

# Government Rules of Sourcing



Rules for planning your procurement, approaching the market and contracting

2013





**Published April 2013 [First Edition]**  
**In force from 1 October 2013**

Government Procurement Branch | Ministry of Business Innovation & Employment (MBIE)  
PO Box 1473 | Wellington 6140 | New Zealand | [www.mbie.govt.nz](http://www.mbie.govt.nz) | [www.procurement.govt.nz](http://www.procurement.govt.nz)

---

**Crown**  
**Copyright**



---

This work is licensed under the Creative Commons Attribution-Non-commercial-Share Alike 3.0 New Zealand Licence. In essence, you are free to copy, distribute and adapt the work non-commercially, as long as you attribute the work to The Crown and abide by the other licence terms. To view a copy of this licence, visit <http://www.creativecommons.org.nz>. Please note that no departmental or governmental emblem, logo or Coat of Arms may be used in any way that infringes any provision of the Flags, Emblems, and Names Protection Act 1981. Attribution to The Crown should be in written form and not by reproduction of any such emblem, logo or Coat of Arms.

---

# Foreword

As Procurement Functional Leader, I am pleased to issue the *Government Rules of Sourcing*. These *Rules* represent the government's standards of good practice for the sourcing stages of the procurement lifecycle.

Government spends billions of dollars every year buying all sorts of things, from medical equipment to school building upgrades, police uniforms to IT systems. Public services are increasingly supported and delivered by businesses as suppliers, so choosing and managing these relationships well is critical to achieving the best results.

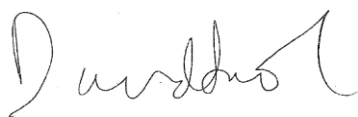
We need to attract creative, clever and commercial suppliers to help us deliver innovative and effective solutions to get the best value for New Zealanders - which isn't always the cheapest price. To become an attractive customer, it is essential that government forges closer links with businesses and fosters more productive relationships with suppliers.

If we are successful in increasing productive engagement with businesses, then those winning government contracts will become more competitive in international markets, increasing exports and supporting New Zealand's economic growth.

The *Rules* give us the foundations. By applying the *Rules* we demonstrate that our government is open, transparent and accountable. The *Rules* help us to design processes that are robust, and build confidence in government procurement practices. This will build greater public trust that our spending is well-planned and well-executed.

Smart public procurement can help deliver better public services and support economic growth.

I would like to thank everyone who contributed to the development of the *Rules*, especially those who gave generously of their time and expertise.



David Smol  
Chief Executive



**Ministry of Business,  
Innovation & Employment**



# Context

## What are the *Rules*?

The *Government Rules of Sourcing* replace the Mandatory Rules for Procurement by Departments issued by the Ministry of Economic Development in 2006. They have been endorsed by Cabinet (CAB Min (13) 10/4A).

## Focus on sourcing

The term 'procurement' covers all aspects of acquiring and delivering goods, services and works (eg *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. The MBIE *Guide to Mastering Procurement* explains the 8 stages of the procurement lifecycle.

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

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

## Changes

The purpose of the *Rules* is to:

- provide a refreshed plain English format that is easier for agencies and suppliers to use
- modernise the government's approach to procurement to align with good international practice and provide better value for the New Zealand public
- encourage agencies to use more strategic approaches and commercial expertise when procuring – including e-procurement
- encourage agencies to engage early with the market to stimulate competition and innovation, and work with suppliers to develop better solutions
- include Cabinet-directed procurement requirements and legislation.

## Application to agencies

Agencies that are required to apply the *Rules* may be audited for their compliance with them. Suppliers have a right to complain if they think that such an agency has not complied with the *Rules*. See the suppliers' guide *How to provide feedback and complain* at:

[www.procurement.govt.nz](http://www.procurement.govt.nz)

The *Rules* are a compulsory requirement for Public Service departments, New Zealand Police, and New Zealand Defence Force. For these agencies, where the *Rules* use the term **must**, the *Rule* is mandatory and non-compliance is a breach of the *Rules*. Where the *Rules* use the term **should**, this indicates good practice.

Other agencies in the wider Public Sector are encouraged to apply the *Rules* as good practice. These agencies can interpret **must** as **should**.

# Context

## How to use the *Rules*

The *Rules* contain headers and boxes with more information, definitions, links to guides, tools and templates and examples. Information in these boxes does not form part of the *Rules*. It is there to assist with interpretation and to give greater context for the reader.

### Icons

The following icons are used to show supplementary information.



more  
information



definition



guides, tools  
& templates



example

Words and phrases that have a special meaning are marked in italics, (eg *Request for Tender* and *new construction*). Special meanings are defined in the 'Definitions' section at the end of the document.

Agencies can refer to the *Rules* as the single source of all New Zealand's international commitments on government procurement. Readers do not need to refer directly to these treaties and agreements. Chapter 6 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.

## For more information

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



# Contents

<b>Chapter 1 Getting started .....</b>	<b>1</b>
Why have rules? .....	2
The five <i>Principles</i> of government procurement .....	6
What values underpin the <i>Rules</i> ? .....	7
Rule 1 Principles .....	7
Rule 2 Integrity .....	8
Rule 3 No offsets .....	8
Rule 4 Non-discrimination .....	8
Rule 5 Protection of suppliers' information .....	9
Who do the <i>Rules</i> apply to? .....	10
Rule 6 Who the Rules apply to .....	10
Rule 7 When the <i>Rules</i> apply - goods or services or refurbishment works .....	11
Rule 8 When the <i>Rules</i> apply - new construction works .....	12
Rule 9 Estimating value .....	13
Rule 10 Non-avoidance .....	14
Rule 11 Types of contract .....	14
When the <i>Rules</i> do not apply .....	15
Rule 12 Non-procurement activities .....	15
Rule 13 Opt-out procurements .....	15
Do I have to openly advertise? .....	18
Rule 14 Requirement to openly advertise .....	18
Rule 15 Exemption from open advertising .....	19
<b>Chapter 2 Planning your procurement .....</b>	<b>25</b>
Procurement planning .....	26
Rule 16 Strategic Procurement Outlooks .....	26
Rule 17 Annual Procurement Plans .....	26
Rule 18 Extended Procurement Forecasts .....	27
Rule 19 Significant business cases .....	28
Preparing to approach the market .....	29
Rule 20 Third-party agents .....	29
Rule 21 Procurement advice .....	29
Rule 22 Subcontracting .....	29
Rule 23 Delivery date .....	30
Rule 24 Technical specifications .....	30
Rule 25 Pre-conditions .....	31
How much time should I give suppliers to respond? .....	32
Rule 26 Sufficient time .....	32
Rule 27 Minimum time periods .....	34
Rule 28 Allowable reductions .....	34
Rule 29 Business day .....	36
Rule 30 Fair application of time .....	36
Rule 31 Minimum time periods by process .....	37

<b>Chapter 3 Approaching the market .....</b>	<b>39</b>
How do I openly advertise? .....	40
Rule 32 Open advertising .....	40
Rule 33 GETS listing .....	40
Rule 34 Notice of Procurement.....	41
Rule 35 Content of Notice of Procurement .....	42
Rule 36 Other tender documents.....	44
Managing the procurement process.....	45
Rule 37 Responding to queries .....	45
Rule 38 Additional information .....	45
Rule 39 Changes to process or requirements.....	46
Evaluating responses .....	47
Rule 40 Treatment of responses.....	47
Rule 41 Reasons to exclude a supplier .....	47
Rule 42 E-auction.....	48
<b>Chapter 4 Awarding the contract .....</b>	<b>49</b>
Awarding the contract .....	50
Rule 43 Awarding the contract.....	50
Rule 44 Informing suppliers of the decision .....	51
Rule 45 Contract Award Notice .....	51
Rule 46 Debriefing suppliers.....	52
Rule 47 Supplier complaints .....	53
Contract administration .....	54
Rule 48 Prompt payment.....	54
Rule 49 Maintaining records .....	54
Rule 50 Audit.....	54
<b>Chapter 5 Types of supply lists .....</b>	<b>55</b>
Rule 51 Types of supplier lists.....	56
Rule 52 Registered Suppliers List.....	57
Rule 53 Pre-qualified Suppliers List.....	58
Rule 54 Panel of Suppliers .....	60
<b>Chapter 6 Other Rules you need to know .....</b>	<b>64</b>
Rule 55 All-of-Government Contracts (AoGs) .....	65
Rule 56 Syndicated Contracts .....	66
Rule 57 Common Capability Contracts .....	67
Rule 58 Web standards .....	68
Rule 59 Approved Government Model Templates .....	68
Rule 60 Geospatial information and services.....	69
Rule 61 Intellectual Property.....	70
Rule 62 Public Private Partnerships (PPPs) .....	71
Rule 63 Capital business cases.....	72
Rule 64 Gateway assurance.....	73
Rule 65 Timber and wood products .....	74
Rule 66 Employee transfer costs.....	75
Rule 67 Property Services Industry .....	76
Definitions.....	77







# **Chapter 1**

## **Getting started**

# What's so special about government procurement?

Delivering good public services to New Zealand starts with good procurement.

How well money is spent has a direct impact on the quality of services New Zealanders experience. It also reflects government agencies' efficiency and effectiveness. It can provide opportunities to increase competition and productivity that lead to innovation and contribute to greater economic growth.

## Why have rules?

### To strengthen accountability

Government agencies must account for how they spend taxpayers' money. The *Rules*, along with the *Principles of Government Procurement* and the Office of the Auditor-General's *Procurement Guidance for Public Entities*, provide a framework that promotes responsible spending when purchasing goods, services, and works. This framework supports proactively managing procurement process and delivery risks.

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

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



Examples of **commercial law legislation**:

- Sale of Goods Act 1908
- Frustrated Contracts Act 1944
- Commerce Act 1986
- Fair Trading Act 1986
- Minors' Contracts Act 1969
- Illegal Contracts Act 1970
- Contracts (Privity) Act 1982
- Contractual Mistakes Act 1977
- Contractual Remedies Act 1979
- Construction Contracts Act 2002
- Sale of Goods (United Nations Convention) Act 1994

Example of **commercial law case**:

- Pratt Contractors Limited v Palmerston North City Council



Examples of **public law legislation**:

- Public Finance Act 1989
- Public Audit Act 2001
- Public Records Act 2005
- Official Information Act 1982
- State Sector Act 1988
- Ombudsmen Act 1975
- Public Bodies Contracts Act 1959

Example of **public law case**:

- Diagnostic MedLab Ltd v Auckland District Health Board



Agencies must comply with other relevant legislation and should make sure they cover all relevant risks when selecting and managing suppliers (eg health and safety). For more information see: A *principal's guide to contracting to meet the Health and Safety in Employment Act 1992* at:

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

## Why have rules?

### To promote our values

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

- delivers best value for money (which isn't always the cheapest price)
- 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 the results we can achieve. There are sound commercial reasons why building stronger relationships with business is important. The *Rules* aim to encourage better commercial practice by promoting these types of behaviours and achieving greater value for money.



#### Value for money

*Value for money* isn't always the cheapest price. *Value for money* means 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.

The principle of *value for money* is about getting the best possible outcome over the whole-of-life of the goods, services or works.

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



#### Value for money 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 1 year it begins to rust, within 3 years it is beginning to fail, and by 6 years it needs to be replaced.

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

## Why have rules?

### To support economic development

As a small, remote trading economy, New Zealand needs to export to survive. A competitive economy trading successfully with the world is one way to build ongoing economic growth. This creates jobs and grows incomes. New Zealand suppliers 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's *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 – that demonstrates professional practice and has a reputation for integrity.



