



Good practice guide

Public sector  
purchases, grants,  
and gifts:  
Managing funding  
arrangements  
with external  
parties

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# Public sector purchases, grants, and gifts: Managing funding arrangements with external parties

This is a good practice guide  
published under section 21 of the  
Public Audit Act 2001

June 2008

ISBN 978-0-478-32608-6

## Foreword

In recent years, my Office has done a significant amount of work, throughout the full range of our activities, on the different types of arrangements public entities use to pay or fund external parties. We have completed a number of performance audits on grant funding programmes, published a good practice guide, and begun to audit performance on funding arrangements with non-government organisations. We have also increased the focus of our annual audit and assurance work on procurement policies and practices.

Many public entities find procurement a challenging and confusing area, and it is not always clear how the various sources of rules and guidance fit together. The aim of this overarching guide is to provide that clarity. I am also publishing new good practice guidelines on procurement.

This document explains the range of funding arrangements and how to think about which type of arrangement suits a particular circumstance. That range covers conventional purchasing contracts, relational purchasing arrangements, grants, and gifts. Our good practice guidelines on procurement discuss in more detail our expectations for how public entities will plan and manage arrangements to purchase goods or services. We will consider whether it would be useful to produce equivalent guidelines on grants.

We have explicitly prepared this document from an accountability perspective, because that is the focus of my role. It shows the broader context for the various other requirements or policies, and should complement any relevant government policy or other requirements, such as those on procurement or on relationships with non-government organisations.

My aim is to help public entities to satisfy themselves and Parliament that they are spending public funds carefully, and that they are properly managing the process for spending those funds.

I encourage all public entities to become familiar with the principles and practical considerations set out in this guide, as they will form the basis of the expectations that will apply in our future work.



K B Brady  
Controller and Auditor-General

12 June 2008

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## Glossary

**Contract or agreement** refers to the legally enforceable obligations, and any associated conditions, that two or more parties have agreed they owe to each other. The terms of a contract will often be recorded in writing but do not have to be. There will always be a contract in a purchasing relationship, and there may often be a contract underpinning a grant arrangement.

**External party** refers to any individual or organisation that has a funding arrangement with a public entity, such as a contract to provide goods or services or a grant to support an activity or the organisation of the external party. External parties may include commercial organisations, individuals, non-government organisations, or other private sector bodies.

**Funding arrangement** refers to the relationship between a public entity and an external party that is being paid by, or receiving funding from, the public entity. Seven types of funding arrangements are discussed in this guide, ranging from conventional purchasing to relational purchasing, grants, and gifts.

**Non-government organisation** refers to a not-for-profit organisation that is organised, is independent of government and self-governing, and does not have compulsory membership. The definition of non-government organisation is discussed in more detail in our good practice guide, *Principles to underpin management by public entities of funding to non-government organisations*.

**Procurement** refers to all the business processes associated with purchasing, spanning the whole cycle from identifying needs to the end of a service contract or the end of the useful life and subsequent disposal of an asset.

**Public entity** refers to a person or organisation subject to audit by the Auditor-General, as defined in the Public Audit Act 2001. It includes, for example, government departments, State-owned enterprises, local authorities, state and integrated schools, tertiary education institutions, other Crown entities, and various other entities that are controlled by public entities (such as subsidiaries or council-controlled organisations). A public entity can take different forms. It might be part of the Crown, a body created by statute, a company, a board, a trust, an incorporated society, or a single office-holder.

# Part 1

## Introduction

### Why do we need an overarching guide?

- 1.1 Public entities use public funds in a range of ways. As well as funding their own activities, they may also buy goods or services from someone else (often called procurement), provide a grant or some other support to another organisation or group, or use some combination or variation of these.
- 1.2 Governments all around the world have developed new ways to deliver services and to work with their communities, other levels of government, business, and non-government organisations. This has changed the range of ways in which public funds are used. An increasing proportion is now spent through funding arrangements with individuals or organisations outside public entities, such as commercial providers or non-government organisations. In this guide, we use the term “external parties” to describe all those individuals and organisations.
- 1.3 For public entities, this can be a confusing area. There is a complex mix of different organisations, types of funding arrangements, and procedural rules and requirements. It is not always clear what rules or expectations apply when, and we often get asked:
  - Does it matter whether something is a grant or a contract? If so, what difference does it make?
  - When does a procurement policy apply? Are there any equivalent rules if it does not apply?
  - Should we manage everything as a contract?
  - Should we do anything different if we are contracting with a non-government organisation?
- 1.4 This guide aims to provide some clarity, by explaining:
  - how the different processes and expectations fit together;
  - what the basic principles are; and
  - what choices public entities need to make when they plan for, and enter into, any kind of funding arrangements with external parties.
- 1.5 This guide should also give entities a clearer understanding of the expectations that we apply when we assess the conduct and performance of public entities (whether in the course of annual audits, performance audits, other assurance work, or inquiries). It is important that the public sector auditor is able to provide assurance about the management of funds going to external parties, whether through purchasing contracts, grants, or gifts, as well as about funds used by public entities to provide services in other ways.

- 1.6 In essence, we expect public entities to be able to satisfy themselves that:
- they are spending public money carefully; and
  - they are properly managing the process for spending it.
- 1.7 Spending money carefully involves the ability of the public entity to account for what the money is being used for, as well as an assessment of effectiveness, efficiency, and value for money.
- 1.8 Properly managing the process for spending money involves looking at whether the public entity made decisions lawfully, fairly, and in keeping with good administrative practice, ethical requirements, and the entity's own policies.

### What this guide covers

- 1.9 This guide focuses on situations where a public entity decides to provide funds directly to an external party to achieve a particular purpose. Common examples are purchasing goods or services (large and small), grants, and donations. The external party may be a commercial organisation, a non-government organisation, another public entity, or some other private body. The aim of this guide is to help public entities make informed decisions and manage risks when funding an external party.
- 1.10 Part 2 describes the basic principles that we expect to be reflected in the management of all funding arrangements with external parties, and indeed any use of public funds.
- 1.11 In Part 3, we set out our expectation that public entities will take a strategic approach to planning and managing the different funding arrangements they will need. In this Part, we suggest beginning with the public entity's broad strategic goals and business plans, before considering the need for specific strategies on procurement or other funding arrangements that are critical to the public entity's activities. We also encourage public entities to think strategically about what they are trying to achieve before entering into particular funding arrangements.
- 1.12 Part 4 sets out the range of funding arrangements that public entities commonly have with external parties, as well as the different kinds of external parties that the public entity might enter into such arrangements with. These arrangements range from major purchasing contracts of a generic commercial nature to simple grants that are tantamount to gifts.
- 1.13 Part 5 discusses a range of factors that public entities can usefully consider when choosing what type of arrangement will best suit particular initiatives. The factors include the purpose or goal, risk, the overall relationship with particular external parties, and the value of the funding arrangement.



- 1.14 Part 6 applies this general approach, and the principles, to the practical business of planning and managing funding arrangements. It explains how the principles and choices a public entity makes affect the way it manages a particular funding arrangement. This Part also sets out our high level expectations for different stages of the life cycle of each type of funding arrangement.
- 1.15 Part 7 discusses the various sources of guidance for public entities to get more detail on requirements and expectations in different situations.

### What this guide does not cover

- 1.16 Our guide does not consider:
- funds used to provide goods or services directly (for example, through salaries and other internal costs);
  - subsidies such as government contributions for general practitioner visits (where the individual citizen chooses which general practitioner to see and the government automatically pays a proportion of the cost); or
  - benefits and other entitlements where the payment is automatic and required as a matter of law if the necessary conditions are met; or
  - equity transactions, such as the investment of Crown funds in the shares of State-owned enterprises.
- 1.17 These situations do not involve the exercise of discretion, or choice, by the public entity in the same way as decisions to purchase goods or services, or to provide grants, do.
- 1.18 This guide covers those transactions between public entities that are effectively the same as transactions with a private organisation to purchase some form of goods or services, or to provide a grant to support the organisation or an activity. This guide does not cover funding arrangements associated with the distribution of funds through the appropriation system, for example, or equity or other ownership investments by public entities.

