

NEW ZEALAND  
GOVERNMENT PROCUREMENT

4<sup>th</sup>  
EDITION  
2019

# Government Procurement Rules

Rules for sustainable and inclusive procurement



MINISTRY OF BUSINESS,  
INNOVATION & EMPLOYMENT  
HĪKINA WHAKATUTUKI

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## New Zealand Government



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# Foreword

As the Procurement Functional Leader, I am pleased to introduce the Government Procurement Rules, fourth edition.

Government procurement can make a vital contribution to the wellbeing of New Zealanders. Benefits that go beyond the immediate purchase of goods, services and works for government can now be achieved through our collective spend in order to ensure that we are promoting inclusivity, transparency and sustainability in the procurement process.

These Rules are essential in reforming government procurement to support broader social, economic, cultural and environmental outcomes, as well as continuing to represent the government's standards of good practice during the procurement process.

Through these Rules, government contracts will now be more explicitly leveraged to support broader outcomes. This entails leveraging contracts to promote the transition to a net zero emissions economy, supporting New Zealand businesses, promoting skills development, and ensuring compliance with employment and health and safety standards. As Government, we will take a lead in ensuring that our spend is delivering public value for New Zealanders.

Government procurement can also future-proof the ability of New Zealand business to trade. By seeking continual innovation and requiring high standards in the procurement process, we are ensuring that those who win contracts in New Zealand can compete in the international market. This increases exports and supports New Zealand's economic growth.

Procurement must adapt and stay relevant to the changing needs of society, the economy and the environment. The inclusion of these wider procurement benefits will ensure procurement practice in New Zealand remains flexible and productive in relation to global trends.



**Carolyn Tremain**

Chief Executive,  
Ministry of Business, Innovation and Employment

# Context

## What are the Rules?

The Government Procurement Rules are the Government's standards of good practice for government procurement. They are the paragraphs numbered 1 to 71, in Sections 1 to 6 of this document, and include the definitions in Section 7.

The Rules must be read along with the *Principles of Government Procurement*, the *Government Procurement Charter* and other good practice guidance. You can read more about these at: [www.procurement.govt.nz](http://www.procurement.govt.nz)

## Editions

The *Rules* were first published in October 2013, replacing the Mandatory *Rules* for Procurement by Departments issued by the Ministry of Economic Development in 2006.

The second edition of the *Rules* came into effect on 26 May 2014, to reflect Cabinet's decision to rescind the Rule that required agencies to source cleaning services only from members of the Building Services Contractors Association.

The third edition came into force in July 2015 following a general review. Changes included extending the mandatory application of the *Rules* to a wider range of agencies, and amending *Rules* relating to opt-out procurements and *Notices of Procurement*.

The fourth edition, now titled the Government Procurement Rules, has been developed to align with the Government's expectations that procurement will be leveraged to achieve *Broader Outcomes*. Changes include:

- › A transformation in the way *public value* is assessed and calculated with a wider view towards *the Broader Outcomes* that can be achieved through procurement (Rules 16 to 20).
- › A set of changes to construction procurement (Rules 18, 64 and 69).
- › New *Rules* around procurement capability (Rules 70 and 71), reporting (Rule 53) and planning (Rule 15).
- › The removal of outdated *Rules* (Extended Procurement Forecasts and Registered Suppliers Lists and amending requirements relating to Significant Procurement Plans).

- › Amending the construction threshold to \$9 million and reviewing the thresholds annually.

A table at the end of this document explains changes to the numbering of the *Rules* from the third edition.

The fourth edition has been approved by the Ministers of Finance and State Services and was endorsed by Cabinet on 13 May 2019. It applies from 1 October 2019.

## What is procurement?

The term 'procurement' covers all aspects of acquiring and delivering goods, services and works (refurbishment and new construction). It starts with identifying the need and finishes with either the end of a service contract or the end of the useful life and disposal of the asset. This is called the procurement lifecycle. You can obtain more information on the eight stages of the procurement lifecycle at: [www.procurement.govt.nz](http://www.procurement.govt.nz).

Procurement can range from relatively simple and low risk activities to those that are complex and high risk. For procurements that are high risk or high value, a strategic approach will usually result in better outcomes. A strategic approach involves understanding the importance of the procurement to the agency in achieving its outcomes, undertaking adequate planning, sourcing suppliers and managing relationships to successfully deliver against public policy objectives and business needs, while delivering *public value*.

*Public value* means achieving the best possible result from a procurement. For instance, procurement offers the opportunity to support *New Zealand businesses*, including Māori businesses and Pasifika businesses. Procurement can also contribute positively towards achieving environmental outcomes by supporting New Zealand's transition to a low emissions economy or reducing waste.

The *Rules* focus mainly on the process of sourcing. Sourcing is only **one** part of the procurement lifecycle. It covers planning your procurement, market research, approaching the market, evaluating responses, and negotiating and awarding the contract.

## Application to agencies

The *Rules* are mandatory for the agencies listed in Rules 5.1 and 5.2. For these agencies, where the *Rules* use the term **must**, the Rule is compulsory and non-compliance is a breach of the *Rules*. Where the *Rules* use the term **should**, this indicates good practice. Agencies referred to in Rule 5.3 must apply the *Rules* relevant to the commitments contained in, and the procurement covered under, the *World Trade Organization Agreement on Government Procurement* and other free-trade agreements.

These agencies may be audited for compliance with the *Rules*. Suppliers have a right to complain if they think that such an agency has not complied with the *Rules*. See the supplier feedback and complaints section at: [www.procurement.govt.nz](http://www.procurement.govt.nz).

Other agencies in the wider *Public Sector* are expected or encouraged to apply the *Rules* as good practice (see Rules 5.5 and 5.6). These agencies can interpret **must** as **should**.

## How to use the Rules

The *Rules* are a flexible framework designed to help agencies make balanced procurement decisions.

Before you choose a procurement process, make sure you understand the nature of the market for the goods, services or works you need and the best way to source your requirements, then consider how the *Rules* apply. When choosing a procurement process, think about what electronic or streamlined or non-traditional methods, such as a hackathon (where potential suppliers work to come up with the most innovative solution to your operational challenges), could be appropriate or achieve a better result.

Accompanying each Rule are tip boxes with more information, definitions, links to guides, tools and templates, and examples. These do not form part of the *Rules*. They can be used, along with the background information in this section and Section 1, to assist with interpretation and to give greater context for the reader. Section and paragraph headings are not part of the *Rules* and should not be used to assist with interpretation.

### Icons

The following icons are used to show supplementary information.

 more information	 definitions
 guides, tools and templates	 examples

Words and phrases that have a special meaning are marked in italics (e.g. *Request for Tender* and *new construction works*). Special meanings are explained in Section 7 Definitions, which is at the end of the document.

When 'includes' or 'including' is used before a list in a Rule, or examples are provided, it means that the relevant Rule may cover things that are not specifically identified in the list or examples.

References to Acts or Regulations include any amendments made to them and any Acts or Regulations that succeed them.

Individual *Rules* should not be read in isolation from each other and the *Principles of Government Procurement*, and the *Government Procurement Charter*. An interpretation of each Rule that best fits its purpose within the *Rules* as a whole should be adopted.

Agencies can rely on the *Rules* to incorporate New Zealand's international commitments on government procurement. Readers do not need to refer directly to these treaties and agreements. Section six contains a summary of New Zealand domestic requirements for government procurement. Readers are directed to additional sources and will be required to refer to them directly.

## Te Tiriti o Waitangi/Treaty of Waitangi

Agencies should be aware of their obligations under Te Tiriti o Waitangi and how this relates to their procurement activities.

New Zealand is party to International Agreements that include specific provisions preserving the pre-eminence of Te Tiriti o Waitangi. Te Tiriti o Waitangi exception provides flexibility for the Government to implement domestic policies in relation to Māori, including in fulfilment of the Crown's obligations under the Treaty. Pursuant to this provision New Zealand may adopt measures it deems necessary to accord favourable treatment to Māori, provided that such measures are not used as a means of arbitrary or unjustified discrimination or as a disguised restriction on trade in goods, trade in services and investment.

Where an agency is considering the application of this provision in their procurement work, this should be discussed in the first instance with the Trade Law Unit at the Ministry of Foreign Affairs and Trade (DM-LGL@mfat.govt.nz).

## For more information

You can read more about New Zealand government procurement policy and practice at: [www.procurement.govt.nz](http://www.procurement.govt.nz).



SECTION

1

# Getting started

# Why have Rules?

## To guide public agencies to procure responsibly and achieve public value

The *Rules* guide government agencies through setting a standard of best practice procurement. To responsibly procure, agencies must achieve public value; this includes any *Broader Outcomes* that an agency is seeking to achieve. The ability and responsibility to achieve *public value* through procurement is applicable to everyone involved in procurement processes within an agency, not just the procurement team.

The *Rules* also include Government's requirements around *priority outcomes* that must be leveraged through *designated contracts* (Rules 16 to 20).

## To provide and maintain the integrity of government procurement

The *Rules* also establish processes that are consistent and predictable, making it easier for agencies and suppliers to engage with each other.

Government agencies must account for how they spend taxpayers' money. The *Rules*, along with the *Principles of Government Procurement*, the *Government Procurement Charter* and good practice *guidance*, available on [www.procurement.govt.nz](http://www.procurement.govt.nz) and [www.oag.govt.nz](http://www.oag.govt.nz), provide a framework that promotes responsible spending when purchasing goods, services, or works. This framework supports proactively managing procurement process and delivery risks.

Agencies must also be aware of and comply with relevant law, including the common law of contract, public law and commercial law obligations.

eg

### Examples of **commercial law** legislation:

- › Contract and Commercial Law Act 2017
- › Commerce Act 1986
- › Fair Trading Act 1986
- › Construction Contracts Act 2002

### Example of **commercial law case**:

Pratt Contractors Limited v Palmerston North City Council (High Court)

### Examples of **public law legislation**:

- › State Sector Act 1988
- › Public Finance Act 1989
- › Public Finance (Departmental Guarantees and Indemnities) Regulations 2007
- › Public Audit Act 2001
- › Public Records Act 2005
- › Official Information Act 1982
- › Ombudsmen Act 1975
- › Privacy Act 1993
- › Human Rights Act 1993
- › New Zealand Bill of Rights Act 1990
- › Public Bodies Contracts Act 1959

### Examples of **agency- or sector-specific legislation** relevant for *procurement*:

- › Crown Entities Act 2004
- › Crown Entities (Financial Powers) Regulations 2005
- › New Zealand Public Health and Disability Act 2000
- › Land Transport Management Act 2003

### Example of **public law case**:

- › Attorney-General v Problem Gambling Foundation of New Zealand (Court of Appeal)

### Examples of **Treaty of Waitangi obligations** in legislation:

- › Section 4, Conservation Act 1987
- › Section 4, New Zealand Public Health and Disability Act 2000

### To promote our values

New Zealand is committed to open, transparent and competitive government procurement that:

- › delivers *public value* (including *Broader Outcomes*)
- › does not discriminate against suppliers (whether domestic or international), and
- › meets agreed international standards.

The *Rules* reflect these values and standards.

### To encourage commercial practice

Early market engagement and continued open dialogue with suppliers are essential to achieving good results. There are sound commercial reasons why building stronger relationships with business is important. The *Rules* encourage better commercial practice by promoting these types of behaviours and achieving greater public value.

### To support economic development

As a small, remote trading economy, New Zealand needs to export to thrive. A competitive economy trading successfully with the world is one way to build ongoing economic growth, including in the regions. This creates jobs and grows incomes. *New Zealand businesses* need greater access to international markets to increase their export opportunities.

The *Rules* incorporate New Zealand's international treaty obligations. Access to markets is secured through Free Trade Agreements (FTAs). Under FTAs, countries offer reciprocal access to their government contracts. The *Rules* reflect New Zealand's FTA commitments and align with the *World Trade Organization Agreement on Government Procurement* (GPA).

Following the *Rules* is essential:

- › to provide open and fair competition that supports innovation and helps create a competitive, productive supply base in New Zealand – that supports economic growth and development
- › for New Zealand being valued as a desirable trading partner – demonstrating our professional practice and maintaining our reputation for integrity.

### To build high-performing public services

Third party suppliers deliver a large share of the government's public services. We can improve the effectiveness and efficiency of public service delivery through better procurement planning, supplier management, and more collaboration across government.



The *Rules* implement New Zealand's international commitments which can be found on the Ministry of Foreign Affairs and Trade Treaties at: [www.mfat.govt.nz](http://www.mfat.govt.nz).



It is important that you consider the longer-term impacts of your procurement decisions and not just the immediate results (e.g. will the decision substantially reduce competition or create a monopoly in the future market-place?).

# What is good procurement?

## Policy framework

Government procurement is based on the *Government Procurement Charter, Principles, Rules* and other good practice *guidance*. Collectively, these provide a broad framework that supports accountability for spending, sound business practice and better results.

Good practice isn't just mechanically applying the *Rules*. It's about developing a strong understanding of all of the aspects of the procurement lifecycle, and skilfully applying these to deliver the best results. While you still need to comply with the *Rules*, you should design your process proportionate to the value, risk and complexity of the procurement. It's about applying sound commercial judgement to achieve the best *public value*, and drive innovation and performance.

Understanding suppliers and the market is part of the careful planning essential to developing the right approach to market. All procurement covered by the *Rules* should be supported by a robust business case or procurement plan that has a level of detail reflecting the size, value and complexity of the procurement.

Procurement also covers proactively managing supplier and other key stakeholder relationships throughout the sourcing process and for the duration of the contract. This continues to develop the supplier and drives *public value* through ongoing efficiency and effectiveness gains.

## Other guidance

Other procurement *guidance* provides information and advice on good practice. This *guidance* can be found at: [www.procurement.govt.nz](http://www.procurement.govt.nz).



Examples of **guidance** on government procurement practice include:

- › Office of the Auditor-General's *Procurement guidance for public entities* [www.oag.govt.nz](http://www.oag.govt.nz).

## What is public value?

*Public value* means getting the best possible result from your procurement, using resources effectively, economically and without waste, and taking into account:

- › the total costs and benefits of a procurement (total cost of ownership), and
- › its contribution to the results you are trying to achieve.

Delivering better *public value* through government procurement should include securing *Broader Outcomes* for New Zealand. For instance, agencies can use procurement as a lever to reduce negative environmental impacts, develop suppliers, and promote regional and economic outcomes. Cabinet has prioritised a set of economic, social, cultural and environmental outcomes that agencies are expected to leverage within *designated contracts*. Agencies are also encouraged to seek additional outcomes voluntarily. The priority set of outcomes and associated new reporting requirements are outlined in the new *Rules* 16 to 20.

For each procurement, agencies must identify if your contract falls under one of the *priority outcomes*. Even if it doesn't, you must explore how you could secure *Broader Outcomes*: for instance, what environmental or social outcomes could be achieved?

Selecting the most appropriate procurement process that is proportionate to the value, risk and complexity of the procurement will also help achieve *public value*. Good procurement is about being risk aware, not risk averse.

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Public value over the whole-of-life

An agency publishes a *Request for Tender* to supply steel mesh fencing for a new depot. It does not specify any quality standards and accepts the lowest price bid.

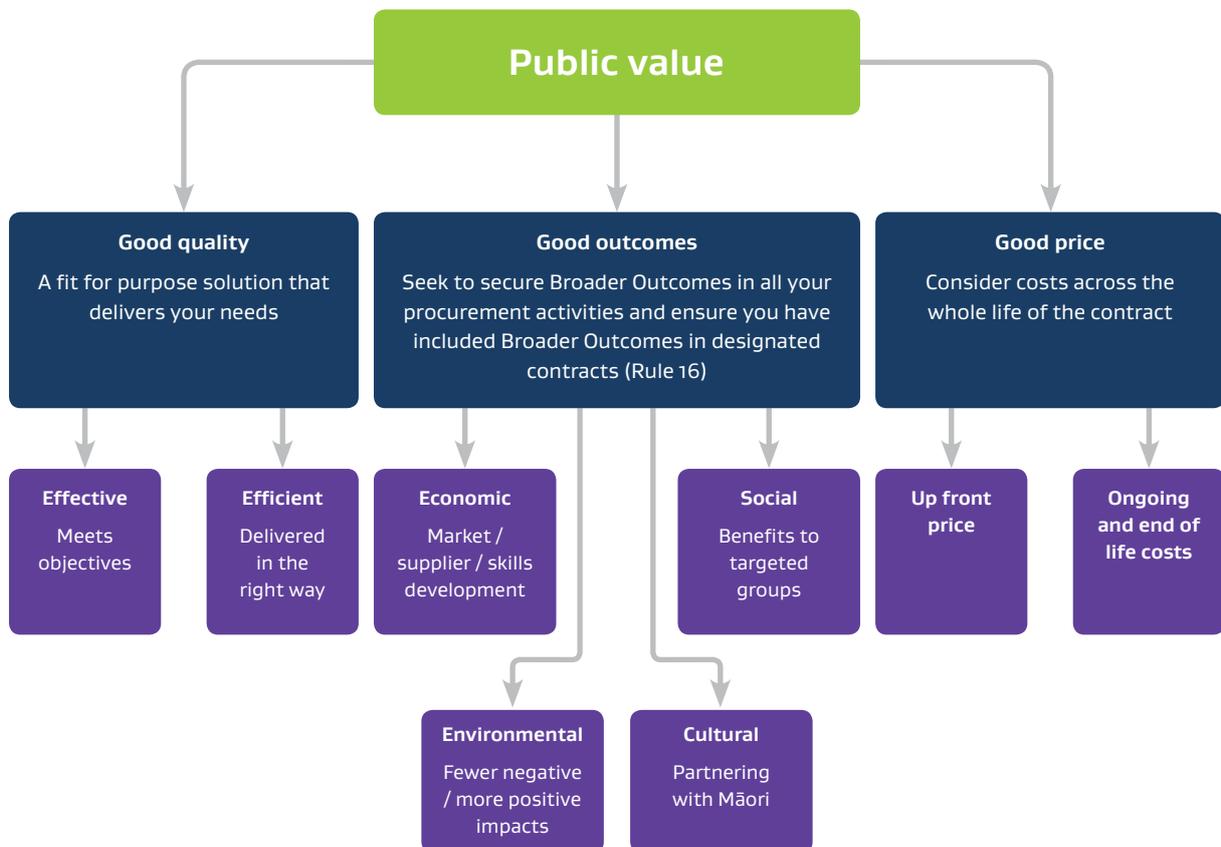
The fencing is installed. Within one year it begins to rust; within three years it is beginning to fail; and by six years it needs to be replaced.

Had the agency specified quality standards, it could have assessed bids based on best *public value* over the whole of the life of the product. Another supplier's price was slightly higher, but their fencing carried a 15-year warranty. Despite the higher initial cost, this supplier's product would have represented the best *public value* over the whole-of-life.

This concept can be applied to *Broader Outcomes* too. For instance, an agency publishes a *Request for Tender* for the provision of 10 heavy duty vehicles, but it does not specify the CO<sub>2</sub> emissions for each vehicle. Because this is not specified, the agency accepts the lowest bid, which results in high-emission vehicles being purchased.

Had the agency taken emissions into consideration they could have assessed the bid on the best *public value*. Another supplier's price was slightly higher but their vehicles had a lower average emissions profile. Despite the higher initial cost, this supplier's product represents a more comprehensive calculation of *public value* and a significantly improved environmental outcome.

See [www.procurement.govt.nz](http://www.procurement.govt.nz) for guidance and expectations regarding whole-of-life, in particular the guidance note entitled Rule 43 – Awarding the Contract.



# The Five Principles of Government Procurement

The *Principles of Government Procurement* apply to all government agencies and provide government's overarching values. They apply even if the *Rules* do not. Agencies should use the *Principles* for guidance and to help make good procurement decisions.

Take time to read the five Principles. You need to understand how they apply to the work that you do.

## 1. PLAN AND MANAGE FOR GREAT RESULTS

- › Identify what you need, including what *Broader Outcomes* should be achieved, and then plan how to get it.
- › Set up a team with the right mix of skills and experience.
- › Involve suppliers early – let them know what you want and keep talking.
- › Take the time to understand the market and your effect on it. Be open to new ideas and solutions.
- › Choose the right process – proportional to the size, complexity and any risks involved.
- › Encourage e-business (for example, tenders sent by email).

## 2. BE FAIR TO ALL SUPPLIERS

- › Create competition and encourage capable suppliers to respond.
- › Treat all suppliers equally – we don't discriminate (this is part of our international obligations).
- › Seek opportunities to involve New Zealand businesses, including Māori, Pasifika and regional businesses and social enterprises.
- › Make it easy for all suppliers (small and large) to do business with government.
- › Be open to subcontracting opportunities in big projects.
- › Clearly explain how you will assess proposals – so suppliers know what to focus on.
- › Talk to unsuccessful suppliers so they can learn and know how to improve next time.

## 3. GET THE RIGHT SUPPLIER

- › Be clear about what you need, and fair in how you assess suppliers – don't string suppliers along.
- › Choose the right supplier who can deliver what you need, at a fair price and on time.
- › Choose suppliers that comply with the Government's *Supplier Code of Conduct*
- › Build demanding, but fair and productive, relationships with suppliers.
- › Make it worthwhile for suppliers – encourage and reward them to deliver great results.
- › Identify relevant risks and get the right person to manage them.