The *Rules* implement New Zealand's **international commitments**, including:

- Australia New Zealand Government Procurement Agreement
- Closer Economic Partnership Agreement with Singapore
- Trans-Pacific Strategic Economic Partnership (P4) agreement.



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

## How do the *Rules* fit with other guidance?

The *Rules* are only one part of what makes up good procurement practice. The framework that supports good practice consists of the *Principles*, *Rules* and good practice *Guidance*.

## What's good procurement?

### Public value

Agencies that maximise their return on spending will achieve the best possible results for New Zealanders. Good procurement means better public value.

### Policy framework

Government procurement is based on *Principles*, *Rules* and 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 skillfully 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 value for money, which isn't always the cheapest price, 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's level of detail reflects 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 embraces continuing to develop the supplier and driving value for money through ongoing efficiency gains.

### Principles

The *Principles* of government procurement apply to all government agencies and provide our overarching values. The *Principles* apply even if the *Rules* do not. Agencies can use the *Principles* for guidance and to help make good procurement decisions.

### 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)
- MBIE's *Guide to Mastering Procurement* [www.procurement.govt.nz](http://www.procurement.govt.nz)



# The five *Principles* of government procurement

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 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).
- Give NZ suppliers a full and fair opportunity to compete.
- Make it easy for all suppliers (small to large) to do business with us.
- Be open to subcontracting opportunities in big projects.
- Clearly explain how you will assess suppliers' proposals – so they 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.
- 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 value for money – account for all costs and benefits over the lifetime of the goods or services.
- Make balanced decisions – consider the social, environmental and economic effects of the deal.
- 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.

# What values underpin the *Rules*?

The government's five *Principles* are the foundations for good procurement. The *Principles* must be reflected in everyday practice. Everyone engaged in procurement must understand and know how to apply the *Principles*.

## Rule 1 Principles

1. Each agency **must** have policies in place that incorporate the five *Principles* of government procurement. The *Principles* apply to all procurements, even if the *Rules* do not apply.
2. Each agency **must** make sure that:
  - a. all staff engaged in procurement have been trained in the five *Principles* of procurement
  - b. its procurement practices reflect the five *Principles*
  - 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

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 it comes to planning a major project:

- *Governance and Oversight of Major IT Projects* by Office of the Auditor-General (2000) [www.oag.govt.nz](http://www.oag.govt.nz)
- *Gateway Assurance* by the State Services Commission [www.ssc.govt.nz](http://www.ssc.govt.nz)



### 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 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.

# What values underpin the *Rules*?

There is no discrimination and no favouritism in New Zealand government procurement. This means treating all suppliers equally – both domestic and international.

## 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.

## Rule 3 No offsets

1. An agency **must not** ask for, take account of, or impose any offset at any stage in a procurement process.



**Offset** has a special meaning within the context of the *Rules*. An example of an offset is where, in order to be awarded a contract, a supplier is required to purchase in return national goods, services or works. The purpose of an offset is to impose a condition intended to develop the local economy or improve balance-of-payments accounts. Offsets are not permitted in New Zealand. Examples of offsets include:

- requiring goods, services or works from a specific country
- applying weighted evaluation criteria that favour local content or give local suppliers a price preference.

## Rule 4 Non-discrimination

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 value for money, which isn't always the cheapest price, 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.



**Rule 4** contains the expression 'must treat suppliers from another country no less favourably than New Zealand suppliers.'

This is a standard phrase in international agreements and has significant meaning in that context. So while it's not plain English, we need to include it in the *Rules*!



# Dealing with commercially sensitive information

Agencies often have access to sensitive information about a supplier's business. This could be new ideas or pricing structures. This information must be protected.

## Rule 5

### Protection of suppliers' 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 (eg 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* which suppliers have consented to 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
- intellectual property
- copyright
- 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, '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*.

# Who do the *Rules* apply to?

The government encourages all Public Sector agencies to apply the *Rules* as good procurement practice. Specifically:

- all departments, NZ Police and NZ Defence Force must apply the *Rules*.
- wider State Services agencies are expected to apply the *Rules*.
- wider State Sector and Public Sector agencies are encouraged to apply the *Rules*.

## Rule 6

### 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.
2. These agencies may be audited for compliance with the *Rules* (eg by the Auditor-General under the Public Audit Act 2001).

#### Good practice guidance only

3. Wider State Services agencies are expected to have regard to the *Rules* as good practice guidance.
4. Wider State Sector and Public Sector agencies are encouraged to have regard to the *Rules* as good practice guidance.
5. In applying the *Rules* as good practice guidance wider State Services, State Sector and Public Sector agencies are to interpret all '**must**' *Rules* as '**should**' *Rules*.

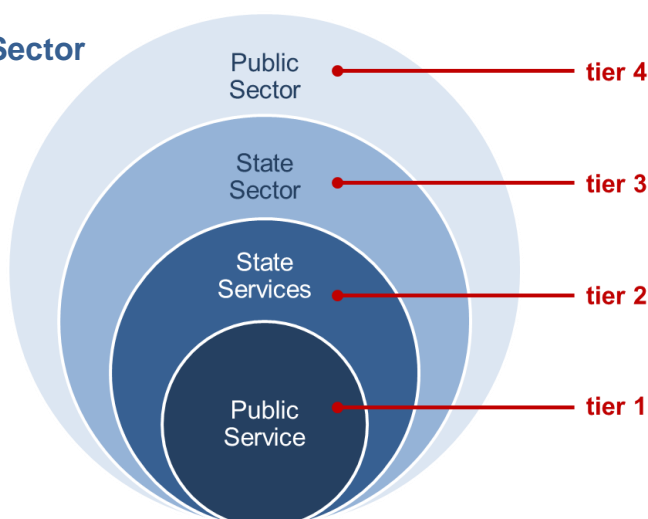


Public Service departments are the core departments and ministries listed in the **State Sector Act 1988, Schedule 1**.

A complete list of Public Service, State Services, State Sector and Public Sector agencies is published at: [www.ssc.govt.nz](http://www.ssc.govt.nz)

For convenience, the *Rules* refer to all of these as 'agencies'.

#### The 4 tiers of the Public Sector



## When do the *Rules* apply?

The Rules apply when the value of a procurement meets or exceeds a value threshold set by the Rules ie:

- goods or services or refurbishment works: \$100,000
- new constructions works: \$10 million.

### Rule 7

#### 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 9) of the procurement meets or exceeds the value threshold of \$100,000 (excluding GST).
2. To estimate the *maximum total estimated value* (Rule 9) for goods or services or *refurbishment works* an agency **must** take into account:
  - a. all related services (eg installation, training, servicing, management consultancy services)
  - b. all types of goods (eg 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.



In the context of the *Rules*, **refurbishment works** relate to the refurbishment of an existing building, road, bridge or dam. It covers renovating, repairing or extending.

It does not include replacing an existing construction as this is deemed to be *new construction works* (Rule 8).



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 a contract are not commercial goods, services or works purchased for resale. Disposals are not subject to these *Rules*.

## Rule 8

### 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 9*) of the procurement meets or exceeds the value threshold of \$10 million (excluding GST).
2. To estimate the *maximum total estimated value* (*Rule 9*) for *new construction works* an agency **must** take into account all:
  - a. related services (eg design, architecture, engineering, quantity surveying, and management consultancy services)
  - b. types of goods (eg construction material, health and safety equipment)
  - c. phases of the construction through to completion
  - d. subcontracted goods, services and works.



#### No 'salami slicing'

When dealing with *new construction works*, individual contracts for goods, services or works valued at less than \$10 million are deemed to be part of the whole and should be openly advertised.

# How do I estimate the value of a procurement?

The *Rules* apply if the value of a procurement meets or exceeds a certain value threshold. There are several things you need to know when you estimate the value of your procurement.

## Rule 9 Estimating value

1. Each agency **must** estimate the total value of a procurement to determine whether it meets or exceeds the relevant value threshold (set out in *Rules 7 and 8*). Agencies **must** act in good faith and use good judgement to estimate the value of a procurement. Agencies **must** include the estimated 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*. 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 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 value

Even if the **value of a procurement** is less than the value threshold (set out in *Rules 7 and 8*), 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 (eg services valued at \$98,000), always consider using an open tender process. After all, your calculation is only an estimate.



An example of **revenue streams**: a supplier receives tolls from a highway built under a Public Private Partnership (PPP).



## Non-avoidance

You must not intentionally avoid applying the *Rules*.

### Rule 10 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 9), 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.

### Rule 11 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. 'build-operate-own' type contracts (eg Public Private Partnerships (PPP))
  - f. contracts accessed through a third-party commercial supplier or broker.



#### Third-party commercial supplier or broker

You can't avoid applying the *Rules* by purchasing through a third-party commercial supplier (eg GSB Supplycorp Ltd).



#### Number of contracts

You can't split a procurement into smaller contracts to avoid applying the *Rules*. However, you may indicate in your *Notice of Procurement* the possibility, or your intention, that the procurement may be let in separate lots. For example, having undertaken the evaluation of responses, you could consider 'chunking' the work into separate parts and awarding these to more than one supplier.

## When the *Rules* do not apply

The *Rules* don't apply to non-procurement activities, such as an employment contract. And there are some types of procurement activities that are exempt from the *Rules*, such as disposals.

### Rule 12 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. Category 1 Legal Services.



**Category 1 Legal Services** are defined in the Cabinet Directions for the Conduct of Crown Legal Business 2012 (reference: Cabinet Office Circular CO (12) 8). These are contained in the Cabinet Manual.

All requirements by a department for external legal services that fall within Category 1 must be referred to the Solicitor-General and are usually dealt with by the Crown Law Office.

**Ministerial appointments** cover government board appointments under the Cabinet Manual. A situation where a Minister instructs an agency to appoint a named consultant to undertake a piece of work is not a Ministerial appointment.

### Rule 13 Opt-out procurements

1. If a procurement is covered by the *Rules* (meets the requirements of *Rules* 6 and 7 or *Rules* 6 and 8), in certain circumstances an agency can opt-out of applying the *Rules*. These circumstances are listed in *Rule* 13.3 and are called 'opt-out procurements'.
2. Even if an agency opts-out of applying the *Rules*, it is still expected to conduct its procurement according to the *Principles* and other procurement good practice *Guidance*. An agency **should** achieve the best value for money over the life of the contract, which isn't always the cheapest price, regardless of whether or not the *Rules* apply.



## Rule 13 continued

### Opt-out procurements

#### Opt-out procurements

3. The following is the list of valid opt-out procurements:

- a. **Between government departments, New Zealand Police or New Zealand Defence Force:** Where a government department, New Zealand Police or New Zealand Defence Force purchases goods, services or works from another government department, New Zealand Police or New Zealand Defence Force. However, if the purchaser chooses to use an open competitive process, then the *Rules* **must** apply.
- 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 (eg a Memorandum of Understanding between two government departments) or any form of assistance including cooperative agreements (eg 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 *construction works* which are covered by *Rules 7 and 8*.
- 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.





## Rule 13 continued

### Opt-out procurements

3. **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 *public health services, education services and welfare services*. Refer to the *Definitions* section 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 the Treasury. See *Definitions* section 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 (eg a peace-keeping deployment)
  - ii.** 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.

