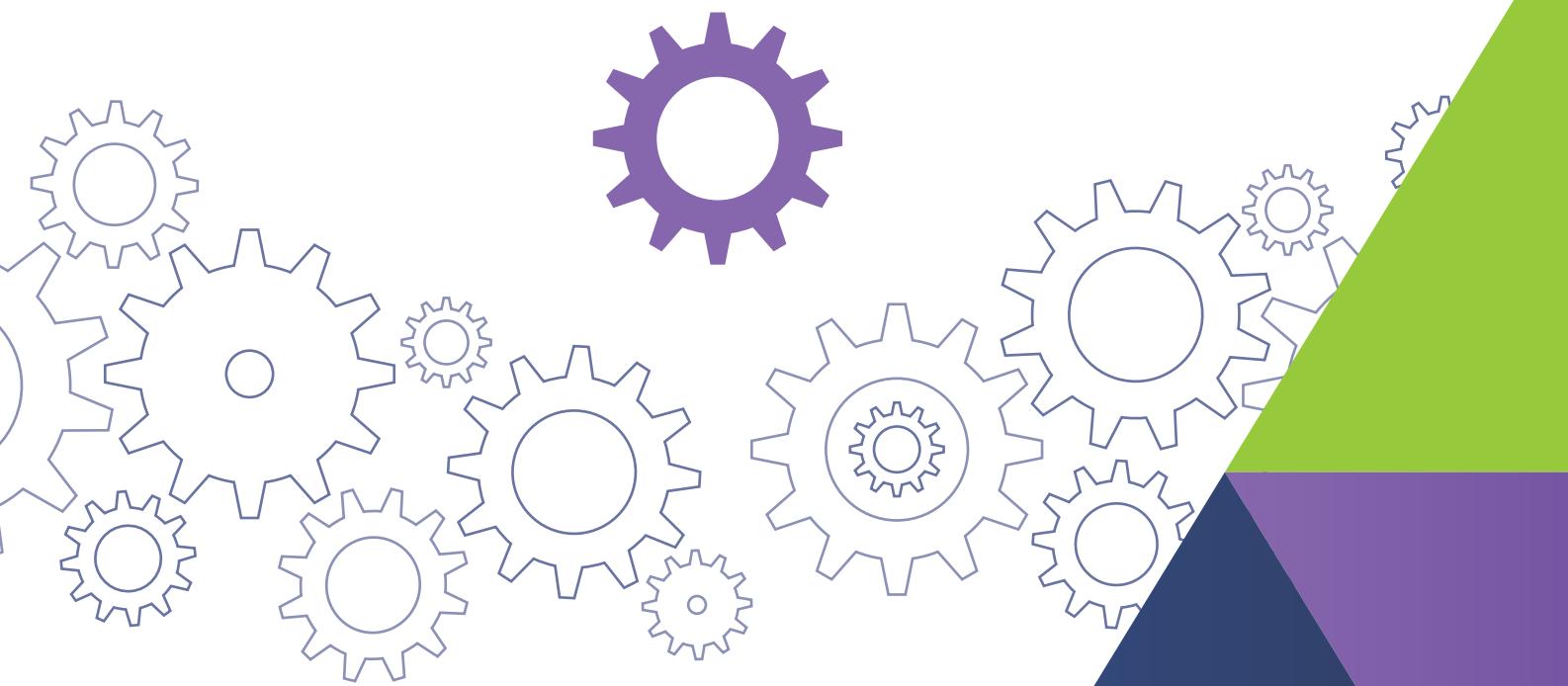


NEW ZEALAND
GOVERNMENT PROCUREMENT

Government Rules of Sourcing

Rules for planning your procurement,
approaching the market and contracting



MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

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New Zealand Government Procurement Branch | Ministry of Business Innovation & Employment (MBIE)
PO Box 1473, Wellington 6140, New Zealand

www.mbie.govt.nz | www.procurement.govt.nz

New Zealand Government

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Foreword

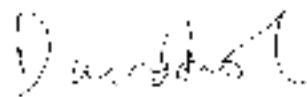
As Procurement Functional Leader, I am pleased to introduce the Government Rules of Sourcing. The Rules represent the government's standards of good practice for the sourcing stages of the procurement lifecycle.