### Relationship with other sources of guidance

- 1.19 We have issued several good practice guides on different aspects of funding arrangements with external parties. They include guidance on procurement, relationships with non-government organisations, public private partnerships, conflicts of interest, and sensitive expenditure. We have also published a number of reports on performance audits and inquiries that examine these issues.

- 1.20 Other organisations have also produced guidance and rules. In particular:
- the Ministry of Economic Development oversees the government's procurement policy and *Mandatory Rules for Procurement by Departments* – central government agencies are bound by these, and other agencies are encouraged to consider them; and
  - the Treasury has published *Guidelines for Contracting with Non-government Organisations for Services Sought by the Crown*.<sup>1</sup>
- 1.21 Part 7 contains more detailed discussion, and a list, of the major sources of rules and advice that public entities should be aware of (and may be required to follow) when they prepare their own policies and operating procedures for managing funding arrangements with external parties.
- 1.22 This guide is designed to overarch these various sources of rules and guidance. It explains the overall conceptual framework that various funding arrangements operate within from an accountability perspective. It complements the government's policy principles, which reinforce some aspects of this guidance (such as the principles of value for money and fairness) and emphasise some other policy matters that are outside our mandate (such as encouraging effective competition and improving business capability).<sup>2</sup>
- 1.23 This guide does not displace any particular legal or other rules and requirements that apply to different public entities. Rather, it shows the context of those particular requirements. In areas not covered by more detailed guidelines or requirements, the principles in this guide should be taken into account for decision-making.

1 The Treasury (2003), available at [www.treasury.govt.nz](http://www.treasury.govt.nz).

2 For further information, see [www.procurement.govt.nz](http://www.procurement.govt.nz).

## Part 2

# Basic principles that govern all funding arrangements

- 2.1 There are some basic principles that govern the use of all public funds. Public entities should consider these principles when contemplating any funding arrangement with an external party.
- 2.2 A question that should be able to be answered in any context is whether the proposed use of funds is for a public purpose. A more specific check is to ensure that the proposed use of funds is for the public purpose or goals of the particular public entity. If not, the proposed use of funds may be more appropriate for another organisation.
- 2.3 Once that threshold of public purpose is established, the focus turns to how to manage such funding arrangements. The international literature on this area includes many different versions of the principles that need to be considered. They all cover similar ground. We summarise these basic principles as:<sup>1</sup>

**Accountability** – Public entities should be accountable for their performance and be able to give complete and accurate accounts of how they have used public funds, including funds passed on to others for particular purposes. They should also have suitable governance and management arrangements in place to oversee funding arrangements.

**Openness** – Public entities should be transparent in their administration of funds, both to support accountability and to promote clarity and shared understanding of respective roles and obligations between entities and any external parties entering into funding arrangements.

**Value for money** – Public entities should use resources effectively, economically, and without waste, with due regard for the total costs and benefits of an arrangement, and its contribution to the outcomes the entity is trying to achieve. Where practical, this may involve considering the costs of alternative supply arrangements.

**Lawfulness** – Public entities must act within the law, and meet their legal obligations.

**Fairness** – Public entities have a general public law obligation to act fairly and reasonably. Public entities must be, and must be seen to be, impartial in their decision-making. Public entities may also at times need to consider the imbalance of power in some funding arrangements, and whether it is significant enough to require a different approach to the way they conduct the relationship.<sup>2</sup>

1 We first set out these principles in our good practice guide, *Principles to underpin management by public entities of funding to non-government organisations*.

2 For example, a traditional contract negotiation approach to setting a price may be problematic when contracting with a small non-government organisation with no other material income stream, because the non-government organisation may effectively have no bargaining power.

**Integrity** – anyone who is managing public resources must do so with the utmost integrity. The standards applying to public servants and other public employees are clear, and public entities need to make clear when funding other organisations that they expect similar standards from them.

- 2.4 By applying these principles sensibly, public entities can demonstrate that they are spending public money carefully and properly managing the process for spending it.

## Part 3

# Taking a strategic approach

### Three stages of strategic thinking

3.1 Funding arrangements are not an end in themselves. They are a way of achieving the broader goals of the public entity. A fundamental part of strategic thinking and business planning for any public entity is considering the most effective way to use public funds to achieve its goals. It is important for public entities to think clearly about the different ways they can use funds, and the benefits, costs, and management consequences of different approaches, throughout their planning.

3.2 This Part identifies three distinct stages where we consider it important for a public entity to specifically and strategically consider the different ways it might use public funds:

**Stage 1:** When a public entity is doing overall strategic and business planning, it (and/or its business units) should consider the different funding options available to it and the significance of each for its activities. Often, this is a discussion about whether it would be better for the public entity to “make” or “buy” a particular product or activity.

**Stage 2:** If a public entity has concluded at a strategic level that purchasing goods and services (procurement), for example, is a significant part of their activity or is a significant contributor to effectively delivering its goals, then we expect the public entity to have a specific procurement strategy to help it manage that aspect of its work. Similarly, if grants and capacity-building activities are an important part of the public entity’s work, we expect the public entity to have a specific strategy to guide and manage that work.

**Stage 3:** Before entering into any *particular* funding arrangement, a public entity should pause and consider the purpose of the funding, what type of relationship it is setting up, and what form of funding arrangement will best fit with that goal and relationship.

### Considering funding choices as part of overall business planning

3.3 Taking a strategic approach to managing public funds should usually begin at the highest level of a public entity’s planning, namely its strategic or business plans. All public entities periodically do some kind of strategic or business planning, whether as part of the annual cycle of preparing statements of intent and other accountability documents, or as part of a longer-term organisational strategy.

3.4 This planning involves identifying the public entity’s main goals (what it is trying to achieve), how it is organising itself, and what else it may need to achieve its goals. That may involve thinking about staffing levels and skills, equipment, or

types of activities and business processes, and working out what is important and what gaps there are.

- 3.5 Although this high-level thinking may not always be separately identified as a specific discussion, it will often involve considering the different types of funding arrangements that the public entity could use. In these processes, the entity will often make fundamental decisions on the types of funding arrangements it will use to help achieve its goals, and on how important a particular type of funding arrangement is for its work.
- 3.6 For example, procuring equipment may be a multi-million dollar part of some public entities' work, and so a crucial part of their ongoing strategic development and management. In many public entities, procurement will be closely linked to their capital asset management. In contrast, a social services organisation might not procure on the same scale, but might have a primary role in delivering on the Government's Pathway to Partnership programme to provide sustainable funding support to community organisations providing social services.<sup>1</sup>
- 3.7 In some large public entities with many disparate business units, strategic planning might also take place at the business unit level.
- 3.8 In our view, it is useful for public entities to think clearly about the different ways they can use public funds, and to identify at the outset of their planning whether any particular types of funding arrangements will be critical to their work or form a significant part of their activity. If so, we expect the public entity to prepare a specific strategy for how it will guide and manage that type of funding.