# Do I have to openly advertise?

The default position for government procurement is to openly advertise all contract opportunities. This gives all suppliers a fair chance to bid for the contract. It also encourages competition which leads to better value for money and stimulates innovative new ideas and solutions.

## Rule 14

### 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 9) of the procurement meets or exceeds the relevant value threshold (Rules 7 or 8), and
  - b. there is no *exemption from open advertising* (Rule 15).
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 *Requests for Quote* or *Requests for Tender*
- b. multi-step processes such as a *Registration of Interest* followed by a shortlisting and then a *Request for Proposal* or *Request for Tender*.



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)

## When don't I need to advertise?

There are some limited situations where the *Rules* apply, but where an agency does not need to openly advertise. These are called *exemptions to open advertising*.

Where one of these *exemptions* arises, an agency may choose not to openly advertise the contract opportunity, but must still meet all of the other requirements of the *Rules*.

### Rule 15 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 15.9* 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.



#### **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 Proposal* or *Request for Tender* restricted to a known supplier.

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

If an agency uses a **direct source** process (with one known supplier) it does not mean that it can instantly contract that supplier. It should request a formal proposal from the supplier and evaluate the proposal, assess its value for money, which isn't always the cheapest price, and undertake due diligence before deciding to negotiate a contract. It must not simply approach one supplier and award a contract without proper evaluation of capacity, capability, risk, value for money and due diligence.



## Rule 15 continued

### Exemption from open advertising

#### Document the rationale

4. If an agency exempts a procurement from *open advertising* under *Rule 15.9*, 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 9*) of the goods, services or works
  - d. the specific exemption/s, that applies (from the list in *Rule 15.9*)
  - e. details of the facts and circumstances which 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 45*) on GETS for any procurement that it has exempted from *open advertising*.

# What happens when there is an exemption from open advertising?

Where one of these *exemptions* arises, an agency may choose not to openly advertise the contract opportunity, but must still meet all of the other requirements of the *Rules*.

## Rule 15 continued Exemption from open advertising

### 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 tender:**  
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 25*) 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 25*) or conformed with or met the requirements.



Read the Quick Guide to Emergency Procurement at:  
[www.procurement.govt.nz](http://www.procurement.govt.nz)



Read more about **collusion and bid rigging** in the Commerce Commission's Guidelines, *How to recognise and deter bid rigging* at: [www.comcom.govt.nz](http://www.comcom.govt.nz)

Collaboration is not necessarily unlawful. In certain types of procurement you may want suppliers to collaborate (eg 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 (eg suppliers must state who they have collaborated with to prepare their response).

If you 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. You can read more about this at: [www.comcom.govt.nz](http://www.comcom.govt.nz)





## Rule 15 continued

### Exemption from open advertising

#### 9. Valid exemptions from open advertising continued:

- c. **Only one supplier:** If the goods, services or works can only be supplied by 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.



A **technical reason** could be:

- 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.

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.

## Rule 15 continued

### Exemption from open advertising

#### 9. Valid exemptions from open advertising continued:

**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.

Once the contract for the prototype has been fulfilled, an agency **must** openly advertise any subsequent procurement. This exemption does not apply to quantity production or supply to establish commercial viability or to recover research and development costs.

**f. Commodity market:** Goods purchased on a commodity market.



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.



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 (eg the London Metal Exchange).

## Rule 15 continued

### Exemption from *open advertising*

9. Valid *exemptions from open advertising* continued:

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 which is consistent with the *Rules*, and
- ii. the contest **must** be judged by 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. **Panel of Suppliers:** Where an agency has established a *Panel of Suppliers* (in accordance with *Rule 54*) it does not need to openly advertise individual contract opportunities that are awarded through the Panel.

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 market place
- iv. the proposal represents value for money.

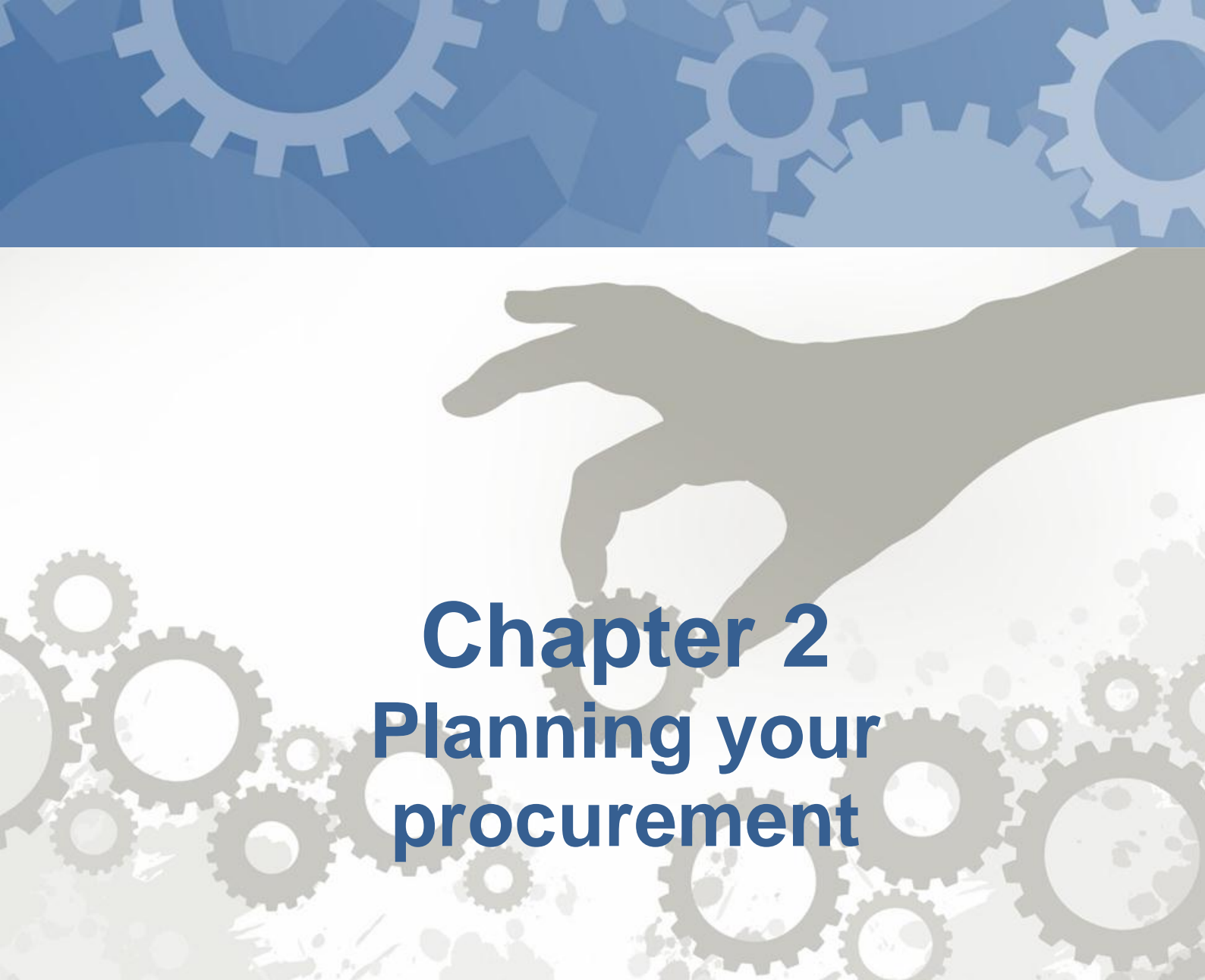


**Exceptionally advantageous** conditions include a sale by public auction or a sale resulting from liquidation, bankruptcy or receivership.



An **unsolicited unique proposal** is an approach initiated by a supplier proposing a unique solution which is not available in the market place. Read more in MBIE's *Guide to Unsolicited Unique Proposals*.



The background of the slide features a blue header with white gears. Below this, a large, stylized grey hand is shown reaching down towards a cluster of grey gears. The text is centered over this gear cluster.

# **Chapter 2**

## **Planning your procurement**

## Procurement planning

Agencies must publish a *Strategic Procurement Outlook* and *Annual Procurement Plan* in order to improve transparency and give suppliers an early heads-up.

### Rule 16

#### Strategic Procurement Outlooks

1. An agency **must** submit a *Strategic Procurement Outlook* (SPO) to MBIE for publication.
2. A SPO gives suppliers a high level summary of an agency's purpose and goals and how these relate to its procurement activities.
3. Each agency **must** review its SPO annually and publish any changes in an updated SPO at the beginning of each financial year.

### Rule 17

#### Annual Procurement Plans

1. An agency **must** submit an *Annual Procurement Plan* (APP) to MBIE for publication.
2. 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. An APP **must** contain all known or anticipated contract opportunities that the *Rules* apply to. It 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.



APPs are intended to help agencies plan their future procurement activities. They also give suppliers advance notice of possible contract opportunities. If an agency intends to purchase from an existing All-of-Government, Syndicated or Common Capability contract, it does not need to include this procurement in its APP.

You can read more about **Strategic Procurement Outlooks** and **Annual Procurement Plans**, including templates at: [www.procurement.govt.nz](http://www.procurement.govt.nz)



## Procurement planning

The Chief Executive of MBIE has been appointed the Procurement Functional Leader across government. Part of that mandate involves initiating and supporting greater collaboration by agencies in their procurement activities.

### Rule 18

## Extended Procurement Forecasts

1. In addition to submitting an *Annual Procurement Plan*, an agency **must** submit an *Extended Procurement Forecast* (EPF) to MBIE to assist with cross-government planning.
2. An EPF is a list of forecast contract opportunities over the next 5 years which fall into one or more of the following categories:
  - a. have an estimated total value over the whole-of-life of the contract of \$5 million or more
  - 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, within budget and on time
  - c. have the potential for cross-government collaboration or resource sharing.
3. Each agency **must** review and update its EPF at least once a year. An agency may update its EPF more often, if appropriate.
4. Updated EPFs are due by 1 October each year.

## Procurement planning

Agencies are encouraged to develop robust business cases and/or procurement plans for procurement activities that are covered by the *Rules*.

Where a procurement is valued at \$5 million or more, agencies are expected to prepare a detailed business case. To support good practice MBIE will review all significant business cases and provide advice and feedback.

### Rule 19 Significant business cases

1. An agency **must** submit to MBIE for review *significant business cases* for procurements that fall into one, or more, of the following categories:
  - a. have an estimated total value over the whole-of-life of the contract of \$5 million or more
  - 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. have the potential for cross-government collaboration or resource sharing.
2. An agency **should** have regard to the advice and feedback provided by MBIE on its *significant business case*.
3. This requirement does not apply where a business case is subject to review under another governance process (eg Syndicated Contracts (*Rule 56*) or Capital Business Cases (*Rule 63*)).



#### Review process

More information on the timing and process for the review of *Significant Business Cases* can be found at:

[www.procurement.govt.nz](http://www.procurement.govt.nz)

## Preparing to approach the market

You can contract a supplier to manage your procurement process, but there are some *Rules* that you need to be aware of.

### Rule 20

#### Third-party agents

1. An agency may purchase the services of a third-party agent, (eg 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 manage a procurement, the agency, through the agent, **must** still comply with the *Rules*.

### Rule 21

#### Procurement advice

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

### Rule 22

#### Subcontracting

1. Once a supplier has been awarded the contract, any subsequent subcontracting that the supplier does is not subject to the *Rules*.
2. However, an agency **should** ask that a prime contractor meet certain procurement standards in its subcontracting. The standards **should** be consistent with good procurement practice, as outlined in the *Principles*, the *Rules* and other procurement *Guidance*.



