

CHAPTER 1 INTRODUCTION AND GENERAL REQUIREMENTS

1.1 This Manual

This Manual sets out the provisions which constitute the Competitive Pricing Procedures (CPPs) for the classes of project involving payments for physical works and professional services undertaken under the Transit New Zealand Act 1989 and subsequent amendments (hereinafter referred to as the Act).

The procedures set out in this Manual are applicable to all physical works and professional services undertaken for the provision of land transport infrastructure which are to be funded in whole or in part by Transfund New Zealand, except for those listed in Section 1.3 of this Manual below.

These CPPs have been established by Transfund New Zealand consistent with the requirements and authorities contained in the Act.

Only Transfund New Zealand is empowered to approve CPPs within the terms of the Act, however the Act does not give Transfund New Zealand a sole right to formulate CPPs. Any tendering authority may develop appropriate CPPs and submit them to Transfund New Zealand for approval.

1.2 Purpose and Requirements of Competitive Pricing Procedures

Section 27 of the Act states that with specified exceptions, no payments shall be made by Transfund New Zealand unless the payment relates to an approved output or capital project, the price of which has been determined by a CPP.

Section 27 of the Act also states that no payment shall be made from the Land Transport Disbursement Account of any local authority in respect of any approved output or capital project unless the amount has been determined by a CPP.

Section 26 of the Act requires Transfund New Zealand "from time to time to approve a competitive pricing procedure for each output or capital project or class of output or capital project".

In approving a CPP, Transfund New Zealand may specify particular terms and conditions which shall be *either* included in *or* excluded from any contract formed pursuant to the CPP.

In exercising these powers (under section 26(3) of the Act), Transfund New Zealand is required to have regard to:

"(a) The efficient application of the State Highways Account and Land Transport Disbursement Accounts:

(b) The safety and other interests of the public in respect of the output or capital project or the class of output or capital project:

- (c) *The desirability of encouraging competition in the sector of industry likely to supply goods or services in relation to the output or capital project or the class of output or capital project:*
- (d) *The undesirability of excluding from competition for the output or capital project or the class of output or capital project any party who might otherwise be willing and able to compete:*
- (e) *The costs of administration associated with the pricing procedure or of any contract formed under that procedure."*

The CPPs are also intended to assist Transfund New Zealand in achieving its principal objective, which is:

". . . to allocate resources to achieve a safe and efficient roading system."

The CPPs defined in this Manual have been developed in accordance with the above requirements. They are designed to enable Transfund New Zealand and local authorities to ensure that physical works (maintenance and construction) and professional services (planning, investigation, design and supervision) related to the provision of land transport infrastructure are procured in the most efficient way, having regard to Transfund New Zealand's objectives and the other requirements of the Act, and also to the lifetime costs of projects. The principal means of achieving this overall objective is to be through the encouragement of competition among potential suppliers of physical works and professional services.

These procedures are designed to ensure that Transfund New Zealand's objectives and requirements are met through the competitive process. They are not intended to provide detailed and comprehensive procedures. It is envisaged that individual authorities will develop their own detailed procedures, within the requirements laid down in this Manual.

1.3 Works Not Subject to Competitive Pricing Procedures

The following types of physical works and professional services are exempt from the CPP requirement:

- (1) any works or services which are not partly or wholly funded by Transfund New Zealand;
- (2) any work that is necessary in the urgent interests of public safety;
- (3) any work that is necessary for the immediate or temporary repair of damage caused by a sudden and unexpected event;
- (4) any approved project of administration (refer Appendix D of this Manual);

- (5) any other activities exempted by subsequent changes in legislation or Ministerial Determinations issued pursuant to the Act.

1.4 Definitions

The following working definitions are used in this Manual:

Alternative Tender

An alternative tender is a tender proposing alternative methods, forms or materials which might produce a different quality or durability, but not scope, from that specified in the Request for Tender (RFT).

Business Unit

A local authority business unit as defined by the Act and operated in accordance with a Ministerial Determination issued pursuant to that Act.

Consultant

Any person who, or organisation which, may tender for any contract for professional services.

Contract

Includes an arrangement entered into with a business unit whereby the business unit agrees to perform minor and ancillary works for the local authority of which it is a part. The agreement shall be consistent with the RFT.

Contract Inputs

Materials, plant, labour and all other resources necessary for carrying out the contract.

Contractor

Any person who, or organisation which, may tender for any contract for physical works and includes a local authority business unit which may tender to carry out minor and ancillary works, for which purpose the business unit is regarded as an independent contractor.

Non-conforming Tender

A non-conforming tender is any tender which:

- (1) offers an end result which is outside the scope of the RFT, and/or
- (2) scores "fail" on any attribute when using the lowest price conforming tender method, and/or
- (3) scores 35 or less on any attribute when using the weighted attribute tender method.

In addition, in the case of physical works, the following types of tender shall be deemed non-conforming if the tendering authority is not prepared to evaluate them as alternative tenders:

- (1) A tender with a tag that the tendering authority considers unacceptable which is not removed by discussion with the tenderer during the tender evaluation process.
- (2) A tender that is significantly inconsistent with the RFT.

Period Contract

A period contract is a contract for the provision of goods or services for a defined period of time.

Physical Works

Maintenance, rehabilitation and construction of land transport infrastructure.

Professional Services

Planning, investigation, design, and supervision of physical works.

