  - price analysis records



- due diligence and referee check records
- approved recommendation report.

## Further Guidance

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### Probity

Everyone involved in a procurement must:

- be impartial, fair, responsible and trustworthy
- act solely in the best interests of MoE and/or the relevant school
- act responsibly, lawfully and with integrity
- report to MoE where fraud and/or corruption is suspected or identified
- maintain the confidentiality of the procurement process, suppliers' information, intellectual property and other related information (except as legislatively required e.g. Official Information Act)
- report any real, perceived or potential conflicts of interest
- not accept any gift, hospitality or benefit from any supplier that may submit or has submitted a tender/proposal and immediately report any such instance as a potential COI.

### Conflicts of Interest Management

A personal COI is a circumstance where an individual has a personal interest, obligation or relationship that may influence the individual's performance of the responsibilities of their job/position. A COI may result in an individual's independence, objectivity or impartiality being called into question.

A commercial COI is a circumstance where a supplier (or any associated party e.g. employee, sub-contractor) has an interest, obligation or relationship that may influence the supplier's performance of its obligations under the contract.

COIs may be:

- actual; the conflict currently exists
- potential; the conflict is about to happen, or could happen
- perceived; another party may reasonably believe that a conflict exists
- positive or negative (e.g. result un-due bias for or against a particular Tenderer)

Everyone involved in procurement must complete, sign and submit (to the Procurement Officer) a COI and Confidentiality Agreement at the commencement of their involvement in a procurement to declare any COIs they may have. All staff must immediately declare (to the Procurement Officer) any COI that arises at any time during the procurement. Failure to declare a COI or making a false COI declaration may be regarded as serious misconduct.

For each COI identified, a Conflict Management Plan must be approved by the Project Sponsor (or the Project Sponsor's manager/the board for any COI relating to the Project Sponsor). The COI management plan must include regular review to ensure that the COI is being managed appropriately. Treatments for managing a COI include:

- Report Advise involved personnel (e.g. the ET) and request any perceived undue bias is reported.
- Restrict Limit the person's involvement in the procurement.
- Recruit Engage an independent probity advisor to oversee the procurement.
- Remove Remove the person completely from the procurement.
- Relinquish The person gives up their private interest.
- Resign The person resigns from MoE/board.

Consideration must be given to identification and management of any commercial COIs. Treatment of commercial COIs include:





- separation of contracts (e.g. engaging a supplier to undertake master planning on the proviso that they cannot bid for any subsequent related professional services).
- aggregation of contracts (e.g. combining master planning and subsequent professional services into one procurement).
- independent quality assurance (e.g. review of master planning to ensure that the planning has not been influenced by the prospect of the supplier being engaged to supply subsequent professional services).

### Requirement-Evaluation-Tender Form Question

The Statement of Requirement must clearly set out the outcome sought in terms of goods/services/works to be delivered and the capability and capacity required by a supplier. Each element of the requirement must map to an aspect of an evaluation criteria and to one or more question in the Response Form. Conversely, do not ask questions that will not be evaluated or which do not relate to an aspect of the requirement.

Our Requirements		Evaluation Criteria		Tender Form Question
Required solution element	<input type="checkbox"/>	Proposed solution criteria	<input type="checkbox"/>	Proposed solution question
Supplier capability element	<input type="checkbox"/>	Capability criteria	<input type="checkbox"/>	Capability question
Supplier capacity element	<input type="checkbox"/>	Capacity criteria	<input type="checkbox"/>	Capacity question

It must not be a requirement that Tenderers have experience with MoE, a particular school, or schools in general. As an alternative, consider stating “Preference may be given to Tenderers with experience delivering works of a similar nature/size in institutional or comparable settings”.

### Pre-conditions

Pre-conditions are essential requirements that Tenderers must meet in order for their response/proposal to be accepted for full evaluation. The use of pre-conditions in a tender process is optional. Pre-conditions provide a means for suppliers to determine whether they have the minimum capacity/capacity required and therefore whether it is worth their while submitting a response.

Pre-conditions must be relevant, demonstrable, polar (yes/no) and not open to interpretation. Any proposal that does not meet all pre-conditions must be excluded from further evaluation. Pre-conditions must be limited to:

- legal capacity
- financial capacity
- commercial or operational capacity or capability to deliver, and/or
- appropriate technical skills or expertise or relevant experience.