## 4. GET THE BEST DEAL FOR EVERYONE

- › Get best *public value* – account for all costs and benefits over the lifetime of the goods or services.
- › Make balanced decisions – consider the possible social, environmental, economic and cultural outcomes that should be achieved.
- › Encourage and be receptive to new ideas and ways of doing things – don't be too prescriptive.
- › Take calculated risks and reward new ideas.
- › Have clear performance measures – monitor and manage to make sure you get great results.
- › Work together with suppliers to make ongoing savings and improvements.
- › It's more than just agreeing the deal – be accountable for the results.

## 5. PLAY BY THE RULES

- › Be accountable, transparent and reasonable.
- › Make sure everyone involved in the process acts responsibly, lawfully and with integrity.
- › Stay impartial – identify and manage conflicts of interest.
- › Protect suppliers' *commercially sensitive information* and intellectual property.

# Government Procurement Charter

The Charter sets out Government's expectations of how agencies should conduct their procurement activity to achieve public value.

Government agencies spend approximately \$41 billion a year on a wide range of goods and services from third party suppliers. We need to ensure that government procurement delivers public value for all New Zealanders while supporting the delivery of better public services throughout New Zealand.

Agencies should identify their key priorities and seek to meet as many of these expectations as practical.

The New Zealand Government directs agencies to:

## 1. SEEK OPPORTUNITIES TO INCLUDE NEW ZEALAND BUSINESSES

- › Openly work to create opportunities for local businesses and small-to-medium enterprises to participate in your procurement processes.

## 2. UNDERTAKE INITIATIVES TO CONTRIBUTE TO A LOW EMISSIONS ECONOMY AND PROMOTE GREATER ENVIRONMENTAL RESPONSIBILITY

- › Ensure that economic and social development can be implemented on a sustainable basis with respect for the protection and preservation of the environment, reducing waste, carbon emissions and pollution.

## 3. LOOK FOR NEW AND INNOVATIVE SOLUTIONS

- › Make sure you don't overprescribe the technical requirements of a procurement, give businesses the opportunity to demonstrate their expertise.

## 4. ENGAGE WITH BUSINESSES WITH GOOD EMPLOYMENT PRACTICES

- › Ensure that the businesses you contract with operate with integrity, transparency and accountability, and respect international standards relating to human and labour rights. For businesses operating within New Zealand, ensure that they comply with all New Zealand employment standards and health and safety requirements.

## 5. PROMOTE INCLUSIVE ECONOMIC DEVELOPMENT WITHIN NEW ZEALAND

- › Engage with Māori, Pasifika, and regional businesses and social enterprises in order to actively contribute to our local economy. Openly working to include and support these businesses and enterprises through procurement will promote both skills development and a diverse and inclusive workforce.

## 6. MANAGE RISK APPROPRIATELY

- › Responsibility for managing risks should be with the party – either the agency or the supplier – that is best placed to manage the risk. Agencies and suppliers should work together on risk mitigation strategies.

## 7. ENCOURAGE COLLABORATION FOR COLLECTIVE IMPACT

- › Look to support greater collaboration, both across-agency and across-businesses to give likeminded groups the opportunity to find common solutions within your procurement opportunities.

## RULE 1 PRINCIPLES AND THE GOVERNMENT CHARTER

1. Each agency **must** have policies in place that incorporate the five *Principles of Government Procurement* and the *Government Procurement Charter*. The *Principles* and the *Charter* apply to all procurements, even if the *Rules* do not apply.
2. Each agency **should** consider making these policies publicly available.
3. Each agency **must** make sure that:
  - a. all staff engaged in procurement have been trained in the five *Principles* and the *Charter*
  - b. its procurement practices reflect the five *Principles* and the *Charter*
  - c. it is able to show how it has used sound research to plan an appropriate approach-to-market strategy that is proportionate to the nature, risk, value and complexity of each procurement.



### Procurement planning

Before you choose a procurement process, you should think about the nature of the goods, services or works you need, and assess the best way to approach and collaborate with the market. You **must** make sure that:

- › all suppliers get fair notice of the contract opportunity
- › the process encourages competition
- › suppliers have enough time to respond.

You should base your decisions on a clear understanding of your agency's needs and an appropriate level of market research. It's important that the process you choose reflects the value and complexity of the procurement. Don't overcomplicate a straightforward tender simply because the *Rules* apply.



### Procurement planning

Good procurement starts with good planning. Knowing what you need to buy and understanding the market makes government an 'intelligent customer'.

The following *guidance* is helpful when planning a major project:

- › *Governance and oversight of major IT projects* by the Office of the Auditor-General (2000) [www.oag.govt.nz](http://www.oag.govt.nz)
- › *Better capital planning and decision making: Quick reference guide* by the National Infrastructure Unit [www.infrastructure.govt.nz](http://www.infrastructure.govt.nz)
- › *Long Term Investment Plans* by the Treasury [www.treasury.govt.nz](http://www.treasury.govt.nz)



### The Government Procurement Charter

The *Government Procurement Charter* sets out the Government's expectations for what agencies should consider when conducting their procurement.

## RULE 2 INTEGRITY

1. Each agency **must** have in place policies that safeguard the integrity of its procurement activities and processes. The policies **must** require that:
  - a. the agency and all staff involved in procurement can justify their procurement decisions
  - b. those involved in procurement decisions stay impartial
  - c. procurement processes are fair, transparent and reasonable
  - d. all staff involved in procurement act responsibly, lawfully and with integrity.
2. Each agency **must** have policies in place that help all staff involved in procurement to identify, notify and manage *conflicts of interest*. Each agency **must** be able to show how it uses sound judgement to manage *conflicts of interest*.



### Integrity in Government Procurement

Government procurement is an area where integrity is of the utmost importance. The Standards of Integrity and Conduct set by the State Services Commissioner must be applied by individuals working in the public state sector. The *State Services code of conduct* and supporting information can be found on the State Services Commission's website: [www.ssc.govt.nz](http://www.ssc.govt.nz).

*Managing conflicts of interest: Guidance for public entities* is available at: [www.oag.govt.nz](http://www.oag.govt.nz).

Suppliers to government are expected to act with integrity and comply with the *Supplier Code of Conduct* available at [www.procurement.govt.nz](http://www.procurement.govt.nz). Consider incorporating a commitment for suppliers to adhere to the *Supplier Code of Conduct* in your contracts.

## RULE 3 NON-DISCRIMINATION AND OFFSETS

1. All suppliers **must** be given an equal opportunity to bid for contracts. Agencies **must** treat suppliers from another country no less favourably than New Zealand suppliers.
2. Procurement decisions **must** be based on the best *public value*, over the whole-of-life of the goods, services or works.
3. Suppliers **must not** be discriminated against because of:
  - a. the country the goods, services or works come from
  - b. their degree of foreign ownership or foreign business affiliations.
4. An agency **must not** ask for, take account of, or impose any *offset* at any stage in a procurement process.



Rule 3 contains the expression 'must treat suppliers from another country no less favourably than New Zealand suppliers.'

This means a supplier will be assessed on their merits. It does not prevent you from awarding a contract to a New Zealand supplier if they present the best *public value*, inclusive of any *Broader Outcomes* sought as part of the tender process.

## **RULE 4**

### **PROTECTION OF SUPPLIER INFORMATION**

1. Each agency **must** protect suppliers' confidential or *commercially sensitive information*. This includes information that could compromise fair *competition* between suppliers.
2. An agency **must not** disclose confidential or *commercially sensitive information* unless:
  - a. the supplier has already agreed to it in writing, or
  - b. the disclosure is required by law (e.g. under the Official Information Act 1982), convention or Parliamentary or Cabinet Office practice, or
  - c. it is a limited disclosure expressly notified in a *Notice of Procurement* to which suppliers have consented by participating in the process.



#### ***Commercially sensitive information***

is information that, if disclosed, could prejudice a supplier's commercial interests. It includes:

- › the design and content of a tender
- › trade secrets and 'know-how'
- › new ideas
- › innovative solutions
- › pricing structures
- › profit margins
- › market strategies.

Agencies must understand what *commercially sensitive information* is and how to handle that information.

Examples of prohibited disclosure of information include:

- › disclosing *commercially sensitive information* to a supplier's competitor
- › using or adopting an idea or solution without the supplier's agreement.

It is good practice to include instructions to suppliers (in your *Notice of Procurement*) to mark their responses, or the relevant parts of their responses, as 'commercial in confidence'.

If, as part of the evaluation process, you need to share responses with other agencies or advisors, you will need to seek permission for such disclosure by making this a condition of participation in your *Notice of Procurement*.

## RULE 5 WHO THE RULES APPLY TO

### Required application

1. The following agencies **must** apply the *Rules*:
  - a. all *Public Service* departments
  - b. New Zealand Police
  - c. New Zealand Defence Force
  - d. *State Services* agencies covered by the *Whole of Government Direction*.  
A list of these agencies is available at: [www.procurement.govt.nz](http://www.procurement.govt.nz)
2. *Crown Research Institutes* **must** have regard to the *Rules*.
3. Certain agencies not listed in Rules 5.1 and 5.2 are bound to meet the requirements of the *WTO Agreement on Government Procurement* or other free trade agreements. For these agencies, only those *Rules* relevant to the commitments made, and procurement covered by, those agreements will apply. A list of these agencies is available at: [www.procurement.govt.nz](http://www.procurement.govt.nz).
4. The agencies identified in Rules 5.1 and 5.2 may be audited for compliance with the *Rules* (e.g. by the Auditor-General under the Public Audit Act 2001).

### Good practice guidance only

5. School Boards of Trustees, *Public Finance Act Schedule 4 organisations*, and the Reserve Bank of New Zealand are expected to have regard to the *Rules* as good practice *guidance*.
6. Wider *State Sector* and *Public Sector* agencies are encouraged to have regard to the *Rules* as good practice *guidance*.
7. In applying the *Rules* as good practice *guidance*, the agencies identified in Rules 5.5 and 5.6 are to interpret all '**must**' *Rules* as '**should**' *Rules*.

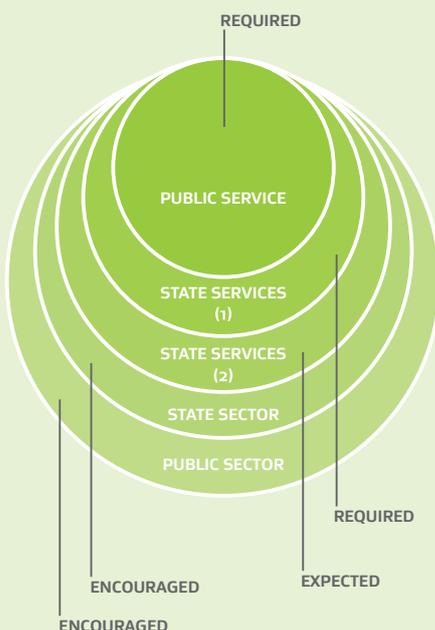


### Whole of Government Direction

The *Whole of Government Direction on Procurement Functional Leadership*, dated 22 April 2014, was made under section 107 of the *Crown Entities Act 2004* by the Ministers of Finance and State Services. More information about this, and related directions about ICT and property services, is available at: [www.ssc.govt.nz](http://www.ssc.govt.nz).



New Zealand's central government is made up of agencies in the *Public Service*, *State Services* and *State Sector*. A full list of these agencies is available at: [www.ssc.govt.nz](http://www.ssc.govt.nz). Local government agencies are part of the *Public Sector*. For convenience, the *Rules* refer to all central and local government agencies as 'agencies'.



**Public Service** departments are the core departments and ministries listed in the *State Sector Act 1988*, Schedule 1.

**State Services 1** is the *State Services* agencies covered by the *Whole of Government Direction*. These include:

- > Crown Agents
- > Autonomous Crown Entities
- > Independent Crown Entities
- > Crown Entity companies
- > *Public Finance Act* Schedule 4A companies

**State Services 2** includes:

- > School Boards of Trustees
- > Crown Entity subsidiaries
- > *Public Finance Act* Schedule 4 companies
- > Reserve Bank of New Zealand

## RULE 6 WHEN THE RULES APPLY – GOODS OR SERVICES OR REFURBISHMENT WORKS

1. The *Rules* apply:
  - a. to the procurement of goods or services or *refurbishment works*, or a combination of goods or services or *refurbishment works*, when
  - b. the *maximum total estimated value* (Rule 8) of the procurement meets or exceeds the *value threshold* found at: [www.procurement.govt.nz](http://www.procurement.govt.nz)
2. To estimate the *maximum total estimated value* (Rule 8) for goods or services or *refurbishment works*, an *agency must* take into account:
  - a. all related services (e.g. installation, training, servicing, and management consultancy services)
  - b. all types of goods (e.g. operating consumables)
  - c. all subcontracted goods or services or works.
3. This rule does not apply to goods, services or *refurbishment works* that are purchased for commercial resale.

eg

### Value thresholds

New Zealand is party to a number of Free Trade Agreements that include government procurement and *Te Tiriti o Waitangi Exceptions*. To ensure alignment with obligations made in these agreements, the *value thresholds* in the *Rules* are reviewed on an annual basis and may be adjusted if there are significant changes in the value of the New Zealand dollar. As of 1 October 2019 the threshold for goods or services or *refurbishment works* is \$100,000 (excluding GST). Check [www.procurement.govt.nz](http://www.procurement.govt.nz) for the current threshold. As the *Rules* represent good practice, agencies can apply the *Rules* for procurements under this threshold.



In the context of the *Rules*, **refurbishment works** relates to the renovating, repairing or extension of an existing works, including an existing building, road, bridge or dam. It does not include replacing an existing construction as this is deemed to be *new construction works* (Rule 7).

eg

An example of **goods purchased for commercial resale** could be items that a museum purchases for resale in its gift shop.



**Disposals** at the end of the useful life of an asset are not commercial goods, services or works purchased for resale. Disposals are not subject to these *Rules*.



### Below threshold procurement

Where procurement is below the threshold, agencies should consider if there is a capable *New Zealand business*, including Māori businesses, Pasifika businesses and social enterprises, that could fulfil the contract opportunity.

## RULE 7 WHEN THE RULES APPLY – NEW CONSTRUCTION WORKS

1. The *Rules* apply:
  - a. to the procurement of goods or services or works for *new construction works*, when
  - b. the *maximum total estimated value* (Rule 8) of the procurement meets or exceeds the *value threshold* found at: [www.procurement.govt.nz](http://www.procurement.govt.nz)
2. To estimate the *maximum total estimated value* (Rule 8) for *new construction works*, an agency **must** take into account all:
  - a. related services (e.g. design, architecture, engineering, quantity surveying, and management consultancy services)
  - b. types of goods (e.g. construction material, health and safety equipment)
  - c. phases of the construction through to completion
  - d. subcontracted goods, services and works.



### Construction value thresholds

As of 1 October 2019 the threshold for construction works is \$9 million (excluding GST). Check [www.procurement.govt.nz](http://www.procurement.govt.nz) for the current threshold. As the *Rules* represent good practice, agencies can apply the *Rules* for procurements under this threshold. New Zealand is party to a number of Free Trade Agreements that include government procurement and *Te Tiriti o Waitangi Exceptions*. To ensure alignment with obligations outlined in these agreements, the *value thresholds* in the *Rules* are reviewed on an annual basis and may be adjusted if there are significant changes in the value of the New Zealand dollar.



### Planning for new construction works

As detailed in Rule 69 (planning for *new construction works*), when planning a new construction project, you must consider *New Zealand Government Procurement's Planning Construction Procurement guides* available at: [www.procurement.govt.nz](http://www.procurement.govt.nz). Agencies must be able to produce evidence that they have considered these guides as they provide standards of good practice for construction procurement processes.



### Calculating the value of new construction works

When planning *new construction works*, you may decide to 'structure work into subcategories and award these to separate suppliers. Openly advertising smaller contracts can be helpful for smaller businesses that do not have the capacity to supply all the components of a large project.

If you decide to structure work into subcategories:

- › Each of the packages of work will count towards the *maximum total estimated value* (Rule 8) of your procurement.
- › You must do so consistently with Rule 9 *Non-avoidance*.

## RULE 8 ESTIMATING THE MONETARY VALUE OF A PROCUREMENT

1. Each agency **must** estimate the total monetary value of a procurement to determine whether it meets or exceeds the relevant *value threshold* (set out in Rules 6 and 7). Agencies **must** act in good faith and use good judgement to estimate the monetary value of a procurement. Agencies **must** include the estimated monetary value in their business case or *procurement plan*. This estimate is referred to as the *maximum total estimated value*.
2. Each agency **must** consider the total value over the whole-of-life of the contract/s when estimating the procurement's *maximum total estimated value, including any costs associated with the disposal of goods*. The estimate **must** include the value of all of the contracts that may result from the procurement.
3. The value is the total amount excluding GST.
4. If an agency cannot estimate the *maximum total estimated value* of a procurement, it **must** apply the *Rules*.
5. When an agency calculates the *maximum total estimated value* of a procurement, it **must** include everything required for the full delivery of the goods, services or works. This includes the value of:
  - a. options to purchase additional goods, services or works
  - b. options to extend the term of the contract
  - c. paying any premiums, fees or commissions to the supplier or a broker
  - d. any related revenue streams a supplier receives
  - e. any other form of remuneration or payment due to the supplier or to a third party or any interest payable.



### Estimating the monetary value of a procurement

Even if the **monetary value of a procurement** is less than the *value threshold* (set out in Rules 6 and 7), agencies are still expected to follow good procurement practice. This means applying the *Principles* and having regard to other good practice *guidance*.

It's better to be cautious. If your **estimated value** is getting close to the *value threshold* (e.g. services valued at \$98,000), always consider using an open competitive process. After all, your calculation is only an estimate.



An example of related revenue streams: a supplier receives tolls from a highway it has built.

## RULE 9 NON-AVOIDANCE

1. An agency **must not** intentionally avoid applying the *Rules* when planning for, valuing or undertaking a procurement.
2. When calculating a procurement's *maximum total estimated value* (Rule 8), an agency **must not** intentionally avoid applying the *Rules* by either:
  - a. designing, structuring or dividing a procurement into separate parts
  - b. using a non-standard or alternative valuation method to lower the estimated value.



### Number of contracts

After conducting market analyses, you might decide to restructure the work into separate lots and publish a tender with multiple subcategories. You should then indicate in your *Notice of Procurement* the possibility, or your intention, that the procurement may be awarded in separate lots.

Restructuring large contracts into smaller lots can be helpful for small *New Zealand businesses* that may not be able to compete for one large contract. For instance, instead of choosing one supplier who is able to deliver a national contract, you could split a contract by region and contract with multiple small regional businesses. However, you must not split a procurement with the intent to avoid applying the *Rules*.



### Third-party commercial supplier or broker

You can't avoid applying the *Rules* by purchasing through a third-party commercial supplier.

## RULE 10 TYPES OF CONTRACT

1. The *Rules* apply to all contract types, including:
  - a. when purchasing outright
  - b. purchasing through hire-purchase
  - c. when renting or leasing
  - d. where there is an option to buy
  - e. *Public Private Partnerships*
  - f. contracts accessed through a third-party commercial supplier or broker.

## RULE 11 NON-PROCUREMENT ACTIVITIES

1. For the purposes of the *Rules*, the following activities are deemed not to be procurement activities:
  - a. employing staff (excluding the engagement of contractors and consultants)
  - b. disposals and sales by tender
  - c. investments, loans and guarantees
  - d. gifts, donations and any form of unconditional grants
  - e. statutory appointments
  - f. Ministerial appointments
  - g. Core Crown legal matters
  - h. public prosecutions as defined in section 5 of the Criminal Procedure Act 2011.



**Gifts, donations and unconditional grants** – for information about these, see the Office of the Auditor-General’s guide *Public sector purchases, grants, and gifts: Managing funding arrangements with external parties* at: [www.oag.govt.nz](http://www.oag.govt.nz)

**Statutory appointments** are made under statutory authority and include appointments made by warrant from the Governor-General under the Letters Patent, e.g. Crown Solicitors.

**Ministerial appointments** are non-statutory government board and advisory body appointments made by Ministers or Cabinet. A situation where a Minister instructs an agency to appoint a named consultant to undertake a piece of work is not a Ministerial appointment.

**‘Core Crown legal matters’** is defined in the *Cabinet Directions for the Conduct of Crown Legal Business* 2016 (reference: Cabinet Office Circular CO (16) 2). These directions are published in the Cabinet Manual.

Public Service departments, New Zealand Police and New Zealand Defence Force (and bodies, decision-makers, office-holders and employees within those agencies) must refer all their requirements for external legal services relating to Core Crown legal matters to the Solicitor-General. These matters are usually dealt with by the Crown Law Office.

## RULE 12 OPT-OUT PROCUREMENTS

1. In certain circumstances, when a procurement is covered by the *Rules* (meets the requirements of Rules 5 and 6 or Rules 5 and 7), an agency can opt-out of applying all *Rules* to that procurement, except those listed in Rule 12.4 and 12.5. These circumstances are listed in Rule 12.3 and are called *opt-out procurements*.
2. When doing an *opt-out procurement*, an agency should still conduct its procurement according to the *Principles* and other procurement good practice *guidance*. It should also achieve the best *public value*, over the life of the contract, which may include the outcomes in the *Government Procurement Charter*.
3. The following is the list of valid *opt-out procurements*:
  - a. Between government agencies: Any of the following agencies can purchase goods, services or works from each other:
    - i. Public Service departments
    - ii. New Zealand Police
    - iii. New Zealand Defence Force
    - iv. agencies covered by the Whole of Government Direction (Rule 5.1)
    - v. Crown Research Institutes.