### Strategies for procurement and other funding options

- 3.9 Our good practice guide on procurement discusses in more detail our expectation that public entities will have a procurement strategy if procurement is an important part of their activities. Every public entity needs to consider the type of procurement that it does, the associated value and risks, and how important procurement is to achieving its goals and business strategy. That consideration should not be isolated from the rest of the public entity's planning and management. Procurement will often need to be closely connected to the public entity's strategies for capital asset management.
- 3.10 If procurement is integral to achieving the overall business strategy, we expect the public entity to have a procurement strategy to help it manage that activity effectively. Even if procurement is not integral to achieving the public entity's goals, we expect the public entity to have a good understanding of what it

<sup>1</sup> See Ministry of Social Development, *Pathway to Partnership Fact Sheet*, 21 April 2008, and other background information on this programme, available at [www.msd.govt.nz](http://www.msd.govt.nz).

purchases, and to have policies and procedures in place to ensure that it follows good procurement practices.

- 3.11 The same expectations logically apply to other forms of funding arrangements with external parties. If the public entity's overall strategic planning identifies grants and other capacity-building funding as a major part of its work or as integral to achieving its goals, then we expect the public entity to have an equivalent strategy to help manage that activity effectively. Even if grants are not integral to the public entity's goals, it should have sound policies and procedures in place to ensure that it administers them well, and in keeping with the basic principles set out in Part 2 of this guide.

### Thinking strategically about particular funding arrangements

- 3.12 Before entering into a particular funding arrangement, it can be useful to pause and think about the purpose of the funding and the relationship that is being set up, and to check that the form of the funding arrangement matches those goals. The funding arrangement is a means to an end, so it is important that it fits with the purpose. The form that is chosen for the funding arrangement will then inform the public entity's approach to planning, choosing a provider, and managing the funding arrangement. Problems can arise if the form does not fit the goal or the relationship.
- 3.13 For many standard transactions or funding arrangements, that check may be brief and straightforward. The public entity's policies and procedures should contain processes for checking that the proposal meets the right criteria for receiving the form of funding, or that the contracting requirements are met. However, for other more significant funding arrangements, it may be useful to specifically consider at the planning stage what form of funding arrangement is most appropriate.
- 3.14 The rest of this guide is designed to support that consideration. It describes:
- the different types of funding arrangements;
  - their common features;
  - the factors that should guide decisions on the most appropriate form of a funding arrangement; and
  - the high level expectations for planning, selection, management, and review that accompany each type of funding arrangement.





## Part 4

# Types of funding arrangements with external parties

### The spectrum of different funding arrangements

- 4.1 For those entering into funding arrangements, an important first step is to understand the underlying nature and purpose of the arrangement, so that expectations are clear and the arrangements can be structured and managed appropriately.
- 4.2 A commonly used and simple typology asks whether the fundamental purpose of the arrangement is to buy, invest, or give to the external party:<sup>1</sup>
- “Shopping” or “buying” arrangements (procurement) are a form of purchase, and can range from simple and low-value purchase transactions to major construction or other infrastructure developments that may be managed through full and formal procurement processes.
  - “Investing” arrangements often take the form of grants, and are designed to build capacity or to support a particular activity or organisation.<sup>2</sup>
  - “Giving” arrangements, along with donations and other forms of unconditional grants and payments, are where the public entity provides something without any conditions attached.
- 4.3 Thinking about those three broad groups can help public entities to clarify the basic purpose or nature of what they are trying to achieve with any particular programme of funding arrangements.
- 4.4 However, for practical purposes it is useful to go a step further and think about the different types of arrangements within each of those broad groups.
- 4.5 Therefore, as a second stage, we have broken procurement into four subsidiary categories:
- major and minor conventional contracts operating in an ordinary market situation; and
  - major and minor contracts with a significant relationship dimension.
- 4.6 We describe contracts that have a significant relationship dimension as “relational purchases” and discuss them further in paragraphs 4.18-4.25.
- 4.7 Similarly, we divide the category of grants into conditional grants and those with only limited conditions, to distinguish between major funding support for substantial projects or development activity (which is likely to attract significant

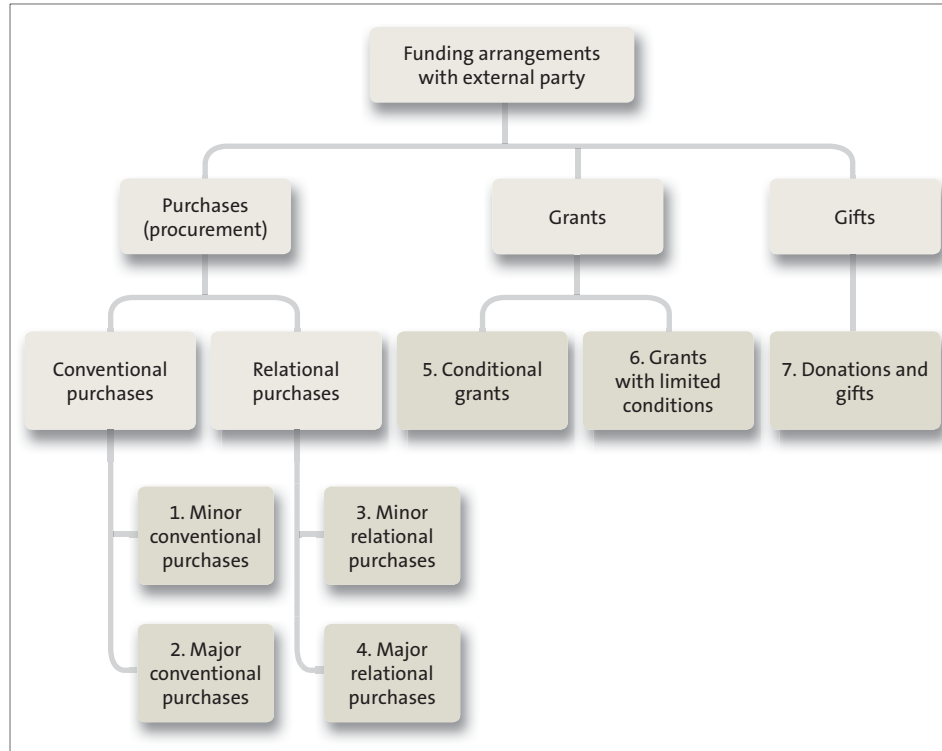
1 This typology was originally developed in Unwin, Julia, *The Grantmaking Tango: Issues for Funders*, Baring Foundation, London, 2004, and was subsequently adopted by the National Audit Office, *Working with the Third Sector*, June 2005.

2 We use the term “investing” here in its colloquial sense, to mean a contribution to, or some support for, the capacity of an organisation or a particular activity, rather than as a technical accounting term. We do not intend to cover investments in equity or other “ownership” transactions.

controls) and more easily managed or minor grants (which may have fewer conditions attached).

- 4.8 It would be possible to break down these categories further. For example, we could differentiate between small simple gifts or donations and more substantial grants with no conditions attached, or between major contracts that are once-only purchases and major contracts that involve long-term supply chain arrangements. Equally, it would be possible to collapse the categories into two major groups – grants and contracts. However, for practical purposes, we have found it useful to work with these seven categories.
- 4.9 Figure 1 shows the way in which we divide the general area of funding arrangements with external parties into seven categories.

**Figure 1**  
The seven categories of funding arrangements with external parties



- 4.10 These are not inflexible categories. One type of arrangement can blur into the next, and a funding arrangement with an organisation may have several dimensions to it. We and others have described a continuum or spectrum of arrangements, from formal or simple contracts, to contracts with a relationship focus, through to conditional and unconditional grants and gifts.<sup>3</sup>
- 4.11 A highly specified or conditional grant can look very similar to a relational purchase contract. The distinction between a minor purchase and a major one is also subjective. Even though the lines between the categories are not solid, it is useful at a practical level to identify the different types of funding arrangements as a starting point for guidance on appropriate administration and management.
- 4.12 Figure 2 shows the different types of funding arrangements as a spectrum, as well as our guidance documents relevant to each.