#### Procurement advice

*Rule 21* does not prevent an agency from using early market engagement to clarify needs or identify possible solutions.



# What Rules apply to technical specifications?

If you include detailed technical specifications, then there are some restrictions on how you may write these requirements.

## Rule 23 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 given their nature and scope.

## Rule 24 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, or the appropriate New Zealand or Australian standards, technical regulations or building codes.
3. When an agency describes technical specifications, it **must not** (except under *Rule 24.4*):
  - 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 24.3* 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.

## Rule 25

### Pre-conditions

1. An agency **may** include essential conditions about capacity or capability in its *Notice of Procurement*. 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*, and
  - b. take into account the supplier's business activities in New Zealand and overseas.



#### Pre-conditions

*Pre-conditions* allow agencies do to 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.

# How much time should I give suppliers to respond?

When going out to the market, it is essential to set a realistic time period for responses.

Unrealistic time periods introduce unnecessary risk. If you don't allow sufficient time it can impact on the quality of the results you achieve, compromise the integrity of the process and affect your agency's reputation as a credible buyer.

## Rule 26 Sufficient time

1. An agency **must** allow *sufficient time* for suppliers to respond to a *Notice of Procurement*. 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.

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 value for money
- 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!



## Sufficient time examples

The following examples show how to calculate *sufficient time*. *Sufficient time* will always vary depending on the nature and complexity of the procurement.

The examples are worked from a supplier's point of view and list the types of tasks suppliers need to do to prepare and submit a response. Although some tasks can be done at the same time allow for possible delays.

### Example 1: Simple one-step Request for Quote

**Scenario:** The request is for a large quantity of an off-the-shelf product. You need a fixed price and a guaranteed delivery date.

Time for suppliers to:	Business Days
• check GETS notices and download all documents	1
• read and analyse the documents	1
• ask for and get answers to questions	4
• check stock and supply chain logistics	4
• prepare pricing information	2
• check the price and get the quote approved	1
• arrange for the quote to be delivered on time	1
<b>Total number of business days</b>	<b>14</b>



To decide how much 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 national New Zealand statutory holidays into account.
- 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.
- Make sure your *sufficient time* is not less than the *minimum time period* set out in Rule 31.
- 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 full capability to deliver on its own.

### Example 2: One-step Request for Proposal

**Scenario:** You need to review a social policy programme. This requires a team of three experts. You ask suppliers to propose their own methodology and provide a detailed work plan, budget quote and timeline for delivery. It is likely that there will be some joint bids or subcontracting involved.

Time for suppliers to:	Business Days
• check GETS notices and download all documents	1
• read and analyse the documents	1
• ask for and get answers to questions	4
• check experts' availability	2
• consult all experts to develop and test the methodology, work plan and timeline	10
• check fee rates and develop a detailed budget	3
• check proposal and price and get it approved	2
• arrange for the proposal to be delivered on time	4
<b>Total number of business days</b>	<b>27</b>

## What is the *minimum time period* allowed?

The *Rules* set *minimum time periods* for suppliers to respond to requests. The *minimum time periods* are not intended as the norm. You must always make sure you allow *sufficient time* for suppliers to respond.

The *sufficient time* you allow suppliers must never be less than the *minimum time period* set by the *Rules*.

### Rule 27 Minimum time periods

1. The *Rules* set *minimum time period* for each of the procurement processes listed in *Rule 31*.
2. If any *allowable reductions* apply, you can deduct them from the *minimum time period*. The result is the new *minimum time period*.
3. The *sufficient time* (*Rule 26*) an agency sets for a procurement **must not** be less than the *minimum time period* (*Rule 31*) or the new *minimum time period*, if one applies.

### Rule 28 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 2 months and no more than 8 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, (eg by email).

2. An agency may make documents available electronically (under *Rule 28.1.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.

## Example: Applying *allowable reductions*

- An agency plans a one-step *Request for Proposal* process for procuring consultancy services.
- The *minimum time period* for this process is 25 *business days* (*Rules 27, 29 and 31.a*).
- The agency can reduce the *minimum time period* because it previously listed the opportunity in its *Annual Procurement Plan* (APP) (less 3 days) and has arranged for proposals to be received electronically by email (less 3 days).
- The agency has another tender document, a civil engineering plan, which it can't publish on GETS. It has to send it to suppliers in hard copy on request. The agency can't claim the third *allowable reduction* because not all tender documents are available electronically.
- The *minimum time period* is reduced by 6 *business days* from 25. This results in a new *minimum time period* of 19 *business days*.

E<sub>1</sub> G<sub>2</sub>

### Calculation

<i>Minimum time period</i>	25
Prior APP listing published	-3
Receive responses electronically	-3
<b><i>New minimum time period</i></b>	<b>19</b>

*Minimum time period*  
25 *business days*

-3 for prior APP listing

-3 for receiving responses electronically

**Total allowable reductions**  
**= 6 *business days***

19 *business days*

***New minimum time period (after deducting allowable reductions)***

## What is a *business day*?

When you calculate *sufficient time* and *minimum time periods* you must use *business days*, not calendar days.

### Rule 29 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.

### Rule 30 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.



#### 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)
- Waitangi Day (6 February)
- Good Friday, Easter Monday (dates vary)
- ANZAC Day (25 April)
- Queen's Birthday (the first Monday in June)
- Labour Day (the fourth Monday in October)
- Christmas Day and Boxing Day (25 & 26 December).



#### '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 the end of a *business day*, the deadline will be 12 noon Monday, 1 August.

## Rule 31 Minimum time periods by process

The following *minimum time periods* **must** be applied to the following types of procurement processes detailed in *Rules 31a* and *31b*. Days are expressed in clear *business days*.

### 31. a. One-step processes

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

One-step processes	<i>business days</i>	
	RFQ	RFT/RFP
<b><i>Minimum time period (Rule 27)</i></b>	<b>13</b>	<b>25</b>
<b><i><u>Allowable reductions (Rule 28)</u></i></b>		
a. Prior listing in an Annual Procurement Plan	-1	-3
b. All tender documents available electronically on GETS	-3	-4
c. Suppliers' tenders or proposals accepted electronically	-1	-3
<b><i>New minimum time period (if allowable reductions apply)</i></b>	<b>8</b>	<b>15</b>



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

- procuring standard goods, services or works that are easy to describe (eg 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.



## Rule 31 continued

### 31. b. Multi-step processes

A multi-step process can include:

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

Step one	business days ROI/EOI/ITP
<b>Minimum time period (Rule 27)</b>	<b>20</b>
<u>Allowable reductions (Rule 28)</u>	
a. Prior listing in an Annual Procurement Plan	-3
b. All tender documents available electronically on GETS	-4
c. Suppliers' tenders or proposals accepted electronically	-3
<b>New minimum time period (if Allowable Reductions apply)</b>	<b>10</b>

Step two	business days RFT/RFP
<b>Minimum time period (Rule 27)</b>	<b>25</b>
<u>Allowable reductions (Rule 28)</u>	
a. All tender documents available electronically to shortlisted suppliers	-5
b. Suppliers' tenders or proposals accepted electronically	-5
<b>New minimum time period (if allowable reductions apply)</b>	<b>15</b>



**Competitive Dialogue** is a technical term for 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. It is not the same as market engagement which is a generic term for any time you talk to suppliers.

Key features of *Competitive Dialogue* include:

- openly advertising an *Invitation to Participate* which states that it is a *Competitive Dialogue* process
- shortlisted suppliers are often paid for their participation in the dialogue phase
- the agency writes its specification of requirements during or at the end of the dialogue phase
- the agency then issues a *Request for Tender* or *Request for Proposal* to all shortlisted suppliers.

See the *Guide to Competitive Dialogue* at: [www.procurement.govt.nz](http://www.procurement.govt.nz)

The background of the slide features a blue header with white gears. Below this, a large, stylized grey hand reaches down towards a cluster of grey gears on a light beige background. The text is centered over this gear cluster.

# **Chapter 3**

## **Approaching the market**

## How do I openly advertise?

When an agency is ready to approach the market it must list the contract opportunity on GETS and, at the same time, publish a *Notice of Procurement* and any other tender documents on GETS.

### Rule 32 Open advertising

1. Under *Rule 14* an agency **must** openly advertise a contract opportunity unless an exemption under *Rule 15* 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 33*)
  - b. publish a *Notice of Procurement* on GETS (*Rules 34* and *35*) and it **must** make it available free of charge
  - c. provide access to all relevant tender documents (*Rule 36*) and it **should** make them available free of charge.

### Rule 33 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 (eg *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 34

### 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 35).
2. A *Request for Information* (RFI) is not a *Notice of Procurement*. It is a market research tool. Agencies **must not** use a *Request for Information* to select or shortlist suppliers.



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 Supplier List.

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

Examples include:

- Registrations of Interest
- Quotes
- Tenders
- Proposals
- Applications to Participate in a *Competitive Dialogue* process
- Applications to qualify for a Pre-qualified Supplier List.

## What should I include in my Notice of Procurement?

You must include everything that suppliers need to know about the contract opportunity in order to prepare meaningful responses.

### Rule 35

#### 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 (eg *Request for Quote* or *Registration of Interest* followed by a *Request for Tender*).
3. Subject to *Rule 35.4*, 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 the supplier is expected to deliver
  - 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 (eg 3 + 2 + 1)
  - 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 25*) 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
  - j. unless the price is the only criterion, an indication of the relative importance of each evaluation criterion



##### Evaluation criteria

The form of the evaluation criteria (*Rule 35.3.i.*) that you include in the *Notice of Procurement* will depend on the type of process, eg:

- 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**, unless price is the only criterion, indicate the relative importance of each criterion (*Rule 35.3.j.*). You can achieve this by ranking the criteria in priority order or adding individual weightings to each criterion.



## Evaluation criteria

Types of scored evaluation criteria include:

- technical merit and fit for purpose
- the quality of goods, services or works
- value for money over the whole of the life of the contract
- ability to deliver on time, to specification, in full for the quoted price
- degree of innovation, efficiency or effectiveness
- ability to comply with the essential conditions of contract (if relevant).

## Rule 35 continued

### Content of Notice of Procurement

- k. the deadline and address for submitting responses
  - l. any restrictions or instructions on how suppliers are to submit responses (eg faxes will not be accepted) or details of how responses are to be submitted through an e-procurement system
  - m. any other terms or conditions relating to the procurement or the procurement process
  - n. if the procurement will be conducted electronically, (eg using e-tender software), all the information suppliers will need to participate electronically
  - o. 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 42*).
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*, eg:
- a. a more complete description of the goods, services or works
  - b. the detailed evaluation criteria the agency will use to award the contract
  - c. full instructions on how the e-auction will be conducted.



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, eg:
  - deadline for suppliers' questions
  - date/s for shortlisted supplier presentations
  - date when suppliers will be notified if they have been successful or not
  - date/s debriefs will be held
  - anticipated contract start date.



**Rule 35.4** recognises that sometimes in multi-step procurements detailed information can be made available only after shortlisting suppliers.

## What does 'other tender documents' mean?

Other tender documents are normally attachments to your *Notice of Procurement*. They are usually standalone documents that provide additional information for suppliers.

### Rule 36

#### 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 28)* to the *minimum time period*.
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 (eg 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.



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.

# Managing the procurement process

The following *Rules* help agencies manage the procurement process fairly.

## Rule 37 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 promptly reply to a question, 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.