However, if the purchasing agency chooses to use an open competitive process it **must** apply the *Rules*.
  - b. **Overseas:** Goods, services or works purchased outside of New Zealand for use outside of New Zealand.
  - c. **Offices overseas:** Any procurement relating to constructing, refurbishing or furnishing New Zealand government offices overseas.
  - d. **Non-contractual arrangement:** Any non-contractual arrangement (e.g. a Memorandum of Understanding between two government departments) or any form of assistance including cooperative agreements (e.g. diplomatic assistance to another government).
  - e. **Land and buildings:** Purchasing or renting land or existing buildings or other immovable property. This does not include refurbishment works or new construction works, which are covered by Rules 6 and 7.
  - f. **Conditional grant:** Any form of conditional grant. However, an agency **must not** design or structure a procurement as a form of conditional grant to avoid applying the *Rules*.
  - g. **International development assistance:** Providing international development assistance through multilateral or bilateral assistance, including aid in the form of conditional grants, budget support or any form of contribution or diplomatic assistance.
  - h. **International funding:** Any procurement funded by an international grant, loan or other assistance or that **must** comply with an international organisation's procedure where that procedure is inconsistent with the *Rules*.
  - i. **International organisation:** Any procurement conducted under a procedure required by an international organisation or funded by an international grant, loan or other assistance that is inconsistent with the *Rules*.
  - j. **International agreements between countries:** Agreements between countries for the joint implementation of a project.
  - k. **Public services:** The provision of certain types of *health services, education services and welfare services*. See Section 7 Definitions for more information.
  - l. **Government's central financial control functions:** Central banking control functions on behalf of government such as those carried out by the Reserve Bank, and Crown debt management functions such as those carried out by Treasury. See Section 7 Definitions for more information.
  - m. **Military and essential security interests:** Measures necessary for the protection of essential security interests, procurement indispensable for national security or for national defence, the maintenance or restoration of international peace or security, or to protect human health, including:
    - i. procurement of arms, ammunition or war materials
    - ii. stationing military or implementing a joint military project under an international agreement (e.g. a peace-keeping deployment)
    - iii. a measure to protect: public morals, order or safety; human, animal or plant life or health; intellectual property; or relating to goods, services or works of persons with disabilities, philanthropic or not-for-profit institutions, and prison labour.

4. The following *Rules* apply to all *opt-out procurements*:
  - a. Rule 4 *Protection of suppliers' information*
  - b. Rule 16 *Broader Outcomes*
  - c. Rule 50 *Supplier complaints*
  - d. Rule 51 *Prompt payment*
  - e. Rule 52 *Maintaining records*
  - f. Rule 54 *Audit*
5. The following *Rules* apply to *opt-out procurements* when relevant:
  - a. Rule 22 *Significant Procurement Plans*
  - b. Rule 49 *Debriefing suppliers* (if the agency has used a competitive process)
  - c. Rule 58 *All-of-Government Contracts*
  - d. Rule 59 *Syndicated Contracts*
  - e. Rule 60 *Common Capability Contracts*
  - f. Rule 63 *Intellectual Property*
  - g. Rule 64 *Infrastructure*
  - h. Rule 65 *Business Cases and Investment Decisions*
  - i. Rule 66 *Investment Reviews*
  - j. Rule 67 *Timber and wood products*
  - k. Rule 68 *Employee transfer costs*.



**Procurement between government agencies**

Rule 12.3.a does not mean you can purchase goods, services or works under a contract that another listed agency has awarded to a third party supplier.



**Opt-out decisions**

The *opt-out* rule allows the Government flexibility in the way it sources goods, services or works in certain situations. You should always consider your options and use good judgement to decide whether opting out of the *Rules* is the best way to meet their needs. You should always keep a record of your *opt-out* decision and the reasons for it.



**Conditional grants**

For information about conditional grants, read the Auditor General's guide *Public sector purchases, grants, and gifts: Managing funding arrangements with external parties*, at: [www.oag.govt.nz](http://www.oag.govt.nz)

## RULE 13 REQUIREMENT TO OPENLY ADVERTISE

1. Wherever possible an agency **should** use open competitive procurement processes to give all suppliers the opportunity to compete.
2. An agency **must** openly advertise on the Government Electronic Tenders Service (*GETS*):
  - a. if the *maximum total estimated value* (Rule 8) of the procurement meets or exceeds the relevant *value threshold* (Rules 6 or 7), and
  - b. when there is no *exemption from open advertising* (Rule 14).
3. Agencies may advertise using other media, as well as *GETS*.



### Open competitive process

Good procurement is about good process and good results.

Open competitive processes that comply with the *Rules* include:

- a. one-step processes such as a *Request for Quote* or *Request for Tender*
- b. multi-step processes such as a *Registration of Interest* followed by a shortlisting then a *Request for Proposal* or *Request for Tender*.



### GETS

The Government Electronic Tenders Service (*GETS*) is a free service. It supplies information about New Zealand government contract opportunities. *GETS* promotes open, transparent and fair competition.

*GETS* is accessible to all interested suppliers, both domestic and international. It meets New Zealand's commitments under free trade agreements.

MBIE manages *GETS* on behalf of the New Zealand Government. You can read more about *GETS* at: [www.gets.govt.nz](http://www.gets.govt.nz)

## RULE 14 EXEMPTION FROM OPEN ADVERTISING

1. An agency does not need to openly advertise a contract opportunity on *GETS* if an *exemption from open advertising* under Rule 14.9 applies.
2. If the procurement is exempt from *open advertising*, an agency **must** use either a *closed competitive process* (with a limited number of known suppliers) or a *direct source* process (with a known supplier).
3. An agency **must not** exempt a procurement from *open advertising* to:
  - a. avoid competition
  - b. protect domestic suppliers
  - c. discriminate against any domestic or international supplier.

### Document the rationale

4. If an agency exempts a procurement from *open advertising* under Rule 14.9, it **must**:
  - a. obtain evidence of the facts and circumstances to verify the reason/s for the exemption before starting the procurement, and
  - b. document the rationale for the decision. This rationale may form part of the business case or *procurement plan* or may be a stand-alone document.
5. The rationale document **must** include:
  - a. the name of the agency
  - b. a description of the goods, services or works
  - c. the *maximum total estimated value* (Rule 8) of the goods, services or works
  - d. the specific exemption/s, that applies (from the list in Rule 14.9)
  - e. details of the facts and circumstances that justify the exemption.
6. A senior manager **must** endorse the rationale before the agency undertakes the procurement. The agency **must** retain the documented rationale for audit purposes.
7. If MBIE asks for the documented rationale, the agency **must** promptly make it available.

### GETS Contract Award Notice

8. Agencies **must** publish a *Contract Award Notice* (Rule 48) on *GETS* for any procurement that it has exempted from *open advertising*.



### Closed competitive and direct source

Processes that comply with the *Rules* where there is a valid *exemption from open advertising* are:

- › *Closed competitive*: a *Request for Quote*, *Request for Tender* or *Request for Proposal* restricted to a limited number of known suppliers
- › *Direct source*: a closed *Request for Quote*, *Request for Proposal* or *Request for Tender* restricted to a known supplier.

If an *exemption from open advertising* applies, you must still comply with all the other *Rules*.

If you use a **direct source** process (with one known supplier) it does not mean that you can instantly contract that supplier. You should request a formal proposal from the supplier and evaluate the proposal, assess its *public value*, and undertake due diligence before deciding to negotiate a contract. You must not simply approach one supplier and award a contract without proper evaluation of capacity, capability, risk, *public value* and due diligence.



### Emergency

Read the *Quick guide to emergency procurement* at: [www.procurement.govt.nz](http://www.procurement.govt.nz)

## Valid exemptions

9. Valid exemptions from open advertising are:

- a. **Emergency:** A genuine emergency as defined by MBIE's *Quick Guide to Emergency Procurement*. Urgent situations that are created by an agency, such as lack of advance planning, do not constitute an emergency.
- b. **Following an open competitive process:** An agency may use a *closed competitive process* or *direct source process* to procure goods, services and works if:
  - i. it has openly advertised the contract opportunity in the last 12 months, and
  - ii. it has not substantially changed the core procurement requirements, and
  - iii. the first time the opportunity was advertised it:
    - a. did not receive any responses, or
    - b. did not receive any responses that complied with the *pre-conditions* (Rule 28) or conformed with or met the requirements (including quantity), or
    - c. received responses from suppliers who it has reasonable grounds to believe have colluded, and this can be verified, and no other responses complied with the *pre-conditions* (Rule 28) or conformed with or met the requirements.
- c. **Only one supplier:** If the goods, services or works can be supplied by only one supplier and there is no reasonable alternative or substitute because:
  - i. for technical reasons there is no real *competition*, or
  - ii. the procurement relates to the acquisition of intellectual property or rights to intellectual property (including patents or copyrights), or other exclusive rights, or
  - iii. the procurement is for a work of art.
- d. **Additional goods, services or works:** Goods, services or *works* additional to the original requirements that are necessary for complete delivery. This rule applies where all three of the following conditions are met:
  - i. the original contract was openly advertised, and
  - ii. a change of supplier cannot be made for economic or technical reasons, and
  - iii. a change of supplier would cause significant inconvenience or substantial duplication of costs for the agency.
- e. **Prototype:** Purchasing a prototype for research, experiment, study or original development. Original development may include a limited production or supply if this is necessary to:
  - i. carry out field tests and incorporate the findings, or
  - ii. prove that the good or service or works can be produced or supplied in large numbers to an agreed quality standard. This exemption does not apply to quantity production or supply to establish commercial viability or to recover research and development costs. Once the contract for the prototype has been fulfilled, an agency **must** openly advertise any subsequent procurement of the same goods, services or works.
- f. **Commodity market:** Goods purchased on a *commodity market*.
- g. **Exceptionally advantageous conditions:** For purchases made in exceptionally advantageous conditions that only arise in the very short term. This exemption does not cover routine purchases from regular suppliers.
- h. **Design contest:** Where a contract is awarded to the winner of a design contest. To meet this exemption:
  - i. the design contest **must** have been organised in a manner that is consistent with the *Rules*, and
  - ii. the contest **must** be judged by a panel whose members understand that the winner will be awarded a contract, and
  - iii. members of the panel do not have any *conflict of interest* in carrying out the judging of the contest.
- i. **Secondary procurement:** Where an agency has established a panel of suppliers (in accordance with Rule 57) or is purchasing under an All-of-Government contract (Rule 58), Syndicated Contract (Rule 59) or Common Capability Contract (Rule 60), it does not need to openly advertise individual contract opportunities that are to be awarded through that arrangement.

**eg**

Examples of **additional goods, services or works** include:

- › in a construction contract, additional ground *works* that were only discovered on excavating the site
- › supplying replacement parts
- › additional consultancy services where an unexpected issue arises
- › an enhancement or change to an integrated IT system.

**eg**

A **technical reason** could be:

- › Where there is a need to match with existing equipment, software or services.
- › Where an agency has a bespoke IT system that was custom-designed for it and only the supplier that designed it fully understands the code base.
- › Where one supplier has, over a period of time, developed such an intimate knowledge of an outdated or complex system that the agency can reasonably claim that other suppliers would not have a similar level of readily available knowledge.
- › Where a spare part or component is only available from one supplier.
- › Where only one supplier has essential, highly specialised expertise, technology, qualifications or skills, e.g. an internationally recognised expert doing cutting-edge work in a field of science or medicine.
- › Where a construction company has already been contracted to do the base build of a building and there would be no real competition in bidding for the fit-out due to the efficiencies gained from being established on site. However, this should not be used as a default position to avoid proper procurement planning.

**eg**

A procurement relating to **intellectual property rights** could be:

- › where an agency is purchasing an online subscription to content or other services with unique characteristics
- › where an agency is purchasing software licences from a proprietary supplier for software that is embedded in its operating environment
- › a unique piece of art that is protected by copyright and not available elsewhere.

**eg**

Examples of a **prototype** include a product or system, and a pilot for new ways of working or delivering services.



The term **commodity market** refers to legally regulated exchanges where raw or primary products, such as agricultural produce, metals and electricity, are bought and sold through standardised contracts (e.g. the London Metal Exchange).

- j. **Unsolicited unique proposal:** Where an agency receives an unsolicited proposal, as described in MBIE's *Guide to unsolicited unique proposals*, and all of the following apply:
  - i. the proposal is unique
  - ii. the proposal aligns with government objectives
  - iii. the goods, services or works are not otherwise readily available in the marketplace
  - iv. the proposal represents *public value*.



### Collaboration, bid rigging and collusion

Collaboration is not necessarily unlawful. In certain types of procurement you may want suppliers to collaborate (e.g. to form a joint venture). You can allow for this in your *Notice of Procurement* and include conditions that suppliers must be transparent about their collaboration (e.g. suppliers must state who they have collaborated with to prepare their response). Businesses can find Competitor Collaboration Guidelines at: [www.comcom.govt.nz](http://www.comcom.govt.nz).

Bid rigging involves agreements between competitors about which of them should win a bid. It eliminates *competition* in a tender between the suppliers who are involved and negatively affects prices and other factors such as choice, innovation, quality and investment. Bid rigging is a form of cartel conduct that is prohibited by the Commerce Act 1986. It is deceptive and illegal behaviour that can result in significant penalties for companies and individuals. Bid rigging can occur in one tender but may also occur across multiple tenders and wider markets.

If you do have reasonable grounds to believe that suppliers have colluded, you should alert the Commerce Commission, which has the role of investigating this kind of conduct. Read more about **collusion and bid rigging** in the Commerce Commission's guidelines *How to recognise and deter bid rigging – Guidelines for procurers* and *How to recognise and deter bid rigging* at: [www.comcom.govt.nz](http://www.comcom.govt.nz)



### Only one supplier

There may be situations where there is more than one supplier, but for technical reasons, there is no real *competition*. In such situations, it would still be appropriate to run a closed, rather than open, competitive process.



**Exceptionally advantageous conditions** include a one-time event such as a sale by public auction or a sale resulting from liquidation, bankruptcy or receivership.



An **unsolicited unique proposal** is an approach initiated by a supplier proposing a unique solution that is not available in the marketplace. Read more in MBIE's *Guide to unsolicited unique proposals* at: [www.procurement.govt.nz](http://www.procurement.govt.nz)





SECTION

2

# Planning your procurement

## RULE 15 PLANNING

1. Agencies **must** conduct appropriate planning based on the size, risk and complexity of each procurement.
2. Agencies **must**:
  - a. Check whether the procurement is subject to one or more of the *priority outcomes* (Rules 17-20).
  - b. Consider what other *Broader Outcomes* could be leveraged through the procurement.
3. Agencies **should**:
  - a. Ensure the need is not covered by an existing All-of-Government, Open Syndicated or Common Capability contract.
  - b. Engage with other agencies to seek opportunities to collaborate.

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Planning is crucial for your procurement. Before you can approach the market or provider community (Section 3), you'll need to plan your procurement. You can find good practice *guidance* on planning at [www.procurement.govt.nz](http://www.procurement.govt.nz).



### Procurement plan

A *procurement plan* sets out what you intend to procure, how and why you intend to approach the market and why, how you will evaluate bids and how you intend to contract. This information could also be covered in another document, e.g. a business case. A typical *procurement plan* should include:

- › a clear business objective and benefits
- › a scoping statement
- › how you will engage with the market, and supply market analysis
- › risk assessment
- › demand analysis
- › stakeholder engagement
- › sourcing approach to market
- › sufficient timelines
- › evaluation methodology and criteria
- › contractual arrangements, including management of the contract
- › relevant funding and other approvals.

## RULE 16 BROADER OUTCOMES

1. Each agency **must** consider, and incorporate where appropriate, *Broader Outcomes* when purchasing goods, services or works.
2. *Broader Outcomes* are the secondary benefits that are generated from the procurement activity. They can be environmental, social, economic or cultural benefits.
3. Where contracts have been designated by Cabinet and/or Ministers of Finance and State Services to achieve a specific *priority outcome* (Rules 17-20), agencies **must** include requirements relating to that outcome in their procurement. Agencies can choose to incorporate other outcomes if appropriate.
4. Each agency **must** ensure that *Broader Outcomes* are incorporated in a way that does not discriminate against any supplier or result in any offsets (Rule 3).
5. Agencies **must** conduct reasonable due diligence and manage the contract to ensure incorporated *priority outcomes* are delivered.

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What are Broader Outcomes?

*Broader Outcomes* are the secondary benefits that are generated by the way a good, service or works is produced or delivered. These outcomes can be social, environmental, cultural or economic benefits, and will deliver long term *public value* for New Zealand.

*Broader Outcomes* require you to consider not only the whole-of-life cost of the procurement, but also the costs and benefits to society, the environment and the economy.

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Priority outcomes

Cabinet has taken a targeted approach to leveraging *Broader Outcomes* and is placing greater requirements on agencies to leverage a priority set of *Broader Outcomes*. These areas are:

- › **Increase New Zealand businesses' access to government procurement:** increasing the number of *New Zealand businesses* contracting directly to government, and within the supply chain. This includes Māori businesses and Pasifika businesses.
- › **Increase the size and skill level of the domestic construction sector workforce:** the Government is leveraging procurement through construction to encourage businesses to increase the size and skills of their workforces.
- › **Improve conditions for workers and future-proof the ability of New Zealand businesses to trade:** this priority protects workers from unfair and unsafe behaviour, and incentivises well-performing firms while ensuring they are not undercut by firms who have reduced costs through poor labour practices.
- › **Support the transition to a net zero emissions economy and assist the Government to meet its goal of significant reduction in waste by 2020 and beyond.**

To maximise the effects of these priorities, Government will designate contracts or sectors where one or more of the *priority outcomes* must be implemented.

For example, the All-of-Government motor vehicles contract is a *designated contract* for the priority: Support the *transition to a net zero emissions economy*. This means that agencies **must** take this priority into account when purchasing new vehicles.

To view which contracts have been designated by Cabinet and Ministers of Finance and State Services for each *priority outcome*, visit our website: [www.procurement.govt.nz](http://www.procurement.govt.nz).

## RULE 17 INCREASE ACCESS FOR NEW ZEALAND BUSINESSES

1. For *designated contracts*, agencies **must** consider how they can create opportunities for *New Zealand businesses*.
2. Agencies **must** have regard to *guidance* published by MBIE on how to effectively involve *New Zealand businesses* in contract opportunities including Māori, Pasifika, and regional businesses, as well as social enterprises.
3. Agencies **must** conduct sufficient monitoring of *designated contracts* to ensure that commitments made in contracts are delivered and reported on.



### How Rule 3 works with Rule 17

You can create opportunities for local, small, Māori, and Pasifika businesses to participate, but these opportunities must not preclude other suppliers. The decision on contract award must be determined by which supplier provides best *public value*.



For large procurements, consider if the procurement can be structured into separate parts and published as a tender with separate subcategories.

Structuring large contracts into smaller parts can be helpful for small *New Zealand businesses* that may not be able to compete for one large contract. For instance, instead of choosing one supplier who is able to deliver a national contract, you could split a contract by region and contract with multiple small, regional businesses.

Structuring larger contracts into smaller parts also helps enable Māori businesses and Pasifika businesses to participate as they, like most *New Zealand businesses*, are often smaller and not able to compete for large contracts. However, you must not split a procurement to avoid applying the *Rules*.

If you cannot structure a large contract into smaller parts and only large businesses are able to tender for the contract, consider engaging with suppliers on how smaller *New Zealand businesses* can be included in the supply chain.

You should also engage with your suppliers on larger contracts about how they can incorporate Māori businesses and Pasifika businesses in their supply chains, or provide opportunities for Māori and Pasifika workers.

## RULE 18 CONSTRUCTION SKILLS AND TRAINING

1. When procuring construction works over threshold (refer to Rule 7) agencies **must** include questions about the skills development and training practices of the supplier and their sub-contractors.
  - a. This **must** also include questions about what more a supplier would do over the course of the contract to improve or build skills,
  - b. Where a weighted attribute model is used, agencies **must** ensure that questions about skills development and training practices of the supplier and their sub-contractors are included as weighted evaluation criteria.
  - c. Where a weighted attribute evaluation model is not used, agencies **must** ensure that reasonable consideration is given to skills development and training.
2. Agencies **must** have regard to any *guidance* published by MBIE on incorporating skills development and training in construction contracts.
3. Agencies **must** conduct sufficient monitoring of the contract to ensure that skills development and training commitments made in the tender process are delivered and reported on in

compliance with any reporting framework published by MBIE.

4. Agencies **must** also consider the Health and Safety practices of a supplier, including the Health and Safety training they provide to their employees.



### Applying a weighting

When determining what weighting to apply, agencies must take into consideration the length and the whole-of-life cost of the contract as detailed in the *guidance*.

*Guidance* on how to apply weightings is available at: [www.procurement.govt.nz](http://www.procurement.govt.nz)

### Evaluating responses

When evaluating a bid, agencies will need to take into account the training and skills development provided by subcontractors working on the contract, as well as the prime contractors.

*Guidance* on how to evaluate responses from suppliers is available at: [www.procurement.govt.nz](http://www.procurement.govt.nz).



### Upskilling and developing the construction workforce

One of the current priorities for the Government is to grow the capability and capacity of the construction workforce. Government is committed to working with industry to deliver the right people, at the right time, with the right skills, to meet current and future needs in the construction sector.

Increasing the size and skill of the construction workforce will benefit the construction industry (by equipping it to better meet New Zealand's current and future demand for construction work), as well as the Government (by enabling the industry to deliver on priority government initiatives).

Evaluating a supplier on their skills development practices gives an incentive to suppliers to invest in and increase their workforce by employing and training more apprentices. It can also encourage suppliers to create employment opportunities (or opportunities to upskill) for targeted groups such as Māori, Pasifika and women to increase the diversity of the construction industry. This also means that suppliers who do not invest in developing the workforce are not able to undercut those who do on price.