**Figure 2****The spectrum of funding arrangements and our relevant publications**

Funding arrangements	OAG good practice guides				
	Overarching guide	Procurement	Public private partnerships	NGO funding arrangements	Sensitive expenditure
Minor conventional purchase	✓	✓		✓	
Major conventional purchase	✓	✓	✓	✓	
Minor relational purchase	✓	✓		✓	
Major relational purchase	✓	✓	✓	✓	
Conditional grant	✓			✓	
Grant with limited conditions	✓			✓	
Gift or donation	✓				✓

**The different types of organisations that are funded**

- 4.13 All of these types of funding arrangements can be with a range of different organisations or individuals, although some arrangements are more likely to be with one kind of organisation than another. The different kinds of organisations include:
- **Commercial organisations:** Funding arrangements with a commercial body are more likely to be a contractual relationship to purchase goods or services, or to develop capital assets, but there are situations where commercial companies receive grants (for example, through business or regional development programmes).

<sup>3</sup> Controller and Auditor-General (2006), *Principles to underpin management by public entities of funding to non-government organisations*, Wellington.

- **Non-government organisations:** Funding arrangements with non-government organisations can span the full range of arrangements, from simple grants or donations through to major purchases of services. Long-term purchasing arrangements with non-government organisations are more likely to fall into the category we have described as relational purchases than commercial organisations.
- **Other public sector entities:** It is relatively common for one public entity to fund another for some purpose, and this funding will sometimes fall into one of the categories described above. For example, a government department may contract for a Crown entity to provide goods or services or research, it may buy services from a State-owned enterprise, or it might provide a grant to another state sector body such as a local authority.
- **Other private bodies such as clubs, societies, and trusts:** There are a variety of other private organisations, not strictly non-government organisations or businesses, that exist for particular purposes and enter into funding arrangements with public entities. Again, these can span the full range of funding arrangements.
- **Other governments and overseas organisations:** Funding arrangements also extend beyond our national boundaries, particularly in the context of aid programmes. It is therefore common for grants to be provided to overseas governments or organisations.

## The seven categories of funding arrangements

### Minor conventional purchases

- 4.14 Minor conventional purchases are relatively self-explanatory. All public entities will have a range of goods and services that they buy regularly, that are of relatively low value, and that are able to be bought through ordinary procurement systems. Common examples include office consumables, such as stationery or catering, or once-only and short-term contracts for professional or consulting services. There will usually be a reasonable range of suppliers or providers to choose from, so that ordinary market-based procurement techniques and competitive processes are likely to be effective as a way of managing the price and value for money.

### Major conventional purchases

- 4.15 As with the previous category, the presence of an effectively functioning market is the main factor in a conventional contracting environment. That means that ordinary market disciplines can be expected to operate well to manage price and value for money. Major conventional purchases are high value – possibly worth millions of dollars. Inevitably, they carry higher risk to the public entity and require

a different level of planning, authorisation, documentation, monitoring, and general management.

- 4.16 Examples of major conventional purchases include contracts to procure or build capital assets, information technology contracts, and major consultancy contracts.
- 4.17 There can be some overlap between this category and that of major relational purchases, as there is a growing pattern of managing major contracts through more strategic arrangements such as partnering and project alliances. Such arrangements may have a lot in common with major relational purchases, even if they are developed within a market context.

### Minor relational purchases

- 4.18 There are two main factors that suggest that a purchasing arrangement might not fit the conventional category, and might be better conceptualised as having a significant relationship dimension. They are:
- the absence of an effective or meaningful market to provide the goods or services; and
  - the strategic importance of the goods or services, or of the relationship with the provider, for the public entity.
- 4.19 These two factors may be present more often for public entities purchasing goods or services that are essential to the delivery of public sector (and implicitly non-market) services, that are highly specialised, or that are provided by non-commercial and public interest bodies such as non-government organisations.
- 4.20 Other factors that might suggest a relational purchase include the nature of the goods and services purchased, the duration of the relationship between the public entity and external party, the relationship between the public entity or external party and an end user (such as a person receiving health care or other social services), and the specialist nature of the goods or services. For some external parties, there may be other policy goals that are relevant and that would suggest a relational approach, such as a goal to support the development of a strong and stable non-government organisation or civil society sector, or a goal to encourage strategic relationships or build capacity within some part of the wider state sector.
- 4.21 In such situations, conventional market-based systems for managing a contract may not be appropriate or particularly effective. It may be more useful to give greater weight to the relationship or strategic dimensions of the contract and to set up other systems to manage the dimensions usually managed by competitive market mechanisms.

- 4.22 Common examples of minor relational purchases include contracts to purchase policy or other advice from specialist advocacy or special interest representative groups, highly specialised professional advice, small and specialised research work, or the supply of minor health services or a niche product produced for a particular and unusual requirement.

### Major relational purchases

- 4.23 The same factors identified in paragraphs 4.18-4.20 apply to major relational purchases. The main difference between the previous category and this one is the value or size of the goods or services being purchased. A larger contract will inevitably require additional attention and management throughout its whole life cycle.
- 4.24 Examples of major relational purchases include residential care or other social support services (where the funding arrangement may need to provide stability for end users for many years), major and long-term research contracts, or significant professional or consultancy relationships.
- 4.25 We have already noted the overlap between this category and that of major conventional purchases, through the growing use of relationship-based contracting arrangements in major projects such as infrastructure development.

### Conditional grants

- 4.26 A grant is a funding arrangement that is designed to support an organisation or an activity rather than to buy goods or services. It can operate on any scale, from very small and localised grants to extremely large grants to support major infrastructure projects. We have found it most useful to distinguish between grants that have substantial conditions attached and grants that have very few conditions, rather than to focus on the value of the grant. However, it is likely that a high value grant will require more substantial and complex conditions.
- 4.27 Conditional grants are where the public entity manages the risk of non-performance by attaching significant conditions to the ongoing payment of funds. Common conditions include:
- dividing a project into stages and releasing funds only as each stage is completed;
  - requiring the commitment of other funders to be confirmed before releasing all funds; or
  - requiring particular project management disciplines to be used, such as regular audit or the use of only certified or approved personnel or contracted providers.
- 4.28 There may also be conditions that require funds to be repaid if they are not used to achieve the purpose of the grant.

### Grants with limited conditions

- 4.29 Grants with only a few and relatively simple conditions are common when the funding is relatively small. One example is grants to community groups from a fund set up for specific purposes, such as an environmental projects fund. Another is a fund that people can apply to if they want to organise an event to celebrate Waitangi Day or similar. Other examples include scholarship funds or grants to support an organisation with a specific initiative (for example, a community consultation exercise) or to build the organisation's capacity (for example, by setting up a website).
- 4.30 However, not all grants within this category are small. In some circumstances, grants of foreign aid, for example, might have limited conditions attached, because they are being provided to another government and it may not be appropriate to impose strict conditions or reporting requirements in that context. In other contexts, aid funding may take the form of a grant with substantial conditions, or may be a contract with a provider to deliver a particular set of services or outcomes.

### Gifts

- 4.31 Gifts are self-explanatory. Sometimes public entities just give money, goods, or time to an external party. Things that are explicitly called gifts or donations are easily identified and should be covered by the public entity's policy on such matters. We have already set out our expectations in this area in our good practice guide, *Controlling sensitive expenditure: Guidelines for public entities*. However, a grant may sometimes be awarded with no conditions attached at all. We would categorise an unconditional grant as a gift.