Provisional Sums

A monetary amount specified by the client in the RFT for either work to be executed, or materials to be supplied by the contractor/consultant but whose exact quantity will not be determined by the client until a later stage and therefore cannot be accurately priced. (Materials to be supplied are technically prime cost sums, but for the purposes of this Manual, they will be considered as provisional sums. For more details see NZS 3910.)

Request for Tender (RFT)

The document prepared by a tendering authority which contains the information on which tenderers base their tenders.

Scope

Scope is the project's principal purpose(s) and service(s) to users as specified in the RFT.

Tenderer

Any person or organisation submitting a tender to a tendering authority. Organisations include but are not limited to companies, LATEs (Local Authority Trading Enterprises), partnerships and joint ventures.

Tendering Authority

Transit New Zealand and any local authority within the meaning of the Local Government Act 1974, or road controlling authority which prepares tender documents, invites tenders, lets contracts and/or carries out any other function associated with payments for physical works or professional services.

1.5 Application of Competitive Pricing Procedures

Subject to the exceptions in Section 1.3 of this Manual, these CPPs apply to all tendering authorities that wish to make a payment for any physical work or

professional service which is to be wholly or partly funded by Transfund New Zealand.

1.6 Consistency of Tendering Authority Actions

Tendering authorities shall comply with the requirements and the intent of these CPPs, and with the intent of the Act, and with any other Transfund New Zealand requirements which may be issued from time to time in relation to these CPPs.

Tendering authorities shall also comply with the procedures that they adopt pursuant to these CPPs (see Sections 2.1 and 4.1 of this Manual). When evaluating tenders for minor and ancillary works, for which its business unit has submitted a tender, the tendering authority shall ensure that any officers evaluating, recommending or approving tenders, or conducting negotiations in terms of Section 2.9 of this Manual, have no direct involvement in the management of the business unit.

Evaluator Competency

Responsibility for evaluating tenders should only be given to evaluators who have the skills to perform such evaluations. The evaluation process must be transparent and impartial.

G1.6 Consistency of Tendering Authority Actions

It is important when dealing with tenders for Minor and Ancillary Works from its business unit that the tendering authority is seen to be consistent in its treatment of all tenderers. This means, amongst other things, that the business unit costs must be fully captured in its accounting procedures. Further to this, a business unit which wishes to tender for work in competition with independent contractors must be bound by all the conditions of the Request for Tender (RFT) (Section 3.2 of this Manual), including bonds and retentions (Section 3.9 of this Manual), insurance of work and public liability.

One of the key inputs to the success of the tendering process is assurance that tender evaluations are completed professionally and objectively and for this the competency of the evaluators undertaking tender evaluations is critical.

1.7 Status and Structure of Manual

This is Volume 1 of the Transfund New Zealand Manual of Competitive Pricing Procedures. Volume 2 sets out the procedures to be adopted for public passenger transport services.

The majority of the remainder of this volume sets out the CPPs specified for physical works and professional services, in the following sections:

- **PART B — Physical Works.** Chapters 2 and 3 cover all other aspects of CPPs relating to physical works, and hybrid projects containing physical works and professional services, under the headings Tendering Procedures

(Chapter 2) and Request for Tender Requirements (Chapter 3).

- **PART C — Professional Services.** Chapters 4 and 5 cover all other aspects of CPPs relating to professional services under the same headings as Chapters 2 and 3.

Components of these CPPs common to both physical works and professional services are therefore included twice; once in Part B (Chapters 2 and 3) and again in Part C (Chapters 4 and 5). Consequently any tendering authority wishing to procure physical works need only be concerned with Part A and Part B. Similarly any tendering authority wishing to procure professional services need only be concerned with Part A and Part C.

- **PART D — Alternative Competitive Pricing Procedures.** This Part contains alternative CPPs and is where any variations issued by Transfund New Zealand will be placed. Chapter 6 contains a CPP for sole suppliers and Chapter 7 contains a CPP for specialised equipment.

Throughout the Manual, mandatory procedures appear on the right hand pages. To assist in the interpretation and/or application of these mandatory procedures, guidelines and discussion are also included. These appear in italics on the facing (left hand) pages.

While the guidelines are not mandatory, they are a statement of recommended good practice. Guidelines may be departed from to suit any particular circumstances but in all cases the actual procedures adopted by the tendering authority need to comply with the provisions of section 26 of the Act.

Additional discussion, and worked examples, are included in the appendixes.

1.8 Amendments and Alternative Competitive Pricing Procedures

The CPP Manual allows tendering authorities to propose amendments to the CPPs. The reason for such provisions is that it is recognised that the procedures in the CPP Manual have to cover a wide variety of circumstances and in some cases other procedures may better achieve the objectives of the Act.

The main type of amendment to the CPPs is a general amendment which is a change to the standard CPPs and applies to all tendering authorities. As well as general amendments, there are two special sorts of amendments; namely alternative CPPs and variations.

Alternative CPPs are stand alone CPPs that tendering authorities can use to cover specified situations (eg the sole supplier CPP). Unlike mandatory amendments, alternative CPPs are optional and tendering authorities can choose to continue to comply with the standard CPP provisions.

Individual tendering authorities are also able to apply for variations to overcome a specific problem. If approved, variations would only be issued to the tendering

authority that applied for the variation and then only for the particular contract(s) to which they relate. Any tendering authority making use of such a variation shall prominently identify the variation from the standard CPP in each RFT to which it is applied.

Variations must be approved prior to use and not sought retrospectively to regularise non-compliance with a previously approved CPP.

Transfund New Zealand will consult with interested parties on proposed alternative procedures or variations as appropriate.

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