When evaluating a supplier's practices, you should look at what recruitment, retention, training and skills development they do in general. You should consider all levels and construction professions, including but not limited to apprenticeships and equivalent training. You should also look at what further recruitment, skills development and training suppliers would commit to doing over the course of the contract.

As with any other weighted criteria, it is important to make sure that commitments given in responses are included and monitored throughout the contract.

## RULE 19 IMPROVING CONDITIONS FOR NEW ZEALAND WORKERS

1. Agencies **should** ensure their contracts set out the expectation that suppliers and sub-contractors comply with employment standards and health and safety requirements.
2. For *designated contracts*, agencies **must** require their suppliers to ensure and demonstrate that they, and their domestic supply chain, comply with all relevant employment standards and health and safety requirements.
3. Agencies **must** have regard to *guidance* published by MBIE on ensuring compliance with employment standards and health and safety requirements in government contracts.
4. Agencies **must** conduct sufficient monitoring of *designated contracts* to ensure that commitments made in contracts for ensuring good conditions for workers are delivered and reported on.



### Health and Safety

Agencies and their suppliers in New Zealand all have responsibilities under the Health and Safety at Work Act 2015, and applicable regulations and codes of practices. An effective way to meet these obligations is to engage early with suppliers that demonstrate good health and safety practices, and establish contracts that meet health and safety requirements under the Act.

Talk to your suppliers about how health and safety will be managed through their supply chain. Often your supplier will have sub-contractors who will actually carry out the work.



### Employment standards

To incentivise suppliers with good labour practices, agencies should ensure that all workers employed to fulfil the requirements of government contracts are treated fairly and are not exploited. This includes compliance with New Zealand labour laws, such as the Employment Relations Act 2000, the Minimum Wage Act 1983 and the Holidays Act 2003. In addition, agencies need to apply a greater level of due diligence in assuring that employment standards are being met for the *designated contracts*. This is because these contracts demonstrate some of the underlying characteristics associated with employment standards breaches and labour exploitation, e.g. low-wage occupations and business models that rely on low wage contracting and casual employment. Check the *guidance* for the list of *designated contracts*, the definition of a domestic supply chain and overview of requirements at: [www.procurement.govt.nz](http://www.procurement.govt.nz).

## RULE 20 TRANSITIONING TO A NET-ZERO EMISSIONS ECONOMY AND DESIGNING WASTE OUT OF THE SYSTEM

1. Agencies should:
  - a. support the procurement of low-emissions and low-waste goods, services and works.
  - b. encourage innovation to significantly reduce emissions and waste impacts from goods and services.
2. For *designated contracts*, agencies must support the procurement of low-waste and low-emissions goods and services and encourage innovation to significantly reduce emissions and waste impacts from goods and services.
3. Agencies must have regard to *guidance* published by MBIE on the procurement of low-waste and low-emissions goods and services.
4. Agencies must conduct sufficient monitoring of *designated contracts* to ensure that commitments made in contracts are delivered and reported on.



### Government fleet emissions dashboard

The average greenhouse gas emissions profile of each agency's fleet is displayed on an emissions dashboard available at: [www.procurement.govt.nz](http://www.procurement.govt.nz). This dashboard is regularly updated to track the emissions reductions of each agency.

The AoG motor vehicle contract has a range of low emission vehicles available to ensure agencies can reduce their average emissions profiles. If you require advice on the best options to reduce your agency's emission profile, your agency should contact New Zealand Government Procurement before purchasing replacement vehicles.

## RULE 21 ANNUAL PROCUREMENT PLANS

1. An agency **must** submit an *Annual Procurement Plan* (APP) to MBIE for publication.
  - a. An APP is a list of planned contract opportunities over the next 12 months. An agency may include such information for a longer period, at its discretion.
  - b. An APP **must** contain all known or anticipated *contract opportunities* that the *Rules* apply to.
2. An APP may contain other contract opportunities that the *Rules* don't apply to, at the agency's discretion.
3. An APP is for planning purposes and does not represent an invitation for bids or pre- solicitation. It is not a commitment by the agency to purchase the described goods, services or works.
4. Each agency **must** review and update its APP at least once every six months. An agency may update its APP more often, if appropriate.
5. Updated APPs are due by 1 March and 1 October each year.



Annual Procurement Plans are intended to help agencies plan their future procurement activities. They also give suppliers advance notice of possible contract opportunities.

If an agency is doing *secondary procurement* (purchasing from an existing panel contract, *All- of- Government, Syndicated* or *Common Capability Contract*), or is doing an *opt-out procurement*, it does not need to include this procurement in its APP. You can read more about APPs and find the template at: [www.procurement.govt.nz](http://www.procurement.govt.nz)

## RULE 22 SIGNIFICANT PROCUREMENT PLANS

1. Where requested, an agency **must** submit a significant *procurement plan* to MBIE for review.
2. An agency **should** have regard to the advice and feedback provided by MBIE on its significant *procurement plans*.



### Significant procurement plans

A significant *procurement plan* is for a procurement that falls into one or more of the following categories:

- a. has an estimated total value of \$5 million or more over the whole-of-life of the contract
- b. due to the nature or complexity of the procurement, it would expose the agency or government to significant risks if it were not delivered to specification and within budget and on time
- c. has the potential for cross-government collaboration or resource sharing.

#### Review purpose

MBIE may request to review your significant *procurement plans* from time to time. This review enables MBIE to provide support and commercial expertise where needed and identify areas where procurement capability development can be focused. The review is a supportive peer assessment to help agencies:

- › improve procurement planning and the quality of decision making
- › focus on achieving the best *public value*, including any *Broader Outcomes* you could achieve over the whole-of-life of the contract
- › identify opportunities to collaborate with other agencies to achieve cost savings and other benefits.

More information about procurement planning and related guides, tools and *procurement plan* templates are available at: [www.procurement.govt.nz](http://www.procurement.govt.nz).

## RULE 23 THIRD PARTY AGENTS

1. An agency may purchase the services of a third-party agent (e.g. an external procurement consultant) to advise, arrange or manage a procurement, or part of a procurement, on its behalf.
2. If an agency uses a third-party agent to conduct and manage a procurement, the agency, through the agent, **must** still comply with the *Rules*.



You can't avoid applying the *Rules* by procuring through a third-party supplier. Even if your third-party supplier is an agency that is not required to apply the *Rules* (Rule 5.1), if you are required to apply the *Rules*, your third party supplier will also be required to apply them for and on your behalf.

## RULE 24 PROCUREMENT ADVICE

1. An agency **should not** purchase procurement advice from a supplier that has a commercial interest in the contract opportunity, as to do so would prejudice fair competition (e.g. a supplier is asked to write the contract requirements and then bids for the contract opportunity).



Procurement  
advice

Rule 24 does not prevent an agency from using early market engagement to clarify needs or identify possible solutions.

For more information about early market engagement see the *Constructive market engagement* guide at [www.procurement.govt.nz](http://www.procurement.govt.nz).

## RULE 25 SUBCONTRACTING

1. An agency **should** require prime contractors to meet certain standards in its subcontracting. The standards **should** be consistent with the *Principles, the Government Procurement Charter, the Supplier Code of Conduct, the priority outcomes* set out in Rules 16 to 20, and other guidance.



Subcontracting can be a significant part of delivering a procurement contract. It is important that subcontractors have good standards, particularly in employment, health and safety, and supporting training and skills development. Agencies should seek to engage with prime contractors who have good processes for managing their subcontractors, and who engage with subcontractors that demonstrate good practice.

## RULE 26 DELIVERY DATE

1. When identifying or estimating the delivery date for the goods, services or works, an agency **should** take into account any of the following factors that apply:
  - a. the complexity of the procurement
  - b. how much subcontracting there might be
  - c. a realistic time to produce, stock and transport goods from the point of supply to the delivery address
  - d. a realistic time to deliver services and works given their nature and scope.

## RULE 27 TECHNICAL SPECIFICATIONS

1. An agency **must not** apply *technical specifications* or prescribe conformance requirements in a way that creates unnecessary obstacles for suppliers.
2. Where appropriate, *technical specifications* **must** be based on:
  - a. performance and functional requirements, not on design or a prescribed licensing model or a description of their characteristics
  - b. international standards where they exist, otherwise the appropriate New Zealand technical regulations, standards, or building codes.
3. When an agency describes *technical specifications*, it **must not** (except under Rule 27.4):
  - a. require or refer to a particular trademark or trade name, patent, design or type
  - b. refer to the specific origin of the goods, services or works or the name of the producer or supplier.
4. The exception to Rule 27.3 is when it is the only way to make the requirements understood. In this case, an agency **must** include words like 'or equivalent' in the specification and make it clear that it will consider equivalent goods, services or works that can be demonstrated to fulfil the requirement.



A situation where using a **trademark** may be the only practical way to make requirements understood is when you are sourcing software that needs to be compatible with an existing system.



**International standards** are published by recognised international standards organisations. New Zealand standards are often aligned with international standards. When they are, suppliers may understand your needs more clearly if you refer to the New Zealand standard rather than the equivalent international one.

**New Zealand technical regulations** are mandatory for goods and services for use in, and construction works located in, New Zealand. If there is a New Zealand technical regulation applying to the goods, services or works you are sourcing, your specifications must be based on it. Examples are the Electricity (Safety) Regulations 2010 and the Building Code in Schedule 1 of the Building Regulations 1992.

## RULE 28 PRE-CONDITIONS

1. An agency **may** include essential conditions for participation in a procurement process in its *Notice of Procurement* (Rule 37). These are called *pre-conditions*.
2. Suppliers **must** meet all of the *pre-conditions* to be considered for the contract opportunity.
3. An agency **must** limit *pre-conditions* to the following critical areas:
  - a. legal capacity
  - b. financial capacity
  - c. commercial or operational capacity or capability to deliver
  - d. appropriate technical skills or expertise or relevant experience.
4. An agency **must not** make it a *pre-condition* that a supplier has been previously awarded a contract by a named buyer or a New Zealand government agency.
5. To assess whether a supplier meets the *pre-conditions*, an agency **must**:
  - a. evaluate responses against the *pre-conditions* that it published in its *Notice of Procurement* (Rules 37 and 38), and
  - b. take into account the supplier's *business activities* in New Zealand and overseas.



### Pre-conditions

*Pre-conditions* allow agencies to do a 'first cut' and eliminate suppliers who do not have the minimum capacity or capability to deliver the contract.

*Pre-conditions* are usually answered by 'yes' or 'no', or 'meets' or 'does not meet'.

Suppliers who meet all of the *pre-conditions* are then eligible to be assessed against the scored *evaluation criteria*.

## RULE 29 SUFFICIENT TIME

1. An agency **must** allow *sufficient time* for suppliers to respond to a *Notice of Procurement* (Rule 37). It **must** act in good faith and use sound judgement when calculating *sufficient time*.
2. The key factors to take into account when calculating *sufficient time* include:
  - a. the nature and complexity of the procurement
  - b. the type of information and level of detail suppliers need to provide in their responses
  - c. the nature of the goods, services or works
  - d. how simple or difficult it is to describe the deliverables
  - e. the level of risk
  - f. the extent of any anticipated subcontracting or the likelihood of any joint bids
  - g. how critical the procurement is to the agency's success
  - h. the time it takes for domestic and foreign suppliers to submit tenders, particularly if you have asked suppliers to deliver hard copies
  - i. the impact of public holidays on suppliers.
3. Mandatory *minimum time periods* are explained in Rules 30 to 34. *Sufficient time* is often longer than the *minimum time periods* and will vary depending on the nature and complexity of the procurement.



Don't jeopardise the results you could achieve with a rushed process. If you don't allow *sufficient time*, you may limit the:

- › number of suppliers that can respond and the quality of their responses
- › level of competition and your agency's ability to get the best *public value*, including *Broader Outcomes*
- › choice of solutions offered and your agency's ability to purchase the right one.

Put yourself in the suppliers' shoes to work out how much time is *sufficient time*. How long will it take to:

- › obtain, read and analyse all tender documents
- › ask questions to clarify the requirements and get answers
- › develop a meaningful response that includes accurate pricing information
- › prepare, check and submit the response and deliver it on time, and...
- › carry on with your day job!



To decide what is *sufficient time*:

- › Be realistic, set timelines that are fair to all suppliers and reflect the nature and complexity of the information you are seeking.
- › Take weekends and New Zealand statutory holidays into account
- › To get the best result possible, avoid publishing contract opportunities on *GETS* right before Christmas or in early January. Most of New Zealand is on holiday for a good part of January. If you must publish during this period you should consider allowing a longer response time unless there is a strong business reason for not doing so.
- › Make sure your *sufficient time* is not less than the minimum time period set out in Rule 34.
- › Where there is the possibility of joint bids, consortiums or subcontracting, allow at least 27 business days. This gives suppliers time to consult and collaborate. It means, for example, small and medium-sized businesses (SMEs) have the opportunity to put together a joint bid, where one SME may not have the capability to deliver on its own.
- › Consider extending your timeframe if there is a late release of material clarifications or supplementary documentation. This will allow suppliers to update their responses accordingly.

## RULE 30 MINIMUM TIME PERIODS

1. The *Rules* set *minimum time periods* for each of the procurement processes listed in Rule 34.
2. If any *allowable reductions* apply (Rule 31), you can deduct them from the *minimum time period*. The result is the new minimum time period.
3. The sufficient time (Rule 29) an agency sets for a procurement must not be less than the *minimum time period* (Rule 34) or the new *minimum time period*, if one applies.



To learn more about options for market engagement, see the guide *Constructive Market Engagement* at [www.procurement.govt.nz](http://www.procurement.govt.nz)

## RULE 31 ALLOWABLE REDUCTIONS

1. An agency can claim *allowable reductions* if it complies with the requirements in any of the following circumstances:
  - a. **Prior listing in Annual Procurement Plan:** The agency **must** have listed the contract opportunity in its *Annual Procurement Plan* not less than two months and no more than eight months before the *Notice of Procurement* is published on *GETS*.
  - b. **All documents available electronically:** All tender documents must be available electronically on *GETS* at the same time as the *Notice of Procurement* is published.
  - c. **Responses accepted electronically:** An agency **must** state in its *Notice of Procurement* that it will accept electronic responses and tell suppliers how to send those responses (e.g. by email).
2. An agency may make documents available electronically (under Rule 31.1.b) through another website or e-procurement system. An *allowable reduction* can be claimed only if:
  - a. the URL address for the other website or e-procurement system is published in the *GETS* listing, and
  - b. the tender documents are free for suppliers to access and download, and
  - c. access to the documents is instant. If suppliers need to register, the registration process must be automated and instant.
3. The *allowable reductions* for each type of procurement process (e.g. Request for Proposal) are shown in Rule 34.

## RULE 32 BUSINESS DAY

1. An agency **must** calculate time periods in *clear business days*.
2. A *business day* is a day when New Zealand government agencies and suppliers are normally open.
3. *Business days* exclude Saturdays and Sundays, New Zealand (national) public holidays and all days between Boxing Day and the day after New Year's Day.
4. A *clear business day* is a full day from 9am to 5pm. The day a *Notice of Procurement* is submitted for publication on *GETS* is not a *clear business day*. The time starts on the next *business day* at 9am.



### New Zealand national public holidays

New Zealand national public holidays are:

- › New Year's Day and the day after New Year's Day (1 & 2 January or the following Monday/Tuesday if they fall on a weekend)
- › Waitangi Day (6 February or the following Monday if it falls on a weekend)
- › Good Friday, Easter Monday (dates vary)
- › ANZAC Day (25 April or the following Monday if it falls on a weekend)
- › Queen's Birthday (the first Monday in June)
- › Labour Day (the fourth Monday in October)
- › Christmas Day and Boxing Day (25 & 26 December or the following Monday/Tuesday if they fall on a weekend).

Check holidays for the current year at: [www.employment.govt.nz](http://www.employment.govt.nz)

## RULE 33 FAIR APPLICATION OF TIME

1. The time period an agency sets for submitting responses **must** apply to all interested domestic and international suppliers.
2. Other than in exceptional circumstances, no supplier can be given more or less time than any other supplier.
3. An agency may, in its *Notice of Procurement*, reserve the right to accept a late response in exceptional circumstances if there is no material prejudice to any other interested supplier. An agency **must not** accept a late response if:
  - a. there is any risk of *collusion* on the part of the supplier
  - b. the supplier may have knowledge of the content of any other response
  - c. it would be unfair to any other supplier to accept the late response because the late supplier is given additional time to prepare its response.

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### Clear business day

- › A *Notice of Procurement* is published on *GETS* at 11am on Friday, 1 July. If the Notice is accepted for listing by MBIE, the time period for submissions begins at 9am on Monday, 4 July.
- › Suppliers have 20 *clear business days* to respond. This means the deadline for submissions is 5pm on Friday, 29 July.
- › If the agency wants the responses at 12 noon and not at the end of a *business day*, the deadline will be 12 noon Monday, 1 August.

## RULE 34 MINIMUM TIME PERIODS BY PROCESS

The following *minimum time periods* **must** be applied to the following types of procurement processes detailed in Rules 34.a and 34.b. Days are expressed in *clear business days*.

### 34. a. One-step processes

A one-step process can include a *Request for Quote* (RFQ), *Request for Tender* (RFT) or *Request for Proposal* (RFP).

### 34. b Multi-step processes

A multi-step process can include:

- › a *Registration of Interest* followed by a *Request for Tender* (RFT) or *Request for Proposal* (RFP), or
- › an *Invitation to Participate* in a procurement process followed by a RFT or RFP.



Agencies **should** use a *Request for Quote* when:

- › procuring standard goods, services or works that are easy to describe (e.g. an off-the-shelf product where the supplier can quote a unit price or contractors providing their hourly rates).

Agencies **should** use a *Request for Tender* or *Proposal* when:

- › they need more from the supplier than the unit price, delivery date and delivery costs.

Table – Allowable reductions (Rule 31)

	Type of process	Minimum time period (Rule 30)	Prior listing in Annual Procurement Plan	All tender documents available electronically on GETS	Suppliers tenders or proposals accepted electronically	New minimum time period (if all allowable deductions apply)
<b>One-step Process</b>	RFQ	13	-1	-3	-1	8
	RFT/RFP	25	-3	-4	-3	15
<b>Multi-step Process</b> Step One	ROI/ITP	20	-3	-4	-3	10
<b>Multi-step Process</b> Step Two	RFT/RFP	25	N/A	-5	-5	15





SECTION

3

# Approaching the market

## RULE 35 OPEN ADVERTISING

1. Under Rule 13 an agency **must** openly advertise a contract opportunity unless an exemption under Rule 14 applies.
2. To openly advertise, an agency **must** do all of the following at the same time:
  - a. list the contract opportunity on *GETS* (Rule 36)
  - b. publish a *Notice of Procurement* on *GETS* (Rules 37 and 38) and it **must** make it available free of charge
  - c. provide access to all relevant tender documents (Rule 39), and it **should** make them available free of charge.

## RULE 36 GETS LISTING

1. The *GETS listing* **must** attach the *Notice of Procurement* and contain the following information:
  - a. the agency's name
  - b. the name of the contract opportunity
  - c. the type of procurement process (e.g. *Request for Tender*)
  - d. the relevant *GETS tender watch code/s*
  - e. the deadline for responses from suppliers
  - f. the address for enquiries and the name of the contact person
  - g. a list of any other tender documents that aren't available on *GETS* and details of how suppliers can get them.

## RULE 37 NOTICE OF PROCUREMENT

1. The *Notice of Procurement* **must**:
  - a. be published on GETS
  - b. be available on GETS until the deadline for supplier responses
  - c. contain all of the information required under Content of *Notice of Procurement* (Rule 38).
2. A *Request for Information* (RFI) is not a *Notice of Procurement*. It is a market engagement tool. Agencies **must not** use a *Request for Information* to select or shortlist suppliers.

eg

Examples of a *Notice of Procurement* include:

- › *Request for Quote*
- › *Registration of Interest*
- › *Request for Tender*
- › *Request for Proposal*
- › Invitation to Participate in a *Competitive Dialogue* process
- › *Invitation to Qualify* for a *Pre-qualified Suppliers List*.
- › *Invitation to Participate* in a brainstorming session such as a hackathon.

A response from a supplier is a supplier's reply to a *Notice of Procurement*. Examples include:

- › *Registration of Interest*
- › Quote
- › Tender
- › Proposal
- › Application to Participate in a *Competitive Dialogue* process
- › *Application to Qualify* for a *Pre-qualified Suppliers List*.

eg

Engaging with the market

The process described in the *Rules* is the formal process of approaching the market.

However, you can and should engage with the market before this stage. It is important that you use this opportunity to understand the market but do not commit your agency to any decisions.

Engaging with the market before planning your approach to market is particularly important for incorporating broader economic, environmental, social and cultural outcomes into your procurement. You can read information on good practice market engagement at: [www.procurement.govt.nz](http://www.procurement.govt.nz).