### Typical features of the different funding arrangements

- 4.32 Figure 3 summarises the features and typical examples of the different funding arrangements. We develop this diagram further in Part 6 to indicate our high level expectations throughout the life cycle of each category of funding arrangement.
- 4.33 A funding arrangement may have several different aspects – for example, it might support an organisation to develop and equip a new training capacity for unemployed people looking for work, and fund the organisation to deliver that training or support to such people.<sup>4</sup> The first aspect is essentially capacity building, or investing in the capability of the organisation. It could be treated on its own as a grant. The second aspect is more clearly the purchase of a service.
- 4.34 In such cases, the public entity may need to consider whether it is more sensible to manage the two separate aspects within a single funding arrangement that

<sup>4</sup> This example is taken from the National Audit Office's *Financial Relationships With Third Sector Organisations – a Decision Support Tool for Public Bodies in England*, page 11. It is a common situation in New Zealand as well.

acknowledges the different nature of the two aspects (thus reducing compliance costs for both parties), or as distinct funding streams. The practical considerations discussed in Part 5 will be relevant to these decisions.

**Figure 3**  
Features of the different types of funding arrangements

Type of funding relationship	Features that indicate this type of relationship	Common examples
Minor conventional purchase	<ul style="list-style-type: none"> <li>Legally enforceable obligations to deliver.</li> <li>Likely to be an effective market.</li> <li>Low or moderate value.</li> <li>May be unplanned or once-only purchase.</li> </ul>	<ul style="list-style-type: none"> <li>Consumables, such as stationery.</li> <li>Once-only professional or consultancy services.</li> </ul>
Major conventional purchase	<ul style="list-style-type: none"> <li>Legally enforceable obligations to deliver.</li> <li>Likely to be an effective market.</li> <li>High value.</li> <li>High risk.</li> <li>Possibly long term.</li> <li>May have alliancing or partnership characteristics.</li> </ul>	<ul style="list-style-type: none"> <li>Capital assets.</li> <li>IT systems.</li> <li>Major consultancy services.</li> </ul>
Minor relational purchase	<ul style="list-style-type: none"> <li>Legally enforceable obligations to deliver.</li> <li>May not be an effective market.</li> <li>May be a long-term relationship between the parties, even if specific contract is limited.</li> <li>Provider may be highly specialised.</li> </ul>	<ul style="list-style-type: none"> <li>Policy advice or peer review services from an advocacy group.</li> <li>Specialist professional advice.</li> <li>Research.</li> <li>Minor health services.</li> </ul>
Major relational purchase	<ul style="list-style-type: none"> <li>Legally enforceable obligations to deliver.</li> <li>May not be an effective market.</li> <li>Likely to be a long-term and substantial relationship between the parties.</li> <li>Critical supplies or services.</li> <li>High risk.</li> <li>May have alliancing or partnership characteristics.</li> </ul>	<ul style="list-style-type: none"> <li>Residential care services.</li> <li>Major research programme.</li> <li>Ongoing professional advice.</li> </ul>



Type of funding relationship	Features that indicate this type of relationship	Common examples
Conditional grant	<p>Supports a “public good” activity, organisation, or project.</p> <p>Limited ability to legally enforce performance.</p> <p>Funding is staged; tranches released as milestones achieved.</p> <p>Significant conditions attached (for example, commitment of other funders, procedural checks).</p> <p>Often not a commercial body.</p>	<p>Support for major development projects (for example, a community facility).</p> <p>Research grants.</p> <p>Ongoing support for a public interest activity or organisation.</p>
Grant with limited conditions	<p>Supports a “public good” activity, organisation, or project.</p> <p>Limited ability to legally enforce performance.</p> <p>Any obligations likely to be around process and reporting.</p> <p>Unlikely to be a commercial body.</p> <p>May involve a relationship with another government.</p>	<p>Foreign aid.</p> <p>Environmental grant.</p> <p>Minor research.</p> <p>Support for specific purpose initiatives (for example, setting up a website for a community group).</p>
Gift or donation	<p>No obligations attached.</p> <p>Usually very low value.</p> <p>Unlikely to be a commercial body.</p>	<p>Business gifts.</p> <p>Gifts to build relationships.</p> <p>Cultural courtesies.</p> <p>Marketing and public relations giveaways.</p> <p>Koha.</p>



## Part 5

# Choosing an approach

- 5.1 As already explained, the basic principles discussed in Part 2 will be relevant regardless of the funding arrangement's purpose or type. However, the way in which they are given practical effect may vary considerably depending on the form of the funding arrangement.
- 5.2 It is therefore important for public entities to decide which type of funding arrangement is appropriate when they prepare the business systems, policies, and procedures to support particular categories of funding, and when they enter into individual transactions or arrangements.
- 5.3 This Part sets out some questions to help public entities consider the characteristics of particular types of transactions and relationships, and identify the most appropriate category of funding arrangement.

### What is the goal?

- 5.4 A public entity should focus on what it is trying to achieve in any particular context. It should ask, at a very simple level, what the goal is with a particular funding arrangement. Is it a purchasing relationship, where the public entity is buying goods or services of some kind? Or is it essentially an exercise in capacity building or general support, where the public entity is assisting an external party with a particular activity or project, or with some part of its ongoing operation? The answer to these questions will determine which types of funding arrangements are going to be most appropriate – those that are designed to support purchasing or those that support grants and gifts.

### What is the relationship context?

- 5.5 An important part of the context for any funding arrangement will be the relationship background. That background may have sectoral and strategic, market, and end-user dimensions, as well as the general relationship between the public entity and the external party.

### Sectoral or strategic context

- 5.6 Is there any general sectoral relationship or strategic context that needs to be considered? For example, central and local government have operated a “partnership” relationship for some years and have shared strategic goals that might at times inform the way that central government funds some local government activity. Similarly, the Government has a programme of activity for its relationship with non-government organisations and community organisations in the social services sector. This activity aims to give greater acknowledgement

to the capacity building and support aspects of those relationships, and the importance of ensuring a sustainable civil society sector.<sup>1</sup>

### Type of organisation

- 5.7 What type of organisation will receive the funding? Although all types of organisations can feature in all of the funding categories, there are some specific relationships that are more common in particular categories. For example, relationships in the “giving” and “investing” categories are much more likely to involve non-government organisations and other non-profit bodies than commercial organisations. Relationships with foreign governments may have very few enforceable conditions attached and so are more likely to be grants with limited conditions. Relationships with commercial organisations are much more likely to be purchase or procurement contracts of some kind. Therefore, although the type of body being funded does not determine the funding category, it can indicate the categories that are more likely to be appropriate.

### Length of relationship

- 5.8 Is the funding arrangement long or short term? Even if it is short term, is it part of a longer-term relationship between the public entity and the external provider? The continuity of the relationship between the funder and the external party may be relevant. A long-standing relationship – for example, with a community provider of a specialist service – will often suggest that the contracting environment will be shaped by what we have termed “relational” considerations rather than market factors. Equally, although an individual contract may be for a short term and of low value, if it is part of a long-term pattern of procurement from a single external party, then the public entity may need to have a system in place to respond to the cumulative total of work going to that provider.

### Presence of a market

- 5.9 Are there many potential providers of the goods or services being sought? Are there many potential buyers? The more effective the market, the more likely it is that the arrangement will be a conventional contract using traditional competitive disciplines to manage price. If there is only one plausible supplier, then the arrangement may be better managed as a relational contract.

### The end users

- 5.10 The purpose of many funding arrangements is to deliver a service or provide support to individuals needing assistance – for example, by supporting residential care facilities or other forms of social support. It may be important to consider

<sup>1</sup> See [www.msd.govt.nz](http://www.msd.govt.nz) for information on the Pathway to Partnership programme.

the needs of the recipients or end users of a service when thinking about the relationship with the external party. For example, if the end users of the service are going to value long-term stability highly, then that will affect the way the public entity should manage the funding arrangement with the provider. A more long-term and strategic approach to quality and price will probably be more appropriate than the use of short-term market-based disciplines.