## Rule 38 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.



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.

## What if I need to give more information or change my requirements?

It's possible to provide additional information and change requirements after you've advertised your procurement. However, there are *Rules* that apply to these processes.

### Rule 39

#### 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 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.



Changes to procurement processes or requirements may include changing:

- any essential aspect of the specification of requirements or technical specifications
- a *pre-condition* (Rule 25) or 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.

# Evaluating responses

## Rule 40 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 its response in writing (this can be through electronic means such as email or an e-procurement system)
  - b. comply with all *pre-conditions* (Rule 25) 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 evaluating them, an agency offers a supplier the opportunity to correct unintentional errors, it **must** offer the same opportunity to all participating suppliers.



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

For more examples, see the Commerce Commission fact sheet, *How to recognise bid rigging*, at: [www.comcom.govt.nz](http://www.comcom.govt.nz)

## Rule 41 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 which adversely reflects on the commercial integrity of the supplier
  - 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.
2. An agency **must** not exclude a supplier before it has evidence supporting the reason for the exclusion.



## What is an e-auction?

An e-auction is an additional evaluation process that can be run after the initial evaluation of responses. It provides a transparent opportunity for suppliers to improve their offers.

### Rule 42 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* which **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 their 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.

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

- the negotiation process is paperless and streamlined
- the negotiation takes less time
- it results in improved value for money procurement
- the process of awarding the contract is more transparent
- it discourages collusion and bid-rigging.

The background of the slide is a light beige color. At the top, there is a blue banner with a pattern of interlocking gears in various shades of blue. Below this banner, a large, stylized grey hand is shown reaching down from the right side, with its index finger pointing towards a gear. The lower half of the slide is filled with a pattern of grey gears of different sizes, some of which are partially obscured by the text.

# **Chapter 4**

## **Awarding the contract**

# Awarding the contract

## Rule 43 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 either the:
    - i. best value for money over the whole of the life of the goods, services or works (which isn't always the cheapest price), or
    - ii. lowest price, if price is the only criterion.
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 both:
  - a. satisfying all of the conditions for participation, if any, and
  - b. fully delivering all of the contract requirements (eg quality, quantity, time and location) 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*.



A **legitimate reason** to cancel a procurement could include a:

- change of policy
- change to an appropriation that affects funding for the initiative
- Ministerial direction.



Look out for **abnormally low bids**. An abnormally 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 what if the bid is so low that it could impact negatively on service delivery?

Agencies should check an abnormally low bid with the supplier to make sure that the price is realistic and that the supplier can fully deliver the contract for that amount. If the supplier is unable to demonstrate this, the agency may consider rejecting the bid. First, make sure you have stated in your conditions of process that you will not necessarily accept the lowest price bid!

An abnormally low bid could also be the result of the supplier taking advantage of its market power in breach of section 36 of the Commerce Act 1986. Report any such concerns to the Commerce Commission at: [www.comcom.govt.nz](http://www.comcom.govt.nz)

A bid that is substantially lower than other bids can sometimes be a sign that a cartel may be operating in the market. For examples see the Commerce Commission's fact sheet, *How to recognise bid rigging*, at: [www.comcom.govt.nz](http://www.comcom.govt.nz)

## How do I let suppliers know the outcome?

It's good practice to set out an indicative timeline for your process in the *Notice of Procurement*. This should include the date you estimate the evaluation process will be completed. Suppliers then know when to expect to be notified of the outcome. Keep suppliers informed of any changes to key dates. When you select the successful supplier, you must let the unsuccessful suppliers know.

### Rule 44 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.

### Rule 45 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.



#### Expected spend

The expected spend (*Rule 45.2.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 54*.

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*), then the circumstances that justify the *exemption*.



#### 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, an agency will usually negotiate with the top-ranked supplier and reserve its position with the second-ranked supplier. If the negotiations with the top-ranked supplier fall through, the agency may then offer to negotiate with the next-ranked supplier. In this case, an agency can tell other highly-ranked suppliers that it is negotiating with the preferred supplier and, should negotiations fail, they may still be considered for the contract opportunity.

## Do I need to debrief suppliers?

It is important to let suppliers know why they haven't been successful. This supports supplier development. At the very least, you need to offer to debrief each supplier. *Rules* apply to the debriefing process.

### Rule 46 Debriefing suppliers

1. 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 5*).
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 25*) 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.

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



# What do I do if a supplier complains?

It's essential to keep good records of your process and decisions. You'll need these if a supplier complains about the process or the outcome.

## Rule 47 Supplier complaints

1. Any participating 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 (eg 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.



Suppliers have the right to **complain** if they have concerns about a procurement process or feel they have been treated unfairly. You must treat supplier complaints seriously and deal with them promptly.

See the 'Suppliers' Guide to Feedback and Complaints' at: [www.procurement.govt.nz](http://www.procurement.govt.nz)

# Contract administration

## Rule 48 Prompt payment

1. Each agency **should** ensure prompt payment of suppliers' invoices. At a minimum, invoices **must** be paid at the time/s set out in the contract, or earlier if possible.

## Rule 49 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.

## Rule 50 Audit

1. An agency **must** keep records (*Rule 49*) for audit purposes.



**Prompt payment** is critical to the cash flow of every business, and especially to small and medium sized businesses (SMEs).

It is not just the timeliness of payment, but also the certainty of getting paid that is really important. Prompt payment helps businesses with their cash flow and enables reliable financial planning.

Prompt payment means suppliers can be confident that if they have delivered then they will be paid, and that they are working with a buyer that values them.

This supports stronger working relationships. Payment certainty inspires confidence across the supply chain which, in turn, stimulates investment and growth in the New Zealand economy. This confidence is good for agencies, suppliers and New Zealand.



### 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, refer to the guide: *What to expect from your audit* by Audit New Zealand [www.auditnz.govt.nz](http://www.auditnz.govt.nz)



# **Chapter 5**

## **Types of supply lists**

# What are supplier lists?

There are a number of different types of supplier lists. Some of them meet the requirements of the *Rules* and others do not.

## Rule 51

### 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. Registered Suppliers List (*Rule 52*)
  - b. Pre-qualified Suppliers List (*Rule 53*)
  - c. Panel of Suppliers (*Rule 54*).



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

Where an agency establishes a **Registered Suppliers List** or **Pre-qualified Suppliers List**, it must still openly advertise (*Rules 14* and *32*) individual contract opportunities that meet or exceed the appropriate value threshold.

However, 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. The agency may select suppliers directly from the *Panel* in accordance with the secondary procurement method established for the *Panel*.

# What is a Registered Suppliers List?

A *Registered Suppliers List* is a list of suppliers who have registered an interest in supplying specific goods, services or works. If you want to buy from a *Registered Suppliers List* and the estimated value of the contract meets or exceeds the relevant value threshold you must still openly advertise the contract opportunity on GETS.

## Rule 52

### Registered Suppliers List

1. A *Registered Suppliers List* is a list of suppliers who have registered an interest in supplying specific types of goods, services or works.
2. A *Registered Suppliers List* is appropriate where an agency wants to know which suppliers are active in the market supplying the specific type of good or service.
3. An agency that establishes a *Registered Suppliers List* is not exempt from *open advertising* where a contract opportunity meets or exceeds the relevant value threshold (*Rules 7 and 8*). An agency **must** openly advertise each such contract opportunity on GETS. *Registered Suppliers* should make sure that they are listed on GETS under the correct *Tender Watch Code/s* to receive notifications.

#### Establishing a *Registered Suppliers List*

4. To establish a *Registered Suppliers List*, an agency **must**:
  - a. publish a standing *Invitation to Register* on GETS (this is a type of *Notice of Procurement*)
  - b. clearly describe the specific type of goods, services or works the agency is interested in procuring
  - c. make the *Invitation to Register* continuously available on GETS and allow suppliers to respond at any time, or at specific deadline/s for responses
  - d. add to the list any suppliers who wish to register, as soon as possible
  - e. notify unsuccessful applicants promptly and, if requested, provide the reason/s why.

#### Operating a *Registered Suppliers List*

5. To operate a *Registered Suppliers List* an agency **must**:
  - a. keep an updated list of *Registered Suppliers* and make this publicly available at all times (eg on the agency's website), and
  - b. notify *Registered 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.



When a supplier is added to a ***Registered Suppliers List*** it does not result in a contractual or legal relationship between the agency and the *Registered Supplier*.

*Registered Suppliers* have the potential to win contracts over time, but they are not guaranteed any work.

Agencies must not use the registration process to get price information from suppliers.



## What is a Pre-qualified Supplier List?

A *Pre-qualified Suppliers List* is a list of suppliers that an agency agrees have the capacity to deliver specific goods, services or works. If you want to procure from a *Pre-qualified Suppliers List*, and the estimated value of the contract meets or exceeds the value threshold, you must still openly advertise the contract opportunity on GETS. However, *Pre-qualified Suppliers* don't need to provide their basic details for each new contract opportunity.

### Rule 53

#### 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 7 and 8*). 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 Codes/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* on GETS and make it continuously available and allow suppliers to respond at any time, or at specific deadline/s for responses. The *Invitation to Qualify* **must**:
    - i. include 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 explain how the agency will check each supplier meets the conditions
    - iv. state how long the list will be active for and how it will be refreshed or terminated
  - b. assess applicants within a reasonable timeframe and add qualifying suppliers to the list as soon as possible
  - c. notify unsuccessful applicants promptly and, if requested, provide the reason/s why.

## Rule 53 continued

### Pre-qualified Suppliers List

#### 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 (eg 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 *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 multi-step procurement (eg *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.

# What is a Panel of Suppliers?

A *Panel of Suppliers* is a pre-approved list of suppliers who have agreed to an agency's terms and conditions for supply, including price. If you want to procure from a *Panel of Suppliers* you don't need to openly advertise the contract opportunity on GETS.

## Rule 54 Panel of Suppliers

1. A *Panel of Suppliers (Panel)* is a list of suppliers who have been pre-approved by an agency and who have agreed to the terms and conditions for 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 (eg agreed hourly fee rate) or the pricing mechanism that will apply.
3. Once a *Panel* has been established through an open process under the *Rules*, an agency does not need to openly advertise individual contract opportunities. It may purchase directly from the *Panel*. This is called secondary procurement.
4. When purchasing from the *Panel* the agency **must** use the specified methodology (*Rule 54.10*) to select a supplier.



### 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.

### 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.

## Rule 54 continued

### Panel of Suppliers

#### 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 14* and *32*.
6. The *Notice of Procurement* **must** comply with *Rule 34* and include the content specified in *Rule 35*. It **must** also include the following information:
  - a. the terms and conditions of supply that will apply (eg the *Standing Offer* or *Framework Agreement*)
  - b. the method the agency will use to award contracts to suppliers on the *Panel* (ie the secondary procurement process *Rule 54.10*)
  - c. how the agency will contract with a supplier who agrees to deliver a specific goods or service 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*.



#### **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*.

#### **Secondary procurement**

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* (eg an agency may publish these on GETS or its own website).

## Rule 54 continued

### Panel of Suppliers

7. The *Notice of Procurement (Notice)* can be:
  - a. a one-off *Notice* to establish the *Panel of Suppliers (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*.



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.