## RULE 38 CONTENT OF NOTICE OF PROCUREMENT

1. Each *Notice of Procurement* **must** contain all of the information that suppliers need to prepare and submit meaningful responses.
2. Each *Notice of Procurement* **must** clearly identify which procurement process is being used (e.g. *Request for Quote* or *Registration of Interest* followed by a *Request for Tender*).
3. Subject to Rule 38.4, each *Notice of Procurement* **must** contain the following information:
  - a. the agency's name and address
  - b. the name and contact details for the agency's contact person
  - c. a description of the goods, services or works and any technical specifications, plans, drawings or instructions, or a description of the outcomes, including any *Broader Outcomes* the supplier is expected to deliver or the agency is seeking to achieve.
  - d. the quantity (if known) or estimated quantity of the goods, services or works
  - e. the estimated timeframe for delivering the goods, services or works, or the estimated length of the contract and any options relating to the length of the contract (e.g. 3 + 2 + 1 years)
  - f. any service levels, response times or other performance measures suppliers will need to meet
  - g. any conditions for participating in the procurement process including any *pre-conditions* (Rule 28) or certificates or standards the supplier **must** meet
  - h. any limitations on the number of suppliers that may be shortlisted
  - i. all *evaluation criteria* the agency will use to assess responses, including an indication of the relative importance of each evaluation criterion
  - j. the deadline and address for submitting responses
  - k. any restrictions or instructions on how suppliers are to submit responses (e.g. faxes will not be accepted) or details of how responses are to be submitted through an e-procurement system
  - l. any other terms or conditions relating to the procurement or the procurement process
  - m. if the procurement will be conducted electronically (e.g. using e-tender software), all the information suppliers will need to participate electronically
  - n. if the procurement may involve an *e-auction*, the *Rules* of the *e-auction* and all of the information and training suppliers need to participate in the *e-auction* (Rule 38.4.c and Rule 45).
4. For a *multi-step process*, more information or details may be contained in the *Request for Tender* or *Request for Proposal* that follows the *Notice of Procurement*, e.g.:
  - a. a more complete description of the goods, services or works and any *Broader Outcomes* being sought
  - b. the detailed *evaluation criteria* the agency will use to award the contract
  - c. full instructions on how the *e-auction* will be conducted.



### Evaluation criteria

The form of the *evaluation criteria* (Rule 38.3.i.) that you include in the *Notice of Procurement* will depend on the type of process, e.g.:

- › for a one-step *Request for Tender*, you would usually list the criteria you will use to award the contract
- › for a multi-step process, you would usually list in the *Registration of Interest* the criteria you will use to shortlist suppliers. In the subsequent *Request for Tender* or *Request for Proposal*, you would list the criteria that you will use to award the contract.

### Relative importance

When listing the *evaluation criteria* (either in the *Notice of Procurement* or subsequent RFP or RFT), you must indicate the relative importance of each criterion (Rule 38.3.j.). This is achieved by including the weighting for each criterion or, if you are not using weightings, by ranking the criteria in priority order.

### Changes

If you need to change your *evaluation criteria* during the procurement process, see Rule 42 (*Changes to process or requirements*).



It is good practice to include additional information in the *Notice of Procurement*, such as:

- › details of how you will communicate additional information or changes to the process
- › the contract terms and conditions that will apply
- › the indicative timeframe for the procurement process, e.g.:
  - deadline for suppliers' questions
  - dates for shortlisted supplier presentations
  - dates when suppliers will be notified if they have been successful or not
  - dates debriefs will be held
  - anticipated contract start date.



- › In their *Notice of Procurement*, agencies should request an NZBN.
- › NZBNs are unique identifiers that have been specifically created for businesses. It's a way for businesses to identify themselves both in New Zealand and globally. NZBNs are for all *New Zealand businesses*, big or small, including sole traders, Non-Government Organisations (NGOs) and social enterprises.
- › In procurement, NZBNs can be used to provide standard core business information (e.g. name, address, contact details).
- › NZBNs are not compulsory – suppliers shouldn't be excluded if they don't have one.
- › For more information about the NZBN, go to: [www.nzbn.govt.nz](http://www.nzbn.govt.nz).



Rule 38.4 recognises that sometimes in *multi-step processes*, detailed information can be made available only after shortlisting suppliers.

## RULE 39 OTHER TENDER DOCUMENTS

1. Other tender documents are documents that are relevant and essential to the procurement.
2. These documents may be included in the *Notice of Procurement* as annexes. If they are standalone documents, they may also be referred to in the *Notice of Procurement*.
3. An agency **should** make other tender documents available to suppliers at the same time the *GETS listing* and the *Notice of Procurement* are published. Where possible, they should be uploaded as attachments to the *GETS listing*. This will count as an *allowable reduction* (Rule 31) to the *minimum time period* (Rule 30).
4. If other tender documents can't be made available on *GETS*, agencies **must** state in the *GETS listing* how suppliers can obtain a copy (e.g. by requesting a hard copy or by referencing an e-procurement system where the document is freely available). An agency **must** promptly provide a copy, to any supplier who requests one, or provide instructions on how to obtain one from an e-procurement system.

## RULE 40 RESPONDING TO QUERIES

1. Suppliers may ask questions about any *Notice of Procurement*.
2. An agency **must** promptly reply to all questions and reasonable requests for information from suppliers. If an agency is unable to reply to a question promptly, it **should** consider extending the deadline for responses.
3. When an agency responds to a supplier's question, it **must not** give information that might give that supplier an unfair advantage over the other suppliers. If an agency wishes to disclose advantageous information, it **must** make it available to all suppliers at the same time.
4. When an agency responds to a supplier's question, it **must not** discuss or disclose another supplier's confidential or commercially sensitive information.

eg

New Zealand Business  
Numbers (NZBN)

Examples of other tender documents include:

- › architectural drawings
- › engineering plans
- › detailed technical specifications
- › reports
- › extensive specifications in an electronic file that is too large to upload to *GETS*
- › applicable policy statements relating to *Broader Outcomes*
- › environmental and other standards.

## RULE 41 ADDITIONAL INFORMATION

1. An agency may make additional information available to all participating suppliers after a *Notice of Procurement* is published on *GETS* and before the deadline for responses closes.
2. An agency may publish additional information on *GETS* or, following a shortlisting, send copies to all participating suppliers.
3. An agency **must** make additional information available to all participating suppliers at the same time.

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The participating suppliers may be different at each stage of a procurement.

An example of when all participating suppliers are known to the agency could be the second stage of a multi-step tender.

This is where the agency has published a *Registration of Interest*, and after receiving and evaluating the responses has shortlisted suppliers. The agency then invites the shortlisted suppliers to submit full tenders. These suppliers are all participating suppliers known to the agency.

## RULE 42 CHANGES TO PROCESS OR REQUIREMENTS

1. An agency may make changes to its procurement process or its requirements after a *Notice of Procurement* has been published on *GETS* and before the deadline for responses closes.
2. An agency **must** notify all participating suppliers of any changes to the procurement process or requirements. An agency **must** publish all changes on *GETS* or, following a shortlisting, send them to all participating suppliers.
3. An agency **must** make all changes available to all participating suppliers at the same time.
4. An agency **must** give participating suppliers enough time to respond to the changes. This may mean extending the deadline for responses, or allowing suppliers who have already submitted their responses a fair opportunity to change their responses.

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Changes to procurement processes or requirements may include changing:

- › any essential aspect of the specification of requirements or *technical specifications*
- › a *pre-condition* (Rule 28)
- › *evaluation criteria*
- › the ranking or weightings of the *evaluation criteria*
- › the deadline for responses or critical dates in the procurement process
- › the *Rules* or conditions that apply to the procurement process.

## RULE 43 TREATMENT OF RESPONSES

1. An agency **must** have in place procedures that guarantee that all suppliers' responses are treated fairly. This includes receiving, opening and evaluating responses.
2. To be considered for an award of contract, a supplier **must**:
  - a. submit a response in writing (this can be through electronic means such as email or an e-procurement system)
  - b. comply with all *pre-conditions* (Rule 28) if any, or other conditions for participating in the contract opportunity.
3. An agency **must** not penalise a supplier who submits a late response, if the delay is solely the agency's fault.
4. If, after opening the responses but before completing the evaluation, an agency offers a supplier the opportunity to correct unintentional errors, it **must** offer the same opportunity to all participating suppliers.



The *Rules* do not prevent you from allowing suppliers to present their bids in person. However, be very sure that you have adequate probity procedures in place.

## RULE 44 REASONS TO EXCLUDE A SUPPLIER

1. An agency may exclude a supplier from participating in a contract opportunity if there is a good reason for exclusion. Reasons for exclusion include:
  - a. bankruptcy, receivership or liquidation
  - b. making a false declaration
  - c. a serious performance issue in a previous contract
  - d. a conviction for a serious crime or offence
  - e. professional misconduct
  - f. an act or omission that adversely reflects on the commercial integrity of the supplier or offends against the *Supplier Code of Conduct*
  - g. failing to pay taxes, duties or other levies
  - h. a threat to national security or the confidentiality of sensitive government information
  - i. the supplier is a person or organisation designated as terrorists by New Zealand Police
  - j. human rights violations by the supplier or in the supplier's supply chain.
  - k. any matter that materially diminishes an agency's trust and confidence in the supplier.
2. An agency **must not** exclude a supplier before it has evidence supporting the reason for the exclusion.
3. An agency **should** notify a supplier of its exclusion and the reasons for it.



### Serious performance issue:

If serious issues with past performance are identified and there is supporting evidence, you should consider excluding the supplier from participating in the contract opportunity. See the guidance note on *Rule 46 Awarding the Contract*, available at: [www.procurement.govt.nz](http://www.procurement.govt.nz).

**Bid rigging:** If you discover that the same errors appear in responses from different suppliers (e.g. misspelled words or the same mathematical mistakes), this may indicate that these suppliers have shared information (e.g. cut and pasted content from each other's responses) and may be acting anti-competitively.

For more examples and guidance on detecting and preventing bid rigging, see the Commerce Commission's fact sheets, *How to recognise bid rigging and How to deter bid rigging*, available at: [www.comcom.govt.nz](http://www.comcom.govt.nz)

**A conviction for a serious crime or offence** includes a conviction for foreign bribery (getting an advantage in an international transaction by offering bribes to foreign officials). For more information, read the Organisation for Economic Cooperation and Development's *Foreign Bribery Factsheet* at: [www.oecd.org](http://www.oecd.org). Information about New Zealand law relating to bribery is available at: [www.sfo.govt.nz](http://www.sfo.govt.nz)

## RULE 45 E-AUCTION

1. An agency may run an *e-auction* after its initial evaluation of proposals. An *e-auction* is a scheduled online event where suppliers bid against each other on price, quality or other quantifiable criteria.
2. An agency **must** notify suppliers in advance if it intends to run an *e-auction*. This advance notice **must** be in the *Notice of Procurement* and **must** include:
  - a. a summary of the *Rules* that will apply to the *e-auction*
  - b. the specific criteria that will be used in the *e-auction*.
3. The automated evaluation method used in an *e-auction* must be based on the criteria set out in the *Notice of Procurement*.
4. Before beginning an *e-auction*, an agency must provide each participating supplier with:
  - a. a summary of the results of its initial tender evaluation
  - b. the automated evaluation method that will be used to re-rank suppliers based on their e-bids
  - c. the formula that the automated evaluation method is based on
  - d. any other relevant information about how the *e-auction* is run.
5. An agency **must** offer to train each participating supplier to use the hosted *e-auction* website or the *e-auction* software before the *e-auction* begins.



An *e-auction* is an online reverse auction. It gives suppliers the opportunity to bid against each other to improve their offers. An *e-auction* can be run on specialist in-house software or as a hosted service.

When considering an *e-auction*, remember the principle of getting *public value*, including any *Broader Outcomes* you could leverage.

It takes place in real time. The benefits of an *e-auction* include:

- › the negotiation process is paperless and streamlined
- › the negotiation takes less time
- › the process of awarding the contract is more transparent
- › it discourages *collusion* and bid rigging.

› SECTION

# 4

## Awarding the contract

## RULE 46 AWARDING THE CONTRACT

1. An agency **must**, unless there is a legitimate reason to cancel the procurement, award the contract to the supplier/s that has both:
  - a. demonstrated that it fully understands and has the capability to deliver the requirements and meet the contract conditions, and
  - b. offered the best *public value*, including *Broader Outcomes*, over the whole life of the goods, services or works.
2. If a supplier offers a price that is substantially lower than other responses (an abnormally low bid), an agency may seek to verify with the supplier that the supplier is capable of:
  - a. satisfying all of the conditions for participation, if any, and
  - b. fully delivering all of the contract requirements (e.g. quality, quantity, time and location), any other stated objectives and meeting all of the contract conditions for the price quoted.
3. An agency **must not** cancel a procurement, use options or modify or terminate an awarded contract to avoid applying the *Rules*.

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A legitimate reason to cancel a procurement could include:

- › A change of policy
- › A change to an appropriation that affects funding for the initiative
- › No supplier has offered a satisfactory solution or an acceptable price, or one that represents *public value*
- › A Ministerial direction.



Public value

To determine which supplier offers the best *public value*, consider all the relevant information from your evaluation process, due diligence and reference checks and any *Broader Outcomes* that could be leveraged through your procurement.

Look out for abnormally low bids. A low bid may reflect a more efficient supplier or one that is willing to make an investment in the relationship by taking a lower margin on the contract. Such competitive responses should be encouraged, but an abnormally low bid could impact negatively on service delivery. An abnormally low bid could also indicate other suppliers involved in the tender have been colluding, or that the low-bidding supplier is trying to take advantage of its market power in breach of section 36 of the Commerce Act 1986.

For more information, including fact sheets *How to recognise bid rigging*, and *How to deter bid rigging*, go to: [www.comcom.govt.nz](http://www.comcom.govt.nz)

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Conducting due diligence

Before awarding a contract, you need to conduct due diligence. This ensures, among other things, that suppliers are who they claim to be, are financially sound and have the necessary capacity and capability to deliver the needs of an agency. Due diligence should also continue throughout contract delivery. More guidance on due diligence is available at: [www.procurement.govt.nz](http://www.procurement.govt.nz)

## RULE 47 INFORMING SUPPLIERS OF THE DECISION

1. After evaluating the responses and making the decision to award the contract to a particular supplier/s, an agency **must** promptly inform all of the unsuccessful suppliers in writing of this decision.



It is good practice to inform suppliers that you do not intend to enter negotiations with, within two to three weeks of making this decision.

## RULE 48 CONTRACT AWARD NOTICE

1. An agency **must** publish a *Contract Award Notice* on *GETS* when it has awarded a contract that is subject to the *Rules*. This *Notice must* be published whether or not the contract was openly advertised, unless it is:
  - a. an *opt-out procurement* (Rule 12) or
  - b. *secondary procurement* (Rule 14.9.i).
2. An agency **must** publish the *Contract Award Notice* on *GETS* within 30 *business days* of all parties signing the contract/s. The *Contract Award Notice must* include:
  - a. the agency's name and address
  - b. the successful supplier's or suppliers' name/s and address/s
  - c. a description of the goods, services or works
  - d. the date the contract/s was awarded
  - e. the term of the contract/s
  - f. the expected spend under the contract/s, or the highest and lowest offers the agency evaluated to award the contract
  - g. the type of procurement process used
  - h. if the agency claimed an *exemption from open advertising* (Rule 15), the circumstances that justify the exemption
  - i. a New Zealand Business Number (NZBN) where available
  - j. any other information, as requested by the *Procurement Functional Leader*, for example information on *Broader Outcomes*.



Open  
data

MBIE will be making all contract award notice data publicly available from 2020. This is part of New Zealand's commitment as a signatory of the Open Government Partnership.



Expected  
spend

### Expected spend

The expected spend (Rule 48.2.f) under the contract could be the contract price, if this is fixed, or an estimate of the total value of the contract over its life. This information will not be required when publishing a *Contract Award Notice* relating to the establishment of a *Panel of Suppliers* under Rule 57.

### Keeping suppliers informed

It's good practice to let participating suppliers know where they stand after evaluating the responses. You should tell suppliers when they have been unsuccessful.

However, in some instances you may want to keep competitive tension between the top ranking suppliers. If there is more than one supplier who is capable of delivering the contract, you may want to negotiate with the top-ranked supplier and reserve your position with the second-ranked supplier. If the negotiations with the top-ranked supplier fall through, you may then offer to negotiate with the next-ranked supplier. In this case, you can tell other highly-ranked suppliers that you are negotiating with the preferred supplier and, should negotiations fail, they may still be considered for the contract opportunity.

## RULE 49 DEBRIEFING SUPPLIERS

1. All suppliers **must** have the opportunity to be debriefed following a procurement. An agency **must** offer each unsuccessful supplier a debrief.
2. When a supplier asks an agency for a debrief, the agency **must** debrief that supplier within 30 *business days* of the date the contract was signed by all parties, or 30 *business days* of the date of the request, whichever is later.
3. At the debrief, an agency **must not** disclose another supplier's confidential or *commercially sensitive* information (Rule 4).
4. An agency should provide information at the debrief that helps the supplier to improve future tenders or responses. At a minimum, the debrief **must**:
  - a. include the reason/s the proposal was not successful
  - b. explain how the supplier's proposal performed against the criteria or any *pre-conditions* (Rule 28) and its relative strengths and weaknesses
  - c. explain the relative advantage/s of the successful proposal
  - d. address the supplier's concerns and questions.



You must offer suppliers a full debrief. Telling suppliers about the strengths and weaknesses of their proposal gives them an opportunity to improve future proposals.

Agencies that debrief suppliers will have fewer complaints.

You can debrief suppliers by phone, email, letter, or at a meeting. The method you choose should reflect the nature and complexity of the procurement.

After a shortlist has been created you should consider debriefing the suppliers that did not make it on to this list while you continue your process with the shortlisted suppliers.

See the *Guide to supplier debriefs* and *Checklist for supplier debriefs* at: [www.procurement.govt.nz](http://www.procurement.govt.nz).

## RULE 50 SUPPLIER COMPLAINTS

1. A supplier may complain to an agency if it believes the agency has not followed the *Rules*. An agency **must** consider and respond promptly and impartially to a complaint. An agency **must** try to resolve any complaints in good faith.
2. The way the agency deals with the complaint **must not** prejudice the supplier's ongoing or future participation in contract opportunities or affect any right the supplier may have to a judicial review or other remedy.
3. An agency **must** keep good records of its procurement process and decisions. These records **must** be made available to any authority competent to hear or review a supplier's complaint (e.g. the Office of the Auditor-General, the Ombudsman, the Commerce Commission or a court of law).
4. Without limiting its legal rights, an agency **must** fully cooperate in any review or hearing of a supplier's complaint by a competent authority.



### Supplier redress

If a supplier has complained to an agency, but is not satisfied, it has several options available for further redress. These may include:

- › an independent review or investigation
- › a mediation or alternative dispute resolution
- › an investigation by the Auditor-General
- › an investigation by the Ombudsman
- › an investigation by the State Services Commission
- › an investigation by the Commerce Commission
- › taking the agency to court.

Before taking further steps, it is important that the supplier has tried, in good faith, to resolve the problem with the agency.

See the *Guide to supplier feedback and complaints* at:  
[www.procurement.govt.nz](http://www.procurement.govt.nz)

## RULE 51 PROMPT PAYMENT

1. Each agency **must** pay suppliers' invoices promptly. At a minimum, invoices **must** be paid at the time/s set out in the contract, or earlier if possible.
2. Agencies **must** encourage their suppliers to pay their sub-contractors promptly.
3. Agencies **should** encourage suppliers to offer subcontractors no less favourable payment terms than the ones they receive from agencies.



Prompt payment is critical to the cash flow of every business and especially to small and medium sized enterprises (SMEs). Payment certainty inspires confidence across the supply chain which, in turn, stimulates investment and growth in the New Zealand economy. Slow payments can negatively impact a business's cash flow, waste their time (having to chase up payments), and impact their ability to grow.

Improving payment times and practices is a priority for the Government. Some things you can do that support prompt payment are:

- › Set all suppliers to "immediate payment terms" in accounts payable systems. This means that all invoices are paid in the next pay run after they are approved, even if the invoice is due at a future date.
- › Have frequent accounts payable system payment runs. There should be at least one accounts payable system payment run each week.
- › When procuring new finance systems, consider what technology is available to improve payment times with suppliers such as purchase to pay systems.
- › Consider the use of purchase cards for low value transactions.
- › Where appropriate consider including contractual or other legal rights that allow agencies to pay sub-contractors directly in instances where the supplier is not paying their subcontractors.

## RULE 52 MAINTAINING RECORDS

1. Without limiting its obligations under the Public Records Act 2005, an agency **must** keep records of each procurement for at least three years from the date the contract was signed by all parties.
2. The records **must** document the procurement process, all decisions, the contract awarded and include all recommendations and reports.
3. An agency may store the records electronically, if its system complies with requirements of the Public Records Act 2005. Disposal of records is subject to the authorisation of the Chief Archivist, in accordance with the Public Records Act 2005.



Recording  
the process

The procurement process includes planning, sourcing, evaluations, meetings, issues and resolutions, recommendations and decisions. Each step should be thoroughly documented and maintained as records.

## RULE 53 REPORTING

1. Agencies **must** provide data and information to the *Procurement Functional Leader* on procurement activity including *Broader Outcomes* as authorised by Cabinet and/or Ministers of Finance and State Services.



Reporting

Reporting is an important mechanism for driving real change and ensuring accountability and transparency. The Government is committed to developing a reporting and monitoring framework that provides a system-wide view of government procurement activity. This includes the outcomes (including *Broader Outcomes*) that agencies are achieving from their primary and secondary procurement activities. In line with open data principles, MBIE may, from time to time, publish the data and information collected.

More information on how to report on Broader Outcomes can be found on our website: [www.procurement.govt.nz](http://www.procurement.govt.nz).

## RULE 54 AUDIT

1. An agency **must** keep records (Rule 52) for audit purposes.



### What to expect from an audit

Agencies are accountable to Parliament and the public for their use of public resources and the powers conferred by Parliament.