### Thinking about risk

- 5.11 Identifying and managing risk is a vital part of any business planning. Public entities need to think about risk when they put in place business processes, policies, and procedures to manage funding arrangements with external parties, as well as when they consider entering into any individual funding arrangement. Thinking about risk will help a public entity to make appropriate decisions on how to structure and manage funding arrangements both at a system and individual level.

### Control

- 5.12 What level of control does the public entity want over the detail of what is done and the outcome? Are there significant requirements around the quality of what is delivered? In general, the greater the level of control that the public entity seeks or expects, the more likely it is that the relationship will be a highly specified and contractually enforceable conventional or relational purchasing arrangement. If significant control is not needed or appropriate – for example, because of the autonomy and governance arrangements of the external party – a grant arrangement may be better.

### Performance and consequences

- 5.13 What happens if the external party does not do what is intended? Is the intention to create legally enforceable performance or delivery obligations? If the intention is to make the provider legally accountable for delivering the contracted goods or services, then it is more likely that the relationship should be set up as a contractual purchase arrangement where the parties can withhold payment or go to court to seek remedies for non-performance. In a grant relationship, the consequence of non-performance is likely to be an end to the current funding arrangement, reputational damage, and a reduced ability to obtain similar funds in future. There may be an obligation to return funds not used for the purpose of the grant. However, the external party may be less accountable for the quality or detail of what is being produced with the funding.

### Tolerance of risk

- 5.14 What level of risk is the funding public entity prepared to tolerate? What level of risk does the particular activity carry? Within a grant framework, higher risk may lead to a more structured arrangement, with more conditions attached to the ongoing release of funds. Within a purchasing context, higher risk to a public entity may sometimes lead to a greater emphasis on strategic and relationship aspects, and might therefore push the contract into the relational category. The closer interaction of a relationship-based approach can sometimes be a sensible way of managing risk to an acceptable level.

### Sustainability

- 5.15 If the government or the public entity has a long-term interest in the viability of the external party, or the sector or market it operates in, that interest may affect how the public entity approaches the relationship as a whole and any particular funding arrangement. It is likely to affect how it defines and manages risk, because risks to the external party's viability may also be seen as risks for the public entity.

### Value

- 5.16 The other aspect of the strategic context that deserves specific mention is the monetary value of a funding arrangement. It is common sense that high-value contracts should attract more attention, at every stage of their life cycle, than contracts for small amounts. At this broad level, high value is one simple indicator of risk.
- 5.17 The definition of high and low value funding arrangements will differ between public entities, depending on the nature of their activities and budget. However, in any public entity, policies and systems should support an approach that tailors the level of planning, documentation, and monitoring to the financial significance of the arrangement for the public entity.

## Part 6

# Putting the principles into practice

- 6.1 In this Part, we set out our high level expectations for how public entities will manage funding arrangements at a strategic organisational level and throughout the life cycle of particular funding arrangements.

### **Our general expectation: having appropriate policies and procedures**

- 6.2 Our general expectation, for all areas of funding arrangements with external parties, is for the public entity to consider the nature of its activity and the types of funding arrangements it uses to achieve its goals, and have in place policies and procedures to guide staff. Subject to any specific legal or other rules applying to the public entity, we expect those policies and procedures to be consistent with the principles and practical considerations set out in this guide, and to reflect as appropriate the types of high level expectations described in this Part.

### **Generic expectations for all funding arrangements**

- 6.3 There are some matters that are so fundamental to public sector administration that they are generic expectations for all categories of funding arrangements. They are not included in the expectations summarised in Figures 4 and 5, because we expect a public entity's systems to support these aspects as a matter of course.
- 6.4 Our generic expectations are:
- any proposed use of public funds should be for the public purpose or goals of the public entity – that is, it should fit with the entity's overall strategic and business planning;
  - for government departments, all funding arrangements must be within the scope of the relevant appropriation, which sets the terms on which Parliament has authorised the use of public funds;
  - individual funding decisions must fit within the budget of the public entity, and must have appropriate justification for the cost of the particular funding arrangement;
  - delegations of authority should be in place within a public entity, and spending decisions must be taken at the right level in keeping with those delegations;
  - all funding arrangements should be managed in keeping with a public entity's policies and procedures unless there is a documented decision, at the right level, to do something differently;
  - all those involved in making decisions or managing funding arrangements must act in keeping with the state sector code of conduct or any equivalent sectoral or organisational documents setting ethical standards;

- systems must be in place to ensure that all those involved in making decisions or managing funding arrangements appropriately identify, manage, and record conflicts of interest; and
- record-keeping systems should be in place to support effective decision-making, monitoring, and management, and to enable the public entity to be open and accountable.

### Some practical considerations

- 6.5 The principles set out in Part 2 are deliberately at a high level. They are a starting point, and a reminder of the basic obligations on those spending public money. In any particular public entity or situation, they need to be applied flexibly and practically, to achieve the goals of the public entity or of the particular funding arrangement through the most sensible means. We have previously described this as taking a risk-based approach.<sup>1</sup>
- 6.6 For example, the principle of accountability at its simplest means that a public entity has to be able to explain what public money has been used for. For a very minor and simple purchase, this may require no more than a receipt for a bottle of milk or a note on the back of a taxi receipt recording the purpose of the travel. For major contracts, such as for a new information technology system, much more would be needed to reflect the same principle, such as fully developed business cases, formal documented approvals at the appropriate level, detailed contracts, ongoing and systematic monitoring of progress under the contracts, and full documentation of the whole procurement process.
- 6.7 When deciding how to give effect to these principles in any particular situation, public entities should consider:<sup>2</sup>
- **The goal** – It is important for the public entity to focus on what it is trying to achieve. Process should not dominate at the expense of the outcome.
  - **Simplicity and proportionality** – The requirements put in place for the funding arrangement should be as simple and practical as possible, considering the amounts involved, the complexity, and the level of risk. It is appropriate to consider compliance costs for the parties, and seek to reduce them where possible.
  - **The context** – The arrangements need to fit with the overall context of the funding arrangement, including any more general relationship that the external party has with the entity or with other relevant government organisations. For example, a funding arrangement between a department

1 Office of the Auditor-General (2006) *Principles to underpin management by public entities of funding to non-government organisations*, Wellington.

2 Based on the National Audit Office's *Financial Relationships With Third Sector Organisations – a Decision Support Tool for Public Bodies in England*, page 4, available on the National Audit Office's website ([www.nao.org.uk](http://www.nao.org.uk)).



and a non-government organisation may need to take account of any general government policy on relationships with the community and voluntary sector.

- **The risk** – Public entities need to identify risks in or around the funding arrangement and to consider how to manage those risks. This should not be seen as encouragement to be overly risk averse. The key is to get the right balance between risk and expected benefit, and to do so consciously.
- **The nature of the parties** – The needs and standards of public entities – for example, for accountability or transparency – may be quite different from those that the external party usually encounters. Equally, the external party's needs may be quite different from those of the public entity. For example, a non-government organisation may have unique obligations to constituent groups or members. Relationships are likely to proceed more constructively and effectively if each party understands the needs of the other and the consequences of those needs for them.

6.8 Considering these factors carefully should help an entity structure and manage a funding arrangement appropriately. Each different category of arrangements has a standard set of procedural and other expectations, deriving from this guide and other good practice guides and requirements, that reflect the basic principles in Part 2. However, these standard expectations can and should be tailored to suit the needs of the individual public entity and the individual situation.

## Managing across the life cycle of a funding arrangement

6.9 At each stage of the life cycle of a funding arrangement, a public entity needs to think about what the principles require for that type of arrangement in that particular context.