### Evaluation Method, Criteria and Weightings

Open tenders must be evaluated using the weighted attribute method. For the ROI the criteria and weightings must be:

Criteria	Weighting	
	Works	Prof. Svcs
<b>Capability</b> The skills and expertise of the Tenderer (including Key Personnel) required to deliver a suitable solution as evidenced by: <ul style="list-style-type: none"> <li>• relevance and recentness of comparable experience (what they have done)</li> </ul>	65%	80%



<ul style="list-style-type: none"> <li>• quality of track record (how well they have done it)</li> <li>• suitability of qualifications etc.</li> </ul>		
<p><b>Capacity</b> The Tenderer's resources and availability (including of Key Personnel) required to deliver a suitable solution as evidenced by:</p> <ul style="list-style-type: none"> <li>• Sufficiency of resources proposed</li> <li>• Availability of resources</li> <li>• Sufficiency of back-up resources (contingency)</li> </ul>	35%	20%

For a single stage RFT/RFP and a closed RFT/RFP following an ROI, the weightings and criteria must be:

Criteria	Works	Other
<p><b>Proposed Solution</b></p> <ul style="list-style-type: none"> <li>• the suitability of the proposed goods, services or works (deliverables)</li> <li>• the comprehensiveness, deliverability and robustness of the plan for delivery of a suitable solution</li> <li>• method, approach, systems and processes</li> <li>• Tenderer's understanding of the requirement</li> </ul>	15%	10%
<b>Capability</b>	10%	45%
<b>Capacity</b>	5%	5%
<b>Price</b>	70%	40%

For a two stage process, the ET scores for Capability and Capacity are to be transferred from the ROI into the RFT/RFP following which they may be moderated by the ET to take into account new or updated information in the RFT/RFP (e.g. a Tenderer's updated availability may affect their Capacity score or the proposed solution may affect the ET's perception of the Tenderer's Capability).

### Evaluation and Scoring

Evaluation involves:

1. individual evaluation and scoring of tenders for non-price criteria conducted separately by ET members
2. review of consolidated individual non-price scores by the ET and determination by consensus of ET non-price scores for each criteria
3. determining which Tenderers are conforming (acceptable) for non-price criteria for either:
  - ROI: short-listing for closed RFT/RFP
  - RFT/RFP: price scoring.
4. Price analysis conducted separately to non-price evaluation, presented to the ET only after ET scores for non-price criteria and conformance of tenders have been confirmed. If the Procurement Officer is an ET member and is to undertake the price analysis, they should complete their non-price evaluation prior to price analysis. Care must be taken to ensure that ET non-price scoring is not affected by the Procurement Officer's knowledge of pricing information.
5. Price scoring of conforming tenders to determine ET total scores for conforming tenders
6. Selection of a preferred tender.





**The rationale for ET scoring, short-listing, exclusion and selection must be thoroughly documented to ensure outcome is defensible.**

The following scoring scale must be used in evaluating proposals:

Rating	Definition	Score
<b>EXCELLENT</b>	Exceeds the criterion to provide substantial additional benefit and/or reduction of risk	<b>9-10</b>
<b>GOOD</b>	Exceeds the criterion to provide some additional benefit and/or reduction of risk	<b>6-8</b>
<b>ACCEPTABLE</b>	Meets the criterion	<b>5</b>
<b>MINOR DEFICIENCY</b>	Does not meet the criterion due to minor deficiency and/or risk	<b>3-4</b>
<b>MAJOR DEFICIENCY</b>	Does not meet the criterion due to major deficiency and /or risk	<b>1-2</b>
<b>UNACCEPTABLE</b>	Does not comply, insufficient information provided or un-acceptable deficiency and/or risk	<b>0</b>

Scoring tenders for each non-price criterion should involve

1. Conformance: determining whether the tender conforms to the minimum requirement (a score of five).
2. Preference of conforming tenders, it should then be determined the degree to which each tender provides additional benefit/reduction of risk as a result of exceeding the minimum requirement (score above 5). Additional benefit must be tangible (able to be demonstrated) and material/of significance.

**A TENDER THAT SCORES 4 OR LESS FOR ANY NON-PRICE CRITEREON (DEFICIENT) MAY BE EXCLUDED BY THE ET FROM FURTHER EVALUATION/SELECTION.**

### Price Evaluation and Scoring

Price analysis is conducted in order to provide a single valid, comparable price for each tender. The requirements must be sufficiently specified to ensure that Tenderers' prices are based on a clear and consistent understanding of the requirements. Pricing information requested should include sufficient detail to be able to verify that the price proposed is valid and not unrealistically low.

For price analysis of Contract Works, refer to the Contract Works Price Analysis Guide.