Government agencies spend billions every year buying goods and services from third-party suppliers and providers, accounting for around 18% of New Zealand's GDP. These goods and services are often critical to our country's economic and social well-being. Effective procurement helps us deliver better public services and realise value for money.

The Rules give us the foundations. By applying them 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.

Government procurement can also contribute to economic growth. By seeking continual improvement and innovation, we can help those who win contracts become more competitive in international markets, increasing exports and supporting New Zealand's economic growth.

The Rules make it easier for suppliers and providers to learn about contract opportunities, and introduce consistent, principled practices across government so that they can get on with delivering effective solutions.



David Smol
Chief Executive

Context

What are the Rules?

The *Government Rules of Sourcing* are the government's standards of good practice for government procurement. They are the paragraphs numbered 1 to 66, in Chapters 1 to 6 of this document, and include the definitions in Chapter 7.

The *Rules* must be read along with the *Principles of Government Procurement* and other good practice *Guidance*. You can read more about these at: www.procurement.govt.nz

Editions

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

The second edition of the *Rules* came into effect on 26 May 2014, to reflect Cabinet's decision to rescind Rule 67. This rule required agencies to source cleaning services only from members of the Building Services Contractors Association.

The third edition resulted from a general review in October 2014. It includes minor changes to provide greater clarity and reflects the following policy decisions:

- › extending the mandatory application of the *Rules* to a wider range of agencies (Rule 6)
- › applying certain *Rules* to opt-out procurements (Rule 13)
- › extending the opt-out for procurement between departments to a wider range of agencies (Rule 13)
- › making it clear that, when a government agency is using weighted evaluation criteria to select a supplier, it must include the weightings in its *Notice of Procurement* (Rule 35)

The third edition has been approved by the Ministers of Finance and State Services and was endorsed by Cabinet on 30 March 2015. It applies from 1 July 2015.

Focus on sourcing

The term 'procurement' covers all aspects of acquiring and delivering goods, services and works (*refurbishment and new construction*). It starts with identifying the need and finishes with either the end of a service contract or the end of the useful life and disposal of the asset. This is called the procurement lifecycle. The MBIE *Guide to Mastering Procurement* explains the 8 stages of the procurement lifecycle. It is available at: www.procurement.govt.nz

The *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, and negotiating and awarding the contract.

Purpose

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

The *Rules* are mandatory for the agencies listed in Rules 6.1 and 6.2. For these agencies, where the *Rules* use the term **must**, the Rule is compulsory and non-compliance is a breach of the *Rules*. Where the *Rules* use the term **should**, this indicates good practice. Agencies referred to in Rule 6.3 must apply the Rules relevant to the commitments contained in, and the procurement covered under, the *WTO Agreement on Government Procurement* and other free trade agreements. A range of mechanisms are used to bind agencies to applying the Rules. An example is a Whole of Government Direction under s107 of the Crown Entities Act 2004.

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

Other agencies in the wider public sector are expected or encouraged to apply the *Rules* as good practice (see Rules 6.4 and 6.5). These agencies can interpret **must** as **should**.

How to use the *Rules*

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

Before you choose a procurement process, make sure you understand the nature of the market for the goods, services or works you need and the best way to source your requirements, then consider how the *Rules* apply.