## Rule 54 continued

### Panel of Suppliers

#### 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. Accepted selection methods for secondary procurement processes include:
  - a. competitive quotes based on the lowest price

Ask for quotes from some or all of the *Panel Suppliers* and award the opportunity to the supplier who offers the lowest price
  - b. competitive quotes based on the supplier's expertise, proposed solution and best value for money

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 value for money, which isn't always the cheapest price, and deliver on time
  - c. direct source, based on the best fit for purpose

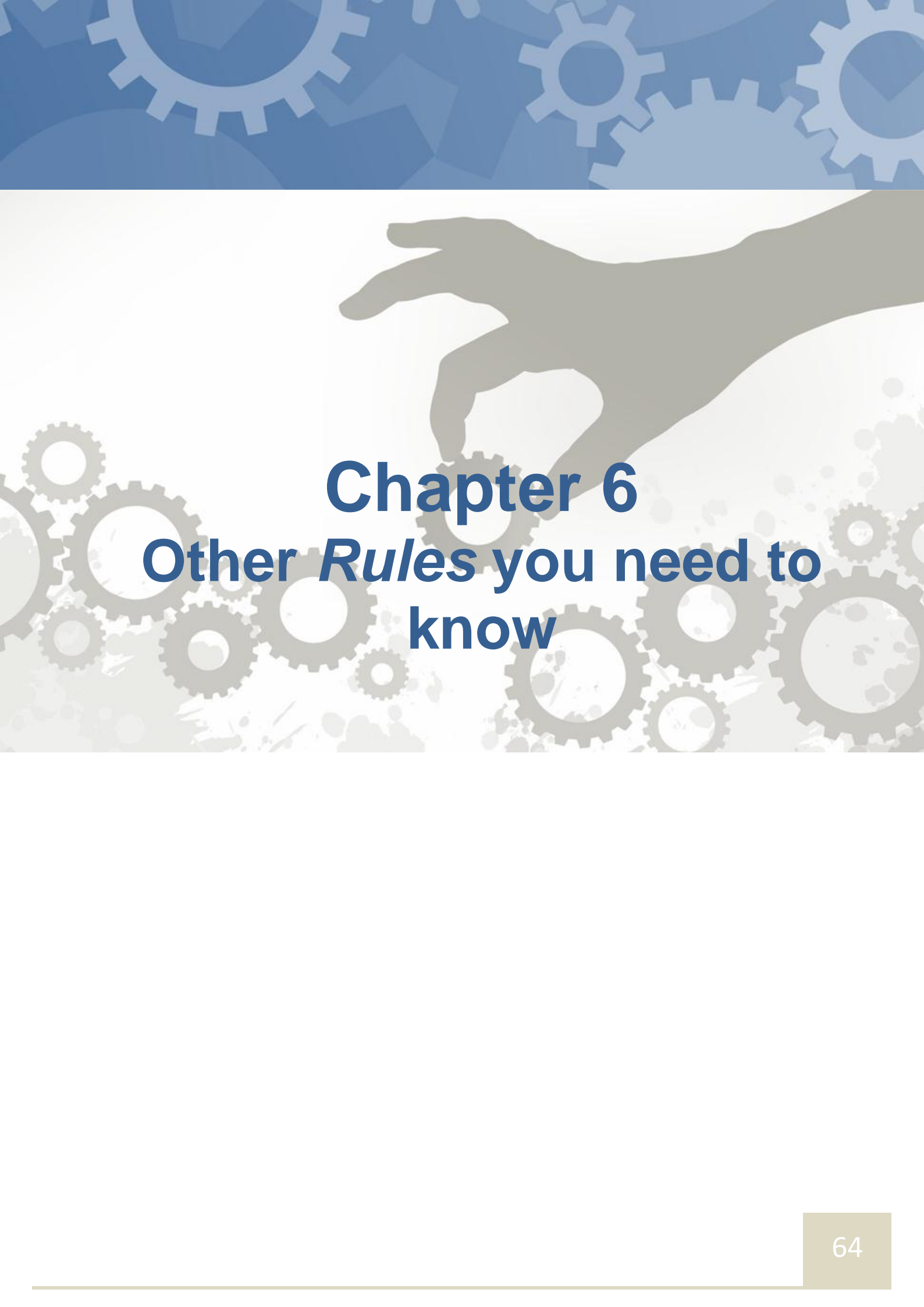
Fair evaluation of all *Panel Suppliers* and selection of the supplier who has the right capacity and capability to fulfil the opportunity and offers the best value for money, which isn't always the cheapest price, at the time of the purchase
  - d. rotation

Award opportunities to each supplier in turn regardless of their expertise, value for money, which isn't always the cheapest price, or delivery time
  - e. 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*
  - f. preferred supplier basis

Identify a preferred supplier from a *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*
  - g. location

Award opportunities to the supplier who is best able to deliver based on their location and the location of the work.

The background of the slide is a light beige color. At the top, there is a blue banner with a pattern of interlocking gears. Below this, a large, stylized grey hand is shown reaching down towards a cluster of grey gears. The text is centered over this gear cluster.

# **Chapter 6**

## **Other *Rules* you need to know**

There are other requirements that agencies must follow or take into account. These arise from Cabinet directions and legislation and are summarised below.

## Rule 55

### All-of-Government Contracts (AoGs)

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 (Chief Executive of MBIE) 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 purchasing from 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 which 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 MBIE's Government Procurement Branch.

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 56

### Syndicated Contracts

1. A *Syndicated Contract* (SC) is a type of approved collaborative contract. SCs typically involve a cluster of agencies aggregating their respective needs and collectively going to market for common goods, services or works. It may also involve an agency or agencies anticipating collaboration and including a *Common Use Provision* (CUP) clause within the resulting contract, that allows other agencies to contract with the supplier on the same terms later.
2. Agencies wishing to establish a SC with a CUP clause **must** first obtain approval from the Procurement Functional Leader (the Chief Executive of MBIE).
3. Before approaching the market, an agency **should** check if there is an existing SC which meets its needs.



For more information about *Syndicated Contracts* and the process of obtaining approval, see MBIE's *Guide to Syndicated Procurement*, at: [www.procurement.govt.nz](http://www.procurement.govt.nz)

# What are Functional Leaders?

The State Services Commissioner has appointed functional leaders (FLs) in the areas of procurement, government ICT and property management. These appointments provide leadership across agencies to develop expertise, secure efficiencies and improve services. The Procurement FL is the CE of MBIE. The ICT FL is the Government Chief Information officer (GCIO) at the Department of Internal Affairs. The Property Management FL is the CE of Ministry of Social Development.

## Rule 57

### Common Capability Contracts

1. A *Common Capability* (CC) contract is a type of approved collaborative contract. CCs establish various supply agreements with approved suppliers for selected common goods or services or works purchased across government. Agencies wishing to establish a CC **must** first obtain approval from the Procurement Functional Leader (the Chief Executive of MBIE).
2. There are two types of CC contracts:
  - a. mandatory CC contracts: an agency **must** purchase from these contracts where the contract reasonably meets the agency's needs. An agency that wants to opt-out of purchasing from this type of contract **must** get approval from the relevant Functional Leader (ie Procurement, Government ICT or Property Management Functional Leader), or the lead agency managing the contract.
  - b. voluntary CC contracts: an agency **should** purchase from these contracts where the contract 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.



#### 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.

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

**Further information** on the types of CC-ICT contracts available and how to purchase from them can be found at:

[www.procurement.govt.nz](http://www.procurement.govt.nz)



#### What's different about *Common Capability* collaborative contracts?

*Common Capability* contracts differ from *All-of-Government* and *Syndicated Contracts* because in a CC contract:

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



## Rule 58

### Web standards

1. If an agency 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.



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

## Rule 59

### Approved Government Model Templates

1. The Procurement Functional Leader (the Chief Executive of MBIE) 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 agencies and suppliers to do business.

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

An example of an A-GMT is the **Government Model Contract (GMC)**. In order to operationalise these templates, agencies must include them in their suite of contract templates and use them as the default templates for all low-value, low-risk common goods and services. For more information see: [www.procurement.govt.nz](http://www.procurement.govt.nz)

## Rule 60

### Geospatial information and services

1. If an agency intends to procure geospatial information or services, it **must** consult with the New Zealand Geospatial Office (NZGO) before approaching the market or publishing a *Notice of Procurement*.



The New Zealand Geospatial Office (NZGO) is part of Land Information New Zealand (LINZ) and is the coordinating body for implementing the New Zealand Geospatial Strategy.

You can read more about the New Zealand Geospatial Office (NZGO) at:

- [www.linz.govt.nz/geospatial-office](http://www.linz.govt.nz/geospatial-office)
- [www.procurement.govt.nz](http://www.procurement.govt.nz)

## Rule 61

# 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: [ict.govt.nz](http://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*, released by the (former) Ministry of Research, Science and Technology and available at: [www.procurement.govt.nz](http://www.procurement.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 anticipate new IP.

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 agencies 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.

## Rule 62

### Public Private Partnerships (PPPs)

1. A specialist unit has been established in the Treasury to oversee all *Public Private Partnerships* (PPPs) arrangements. The unit is called the *PPP Team*. If an agency is to undertake a capital project where the total estimated value over the whole-of-life of the contract is \$25 million or more it **must** assess alternative procurement options such as *PPP*.
2. Cabinet has agreed that if an agency wishes to undertake a PPP, then the agency:
  - a. **must** consult the *PPP Team* early in the development of the *PPP* proposal, and
  - b. **should** involve the *PPP Team* in the economic and financial assessment and advice on the *PPP*, and
  - c. **should** give the *PPP Team* the opportunity to make an experienced officer available to the project steering and working groups for the *PPP* project.



A **PPP** is a long-term contract for the delivery of a service, where the service involves the construction of a new asset or infrastructure (eg 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.

The role of the *PPP Team* at the Treasury is to support agencies undertaking *PPP* projects. It provides consistency across projects and maintains the government's integrity in how it implements these types of arrangements.

For more information on **PPPs** see: [www.infrastructure.govt.nz](http://www.infrastructure.govt.nz)

## Rule 63

### Capital business cases

1. Cabinet approval is required for certain capital expenditure, lease or asset disposal proposals from departments, Crown Agents or other Crown Entities. If an agency wants to undertake a capital asset project which meets one of more of the following criteria, it **must** consult with the Treasury and **must** use the Treasury's 'Better Business Cases' (BBC) methodology. The criteria are:
  - a. any project or programme that requires new Crown funding (regardless of the amount involved)
  - b. any department's or Crown Agent's project that is a potential *Public Private Partnership*
  - c. any department's project with a whole-of-life cost of \$25 million or more (regardless of the funding source)
  - d. any department's or Crown Agent's project identified as 'High Risk' as per the Gateway Risk Profile Assessment
  - e. any programmes or projects that involve asset disposals with significant policy decisions.



The primary objective of **Better Business Cases** (BBCs) is to enable better-informed decisions on public investments so they are well-placed to deliver the intended benefits for New Zealand, while managing the risks and costs.

The secondary objectives are to reduce the internal and external costs of developing business cases and improve the efficiency of the business case process, both in production and review, and to conform to recognised good practice.

For more information on **BBCs** visit: [www.infrastructure.govt.nz](http://www.infrastructure.govt.nz)



## Rule 64

### Gateway assurance

1. Gateway is an assurance review process for major investments. It examines programmes and projects at key decision points in their lifecycle to provide assurance that they can proceed successfully to the next stage. Gateway assurance is part of Treasury's Capital Asset Management regime and is managed by the State Services Commission. It is integrated with the Treasury's Better Business Cases process.
2. Agencies **must** complete a Gateway Risk Assessment Profile for any project or programme that would expose the government to significant fiscal or ownership risks if it were not delivered to specification, within budget and on time.