The Auditor-General provides independent assurance that agencies are operating and accountable for their performance. For more information, see Audit New Zealand's guide *What to expect from your audit* at: [www.auditnz.govt.nz](http://www.auditnz.govt.nz)

### Auditing procurements involving an alliance or joint venture with the private sector

When entering into any form of joint venture or alliance with the private sector, you should include provisions in the contracts or agreements allowing access for auditing purposes to all records of procurement undertaken by the partnering. The contract provisions should enable access by the public sector entity's own internal auditor and any other person undertaking audit or review on behalf of the Auditor-General.



SECTION

# 5

## Types of supplier lists

## RULE 55 TYPES OF SUPPLIER LISTS

1. If an agency regularly purchases a specific type of good, service or works, it may establish a list of suppliers. Common types of lists include:
  - a. *Pre-qualified Suppliers List* (Rule 56)
  - b. *Panel of Suppliers* (Rule 57).



Where a supplier list has been established, do you still need to openly advertise individual contract opportunities?

Where an agency establishes a *Pre-qualified Suppliers List*, it must still openly advertise individual contract opportunities that meet or exceed the appropriate *value threshold* (Rules 13 and 35).

Where an agency has established a *Panel of Suppliers*, individual contract opportunities that meet or exceed the *value threshold* do not need to be openly advertised. These are *secondary procurements* and the agency may select suppliers directly from the *Panel* in accordance with the *secondary procurement method(s)* established for the *Panel*.

## RULE 56 PRE-QUALIFIED SUPPLIERS LIST

1. A *Pre-qualified Suppliers List* is a list of suppliers who an agency has pre-approved as capable of delivering specific types of goods, services or works.
2. A *Pre-qualified Suppliers List* is appropriate if an agency wants to:
  - a. verify which suppliers can deliver specific goods, services or works
  - b. make it easier for suppliers to respond to contract opportunities by only asking for qualifying information once.
3. An agency that establishes a *Pre-qualified Suppliers List* is not exempt from *open advertising* where a contract opportunity meets or exceeds the relevant *value threshold* (Rules 6 and 7). An agency **must** openly advertise each contract opportunity on *GETS*. *Pre-qualified suppliers* should make sure that they are listed on *GETS* under the correct *tender watch code/s* to receive notifications.

### Establishing a Pre-qualified Suppliers List

4. To establish a *Pre-qualified Suppliers List*, an agency **must**:
  - a. publish an *Invitation to Qualify* (a type of *Notice of Procurement*) on *GETS* and make it continuously available
  - b. allow suppliers to respond to the invitation at any time or by specific deadlines for responses
  - c. include the following information in the invitation:
    - i. the agency's name and address and contact details for the person managing the process
    - ii. a clear description of the specific goods, services or works potential suppliers must be capable of delivering
    - iii. a list of any conditions that each supplier must meet to participate and how the agency will check each supplier meets the conditions
    - iv. how long the list will be active for and how it will be refreshed or terminated
  - d. assess applicants within a reasonable timeframe and add qualifying suppliers to the list as soon as possible
  - e. notify unsuccessful applicants promptly and, if requested, provide the reason/s why.

### Operating a *Pre-qualified Suppliers List*

5. To operate a *Pre-qualified Suppliers List* an agency **must**:
  - a. keep an updated list and make this publicly available at all times (e.g. on the agency's website)
  - b. notify pre-qualified suppliers if the list is terminated or they are removed from the list. If an agency removes a supplier from a list, it **must** explain why.

### Managing contract opportunities

6. If a contract opportunity arises for the specific goods, services or works that a *Pre-qualified Suppliers List* was established for, an agency **must**:
  - a. openly advertise the contract opportunity on *GETS*. *Pre-qualified suppliers* should make sure that they are listed on *GETS* under the correct *tender watch code/s* to receive notifications
  - b. allow any unqualified supplier to submit an *Application to Qualify* either prior to or along with its response to the *Notice of Procurement*
7. If a supplier submits an *Application to Qualify* before or with its response, the agency **must**:
  - a. promptly assess the application
  - b. allow a supplier who is successful in becoming *pre-qualified* to take part in the contract opportunity if there is enough time to complete the qualification process
  - c. promptly notify the supplier of the decision.



When a supplier is added to a ***Pre-qualified Suppliers List***, it does not result in a contractual or legal relationship between the agency and the *pre-qualified supplier*.

To qualify as a *pre-qualified supplier*, the supplier must demonstrate that it can meet the criteria for delivering the goods, services or works. A *pre-qualified supplier* may still need to meet other evaluation criteria each time the agency wishes to purchase goods, services or works the supplier has qualified to deliver.

Pre-qualification is not the same as a multi-step procurement (e.g. *Registration of Interest* followed by a *Request for Proposal*). There is no specific contract in mind when suppliers pre-qualify. *Pre-qualified suppliers* have the potential to win contracts over time, but are not guaranteed any work.

Agencies must not use the pre-qualification process with the purpose of obtaining price information from suppliers.

## RULE 57 PANEL OF SUPPLIERS

1. A *Panel of Suppliers (Panel)* is a list of suppliers who have been approved by an agency as capable of delivery and who have agreed to the terms and conditions of supply.
2. A *Panel of Suppliers* is appropriate when an agency wants to:
  - a. verify which suppliers are capable of delivering specific goods, services or works
  - b. agree in advance with each supplier the terms and conditions of supply of the goods, services or works, including the pricing (e.g. agreed hourly fee) or the pricing mechanism that will apply.
3. Before establishing a Panel, an agency **must**:
  - a. have a good understanding of the anticipated demand for the goods, services or works and number or range of Panel suppliers that are required
  - b. anticipate an on-going need for the goods, services or works
  - c. have resources and plans in place for the Panel to be appropriately managed once established.
4. Once a *Panel* has been established through an open process under the *Rules*, an agency does not need to openly advertise individual contract opportunities on *GETS*. It may purchase from the Panel. This is called *secondary procurement*.

When purchasing from the *Panel*, the agency **must** use the specified method (Rule 57.10) to select a supplier.

### Establishing a Panel of Suppliers

5. An agency **must** openly advertise the opportunity to be selected for the *Panel of Suppliers* in accordance with Rules 13 and 35.
6. The *Notice of Procurement* **must** comply with Rule 37 and include the content specified in Rule 38. It **must** also include the following information:
  - a. the terms and conditions of supply that will apply (e.g. the *framework agreement*)
  - b. the method/s the agency will use to award contracts to suppliers on the *Panel* (i.e. the *secondary procurement* process (Rule 57.12))
  - c. how the agency will contract with a supplier who agrees to deliver specific goods or services or works
  - d. the period of time the *Panel* will be established for
  - e. whether or not the *Panel* is 'open' or 'closed'
  - f. any circumstances that may lead to a supplier being removed from the *Panel*.
7. The *Notice of Procurement (Notice)* can be:
  - a. a one-off *Notice* to establish the *Panel*
  - b. a standing *Notice* which is made available continuously on *GETS* that allows interested suppliers to respond on an ongoing basis
  - c. an occasional *Notice* that is published from time to time when an agency wants to refresh or expand the *Panel*.
8. It is expected that an agency will appoint more than one supplier to a *Panel*.

## Method of allocation of contracts

9. The *Notice of Procurement* used to establish the *Panel* **must** outline the method/s that the agency will use to select suppliers when a contract opportunity arises (*secondary procurement process*). The method/s should be appropriate for the nature of the goods, services or works and the anticipated volume of work.
10. An agency should use competitive *secondary procurement processes*, unless there is a good reason not to.
11. Accepted selection methods for *secondary procurement processes* include:
  - a. **competitive quotes which could be based on the supplier's expertise, proposed solution and/or best public value:** Ask for quotes from some or all *Panel Suppliers* and award the opportunity to the supplier who has the right level of expertise, can offer the best *public value* and deliver on time
  - b. **direct source, based on the best fit for purpose:** Fair evaluation of all *Panel Suppliers* and selection of the supplier who has the right capacity and capability to fulfil the opportunity and offers the best *public value* at the time of the purchase
  - c. **rotation:** Award opportunities to each supplier in turn regardless of their expertise, *public value* or delivery time
  - d. **equal division of the work:** Fix an upper limit for the amount of work that can be awarded to each supplier and award opportunities on a rotational basis. When a supplier reaches the upper limit, the agency chooses the next supplier from the *Panel*
  - e. **preferred supplier basis:** Identify a preferred supplier from the *Panel*. This supplier receives most of the opportunities unless it has a *conflict of interest* or is unable to supply. If this happens, the agency will award the opportunity to the next-ranked supplier from the *Panel*
  - f. **location:** Award opportunities to the supplier who is best able to deliver based on their location and the location of the work.



### Who can establish a Panel?

A **Panel of Suppliers** may be established by:

- › a single agency for its exclusive use
- › a lead agency on behalf of a group of agencies with common needs (e.g. for a Syndicated or All-of- Government Contract).

### No guarantee of work

Although suppliers from a *Panel* are not guaranteed any work, they will have some expectation of getting work. So the size of the *Panel* should be proportionate to the anticipated demand. Ideally, all suppliers should get some work while the *Panel* is in existence.

### Open and closed panels

A *Panel* is 'open' if other suppliers can apply to be on the *Panel* during the period it is established for.

A *Panel* is 'closed' if other suppliers can't apply to be on the *Panel* during the period the *Panel* is established for.



### Contract Award Notice

On establishing the *Panel*, an agency must publish the names of all of the suppliers that have been appointed to the *Panel* in its *Contract Award Notice*.

Where a *Panel Supplier* is given a specific contract through a *secondary procurement process*, the agency does not need to publish a *Contract Award Notice*.

However, it is good practice to be transparent and publish summary details of contracts awarded as a result of *secondary procurement* from a *Panel* (e.g. an agency may publish these on *GETS* or its own website).

### Secondary procurement process

Agencies can use more than one method for *secondary procurement* as long as this is explained in the *Notice of Procurement* (for example, the notice may say the agency will either direct source from one *Panel* member or request quotes from some or all *Panel* members).

A *Panel of Suppliers* is normally established with a set number of suppliers for a specific time period. The number of suppliers will depend on the:

- › nature of the goods, services or works
- › maturity of the supply market
- › anticipated volume of work.



Competitive *secondary procurement* processes (such as a *Request for Quote*) involving a selection or all of the *Panel* suppliers will usually result in better *public value*. It also gives capable *Panel* suppliers the opportunity to compete.

There may be some circumstances when a competitive process may not be appropriate. For example, if the procurement is low risk and low value (e.g. less than \$100,000) or if you already have all the necessary information you need to make a decision, such as quality and pricing information. Remember that whatever secondary method is used, it needs to feature in the *Notice of Procurement* (Rule 57.7.b). See [www.procurement.govt.nz](http://www.procurement.govt.nz) for more information.

You should still consider what *Broader Outcomes* you could achieve when conducting competitive processes in a *secondary procurement*.



SECTION

6

**Other Rules you  
need to know**

## RULE 58 ALL-OF-GOVERNMENT CONTRACTS

1. An *All-of-Government Contract* (AoG) is a type of approved collaborative contract. AoGs establish supply agreements with approved suppliers for selected common goods or services purchased across government. AoGs are developed under the oversight of the *Procurement Functional Leader* and managed by appointed procurement Centres of Expertise.
2. All agencies **must** purchase from the AoGs, unless there is a good reason not to.
3. Agencies who want to opt out of joining an AoG, **must** get approval from the *Procurement Functional Leader*. If an agency and the *Procurement Functional Leader* fail to agree to an opt-out, the State Services Commissioner will decide the matter.
4. Before approaching the market, an agency should check if there is an existing AoG that meets its needs.



To avoid confusion in the market, Cabinet has agreed that the term *All-of-Government Contract* must be applied only in very specific circumstances.

The term applies only where an AoG contract initiative is coordinated by the *Procurement Functional Leader* through New Zealand Government Procurement. An agency wishing to opt out of joining an AoG contract should email [procurement@mbie.govt.nz](mailto:procurement@mbie.govt.nz) in the first instance.

When purchasing from AoG contracts you should still consider what *Broader Outcomes* you can achieve through your spending. For example, as lowering emissions is a Government priority you can use the *All-of-Government contract* to purchase a vehicle with a low emissions rating.

For more information on the categories of goods and services available and how to buy from AoG Contracts, see: [www.procurement.govt.nz](http://www.procurement.govt.nz)

## RULE 59 SYNDICATED CONTRACTS

1. A *Syndicated Contract* is a type of collaborative contract. *Syndicated Contracts* typically involve a group of agencies aggregating their respective needs and collectively going to market for goods, services or works. There are two types of *Syndicated Contract*:
  - a. An Open Syndicated Contract (OSC) includes a common use provision allowing other, unspecified agencies to contract with the supplier on the same terms at a later stage.
  - b. A Closed Syndicated Contract is limited to a group of named agencies.
2. Agencies wishing to establish an OSC **must** first obtain approval from the *Procurement Functional Leader*.
3. Before approaching the market, an agency should check if there is an existing OSC that meets its needs. OSCs are listed in the *Collaborative Contracts Register* available at [www.procurement.govt.nz](http://www.procurement.govt.nz).



Information about *Syndicated Contracts* and the process of obtaining approval are available at [www.procurement.govt.nz](http://www.procurement.govt.nz)

## RULE 60 COMMON CAPABILITY CONTRACTS

1. A *Common Capability Contract* (CC) is a type of approved collaborative contract that can have various contractual forms. CCs establish various supply agreements with approved suppliers for selected common goods or services or works purchased across government. CCs may be established by a *Functional Leader's* agency or by another lead agency that is approved and overseen by a *Functional Leader*, with prior approval from the *Procurement Functional Leader*.
2. CCs may cover mandatory and / or voluntary common capabilities:
  - a. **Mandatory common capabilities:** Some agencies may be directed to purchase certain goods, services or works from a CC. These are called mandatory common capabilities. The direction may be made by Cabinet, a *Functional Leader*, or under section 107 of the *Crown Entities Act 2004*. An agency that wants to opt-out of purchasing mandatory common capabilities **must** get approval from the relevant *Functional Leader*. Information about mandatory common capabilities is available at: [www.ict.govt.nz](http://www.ict.govt.nz) and [www.procurement.govt.nz](http://www.procurement.govt.nz).
  - b. **Voluntary common capabilities:** when a common capability is voluntary, an agency should purchase from the CC when it reasonably meets the agency's needs.
3. Before approaching the market, an agency **should** check if there is an existing CC contract that meets its needs. CCs are listed in the Collaborative Contracts Register, available at [www.procurement.govt.nz](http://www.procurement.govt.nz).



### What's different about *Common Capability Contracts*?

*Common Capability Contracts* (CCs) differ from *All-of-Government* and *Syndicated Contracts* because:

- › in some instances, a private sector supplier may be authorised to purchase from a CC when it is an authorised agent acting on behalf of an agency
- › in some CCs, the lead agency may charge a participating agency an admin fee or levy.

For more information see the *Common Capability Contracts Guide* at: [www.procurement.govt.nz](http://www.procurement.govt.nz)



### CC-ICT Contracts

*Common Capability Contracts* are being used in the procurement of information, communication and technology (ICT) goods and services. These are called CC-ICT contracts.

CC-ICT contracts are usually overarching agreements entered into by a *Functional Leader* (or another agency with *Functional Leader* oversight) with suppliers. They can come in a number of contractual forms, such as a paper-based agreement or, in an online marketplace context (e.g. cloud services), online terms that suppliers must accept to participate.

These contracts are developed under the oversight of the Government Chief Digital Officer (GCDO) at the Department of Internal Affairs (DIA) (as the *Functional Leader* for Government ICT), in collaboration with others and with the approval of the *Procurement Functional Leader*.

Procuring ICT goods and services across government presents a range of unique challenges as well as great potential for collaboration. The development of CC-ICT contracts provides an opportunity to drive transformational change in the delivery of ICT services across government.

#### Seamless provision of ICT goods and services

Given the often complex nature of ICT, some of these contracts are designed to allow, where appropriate, private sector suppliers to work together to supply seamless end-to-end ICT goods and services to agencies. This means that agencies and, where authorised, suppliers acting on behalf of agencies or supplying services to agencies may purchase from these contracts.



**How mandatory common capabilities apply across the Public Sector**

	Property	ICT	Other Procurement
Mandatory	<ul style="list-style-type: none"> <li>› Public Service departments</li> <li>› New Zealand Police</li> <li>› New Zealand Defence Force</li> <li>› New Zealand Security Intelligence Service</li> <li>› Parliamentary Counsel Office</li> <li>› Crown Agents (except New Zealand Blood Service and District Health Boards)</li> </ul>	<ul style="list-style-type: none"> <li>› Public Service departments</li> <li>› New Zealand Police</li> <li>› New Zealand Defence Force</li> <li>› New Zealand Security Intelligence Service</li> <li>› Parliamentary Counsel Office</li> <li>› District Health Boards (effective 1/7/2015)</li> <li>› Earthquake Commission</li> <li>› Housing New Zealand Corporation</li> <li>› New Zealand Qualifications Authority</li> <li>› Tertiary Education Commission</li> <li>› New Zealand Transport Authority</li> <li>› Accident Compensation Corporation</li> <li>› New Zealand Trade and Enterprise.</li> </ul>	<ul style="list-style-type: none"> <li>› Public Service departments</li> <li>› New Zealand Police</li> <li>› New Zealand Defence Force</li> <li>› Crown Agents</li> <li>› Autonomous Crown Entities</li> <li>› Independent Crown Entities</li> <li>› Crown Entity Companies</li> <li>› Public Finance Act Schedule 4A companies</li> </ul>
› Voluntary	<ul style="list-style-type: none"> <li>› Other State Services agencies</li> <li>› Wider State Sector and Public Sector agencies</li> </ul>	<ul style="list-style-type: none"> <li>› Other State Services agencies</li> <li>› Wider State Sector and Public Sector agencies</li> </ul>	<ul style="list-style-type: none"> <li>› Other State Services agencies</li> <li>› Wider State Sector and Public Sector agencies</li> </ul>

## RULE 61 WEB STANDARDS

1. If a *Public Service* department, New Zealand Police or New Zealand Defence Force outsources web development work, it **must** include, in its *Notice of Procurement*, a *pre-condition* for the work to comply with the mandatory requirements in the latest version of the New Zealand Government web standards.
2. Other agencies **should** include this *pre-condition* in their *Notices of Procurement* for web development work.



For further information on web standards visit: [www.digital.govt.nz](http://www.digital.govt.nz)

## RULE 62 APPROVED GOVERNMENT MODEL TEMPLATES

1. The *Procurement Functional Leader* issues Approved Government Model Templates (A-GMTs) from time to time. Agencies **must** operationalise these templates in their procurement activities, regardless of whether or not the *Rules* apply to the procurement.



### Approved Government Model Templates

A-GMTs are developed to improve the consistency of procurement practices across government.

They are simple, plain English templates that make it easier for both you and your suppliers to do business.

In order to avoid confusion with general procurement templates available at [www.procurement.govt.nz](http://www.procurement.govt.nz) (e.g. the contract register template which agencies can opt to use), A-GMTs are a set of approved templates that you are required to deploy in your procurement activities.

An example of an A-GMT is the Government Model Contract (GMC). In order to operationalise these templates, you must include them in your suite of contract templates and use them as the default templates for all low-value, low-risk common goods and services.

## RULE 63 INTELLECTUAL PROPERTY

1. If an agency's procurement of goods, services or works involves the supplier creating new Intellectual Property, the agency should set out, in its *Notice of Procurement*, its intentions regarding ownership, licensing, and future commercialisation of that Intellectual Property.
2. Cabinet has endorsed specific guidelines for agencies on the ownership and commercialisation of new Intellectual Property in certain types of procurement. Agencies should take these guidelines into account. The guidelines are:
  - a. for procurement of goods, services or works in the context of Information and Communication Technologies (ICT): *Guidelines for treatment of intellectual property rights in ICT contracts*, released by the State Services Commission, maintained by the Department of Internal Affairs and available at: [www.ict.govt.nz](http://www.ict.govt.nz).
  - b. for procurement of goods, services or works in the context of *Public Service* research contracts: *Cabinet guidelines for intellectual property from Public Service research contracts*, available at: [www.procurement.govt.nz](http://www.procurement.govt.nz).
  - c. for when releasing copyright works and non-copyright material for re-use by others: New Zealand Government Open Access and Licensing framework (NZGOAL) and the NZGOAL Software Extension for software, available at [www.data.govt.nz](http://www.data.govt.nz).



It's important to consider if new Intellectual Property will arise in a contract and to explicitly set out your expectations about ownership and licensing in your *Notice of Procurement*. This provides clarity for suppliers at an early stage and potentially reduces expense and time later on negotiating ownership and licensing. Alternatively, you can ask suppliers to state in their responses their assumptions about any anticipated new Intellectual Property.

Often agencies assume that ownership of new Intellectual Property in contract deliverables should be owned by government. While there may be circumstances when government wants to own and exploit new Intellectual Property, there is a trend towards vesting the Intellectual Property with the party best placed to commercialise it.

Various guidance has been developed to help you decide an appropriate approach.

Ownership options include:

- › the agency owns the new Intellectual Property and decides to commercialise
- › the agency owns the new Intellectual Property but licenses the supplier to use and commercialise
- › the supplier owns the new Intellectual Property but licenses the agency, and all other *State Services* agencies, to use.

Allowing the supplier to commercialise the new Intellectual Property encourages innovation and economic development.

Other options include licensing and releasing software as open source. You can find guidance on this at [www.data.govt.nz](http://www.data.govt.nz).