When requesting prices as rates for specific roles, those roles must be clearly defined to allow for a "like for like" comparison between proposed rates (e.g. "senior" consultant defined as minimum specific qualification and specific minimum number of years relevant experience). Proposed rates are then applied to a scenario (e.g. Role A (100 hours) Role B (60 hours) and 2 x Role C (50 hours)) to calculate a total price.

The following formula is to be used to allocate score (out of ten) to prices:

$$\text{Tender "A" price score}/10 = ((\text{Lowest Price}/\text{Price "A"}) * 10)$$

*Note: because the price scoring formula is based on lowest price, only tenders that conform for non-price criteria are scored for price.*



## Due Diligence

Due diligence is the process of assessing the risk of entering into a contract and may include:

- validity of the tender
- a supplier's financial viability
- a supplier's ownership/structure
- a supplier's business practices
- Director status statements
- disputes with the Ministry
- insurances held.

The degree of due diligence and when it is conducted depends on the circumstance of the procurement and should be detailed in the Procurement Plan. For example:

- all tenders prior to evaluation
- short-listed tenders only
- the provisionally preferred Tenderer as recommended by the ET.

Exclusion of a Tenderer for due diligence requires the written approval of the Project Sponsor.



## Procurement Control Points

	Procurement Officer	Procurement Owner	Procurement Leader <sup>1</sup>	Property Advisor <sup>2</sup>	Procurement Sponsor	Procurement Director
Conflict of Interest Management Plan	D	E	E (EIS)		A	
Procurement Plan (Full)	D	E	E (EIS)	C (board) <sup>2</sup>	A	
RFP document and Evaluation Workbook	D	A	E (EIS)			
Recommendation Report	D	E	E (EIS)	C (board) <sup>2</sup>	A	
Award of contract to a board member (\$25k or more) <sup>3</sup>	D	E		E (board)	E	A
Final Form of Contract	D	E	E (EIS)			
Contract Signatory					S	

**D: Drafted**      **E: Endorsed (Supported)**      **C: Copy<sup>3</sup>**      **A: Approved**      **S: Signed**

### Notes:

<sup>1</sup>Ministry funded/managed procurements require endorsement by an EIS Procurement Leader

<sup>2</sup>For Board procurements (Capex only), a copy of the Procurement Plan and Recommendation Report are to be sent to the relevant Property Advisor two business days before approval by the Procurement Sponsor

<sup>3</sup>Request for approval are to be made using a [Conflict of Interest and Confidentiality Agreement form](#) which is to be endorsed by the Project Sponsor, then the relevant Property Advisor and emailed to [eis.procurement@minedu.govt.nz](mailto:eis.procurement@minedu.govt.nz) for review/approval by the EIS Procurement Director.

### No Tenders Received, One Tender Received or No Acceptable Tenders Received

For an open tender process where no tenders are received or no tenders are evaluated as being acceptable, engage with the market to determine whether a change to the requirement (e.g. delay the engagement) would result in a better tender. If required, obtain written approval from the Procurement Sponsor to conduct a closed tender process with preferably three or more potential suppliers. The outcome of the open process (e.g. no tenders received) and the rationale for choosing which potential suppliers to approach for the closed tender is to be detailed in the Recommendation



Report. Tenderers to the open tender evaluated as being unacceptable must not be invited to participate in the subsequent closed tender.

For open tenders where only one conforming tender is received and the ET are not confident that value for money will be able to be assured, the tender may be concluded without awarding a contract. Otherwise, evaluation of the tender is to be conducted as described in the tender document/Procurement Plan.

### Tenderer Debriefs

When notifying Tenderers in writing that they have been either successful or unsuccessful, a debrief must be either provided or offered. The purpose of tender debriefs is to provide constructive feedback to enable Tenderers to improve their offering for future tenders. Note: commercially confidential information about other tenders/Tenderers must not be disclosed (e.g. pricing).

Debriefs may be provided in writing (e.g. as part of the unsuccessful notification), by telephone or in person. Debrief content must be consistent with the evaluation. Debriefs must include:

- the reason(s) the tender was unsuccessful (e.g. It was determined that your tender did not meet minimum requirements for proposed solution/capability/capacity. Your tender met all minimum requirements however the successful Tenderer was judged to offer a more suitable solution/better value for money)
- the relative strengths and weaknesses of the tender (e.g. pricing was competitive however proposed solution was not sufficiently detailed)
- how the tender performed against evaluation criteria (e.g. proposed solution and capacity were acceptable and price was competitive, however it was determined that the Tenderer lacked sufficient experience with projects of this size and level of complexity in comparison to other Tenderers)
- relative advantages of the successful tender (e.g. The successful Tenderer was judged to provide greater value for money due to more relevant experience and a lower price)
- an offer to address concerns/questions.