The primary objective of **Gateway reviews** is to provide independent, objective advice and guidance to project and programme sponsors at key decision points, to help ensure they are in the best position to proceed.

Gateway is **Cabinet mandated** for high-risk capital projects and programmes in departments and Crown Agents, irrespective of the size of the project or the funding source. Agencies determine whether a project or programme is high-risk by completing a Risk Assessment Profile available from [www.ssc.govt.nz](http://www.ssc.govt.nz). The Risk Assessment Profile is also used in the Better Business Cases process.

For more information on Gateway, see [www.ssc.govt.nz](http://www.ssc.govt.nz) or email [gatewayunit@ssc.govt.nz](mailto:gatewayunit@ssc.govt.nz)

## Rule 65

### 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.

Further information is available from the Ministry for Primary Industries at: [www.mpi.govt.nz](http://www.mpi.govt.nz)

## Rule 66

### 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 the 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 (eg 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.dol.govt.nz](http://www.dol.govt.nz)

## Rule 67

### Property Services Industry

1. Agencies **must** recognise the *Principles* for a Sustainable Property Services Industry in their procurement of property services.



These *Principles* aim to establish sustainable practices in the property services industry where clients receive and pay for good services, providers bid and win work based on fair contracting principles and reasonable reward and cleaners enjoy sufficient hours, fair pay and safe working conditions.

In particular, agencies **must** only contract with cleaning providers who are members of the Building Services Contractors Association of New Zealand.

To read the *Principles*, go to:

<http://www.sfwu.org.nz/files/PRINCIPLES%20FOR%20THE%20PROPERTY%20SERVICES%20INDUSTRY%20FINAL%20COPY.pdf>

# Definitions

This section defines words and phrases used in the *Rules*. Words or phrases in italics have a special meaning when used in the context of the *Rules*.

Word or phrase	Reference	Definition
<b>Agency</b>	<b>Rule 6</b>	A generic term used in the <i>Rules</i> to refer to New Zealand government entities across the Public Sector.
<b>Agreement on Government Procurement (GPA)</b>	<b>Page 4</b>	Commonly referred to as the Government Procurement Agreement. A World Trade Organization agreement that is a legally-binding treaty between participating countries. It is based on the principles of openness, transparency and non-discrimination. It sets out detailed rules for good procurement process.
<b>All-of-Government Contracts (AoG)</b>	<b>Rule 55</b>	<p>A type of collaborative contract that has been approved by the Procurement Functional Leader.</p> <p>AoGs are usually panel contracts established by the Ministry of Business, Innovation and Employment (MBIE) or other approved Centres of Expertise for common goods or services (eg vehicles, laptops, and recruitment services).</p>
<b>Allowable reduction</b>	<b>Rule 28</b> <b>Rule 31</b>	<p>An agency may reduce the <i>minimum time period</i> for tender response deadlines in three circumstances, namely if:</p> <ul style="list-style-type: none"> <li>• it has listed the contract opportunity in its <i>Annual Procurement Plan</i> not less than 2 months and not more than 8 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> </ul> <p>The number of <i>business days</i> for each <i>allowable reduction</i> are specified in the <i>Rules</i> (<i>Rule 31</i>).</p>
<b>Annual Procurement Plan (APP)</b>	<b>Rule 17</b>	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. Agencies must submit updated APPs to MBIE to publish every 6 months. APPs give suppliers a 'heads up' on anticipated government contract opportunities.
<b>Application to Qualify</b>	<b>Rule 53</b>	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.
<b>Approach to market</b>	<b>Chapter 3</b>	The formal process of giving notice to potential suppliers to participate in a contract opportunity inviting them to respond. An example of an approach to the market is a <i>Request for Tender</i> published on GETS.
<b>Business</b>	<b>Rule 25</b>	Any activity that is performed with the goal of running a business. For the private



<b>activities</b>		sector, these are activities associated with making a profit (eg operations, marketing, production or administration).
<b>Business case</b>	<b>Rule 19</b>	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
<b>Business day</b>	<b>Rule 29</b>	A day when New Zealand government agencies and suppliers are normally open. It excludes Saturdays, Sundays, New Zealand (national) public holidays and all days from Boxing Day up to and including the day after New Year's Day.
<b>Clear business day</b>	<b>Rule 29</b>	One full <i>business day</i> from 9am to 5pm.
<b>Closed competitive process</b>	<b>Rule 15</b>	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.
<b>Collusion</b>	<b>Rule 30</b>	A secret agreement or cooperation between two or more parties to cheat or deceive others by illegal, fraudulent or deceitful means.
<b>Commercially sensitive information</b>	<b>Rule 5</b>	Information that, if disclosed, could prejudice a supplier's commercial interests (eg trade secret, profit margin or new ideas).
<b>Commodity market</b>	<b>Rule 15</b>	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 (eg the London Metal Exchange and the Chicago Board of Trade).
<b>Common Capability contracts (CCs)</b>	<b>Rule 57</b>	<p>A type of collaborative contract that has been approved by the Procurement Functional Leader.</p> <p>CCs establish various supply agreements (eg for ICT goods or services purchased across government with approved suppliers).</p> <p><i>Common Capability</i> contracts differ from All-of-Government and Syndicated Contracts, because, in a CC contract:</p> <ul style="list-style-type: none"> <li>• in some instances, a private sector supplier may be authorised to purchase from a CC contract when it is acting on behalf of an agency (authorised agent)</li> <li>• in some voluntary CC contracts, the lead agency may charge a participating agency an admin fee or levy.</li> </ul>
<b>Competition</b>	<b>Rules 5 15 21</b>	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>Competitive Dialogue</b>	<b>Rule 31</b>	<p>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 <i>Request for Proposal</i> or <i>Request for Tender</i>.</p> <p>For more information refer to MBIE's <i>Guide to Competitive Dialogue</i>.</p>
<b>Conflict of interest</b>	<b>Rules 15 54</b>	<p>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.</p> <p>For more information refer to MBIE's <i>Quick Guide: Conflict of Interest</i></p>
<b>Contract opportunity</b>	<b>Rule 32</b>	An opportunity for suppliers to bid for a contract for goods, services or works.

<b>Deadline for responses</b>	<b>Rule 33</b>	The closing time and date for responses to a <i>Notice of Procurement</i> 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.
<b>Direct source</b>	<b>Rule 15</b>	A tender process where the agency asks a single supplier to tender for a contract opportunity, and the contract opportunity is not openly advertised.
<b>Discrimination</b>	<b>Rule 4</b>	Making an unfair and prejudicial judgement for or against a person or product.
<b>E-auction</b>	<b>Rule 42</b>	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>Education services</b>	<b>Rule 13</b>	A generic term for public education services provided by government that includes: <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>
<b>Emergency</b>	<b>Rule 15</b>	A sudden unforeseen catastrophe that results in injury, loss of life or critical damage to property or infrastructure. Examples include: <ul style="list-style-type: none"> <li>• natural disasters (eg earthquakes, cyclones, tsunamis or flooding)</li> <li>• critical infrastructure failures (eg a national power outage)</li> <li>• critical health emergencies (eg a pandemic)</li> <li>• political emergencies (eg a coup or civil insurrection)</li> <li>• security emergencies (eg a terrorist attack).</li> </ul>
<b>Evaluation criteria</b>	<b>Rule 35</b>	The criteria that are used to evaluate responses. These include measures to assess the extent to which competing responses meet requirements and expectations (eg criteria to shortlist suppliers following a Registration of Interest or criteria to rank responses in awarding the contract).
<b>Exemption from open advertising</b>	<b>Rule 15</b>	The recognised circumstances (eg a procurement in response to an emergency) where an agency does not need to openly advertise the contract opportunity.  An agency choosing not to advertise under this <i>Rule</i> must document the reason/s and publish a <i>Contract Award Notice</i> following the procurement.
<b>Financial year</b>	<b>Rule 16</b>	The New Zealand government's financial year, which is 1 July to 30 June.
<b>Framework Agreement</b>	<b>Rule 54</b>	Usually used in relation to <i>Panel Contracts</i> . It is the umbrella agreement that governs the relationship between the agency and each <i>Panel Supplier</i> . It sets out the terms and conditions (including pricing) that the parties agree to contract on in the event that the <i>Panel Supplier</i> is allocated a contract.  It is not usually a contract, but an 'in-principle' agreement. Parties only contract once a specific deliverable is determined. Parties then enter into a separate contract, that refers to the terms and conditions contained in the <i>Framework Agreement</i> .
<b>Free Trade Agreement (FTA)</b>	<b>Page 4</b>	A trade treaty between two or more countries. Usually these agreements aim to improve access to markets and remove barriers to trade.
<b>Gateway</b>	<b>Rule 64</b>	A strategic-level peer review of a procurement project carried out at critical points of

<b>assurance</b>		the project's development by a team of experienced people who are independent of the project (selected by the State Services Commission). These critical points are called 'gates'. Gateway Assurance is Cabinet mandated for high-risk capital projects in departments and Crown Agents.
<b>Geospatial information</b>	<b>Rule 60</b>	Information about the relative position of things on the earth's surface.
<b>GETS</b>		An acronym for Government Electronic Tenders Service. GETS is a website managed by the New Zealand Government. 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 is made freely available through GETS.
<b>GETS Listing</b>	<b>Rule 33</b>	<p>The summary of a contract opportunity that is published on GETS. It includes key information such as the:</p> <ul style="list-style-type: none"> <li>• name of the buying agency</li> <li>• approach to market process that will be used (eg Request for Proposals)</li> <li>• deadline for responses</li> <li>• address for any enquiries.</li> </ul>
<b>Goods</b>	<b>Rules 7 8</b>	Items which are capable of being owned. This includes physical goods and personal property as well as intangible property such as Intellectual Property (eg a software product).
<b>Government departments</b>	<b>Rule 6</b>	<p>The core New Zealand government departments and ministries listed in Schedule 1, State Sector Act 1988 (Public Service) and non-Public Service departments (New Zealand Defence Force, New Zealand Police, New Zealand Security Intelligence Service, Parliamentary Counsel Office, Office of the Clerk of the House of Representatives and Parliamentary Services).</p> <p>See State Services Commission's list of departments at: <a href="http://www.ssc.govt.nz">www.ssc.govt.nz</a></p>
<b>Government's central financial control functions</b>	<b>Rule 13</b>	<p>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.</p> <p>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 the Treasury.</p> <p>Ordinary commercial banking and financial services are not covered by this definition and are not valid opt-out procurements.</p>
<b>GPA</b>	<b>Page 4</b>	The World Trade Organization's <i>Agreement on Government Procurement</i> commonly referred to as the Government Procurement Agreement (GPA).
<b>Grant</b>	<b>Rules 12 13</b>	<p>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.</p> <p>It can be either:</p> <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>
<b>GST</b>	<b>Rule 9</b>	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.