6.10 The life cycle of funding arrangements is discussed in our good practice guides on non-government organisations, procurement, and partnership arrangements, as well as in the Treasury non-government organisation guidelines. In summary, a life cycle approach requires the public entity to think about the different stages that the arrangement will go through. We summarise these as:

- planning for the funding arrangement;
- selecting a provider and agreeing the terms;
- managing and monitoring the arrangement; and
- reviewing, evaluating, and starting over (where appropriate).

## High level expectations for the different arrangements

- 6.11 At each stage of the life cycle, we have a number of high level expectations for each category of funding arrangement that show how we expect the basic principles in Part 2 to be reflected in practice. Figure 4 sets out those expectations for the four categories of purchasing arrangements. Figure 5 sets out those expectations for the three categories of grants and gifts.
- 6.12 There will usually be various sources of guidance to help public entities apply the principles in line with our expectations. A public entity's policies and procedures may already translate the principles and other legal and administrative requirements into concrete expectations and procedural steps. We and others continue to produce more detailed procedural guides on a wide range of topics. We discuss the range of sources of requirements and guidance in Part 7.

**Figure 4**

### General expectations and sources of guidance for managing purchasing arrangements

Type of funding arrangement			
Minor conventional purchase	Major conventional purchase	Minor relational purchase	Major relational purchase
<b>General expectations: planning stage</b>			
Any planning, decisions, and approvals follow the entity's policies and procedures.	Formal planning and project systems put in place to manage the contract process. Suitably skilled staff assigned. Legal advice on process and contract as needed.	Any planning, decisions, and approvals follow the entity's policies and procedures. A key person assigned to manage the particular funding arrangement. Early liaison between the key person and any others in the public entity involved in managing the relationship with the external party.	Planning, decisions, and approvals at a level appropriate to the scale of the contract. Suitably skilled staff assigned. Early liaison between the key person and any others in the public entity involved in managing the relationship with the external party. Legal advice on process and contract as needed. Assessment of risks and relationship context.
<b>General expectations: selection stage</b>			
Selection process may vary (direct negotiation, quotations, preferred suppliers, closed tenders) but	Competitive selection process (preferably open tender). Formal processes with procedural safeguards.	Selection process may be limited if no effective market, or if urgent and specialist goods or services needed.	Selection process more likely to involve direct negotiation than competitive systems.

Type of funding arrangement			
Minor conventional purchase	Major conventional purchase	Minor relational purchase	Major relational purchase
<p>will involve periodic reference to the market.</p> <p>May be standard form contracts, or little negotiation of terms.</p> <p>Documentation of agreement.</p>	<p>Negotiation of specific and detailed terms and conditions.</p> <p>Full formal documentation of contract.</p>	<p>May be no negotiation of terms, or use of standard form contracts.</p> <p>Documentation of agreement, possibly through an exchange of letters.</p>	<p>If no effective market, may use other approaches to determine price (for example, open book, benchmarking components, or independent peer review).</p> <p>Clear documentation of agreement and what is being funded.</p>
General expectations: monitoring stage			
<p>Possibly periodic payments, dependent on performance.</p> <p>Monitoring through normal office systems for processing receipts and invoices.</p>	<p>Systematic oversight.</p> <p>Comprehensive reporting.</p> <p>Payments dependent on performance.</p>	<p>Payments dependent on performance.</p>	<p>Systematic oversight.</p> <p>Reporting requirements tailored to situation.</p> <p>Periodic payments, dependent on performance. For long-term contracts, periodic review to ensure that the rationale for the arrangements continues to apply.</p>
General expectations: review stage			
<p>Periodic review of satisfaction with suppliers.</p>	<p>Programmed review well before contract expires.</p>	<p>Periodic review of purchasing experience and satisfaction.</p> <p>Periodic discussion with external party about mutual needs and satisfaction.</p>	<p>Programmed or regular review to check the purpose still relevant, satisfaction of both parties, price, and any other issues.</p>
Sources of guidance			
<p><i>Procurement guidance for public entities</i></p> <p><i>Principles to underpin management by public entities of funding to non-government organisations</i></p> <p><i>Mandatory Rules for Procurement by Departments.</i></p>	<p><i>Procurement guidance for public entities</i></p> <p><i>Principles to underpin management by public entities of funding to non-government organisations</i></p> <p><i>Achieving public sector outcomes with private sector partners</i></p> <p><i>Mandatory Rules for Procurement by Departments.</i></p>	<p><i>Procurement guidance for public entities</i></p> <p><i>Principles to underpin management by public entities of funding to non-government organisations</i></p> <p><i>Mandatory Rules for Procurement by Departments.</i></p>	<p><i>Procurement guidance for public entities</i></p> <p><i>Principles to underpin management by public entities of funding to non-government organisations</i></p> <p><i>Achieving public sector outcomes with private sector partners</i></p> <p><i>Mandatory Rules for Procurement by Departments.</i></p>

**Figure 5**  
**General expectations and sources of guidance for managing grants and gift arrangements**

Type of funding arrangement		
Conditional grant	Grant with limited conditions	Gift or donation
<b>General expectations: planning stage</b>		
<p>Process to check that purpose aligns with entity's business or functions.</p> <p>Organisational policy and business planning to develop systems and criteria for considering applications or requests.</p>	<p>Process to check that purpose aligns with entity's business or functions.</p> <p>Organisational policy and business planning to develop systems and criteria for considering applications or requests.</p>	<p>Authorised in accordance with entity's policies.</p>
<b>General expectations: selection stage</b>		
<p>Systematic process for considering applications or requests against criteria.</p> <p>Specific assessment of the basis for the amount of the grant sought.</p> <p>Clear documentation of terms of the grant and what is being funded.</p> <p>Clear and appropriate conditions set to manage risk and ensure suitable accountability.</p>	<p>Systematic process for considering applications or requests against criteria.</p> <p>Specific assessment of the basis for the amount of the grant sought.</p> <p>Clear documentation of terms of the grant and what is being funded.</p> <p>Some clear and appropriate conditions set to manage risk and ensure suitable accountability.</p>	<p>No application process.</p> <p>Voluntary.</p> <p>May be a tangible gift, or money, or time.</p>
<b>General expectations: monitoring stage</b>		
<p>Regular reporting or other checks (at an appropriate level) to assess progress and whether further funds should be released, to enable funder to assess success.</p> <p>Payment may be in advance of delivery/performance but could be in stages to manage risk.</p>	<p>Payment may be in advance of delivery/performance but could be in stages to manage risk.</p> <p>Possibly some ongoing reporting or monitoring arrangements, depending on risk, scale, and nature of the relationship, to enable funder to assess success.</p>	<p>No reporting by recipient.</p>
<b>General expectations: review stage</b>		
<p>Full reporting of achievements against the purpose of the grant.</p>	<p>Some reporting of achievements against the purpose of the grant.</p>	<p>Recording through normal office systems for minor expenditure.</p>
<b>Sources of guidance</b>		
<p><i>Principles to underpin management by public entities of funding to non-government organisations</i></p>	<p><i>Principles to underpin management by public entities of funding to non-government organisations</i></p>	<p><i>Controlling sensitive expenditure: Guidelines for public entities</i></p>

## Part 7

# An overview of sources of requirements and guidance

- 7.1 This overarching guide has described:
- the fundamental principles that apply to all funding arrangements with external parties;
  - the types of funding arrangements with external parties that public entities enter into and manage;
  - the strategic considerations relevant to how a public entity plans for funding arrangements with external parties, both at a business level and for particular proposals for funding arrangements; and
  - our high level expectations for how public entities will manage different funding arrangements throughout their life cycle.
- 7.2 More detailed rules and guidance are contained in a wide range of other sources, including other guides we have published. This Part describes the other sources of guidance or advice that public entities need to be familiar with when they develop and manage funding arrangements with external parties. Any specific laws or other rules that apply to a sector will prevail over the general expectations outlined in this or other good practice guides issued by the Auditor-General.