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

Icons

The following icons are used to show supplementary information.



more information



definitions



guides, tools and templates



examples

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

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

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

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

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

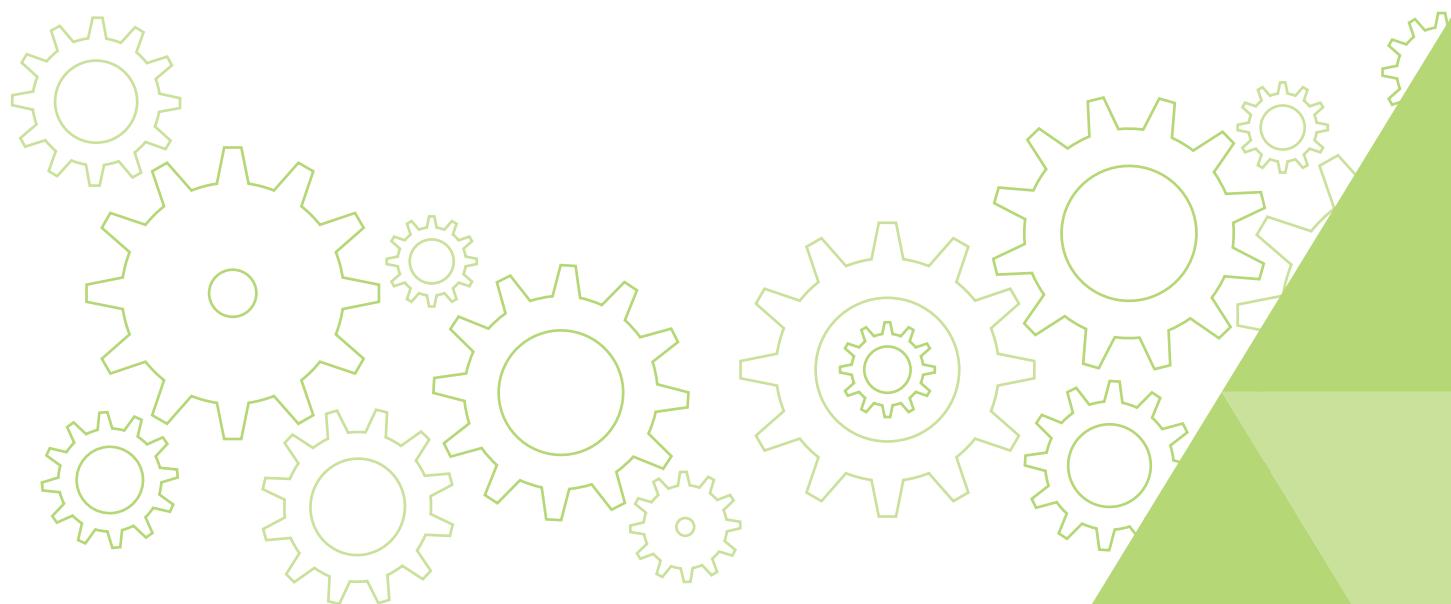
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1.

Getting started



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 other good practice guidance such as 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 relevant law, including the common law of contract, public law and commercial law obligations.



Managing risks – health and safety

Agencies 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.mbie.govt.nz



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

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

- › Crown Entities Act 2004
- › New Zealand Public Health and Disability Act 2000
- › Land Transport Management Act 2003

Example of **public law case**:

- › Diagnostic MedLab Ltd v Auckland District Health Board

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?).

To build high-performing public services

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

What is 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 has a level of detail reflecting the size, value and complexity of the procurement.

Procurement also covers proactively managing supplier and other key stakeholder relationships throughout the sourcing process and for the duration of the contract. This 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



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

- › Office of the Auditor-General's *Procurement guidance for public entities* www.oag.govt.nz
- › MBIE's *Mastering procurement* guide 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.

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*
 - 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 the Office of the Auditor-General (2000) www.oag.govt.nz
- › *Better capital planning and decision making: Quick reference guide* by the National Infrastructure Unit www.infrastructure.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.

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*!

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* to which suppliers have consented by participating in the process.



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

- › the design and content of a tender
- › trade secrets and 'know how'
- › new ideas
- › innovative solutions
- › 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*.

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
 - d. *State Services* agencies covered by the *Whole of Government Direction*. A list of these agencies is available at: www.procurement.govt.nz
2. *Crown Research Institutes* **must** have regard to the *Rules*.
3. Certain agencies not listed in Rules 6.1 and 6.2 are bound to meet the requirements of the *WTO Agreement on Government Procurement* or other free trade agreements. For these agencies, only those *Rules* relevant to the commitments made, and procurement covered by, those agreements will apply. A list of these agencies is available at: www.procurement.govt.nz
4. The agencies identified in Rules 6.1 and 6.2 may be audited for compliance with the *Rules* (eg by the Auditor-General under the Public Audit Act 2001).