<b>Guidance</b>	<b>Page 5</b>	A generic name for a range of New Zealand government good procurement practice guides, tools and templates. These can be found at: <a href="https://procurement.govt.nz">procurement.govt.nz</a>
<b>Health services</b>	<b>Rule 13</b>	<p>A generic term for public health services provided by government that includes:</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 hygienics, etc. Physiotherapy and para-medical services ie services in the field of physiotherapy, ergotherapy, occupational therapy, speech therapy, homeopathy, acupuncture, nutrition instructions, etc.</li> </ul>
<b>Invitation To Qualify</b>	<b>Rule 53</b>	<p>An invitation to suppliers, published on GETS, to apply to be included in an agency's <i>Pre-Qualified Supplier List</i>.</p> <p>The invitation details the criteria each supplier must meet to be included in the list and explains how the agency will check each supplier meets those criteria.</p>
<b>Invitation To Register</b>	<b>Rule 52</b>	An invitation to suppliers published on GETS, to register their interest in supplying a specific type of good or service. Suppliers who register their interest are included in a Registered Suppliers List.
<b>Maximum total estimated value</b>	<b>Rule 9</b>	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.
<b>Minimum time periods</b>	<b>Rules 27 31</b>	The least amount of time, set by the <i>Rules</i> , that an agency must allow suppliers to respond to a particular contract opportunity.
<b>Multi-step process</b>	<b>Rule 31</b>	A procurement process with more than one step, (eg a <i>Registration of Interest</i> followed by the <i>Request for Proposals</i> ).
<b>New construction works</b>	<b>Rule 8</b>	<p>In the context of the <i>Rules</i>, the term relates to goods and services associated with delivering new civil or building construction works. This means buildings, roads, bridges and dams. It covers new build and replacement of an existing construction. 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. ie 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</li> </ul>

		<p>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</p> <ul style="list-style-type: none"> <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 (eg electrical wiring, water, heat, sound), fencing and railing construction work, other installation work (eg installation of lifts and escalators and moving sidewalk), fire escape equipment and construction work (eg staircases)</li> <li>• building completion and finishing or 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 (eg 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>
<b>Notice of Procurement</b>	<b>Rules 34 35</b>	The document published on GETS that advertises a new contract opportunity (eg a <i>Registration of Interest</i> or a <i>Request for Tender</i> ). It sets out all the information that suppliers need in order to prepare and submit a meaningful response.
<b>Official Information Act 1982</b>	<b>Rule 5</b>	A New Zealand law that sets out the information that government must make freely available to the New Zealand public.
<b>Offset</b>	<b>Rule 3</b>	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 by requiring or encouraging suppliers to purchase national products.
<b>Open advertising</b>	<b>Rule 14</b>	Publishing a contract opportunity on GETS and inviting all interested domestic and international suppliers to participate in the procurement.
<b>Opt-out procurements</b>	<b>Rule 13</b>	Specific types of procurement activities where applying the <i>Rules</i> is optional.
<b>Other tender documents</b>	<b>Rule 36</b>	Any documents that provide suppliers with additional information about a procurement. These can be attached as appendix to the <i>Notice of Procurement</i> or be standalone documents.
<b>Panel of Suppliers</b>	<b>Rule 54</b>	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.
<b>Panel Supplier</b>	<b>Rule 54</b>	A supplier included in a <i>Panel of Suppliers</i> .
<b>Pre-conditions</b>	<b>Rule 25</b>	A condition that a supplier must meet to be considered for a particular contract opportunity.
<b>Pre-qualified Supplier</b>	<b>Rule 53</b>	A supplier included in a <i>Pre-qualified Suppliers List</i> .
<b>Pre-qualified Suppliers List</b>	<b>Rule 53</b>	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 GPA's 'multi-use list'.
<b>Principles</b>	<b>Rule 1</b>	<p>Short for the <i>Principles of Government Procurement</i>. The five <i>Principles</i> are:</p> <ul style="list-style-type: none"> <li>• plan and manage for great results</li> <li>• be fair to all suppliers</li> </ul>



		<ul style="list-style-type: none"> <li>• get the right supplier</li> <li>• get the best deal for everyone</li> <li>• play by the rules.</li> </ul>
<b>Procurement</b>		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.
<b>Procurement Functional Leader</b>	<b>Page i</b> <b>Rules 55 56</b> <b>57 59</b>	The Chief Executive of the Ministry of Business, Innovation and Employment has been appointed by the Commissioner for State Services as the Functional Leader for procurement activities across government.
<b>Procurement Guidance</b>	<b>Page 5</b>	see ' <i>Guidance</i> '
<b>Procurement plan</b>	<b>Rule 17</b>	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.
<b>Prototype</b>	<b>Rule 15</b>	An early sample or model built to test a concept or process.
<b>Public Sector</b>	<b>Rule 6</b>	<p>This is sometimes referred to as the fourth 'tier' of government. It includes Public Service agencies (departments), agencies in the wider State Services, State Sector and Public Sector (ie local government - Regional Councils and Territorial Authorities).</p> <p>Reference State Services Commission list at: <a href="http://www.ssc.govt.nz">www.ssc.govt.nz</a></p>
<b>Public Service</b>	<b>Rule 6</b>	<p>Core government agencies which comprises New Zealand government department listed in Schedule 1, State Sector Act 1988. This is sometimes referred to as the first 'tier' of government.</p> <p>Reference State Services Commission list of departments at: <a href="http://www.ssc.govt.nz">www.ssc.govt.nz</a></p>
<b>Public Private Partnerships (PPPs)</b>	<b>Rule 62</b>	A long-term contract for the delivery of a service, that involves the building a new asset or infrastructure (eg 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.
<b>Refurbishment works</b>	<b>Rule 7</b>	<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. <i>Refurbishment works</i> cover renovating, repairing or extending an existing construction.</p> <p><i>Refurbishment works</i> does not include replacing a construction. That is deemed to be <i>new construction works</i>.</p>
<b>Registered Supplier</b>	<b>Rule 52</b>	A supplier included in a <i>Registered Suppliers List</i> .
<b>Registered Suppliers List</b>	<b>Rule 52</b>	A list of suppliers who have registered an interest in supplying specific types of goods, services or works to an agency.
<b>Registration of interest (ROI)</b>	<b>Rule 31</b>	<p>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>

		It's usually the first formal stage of a multi-step tender process.
<b>Request for information (RFI)</b>	<b>Rule 31</b>	<p>A market research tool. A formal request from an agency to the market asking for information to get an idea of 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 <i>Notice of Procurement</i>. It must not be used to select or shortlist suppliers.</p>
<b>Request for proposal (RFP)</b>	<b>Rule 31</b>	<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>
<b>Request for quote (RFQ)</b>	<b>Rule 31</b>	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.
<b>Request for tender (RFT)</b>	<b>Rule 31</b>	<p>A formal request from an agency asking for offers from potential suppliers to supply clearly defined goods or services or works.</p> <p>Often there are highly-technical requirements and a prescriptive solution.</p>
<b>Response</b>	<b>Rules 28 33</b>	<p>A supplier's reply to a <i>Notice of Procurement</i>. Examples include:</p> <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 <i>Pre-qualified Supplier</i>.</li> </ul>
<b>Rules</b>		A short name for <i>Government Rules of Sourcing</i> .
<b>Services</b>	<b>Rule 7</b>	<p>Acts or work performed for another party such as accounting, legal services, cleaning, consultancy, training, medical treatment, or transportation.</p> <p>Sometimes services are difficult to identify because they are closely associated with a good (eg where medicine is administered as a result of a diagnosis). No transfer of possession or ownership takes place when services are sold, and they:</p> <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>
<b>Sourcing</b>	<b>Context</b>	The parts of the procurement lifecycle that relate to planning, market research, approaching the market, evaluating responses, negotiating and contracting.
<b>Standing Offer</b>	<b>Rule 54</b>	See <i>Framework Agreement</i>
<b>State Sector</b>	<b>Rule 6</b>	<p>This is sometimes referred to as the third 'tier' of government. It includes Public Service agencies (departments), agencies in the wider State Services and agencies in the wider State Sector (eg Offices of Parliament, Crown Entities, Tertiary Education Institutes and State Owned Enterprises).</p> <p>See State Services Commission list at: <a href="http://www.ssc.govt.nz">www.ssc.govt.nz</a></p>
<b>State Services</b>	<b>Rule 6</b>	<p>This is sometimes referred to as the second 'tier' of government. It includes Public Service agencies (departments) and agencies in the wider State Services (eg Crown Agents, Crown Entities and School Boards of Trustees).</p> <p>See State Services Commission list at: <a href="http://www.ssc.govt.nz">www.ssc.govt.nz</a></p>
<b>Strategic Procurement</b>	<b>Rule 16</b>	A high-level summary of an agency's purpose and goals and how this relates to its

<b>Outlook</b>		regular procurement activities.
<b>Sufficient Time</b>	<b>Rule 26</b>	<p>The necessary time a government agency must give suppliers to respond to a <i>Notice of Procurement</i>, 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>
<b>Supplier</b>		A person, business, company or organisation that supplies or can supply goods or services or works to an agency.
<b>Supplier debrief</b>	<b>Rule 46</b>	<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 <i>pre-conditions</i></li> <li>• the reasons the successful proposal won the contract</li> <li>• anything else the supplier has questioned.</li> </ul>
<b>Syndicated Contracts (SCs)</b>	<b>Rule 56</b>	<p>A type of collaborative contract that has been approved by the Procurement Functional Leader.</p> <p>SCs typically involve a 'cluster' of agencies aggregating their needs and collectively going to market for common goods, services or works. It may also involve an agency or agencies anticipating collaboration and including a Common Use Provision (CUP) clause within the resulting contract, to allow other agencies to contract with the supplier on the same terms later.</p>
<b>Technical specifications</b>	<b>Rule 24</b>	<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>
<b>Tender Watch Code/s</b>	<b>Rule 33</b>	GETS classifies goods, services and works according to a standard code. This is the Australian and New Zealand Standard Commodity Classification (ANZSCC). You can find these codes at: <a href="http://www.gets.govt.nz">www.gets.govt.nz</a>
<b>The Crown</b>		Short for 'Her Majesty in Right of New Zealand'. The Crown is the source of executive, judicial and legislative power in New Zealand.
<b>Third party agent</b>	<b>Rule 20</b>	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 Rules of Sourcing.
<b>Total cost of ownership (TCO)</b>	<b>Page 3</b>	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 they agency will incur (eg installation and training, operating and maintenance costs, repairs, decommissioning and cost 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.
<b>Unsolicited unique proposal</b>	<b>Rule 15</b>	<p>An approach initiated by a supplier proposing a unique solution which is not available in the market place.</p> <p>For more information see MBIE's 'Guide to unsolicited unique proposals'.</p>
<b>Value for money</b>	<b>Page 3</b>	Value for money is not always the cheapest price. It is the best available outcome for

	<b>Rules 4 13 43</b>	<p>the money spent. It means using resources effectively, economically, and without waste, and taking into account:</p> <ul style="list-style-type: none"> <li>• the total costs and benefits of a procurement (total cost of ownership), and</li> <li>• the procurement's contribution to the results you are trying to achieve.</li> </ul> <p>The principle of Value for Money when procuring goods, services or works does not necessarily 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 value for money.</p>
<b>Value threshold</b>	<b>Rule 7 8 9</b>	The minimum NZ\$ value at which the <i>Rules</i> apply to a particular procurement type. It excludes GST.
<b>Welfare Services</b>	<b>Rule 13</b>	<p>A generic term for public welfare services provided by government which includes:</p> <ul style="list-style-type: none"> <li>• social services, including residential and non-residential welfare services to the old, handicapped, children and other social assistance clients</li> <li>• compulsory social security services (administration of benefits).</li> </ul>
<b>Works</b>	<b>Rules 7 8</b>	A generic term which covers <i>new construction works</i> for a new build or <i>refurbishment works</i> to an existing construction.
<b>World Trade Organization (WTO)</b>	<b>Page 4</b>	An international organisation that deals with the global rules of trade between nations.