### Legal requirements

- 7.3 All public entities need to prepare their policies and procedures in a way that supports compliance with any applicable legal obligations. Acting lawfully is a fundamental obligation for public entities, and is reflected in the basic principles discussed in Part 2. The particular obligations will vary according to the nature of the public entity and the sector, but may include:
- general public and administrative law duties to act fairly, reasonably, and in keeping with the law;
  - obligations arising from international law and international trade agreements that bind the Government;
  - sectoral legislation relevant to the management of public funds and the powers of public entities;
  - any other limits or rules in the specific legislation that establishes a public entity or group of public entities (such as the Human Rights Act establishing the Human Rights Commission, the New Zealand Superannuation and Retirement Income Act 2001 establishing the Guardians of New Zealand Superannuation, or the Private Schools Conditional Integration Act 1975 setting out the terms on which private schools can integrate with the public school sector); and

- specific rules in general legislation that may affect particular funding arrangements, such as the Commerce Act 1986, the Fair Trading Act 1986, or the various contract statutes.

7.4 Relevant sectoral legislation includes:

- the Public Finance Act 1989 and the annual Appropriation Acts, for central government departments;
- the Crown Entities Act 2004, for Crown entities;
- the Local Government Act 2002, for regional and territorial authorities;
- the New Zealand Public Health and Disability Act 2000, for district health boards; and
- the Education Acts of 1964 and 1989 for schools and tertiary institutions.

### The Auditor-General's good practice guides

7.5 The Auditor-General publishes good practice guides on topics where experience suggests that public entities would find some guidance useful. Because the Auditor-General's mandate covers the whole public sector, the guides are usually written at a level of principle. Different public entities are then expected to consider how they can best reflect those principles in the policies and procedures they put in place to meet their own working needs.

7.6 The good practice guides provide the basis for any later assessment by the Auditor-General of the adequacy of a public entity's systems or practices, whether in the course of annual audits, performance audits, or inquiries. Good practice guides relevant to managing funding arrangements with external parties include:

- this guide, which explains how the various sources of guidance fit together, and sets out our overall principles and expectations;
- *Procurement guidance for public entities*, which is relevant to all four purchasing categories;
- *Principles to underpin management by public entities of funding to non-government organisations*, which is relevant to all categories, but particularly to relational contracts and grants;
- *Achieving public sector outcomes with private sector partners*, which is relevant to major contracts, both conventional and relational;
- *Managing conflicts of interest: Guidance for public entities*, which is relevant to all categories and all decision-making; and
- *Controlling sensitive expenditure: Guidelines for public entities*, which is relevant to gifts.

## Other publications by the Auditor-General

- 7.7 There are a range of other publications from this Office that include relevant advice and comment. A full list of publications is available on our website ([www.oag.govt.nz](http://www.oag.govt.nz)).
- 7.8 Recent performance audit reports on grants include *Te Puni Kōkiri: Administration of grant programmes*, *New Zealand Trade and Enterprise: Administration of grant programmes – follow-up audit*, and *New Zealand Agency for International Development: Management of overseas aid programmes*.
- 7.9 Recent reports on inquiries include *Management of conflicts of interest in the three Auckland District Health Boards*, *Inquiry into the Ministry of Health’s contracting with Allen and Clarke Policy and Regulatory Specialists Limited*, and *Inquiry into certain aspects of Te Wānanga o Aotearoa*.
- 7.10 The auditing standards published by the Auditor-General set out the general standards that we apply on topics such as waste, probity, performance, accountability, and legislative compliance.

## Central government policy and mandatory rules on procurement

- 7.11 On behalf of the Government, the Ministry of Economic Development oversees the government’s general policy on procurement, and the mandatory rules that Cabinet has set for the way government departments purchase goods and services (*Mandatory Rules for Procurement by Departments*). The policy and rules apply to and bind government departments, and other public entities in the state sector are encouraged to consider them. For a public entity bound by them, the rules take precedence over our general guidance if there is any conflict. We discuss the rules further in our publication *Procurement guidance for public entities*. The rules will usually be relevant to major conventional contracts, and may sometimes be relevant to other purchase categories depending on the value of the contract and the sector. (The mandatory rules do not apply to the purchase of services for public health, education, or social services purposes.)

## State sector requirements, standards, and guidelines

- 7.12 The Treasury, the State Services Commission (SSC), and others publish rules and guidelines on relevant topics. The main publications in this category at present are:
- Treasury Instructions;<sup>1</sup>
  - Treasury circulars;<sup>2</sup>

1 Available at [www.treasury.govt.nz](http://www.treasury.govt.nz).

2 Available at [www.treasury.govt.nz](http://www.treasury.govt.nz).

- Treasury NGO guidelines *Guidelines for contracting with Non-government Organisations for Services sought by the Crown*;<sup>3</sup>
- SSC code of conduct *Standards of Integrity and Conduct*;<sup>4</sup>
- SSC *Guidelines for Treatment of Intellectual Property Rights in ICT contracts*;<sup>5</sup>
- Ministry for the Environment *Govt3: towards sustainable practice*;<sup>6</sup>
- Department of Labour *Construction Tendering – Health and Safety Guide*;<sup>7</sup>
- Office of Community and Voluntary Sector – general information and guidance is available on their website, particularly for funding community, voluntary, and Maori organisations;<sup>8</sup> and
- Ministry of Social Development – general information and guidance is available on their website on the Pathway to Partnership programme and other government initiatives to support the non-government organisation social services sector.<sup>9</sup>

## Industry-specific standards

- 7.13 Different industries, particularly those operating in specialised and complex environments, may also have their own standards or operating guidelines. When interacting with that industry, public entities should be familiar with the relevant industry standards.

## The public entity's own policies and procedures

- 7.14 Finally, it is important that any staff member who is entering into or managing a funding arrangement with an external party is familiar with the public entity's own policies and procedures. Usually, these internal systems and guidance will have been prepared carefully and will cover the whole range of considerations and obligations discussed in this guide. They should provide a solid basis for a staff member to proceed with confidence, by drawing attention to any external or internal procedural requirements and supporting the exercise of careful judgement when needed.

3 Available at [www.treasury.govt.nz](http://www.treasury.govt.nz).

4 Available at [www.ssc.govt.nz](http://www.ssc.govt.nz).

5 Available at [www.e.govt.nz](http://www.e.govt.nz).

6 Available at [www.mfe.govt.nz](http://www.mfe.govt.nz).

7 Available at [www.osh.govt.nz](http://www.osh.govt.nz).

8 Available at [www.ocvs.govt.nz](http://www.ocvs.govt.nz).

9 Available at [www.msd.govt.nz](http://www.msd.govt.nz).





# Publications by the Auditor-General

Other publications issued by the Auditor-General recently have been:

- Procurement guidance for public entities
- The Accident Compensation Corporation's leadership in the implementation of the national falls prevention strategy
- Ministry of Social Development: Preventing, detecting, and investigating benefit fraud
- Guardians of New Zealand Superannuation: Governance and management of the New Zealand Superannuation Fund
- Annual Plan 2008/09 – B.28AP(08)
- Central government: Results of the 2006/07 audits – B.29[08a]
- The Auditor-General's Auditing Standards – B.28(AS)
- Responses to the Coroner's recommendations on the June 2003 Air Adventures crash
- Inland Revenue Department: Effectiveness of the Industry Partnership programme
- Audit committees in the public sector
- New Zealand Trade and Enterprise: Administration of grant programmes – follow-up audit
- Mental health services for prisoners
- New Zealand Agency for International Development: Management of overseas aid programmes
- Liquor licensing by territorial authorities

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