## RULE 64 INFRASTRUCTURE

1. Agencies considering the procurement of infrastructure with a (total cost of ownership of more than \$50 million ) **must**:
  - a. consult with Treasury’s Interim Infrastructure Transactions Unit (ITU) (or any new entity established to take over the functions of that Unit) early in the development of the project’s *business case*
  - b. follow relevant published ITU guidance
  - c. involve the ITU in the assessment of the project’s *business case* and advice to Ministers
  - d. invite the ITU to participate in relevant project steering and working groups, and in the selection panels for all key advisor appointments in relation to the project, and
  - e. use any standard form documentation developed by the ITU as the basis for any infrastructure contract and consult with the ITU over any material proposed modifications.



‘Infrastructure’ means fixed, long-lived structures that facilitate economic performance and wellbeing. Infrastructure includes buildings and physical networks, principally: transport, water, social assets and digital infrastructure such as mobile and broadband infrastructure, however funded.

## RULE 65 BUSINESS CASES AND INVESTMENT DECISIONS

1. Cabinet approval is required for certain types of expenditure, lease or asset disposal proposals from departments, Crown Agents and other Crown Entities. If an agency wants to undertake a project which meets certain criteria, it **must** consult with Treasury and the project proposal will be assessed and reviewed against Treasury’s published *Better Business Cases framework*.
2. The criteria for determining which investment decisions require Cabinet approval and guidance on the *Better Business Cases framework* are available at: [www.treasury.govt.nz](http://www.treasury.govt.nz)

## RULE 66 INVESTMENT REVIEWS

1. Depending on the size, scale and type of investment, investment reviews may be required for significant projects and programmes that involve procurement.
2. For each significant project or programme on an agency's long-term plans, the agency **must** complete a Risk Profile Assessment (RPA) and submit it to Treasury, which will determine whether reviews are required. The Risk Profile Assessment is available on Treasury's website at: [www.treasury.govt.nz](http://www.treasury.govt.nz)



### Who is involved in the review?

To assess the RPA and determine whether investment reviews are required, Treasury works with the State Services Commission, the Department of the Prime Minister and Cabinet, and *Functional Leaders* appointed by the Cabinet to provide leadership across government on specific areas such as procurement, information technology and property investment.

Investment reviews are organised by Treasury; reviewers are independent of Central Agencies and Functional Leads. For more information visit Treasury's website at: [www.treasury.govt.nz](http://www.treasury.govt.nz)

## RULE 67 TIMBER AND WOOD PRODUCTS

1. Agencies **must** apply the *New Zealand Timber and Wood Products Procurement Policy* when procuring timber and wood products.



The Timber and Wood Products Procurement Policy was issued by the Ministry for Primary Industries. It aims to ensure that government buys only legally sourced timber and timber products. It also encourages agencies to use only sustainably produced timber.

Key features of the policy are:

- › agencies are required to seek legally-sourced timber and wood that can be verified by recognised third-party certification
- › agencies are encouraged to buy timber and wood products from sustainably-managed sources that can be verified by recognised third-party certification
- › agencies are required to document, for audit purposes, the verification of the legality of timber and wood purchased.

More information is available at: [www.mpi.govt.nz](http://www.mpi.govt.nz)

## RULE 68 EMPLOYEE TRANSFER COSTS

1. In certain situations, an agency **must** disclose the costs relating to the transfer of employees due to restructuring. The circumstances are contained in the Employment Relations Act 2000 (the Act), Part 6A and Schedule 1A. Disclosure of costs **must** be made available to prospective suppliers (new employers) on request when:
  - a. the restructuring is the subject of a tender, and
  - b. the type of employees affected falls within a category listed in the Act.



The purpose of Part 6A of the Employment Relations Act 2000 is to protect 'vulnerable' employees in specific industries. It deals with continuity of employment under the same terms and conditions, if an employee's work is affected by a restructuring that is the subject of a tender (e.g. outsourcing a service that was previously provided in-house).

It relates only to employees in certain types of industries, which include the:

- › Education sector – cleaning, food catering, caretaking and laundry services
- › Health sector and Age-related Residential Care – cleaning, food catering, orderly and laundry services
- › Public Service, airports and any other place of work – cleaning and food catering services.

Where disclosure of the costs relating to the transfer of employees is not provided, prospective suppliers can make an application to the Employment Relations Authority for a Compliance Order. The provisions of the Act override the Official Information Act 1982.

Further information is available from MBIE at: [www.mbie.govt.nz](http://www.mbie.govt.nz)

## RULE 69 PLANNING FOR NEW CONSTRUCTION WORKS

1. Agencies **must** apply the good practices set out in the Construction Procurement guides, where appropriate, when procuring construction works and be able to produce documented evidence of the rationale where they have not been followed.



Planning for new construction works

There are a number of ways that you could demonstrate that the Construction Procurement guides have been considered. For example, in a *procurement plan* you could include a statement that the guides have been consulted, provide a brief overview of how the procurement aligns with the guides, or highlight the areas where the process deviates and provide the rationale for doing so.

New Zealand Government Procurement's Planning Construction Procurement guides are available at: [www.procurement.govt.nz](http://www.procurement.govt.nz).

## RULE 70 PROCUREMENT CAPABILITY INDEX

1. An agency **must** submit a completed Procurement Capability Index (PCI) self-assessment to MBIE annually by 1 October each year.
2. The *Procurement Functional Leader* may, at its discretion, exempt an agency from having to submit a PCI self-assessment.



### Procurement Capability Index

The Procurement Capability Index (PCI) tool assists you in evaluating and building the procurement capability within your agency. It helps you to identify areas where additional focus may be required, and put in place a procurement capability improvement plan. Submitting PCI self-assessments to MBIE also provides the *Procurement Functional Leader* with a cross-government view of procurement capability and areas where more support may be required.

The *Procurement Functional Leader* may exempt an agency from the requirement to submit their self-assessment to MBIE if deemed appropriate (e.g. there is no designated procurement function or the agency utilises AoG contracts and only undertakes low risk and low value procurements). However, even in these instances, agencies are still strongly encouraged to use the tool as means to improve their agency's procurement capability.

More information can be found at [www.procurement.govt.nz](http://www.procurement.govt.nz).

## RULE 71 SIGNIFICANT SERVICE CONTRACTS FRAMEWORK

1. An agency **must** submit to MBIE a Significant Service Contracts Framework (SSCF) report.
2. Each agency **must** review and update its SSCF report at least once every six months. An agency may update its SSCF report more often, if appropriate.
3. Updated SSCF reports are due to MBIE by 1 March and 1 October each year.



### Significant Service Contracts

Significant service contracts are the important contracts that your agency manages. These contracts include:

- a. services that are critically important to the delivery of business objectives of an agency; and
- b. pose a significant risk and/or significant impact in the event of supplier failure.

If an agency does not identify any significant services contracts, they must submit a nil return to MBIE.

More information can be found at: [www.procurement.govt.nz](http://www.procurement.govt.nz)



SECTION

7

# Definitions

Word or phrase	Reference	Definition
<i>agency</i>	all Rules	A generic term used in the <i>Rules</i> to refer to New Zealand government entities across the <i>Public Sector</i> .
<i>All-of-Government Contracts (AoG)</i>	Rule 58	A type of collaborative contract that has been approved by the <i>Procurement Functional Leader</i> (the Chief Executive of MBIE). AoGs are usually <i>Panel Contracts</i> established by MBIE or other agencies that are approved Centres of Expertise for common goods or services (e.g. vehicles, laptops, and recruitment services).
<i>allowable reduction</i>	Rules 30, 31 and 39	An agency may reduce the <i>minimum time period</i> for tender response deadlines in three circumstances, namely if: <ul style="list-style-type: none"> <li>› it has listed the contract opportunity in its <i>Annual Procurement Plan</i> not less than two months and not more than eight months before the publication of the <i>Notice of Procurement</i></li> <li>› all tender documents are made available electronically at the same time as the publication of the <i>Notice of Procurement</i></li> <li>› it accepts responses electronically.</li> <li>› The number of <i>business days</i> for each <i>allowable reduction</i> is specified in Rule 31.</li> </ul>
<i>Annual Procurement Plan (APP)</i>	Rule 21	An agency's list of planned contract opportunities that meet or exceed the <i>value threshold</i> . It is a rolling list covering at least the next 12 months.
<i>Application to Qualify (ATQ)</i>	Rule 56	An application by a supplier to be included in an agency's <i>Pre-qualified Suppliers List</i> . A supplier must prove it has the capability and capacity to deliver specific types of goods, services or works to be included in the list.
<i>approach to market</i>	Section 3	The formal process of giving notice of a contract opportunity to potential suppliers and inviting them to respond. An example of an approach to the market is a <i>Request for Tender</i> published on <i>GETS</i> .
<i>bid-rigging</i>	Rule 14, 44	A type of price-fixing, or collusive tendering, where there is an agreement between competitors about which of them should win a bid.
<i>Broader Outcomes</i>	Rule 16	Broader Outcomes are the secondary benefits which are generated due to the way goods, services or works are produced or delivered. They include economic, environmental, social, and cultural outcomes.
<i>business activities</i>	Rule 28	Any activity that is performed with the goal of running a business. For the private sector, these are activities associated with making a profit (e.g. operations, marketing, production or administration).

Word or phrase	Reference	Definition
<i>business case</i>	Rules 12 and 63	A management tool that supports decision-making for an investment. It sets out the reasons for a specific project, considers alternative solutions and identifies assumptions, constraints, benefits, costs, and risks.
<i>business day</i>	Rules 26 to 65	Any week day in New Zealand, excluding Saturdays, Sundays, New Zealand (national) public holidays and all days from Boxing Day up to and including the day after New Year's Day.
<i>clear business day</i>	Rule 32	One full business day from 9am to 5pm.
<i>closed competitive process</i>	Rule 14	A tender process where an agency asks a limited number of known suppliers to tender for a contract opportunity. The contract opportunity is not openly advertised.
<i>collusion</i>	Rule 33	A secret agreement or cooperation between two or more parties to cheat or deceive others by illegal, fraudulent or deceitful means.
<i>commercially sensitive information</i>	Rule 4	Information that, if disclosed, could prejudice a supplier's commercial interests (e.g. trade secret, profit margin or new ideas).
<i>commodity market</i>	Rule 14	A legally-regulated exchange (market) where raw goods or primary products, such as agricultural produce, metals and electricity, are bought and sold using standardised contracts (e.g. the London Metal Exchange and the Chicago Board of Trade).
<i>Common Capability Contracts (CCs)</i>	Rule 60	<p>A type of collaborative contract that has been approved by the Procurement Functional Leader.</p> <p>CCs establish various supply agreements (e.g. for ICT goods or services purchased across government with approved suppliers).</p> <p>CCs differ from All-of-Government and Syndicated Contracts because, in a CC:</p> <ul style="list-style-type: none"> <li>› in some instances, a private sector supplier may be authorised to purchase from a CC when it is acting on behalf of an agency (authorised agent)</li> <li>› in some CCs, the lead agency may charge a participating agency an admin fee or levy.</li> </ul>
<i>competition</i>	Rules 4, 14 and 24	Rivalry between suppliers for sales, profits and market share. Competitive tension in the market and can produce innovation, better-quality goods or services, better value and better pricing.

<b>Word or phrase</b>	<b>Reference</b>	<b>Definition</b>
<i>Competitive Dialogue</i>	Rule 37	A type of open procurement process often used where there is no known solution in the market place. It involves a structured dialogue phase with each shortlisted supplier, who invents a possible solution to meet the agency's needs. Shortlisted suppliers are often paid for their participation in the dialogue phase. All shortlisted suppliers are invited to respond to a Request for Proposal or Request for Tender.  For more information see the Guide to competitive dialogue at: <a href="http://www.procurement.govt.nz">www.procurement.govt.nz</a>
<i>conflict of interest</i>	Rule 2	A conflict of interest is where someone's personal interests or obligations conflict, or have the potential to conflict, with the responsibilities of their job or position or with their commercial interests. It means that their independence, objectivity or impartiality can be called into question.  For more information see <a href="http://www.procurement.govt.nz">www.procurement.govt.nz</a>
<i>Contract Award Notice</i>	Rules 14, 48 and 57	A notice containing the information listed in Rule 45.2.
<i>contract opportunity</i>	Rules 14, 24, 28, 31, 35, 36, 43, 44, 56 and 57	An opportunity for suppliers to bid for a contract for goods, services or works.
<i>Crown Research Institutes</i>	Rule 5	Companies established under the Crown Research Institutes Act 1992. For a full list of Crown Research Institutes go to <a href="http://www.ssc.govt.nz">www.ssc.govt.nz</a>
<i>deadline for responses</i>	Rule 36	The closing time and date for responses to a Notice of Procurement or any other call for tenders. If a tender is submitted after the closing date, it is deemed to be late and may not be accepted by the agency.
<i>designated contracts</i>	Rule 16- 20	These are contract categories identified by Cabinet in which priority outcomes must be included and published online at <a href="http://www.procurement.govt.nz">www.procurement.govt.nz</a> .
<i>direct source</i>	Rule 14	A tender process where the agency asks a single supplier to tender for a contract opportunity, and the contract opportunity is not openly advertised.
<i>discrimination</i>	Rule 3	Making an unfair and prejudicial judgement for or against a person or product.
<i>e-auction</i>	Rule 45	An online reverse auction that takes place in real time. It gives suppliers the opportunity to bid against each other to improve their offers.

<b>Word or phrase</b>	<b>Reference</b>	<b>Definition</b>
<i>education services</i>	Rule 12	<p>A generic term for public education services provided by government that includes:</p> <ul style="list-style-type: none"> <li>› primary education services: preschool and primary school</li> <li>› secondary education services: general and higher, technical and vocational</li> <li>› higher education services: post-secondary, sub-degree technical and vocational, and those leading to a university degree or equivalent</li> <li>› adult education services: for adults not in the regular school and university system</li> <li>› other education services: not definable by level, excluding sport and recreation education.</li> </ul>
<i>evaluation criteria</i>	Rule 38	The criteria that are used to evaluate responses. These include measures to assess the extent to which competing responses meet requirements and expectations (e.g. criteria to shortlist suppliers following a Registration of Interest or criteria to rank responses in awarding the contract).
<i>exemption from open advertising</i>	Rule 14	The recognised circumstances (e.g. a procurement in response to an emergency) where an agency does not need to openly advertise the contract opportunity.
<i>framework agreement</i>	Rule 57	<p>Usually used in relation to Panel Contracts. It is the umbrella agreement that governs the relationship between the agency and the supplier(s). It sets out the terms and conditions (including pricing) that the parties agree to contract on in the event that the supplier is allocated a contract for supplying the covered goods, services or works.</p> <p>When the agency wants to buy something under the framework agreement, the parties then enter into a separate contract that refers to the terms and conditions contained in the framework agreement.</p>
<i>Functional Leader</i>	Rules 48, 53, 58, 59, 60, 62, 66 and 70	A government Chief Executive appointed by Cabinet to drive performance across the State Services in a particular area, e.g. procurement, ICT and property.
<i>GETS</i>		An acronym for Government Electronic Tenders Service. GETS is a website managed by New Zealand Government Procurement. It is a free service that advertises New Zealand Government contract opportunities and is open to both domestic and international suppliers. All tender information and documents are made freely available through GETS.

Word or phrase	Reference	Definition
<i>GETS listing</i>	Rule 36	The summary of a contract opportunity that is published on GETS. It includes key information such as the: <ul style="list-style-type: none"> <li>› name of the buying agency</li> <li>› approach to market process that will be used (e.g. Request for Proposals)</li> <li>› deadline for responses</li> <li>› address for any enquiries.</li> </ul>
<i>goods</i>	Rules 6 and 7, and throughout subsequent Rules	Items which are capable of being owned. This includes physical goods and personal property as well as intangible property such as Intellectual Property (e.g. a software product).
<i>Government Procurement Charter</i>	Rule 1	The Charter sets out Government's expectations of how agencies should conduct their procurement activity to achieve public value.
<i>government's central financial control functions</i>	Rule 12	This relates only to the acquisition of fiscal agency or depository management services, liquidation and management services for regulated financial institutions, and sale and distribution services for government debt.  These are central banking control functions on behalf of government such as those carried out by the Reserve Bank, and Crown debt management functions such as those carried out by Treasury.  Ordinary commercial banking and financial services are not covered by this definition and are not valid opt-out procurements.
<i>grant</i>	Rules 11 and 12	Financial assistance in the form of money paid by the Government to an eligible organisation with no expectation that the funds will be paid back.  It can be either: <ul style="list-style-type: none"> <li>› a conditional grant, where the recipient undertakes specific obligations in return for the money, or</li> <li>› an unconditional grant, where the recipient has no specific obligations to perform in return for the money.</li> </ul>
<i>GST</i>	Rule 8	Goods and Services Tax (GST) is a tax on most goods and services produced in New Zealand, most imported goods, and certain imported services. GST is added to the price of taxable goods and services.
<i>guidance</i>	Context	A generic name for a range of New Zealand Government good procurement practice guides, tools and templates. These can be found at: <a href="http://www.procurement.govt.nz">www.procurement.govt.nz</a>

<b>Word or phrase</b>	<b>Reference</b>	<b>Definition</b>
<i>health services</i>	Rule 12	<p>A generic term for health services provided by government for the public good, including:</p> <ul style="list-style-type: none"> <li>› hospital services (in-outpatient and outpatient) including: surgical, medical, gynaecological and obstetrical, rehabilitation, psychiatric and other hospital services delivered under the direction of medical doctors chiefly to outpatients, aimed at curing, restoring, and/or maintaining the health of such patients.</li> <li>› general and specialised medical services</li> <li>› military hospital services and prison hospital services</li> <li>› residential health facilities services other than hospital services</li> <li>› ambulance services</li> <li>› services such as supervision during pregnancy and childbirth and the supervision of the mother after birth</li> <li>› services in the field of nursing (without admission) care, advice and prevention for patients at home, the provision of maternity care, children’s hygiene, etc.</li> <li>› physiotherapy and para-medical services, i.e. services in the field of physiotherapy, ergotherapy, occupational therapy, speech therapy, homeopathy, acupuncture, nutrition instructions, etc.</li> </ul>
<i>Invitation to Participate (ITP)</i>	Rule 34	An invitation to suppliers, published on GETS, to apply to be included in a procurement process.
<i>Invitation to Qualify (ITQ)</i>	Rule 56	An invitation to suppliers, published on GETS, to apply to be included in an agency’s Pre-Qualified Suppliers List.
<i>Market engagement</i>	Rule 24	<p>Market engagement is a process that allows you, at all stages of procurement, to:</p> <ul style="list-style-type: none"> <li>› communicate your needs or requirements to suppliers</li> <li>› openly and transparently discuss possible solutions</li> <li>› stimulate innovation in the design and delivery of the solution</li> <li>› understand market capacity, capability and trends.</li> </ul>
<i>maximum total estimated value</i>	Rule 8	A genuine estimate of the total cost that an agency will pay over the whole-of-life of the contract. It covers the full contract cost of goods or services, and any other expenses such as maintenance and repairs, and the cost of disposing of the goods at the end of the contract.
<i>minimum time periods</i>	Rules 30 and 34	The least amount of time, set by the <i>Rules</i> , that an agency must allow suppliers to respond to a particular contract opportunity.
<i>multi-step process</i>	Rule 34	A procurement process with more than one step (e.g. a Registration of Interest followed by a Request for Proposals).

Word or phrase	Reference	Definition
<i>new construction works</i>	Rule 7	<p>In the context of the <i>Rules</i>, the term relates to goods and services associated with developing new civil or building construction works.</p> <p>This includes buildings, roads, rails, bridges and dams. It covers new builds and replacement of an existing construction. This also includes related services such as design, architecture, engineering, quantity surveying, and management consultancy services.</p> <p>It includes various stages in the project such as:</p> <ul style="list-style-type: none"> <li>› demolition of previous structure</li> <li>› pre-erection works at construction sites, including site investigation work</li> <li>› construction work for buildings, residential and non-residential</li> <li>› construction work for civil engineering</li> <li>› assembly and erection of prefabricated constructions, i.e. installation on site of complete prefabricated buildings or other constructions, or the assembly and erection on site of prefabricated sections of buildings or other constructions</li> <li>› special trade construction work such as foundation work, including pile driving, water well drilling, roofing and water proofing, concrete work, steel bending and erection, erection work from purchased or self-manufactured structural steel components for buildings or other structures such as bridges, overhead cranes or electricity transmission towers, steel reinforcing work and welding work</li> <li>› masonry work</li> <li>› installation work such as heating, ventilation and air-conditioning work, water plumbing and drain-laying work, gas-fitting construction work, electrical work, insulation work (e.g. electrical wiring, water, heat, sound), fencing and railing construction work, other installation work (e.g. installation of lifts and escalators and moving sidewalk), fire escape equipment and construction work (e.g. staircases)</li> <li>› building completion and finishing such as glazing work and window-glass installation work, plastering work, painting work, floor and wall-tiling work, floor-laying, wall-covering and wall papering work, wood and metal joinery and carpentry work, interior fitting decoration work, ornamentation fitting work, other building completion and finishing work (e.g. special trade building acoustical work involving the application of acoustical panels, tiles and other material to interior walls and ceilings), and steam or sand cleaning work of building exteriors</li> <li>› renting services related to equipment for construction or demolition of buildings or civil engineering works.</li> </ul>
<i>New Zealand business</i>	Rule 17	A business that originated in New Zealand (not being a New Zealand subsidiary of an offshore business), is majority owned or controlled by New Zealanders, and has its principal place of business in New Zealand.

Word or phrase	Reference	Definition
<i>Notice of Procurement</i>	Rules 37 and 38	The document published on GETS that advertises a new contract opportunity (e.g. a Registration of Interest or a Request for Tender).
<i>Official Information Act 1982</i>	Rule 4	A New Zealand law that sets out the information that government must make freely available to the New Zealand public.
<i>offset</i>	Rule 3	Within the context of the <i>Rules</i> , an offset is a condition or undertaking intended to develop the local economy or improve the balance-of-payments accounts that a supplier must fulfil in order to be awarded the contract.
<i>open advertising</i>	Rule 13	Publishing a contract opportunity on GETS and inviting all interested domestic and international suppliers to participate in the procurement.
<i>opt-out procurements</i>	Rule 12	Specific types of procurement activities where agencies can choose to opt out of applying most of the <i>Rules</i> .
<i>Panel Contract</i>	Rule 58	A type of framework agreement that governs the relationship between the agency and each Panel Supplier. It sets out the terms and conditions that the parties agree to contract on in the event that the Panel Supplier is allocated a contract to provide specific goods, services or works.
<i>Panel of Suppliers</i>	Rule 57	A list of suppliers an agency has pre-approved to supply particular goods or services and who have agreed to the agency's terms and conditions for supply.
<i>Panel Supplier</i>	Rule 57	A supplier included in a Panel of Suppliers.
<i>pre-conditions</i>	Rule 28	A condition that a supplier must meet to be considered for a particular contract opportunity.
<i>pre-qualified supplier</i>	Rule 56	A supplier included in a Pre-qualified Suppliers List.
<i>Pre-qualified Suppliers List</i>	Rule 56	A list of suppliers an agency has pre-approved as having the capability and capacity to deliver specific goods or services. It is the New Zealand Government equivalent of the World Trade Organization Agreement on Government Procurement's 'multi-use list'.
<i>Principles</i>	Rule 1	Short for the Principles of Government Procurement. The five Principles are: <ul style="list-style-type: none"> <li>› plan and manage for great results</li> <li>› be fair to all suppliers</li> <li>› get the right supplier</li> <li>› get the best deal for everyone</li> <li>› play by the <i>Rules</i>.</li> </ul>

Word or phrase	Reference	Definition
<i>priority outcomes</i>	Rules 15, 16, 17, 18, 19 and 20	<p>The following four priority outcomes have been identified by Cabinet to be leveraged by government procurement:</p> <ul style="list-style-type: none"> <li>› Increase New Zealand businesses' access to government procurement</li> <li>› Increase the size and skill of the domestic construction sector workforce</li> <li>› Improve conditions for workers and future-proof the ability of New Zealand business to trade, and</li> <li>› Support the transition to a net zero emissions economy and design waste out of the system.</li> </ul> <p>Each priority outcome is targeted at specific focus areas. You can find these focus areas at: <a href="http://www.procurement.govt.nz">www.procurement.govt.nz</a></p>
<i>procurement</i>		All aspects of acquiring and delivering goods, services and works. It starts with identifying the need and finishes with either the end of a service contract or the end of the useful life and disposal of an asset.
<i>Procurement Functional Leader</i>	Rule 48 and throughout	The Chief Executive of the Ministry of Business, Innovation and Employment, who has been appointed by the Commissioner for State Services as the Functional Leader for procurement activities across government.
<i>procurement plan</i>	Rule 15	A plan to analyse the need for specific goods, services or works and the outcome the agency wants to achieve. It identifies an appropriate strategy to approach the market, based on market research and analysis, and summarises the proposed procurement process. It usually includes the indicative costs (budget), specification of requirements, indicative timeline, evaluation criteria and weightings and an explanation of the Broader Outcomes an agency will seek to achieve through the procurement.
<i>prototype</i>	Rule 14	An early sample, model or pilot study used to test a concept or process.
<i>Public Sector</i>	Rule 5	<p>This includes agencies in:</p> <ul style="list-style-type: none"> <li>› the Public Service (departments and ministries)</li> <li>› the wider State Services (e.g. Crown Entities, Crown Research Institutes, entities listed in Schedules 4 and 4A of the Public Finance Act 1989, and School Boards of Trustees) and</li> <li>› the wider State Sector (e.g. Offices of Parliament, Tertiary Education Institutes and State Owned Enterprises) and</li> <li>› Regional Councils and Territorial Authorities (as defined in s5 of the Local Government Act 2002).</li> </ul> <p>A list of these agencies is available at: <a href="http://www.ssc.govt.nz">www.ssc.govt.nz</a></p>
<i>Public Service</i>	Rule 5	<p>The New Zealand government public service departments and ministries listed in Schedule 1 of the State Sector Act 1988.</p> <p>A list of these agencies is available at: <a href="http://www.ssc.govt.nz">www.ssc.govt.nz</a></p>

Word or phrase	Reference	Definition
<i>Public Private Partnerships (PPPs)</i>	Rule 10	A long-term contract for the delivery of a service, involving building a new asset or infrastructure (e.g. a prison) or enhancing an existing asset. The project is privately financed on a non-recourse basis and full legal ownership is retained by the Crown.
<i>public value</i>	Rules 3, 12 and 46	<p>Public value means the best available result for New Zealand for the money spent. It includes using resources effectively, economically, and responsibly, and taking into account:</p> <ul style="list-style-type: none"> <li>› the procurement’s contribution to the results you are trying to achieve, including any Broader Outcomes you are trying to achieve and</li> <li>› the total costs and benefits of a procurement (total cost of ownership).</li> </ul> <p>The principle of public value when procuring goods, services or works does not mean selecting the lowest price but rather the best possible outcome for the total cost of ownership (over the whole-of-life of the goods, services or works).</p> <p>Selecting the most appropriate procurement process that is proportionate to the value, risk and complexity of the procurement will help achieve public value.</p>
<i>refurbishment works</i>	Rule 6	<p>In the context of the <i>Rules</i>, the term relates to goods or services or works associated with delivery of refurbishment works in relation to an existing construction. Construction means buildings, roads, bridges and dams. Refurbishment works cover renovating, repairing or extending an existing construction.</p> <p>Refurbishment works does not include replacing a construction. That is deemed to be new construction works.</p>
<i>Registration of Interest (ROI)</i>	Rule 34	<p>Also known as an Expression of Interest. A formal request from an agency asking potential suppliers to:</p> <ul style="list-style-type: none"> <li>› register their interest in an opportunity to supply specific goods, services or works</li> <li>› provide information that supports their capability and capacity to deliver the goods, services or works.</li> </ul> <p>It’s usually the first formal stage of a multi-step tender process.</p>
<i>Request for Information (RFI)</i>	Rule 34	<p>A market research tool. A formal request from an agency to the market, for information that helps identify the number and type of suppliers and the range of solutions, technologies and products or services they can provide.</p> <p>It is not a type of Notice of Procurement. It must not be used to select or shortlist suppliers.</p>
<i>Request for Proposal (RFP)</i>	Rule 34	<p>A formal request from an agency asking suppliers to propose how their goods or services or works can achieve a specific outcome, and their prices.</p> <p>An agency may be open to innovative ways of achieving the outcome.</p>

Word or phrase	Reference	Definition
<i>Request for Quote (RFQ)</i>	Rule 34	A formal request from an agency asking potential suppliers to quote prices for 'stock standard' or 'off-the-shelf' goods or services or works, where price is the most important factor.
<i>Request for tender (RFT)</i>	Rule 34	A formal request from an agency asking for offers from potential suppliers to supply clearly defined goods or services or works. Often there are highly-technical requirements and a prescriptive solution.
<i>response</i>	Rule 37	A supplier's reply to a Notice of Procurement. Examples include: <ul style="list-style-type: none"> <li>› registering of interest in an opportunity</li> <li>› submitting a proposal</li> <li>› submitting a tender</li> <li>› applying to qualify as a pre-qualified supplier.</li> </ul>
<i>Rules</i>		A short name for the <i>Government Procurement Rules</i> , which are the Rules 1 to 71 and the definitions in this Section. Information in boxes and diagrams accompanying the <i>Rules</i> are not part of the <i>Rules</i> but may be used to help with understanding the <i>Rules</i> .
<i>secondary procurement</i>	Rules 14, 21, 48, 55 and 57	Where an agency purchases goods, services or works from a Panel of Suppliers, an All-of-Government Contract, Common Capabilities Contract or Syndicated Contract.
<i>services</i>	Rule 6	Acts or work performed for another party, e.g. accounting, legal services, cleaning, consultancy, training, medical treatment, or transportation. Sometimes services are difficult to identify because they are closely associated with a good (e.g. where medicine is administered as a result of a diagnosis). No transfer of possession or ownership takes place when services are sold, and they: <ul style="list-style-type: none"> <li>› cannot be stored or transported</li> <li>› are instantly perishable</li> <li>› only exist at the time they are provided.</li> </ul>
<i>sourcing</i>	Context	The parts of the procurement lifecycle that relate to planning, market research, approaching the market, evaluating responses, negotiating and contracting.

Word or phrase	Reference	Definition
<i>State Sector</i>	Rule 5	<p>This includes</p> <ul style="list-style-type: none"> <li>› the Public Service (departments and ministries)</li> <li>› the wider State Services (e.g. Crown Entities, Crown Research Institutes, entities listed in Schedules 4 and 4A of the Public Finance Act 1989, and School Boards of Trustees)</li> <li>› offices of Parliament, Parliamentary Service and the Office of the Clerk of the House of Representatives</li> <li>› Tertiary Education Institutes</li> <li>› State-owned enterprises</li> </ul> <p>A list of these agencies is available at: <a href="http://www.ssc.govt.nz">www.ssc.govt.nz</a></p>
<i>State Services</i>	Rule 5	<p>This includes:</p> <ul style="list-style-type: none"> <li>› the Public Service (departments and ministries)</li> <li>› Non-Public Service departments (including New Zealand Defence Force and New Zealand Police)</li> <li>› Crown agents, autonomous Crown entities, independent Crown entities, Crown entity companies, and Crown entity subsidiaries,</li> <li>› Crown Research Institutes</li> <li>› entities listed in Schedules 4 and 4A of the Public Finance Act</li> <li>› Reserve Bank of New Zealand</li> <li>› School Boards of Trustees.</li> </ul> <p>A list of these agencies is available at: <a href="http://www.ssc.govt.nz">www.ssc.govt.nz</a></p>
<i>sufficient time</i>	Rule 29	<p>The time a government agency must give suppliers to respond to a Notice of Procurement, to support:</p> <ul style="list-style-type: none"> <li>› quality responses</li> <li>› the integrity of the process</li> <li>› the agency's reputation as a credible buyer.</li> </ul>
<i>supplier</i>	Throughout	A person, business, company or organisation that supplies or can supply goods or services or works to an agency.
<i>Supplier Code of Conduct</i>	Rules 25 and 44	The Code of Conduct provides a minimum set of expectations that government expects of all its suppliers. Agencies may have their own codes of conduct for suppliers and these can exist simultaneously.
<i>supplier debrief</i>	Rule 49	<p>Information an agency provides to a supplier who has been unsuccessful in a particular contract opportunity, that explains:</p> <ul style="list-style-type: none"> <li>› the strengths and weaknesses of the supplier's proposal against the tender evaluation criteria and any pre-conditions</li> <li>› the reasons the successful proposal won the contract</li> <li>› anything else the supplier has questioned.</li> </ul>

Word or phrase	Reference	Definition
<i>Syndicated Contracts</i>	Rule 59	<p>A type of collaborative contract that typically involves a group of agencies aggregating their needs and collectively going to market for common goods, services or works.</p> <p>If the contract includes a common use provision (CUP), to allow other agencies to contract with the supplier on the same terms later, it is an Open Syndicated Contract and needs to be approved by the Procurement Functional Leader.</p> <p>If the contract is limited to a group of named agencies, it is a Closed Syndicated Contract.</p>
<i>technical specifications</i>	Rule 27	<p>A tendering requirement that either:</p> <ul style="list-style-type: none"> <li>› lays down the characteristics of goods, services or works to be procured, including quality, performance, safety and dimensions, or the processes and methods for their production or provision, or</li> <li>› addresses terminology, symbols, packaging, marking or labelling requirements, as they apply to a goods, service or works.</li> </ul>
<i>tender watch code/s</i>	Rule 36	<p>Codes used on GETS to classify goods, services and works. They are based on the United Nations Standard Products and Services Code (UNSPSC). You can find these codes at: <a href="http://www.gets.govt.nz">www.gets.govt.nz</a></p>
<i>Te Tiriti o Waitangi/ Treaty of Waitangi Exception</i>	Rule 3	<p>New Zealand is party to International Agreements that include specific provisions preserving the pre-eminence of Te Tiriti o Waitangi. Te Tiriti o Waitangi exception provides flexibility for the Government to implement domestic policies in relation to Māori, including in fulfilment of the Crown's obligations under the Treaty. Pursuant to this provision New Zealand may adopt measures it deems necessary to accord favourable treatment to Māori, provided that such measures are not used as a means of arbitrary or unjustified discrimination or as a disguised restriction on trade in goods, trade in services and investment.</p>
<i>The Crown</i>	Context	<p>The short name for 'the Sovereign in Right of New Zealand' as the bearer of governmental rights, powers, privileges and liabilities in New Zealand.</p>
<i>third party agent</i>	Rule 23	<p>A party who is contracted to manage a procurement process on behalf of an agency. The agency remains responsible and accountable for ensuring that the procurement complies with the Government Procurement Rules.</p>
<i>total cost of ownership (TCO)</i>	Section 1	<p>An estimate of the total cost of the goods, services or works over the whole of their life. It is the combination of the purchase price and all other expenses and benefits that the agency will incur (e.g. installation and training, operating and maintenance costs, repairs, decommissioning, cost associated with disposal and residual value on disposal). It is a tool often used to assess the costs, benefits and risks associated with the investment at the business case stage of a procurement.</p>

Word or phrase	Reference	Definition
<i>unsolicited unique proposal</i>	Rule 14	An approach initiated by a supplier proposing a unique solution that is not available in the market place.  For more information, the <i>Guide to unsolicited unique proposals</i> is available at: <a href="http://www.procurement.govt.nz">www.procurement.govt.nz</a>
<i>value threshold</i>	Rules 6, 7 and 8	The minimum New Zealand Dollar value at which the <i>Rules</i> apply to a particular procurement type. It excludes GST.
<i>welfare services</i>	Rule 12	A generic term for public welfare services provided by government, which includes: <ul style="list-style-type: none"> <li>› social services, including residential and non-residential welfare services to the old, disabled, children and other social assistance clients</li> <li>› compulsory social security services (administration of benefits).</li> </ul>
<i>Whole of Government Direction</i>	Rule 5	The Whole of Government Direction Regarding Procurement Functional Leadership given by the Ministers of Finance and State Services, on 22 April 2014, under section 107 of the Crown Entities Act 2004 (notified in New Zealand Gazette No. 65 on 19 June 2014).  This direction requires certain types of State Services agencies to apply the <i>Rules</i> . A list of these agencies is available at: <a href="http://www.procurement.govt.nz">www.procurement.govt.nz</a>  The direction is available at: <a href="http://www.ssc.govt.nz">www.ssc.govt.nz</a>
<i>works</i>	Rules 6 and 7	A generic term which covers new construction works for a new build or refurbishment works to an existing construction.
<i>World Trade Organization Agreement on Government Procurement</i>	Rule 5	Also known as the GPA. A free trade agreement established by the World Trade Organization (WTO). It is a legally-binding treaty between participating countries, based on the principles of openness, transparency and non-discrimination, and sets out detailed <i>Rules</i> for good procurement processes.  The main aim of the GPA is to improve access to government procurement markets and remove barriers to international trade.

## Table of Rule changes

Current Rule	Previous Rule (Third Edition)
Rule 1: Principles and the Charter	Rule 1: Principles
Rule 2: Integrity	Rule 2: Integrity
Rule 3: Non- discrimination and offsets	Rule 3: No offsets and Rule 4: Non-discrimination
Rule 4: Protection of supplier's information	Rule 5: Protection of supplier's information
Rule 5: Who the Rules apply to	Rule 6: Who the <i>Rules</i> apply to
Rule 6: When the Rules apply – goods or services or refurbishment works	Rule 7: When the <i>Rules</i> apply – goods or services or refurbishment works
Rule 7: When the Rules apply – new construction works	Rule 8: When the <i>Rules</i> apply – new construction works
Rule 8: Estimating value thresholds	Rule 9: Estimating value
Rule 9: Non-avoidance	Rule 10: Non-avoidance
Rule 10: Types of contract	Rule 11: Types of contract
Rule 11: Non-procurement activities	Rule 12: Non-procurement activities
Rule 12: Opt-out procurements	Rule 13: Opt-out procurements
Rule 13: Requirement to openly advertise	Rule 14: Requirement to openly advertise
Rule 14: Exemption from open advertising	Rule 15: Exemption from open advertising
Rule 15: Planning	N/A
Rule 16: Broader Outcomes	N/A
Rule 17: Increase access for New Zealand Businesses	N/A
Rule 18: Construction skills and training	N/A
Rule 19: Improving Conditions for New Zealand Workers	N/A
Rule 20: Supporting the Transition to a low emissions economy and designing waste out of the system	N/A
Rule 21: Annual Procurement Plans	Rule 17: Annual Procurement Plans
Rule 22: Significant Procurement Plans	Rule 19: Significant Procurement Plans
Rule 23: Third party agents	Rule 20: Third party agents
Rule 24: Procurement Advice	Rule 21: Procurement Advice
Rule 25: Subcontracting	Rule 22: Subcontracting

<b>Current Rule</b>	<b>Previous Rule (Third Edition)</b>
<b>Rule 26: Delivery date</b>	Rule 23: Delivery date
<b>Rule 27: Technical Specifications</b>	Rule 24: Technical Specifications
<b>Rule 28: Pre-conditions</b>	Rule 25: Pre-conditions
<b>Rule 29: Sufficient time</b>	Rule 26: Sufficient time
<b>Rule 30: Minimum time periods</b>	Rule 27: Minimum time periods
<b>Rule 31: Allowable reductions</b>	Rule 28: Allowable reductions
<b>Rule 32: Business day</b>	Rule 29: Business day
<b>Rule 33: Fair application of time</b>	Rule 30: Fair application of time
<b>Rule 34: Minimum time periods by process</b>	Rule 31: Minimum time periods by process
<b>Rule 35: Open advertising</b>	Rule 32: Open advertising
<b>Rule 36: GETS listing</b>	Rule 33: GETS listing
<b>Rule 37: Notice of Procurement</b>	Rule 34: Notice of Procurement
<b>Rule 38: Content of Notice of Procurement</b>	Rule 35: Content of Notice of Procurement
<b>Rule 39: Other tender documents</b>	Rule 36: Other tender documents
<b>Rule 40: Responding to queries</b>	Rule 37: Responding to queries
<b>Rule 41: Additional information</b>	Rule 38: Additional information
<b>Rule 42: Changes to process or requirements</b>	Rule 39: Changes to process or requirements
<b>Rule 43: Treatment of responses</b>	Rule 40: Treatment of responses
<b>Rule 44: Reasons to exclude a supplier</b>	Rule 41: Reasons to exclude a supplier
<b>Rule 45: E-auction</b>	Rule 42: E-auction
<b>Rule 46: Awarding the contract</b>	Rule 43: Awarding the contract
<b>Rule 47: Informing suppliers of the decision</b>	Rule 44: Informing suppliers of the decision
<b>Rule 48: Contract Award Notice</b>	Rule 45: Contract Award Notice
<b>Rule 49: Debriefing suppliers</b>	Rule 46: Debriefing suppliers
<b>Rule 50: Supplier complaints</b>	Rule 47: Supplier complaints
<b>Rule 51: Prompt payment</b>	Rule 48: Prompt payment
<b>Rule 52: Maintaining records</b>	Rule 49: Maintaining records
<b>Rule 53: Reporting</b>	N/A

<b>Current Rule</b>	<b>Previous Rule (Third Edition)</b>
<b>Rule 54: Audit</b>	Rule 50: Audit
<b>Rule 55: Types of supplier lists</b>	Rule 51: Types of supplier lists
<b>Rule 56: Pre-qualified Suppliers List</b>	Rule 53: Pre-qualified Suppliers List
<b>Rule 57: Panel of Suppliers</b>	Rule 54: Panel of Suppliers
<b>Rule 58: All-of-Government Contracts</b>	Rule 55: All-of-Government Contracts
<b>Rule 59: Syndicated contracts</b>	Rule 56: Syndicated contracts
<b>Rule 60: Common Capability Contracts</b>	Rule 57: Common Capability Contracts
<b>Rule 61: Web standards</b>	Rule 58: Web standards
<b>Rule 62: Approved Government Model Templates</b>	Rule 59: Approved Government Model Templates
<b>Rule 63: Intellectual Property</b>	Rule 61: Intellectual Property
<b>Rule 64: Infrastructure</b>	Rule 62: Public Private Partnerships
<b>Rule 65: Business cases and investment decisions</b>	Rule 63: Business cases and investment decisions
<b>Rule 66: Investment reviews</b>	Rule 64: Investment reviews
<b>Rule 67: Timber and wood products</b>	Rule 65: Timber and wood products
<b>Rule 68: Employee transfer costs</b>	Rule 66: Employee transfer costs
<b>Rule 69: Planning for new construction works</b>	N/A
<b>Rule 70: Procurement Capability Index</b>	N/A
<b>Rule 71: Significant Service Contracts Framework</b>	N/A
<b>N/A</b>	Rule 16: Strategic Procurement Outlooks
<b>N/A</b>	Rule 18: Extended Procurement Forecasts
<b>N/A</b>	Rule 52: Registered Suppliers List
<b>N/A</b>	Rule 60: Geospatial information and services