Good practice guidance only

5. School Boards of Trustees, *Public Finance Act Schedule 4 organisations*, and the Reserve Bank of New Zealand are expected to have regard to the *Rules* as good practice guidance.
6. Wider *State Sector* and *Public Sector* agencies are encouraged to have regard to the *Rules* as good practice guidance.
7. In applying the *Rules* as good practice guidance, the agencies identified in Rules 6.4 and 6.5 are to interpret all '**must**' *Rules* as '**should**' *Rules*.

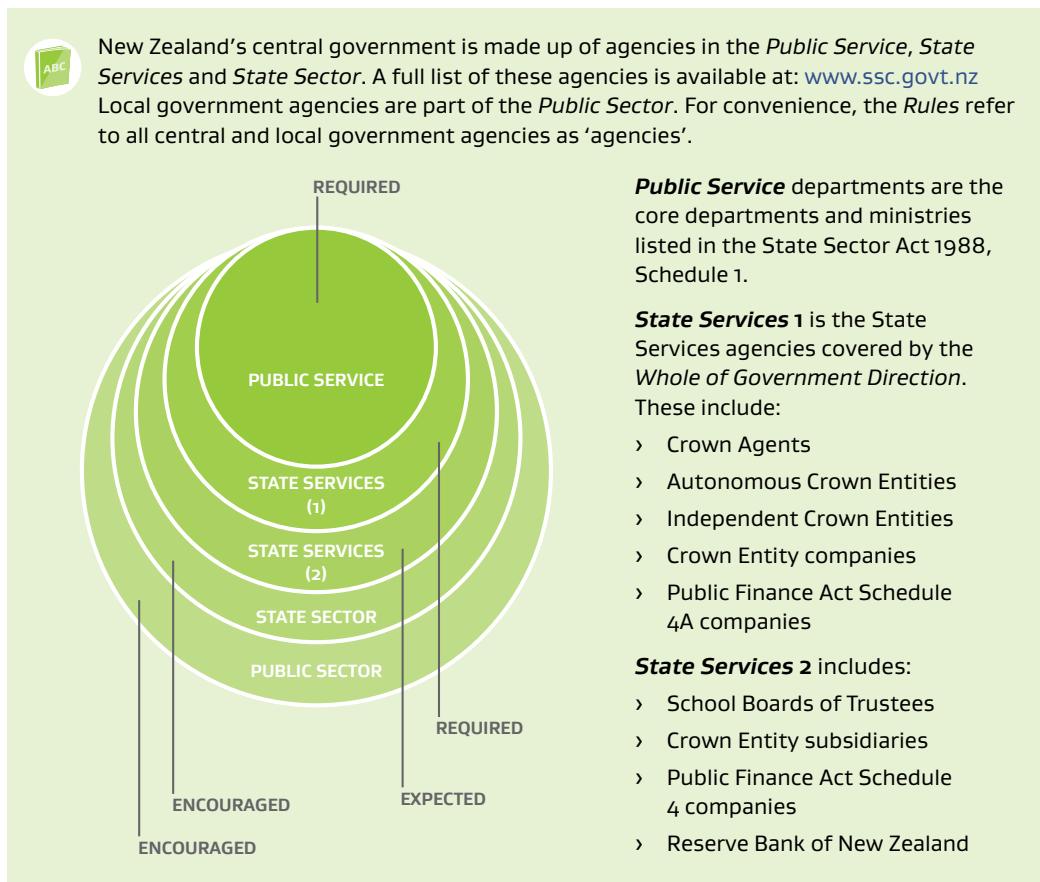


Whole of Government Direction

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



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



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

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

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

State Services 2 includes:

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

RULE 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, and 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** relates 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.

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 it has built.

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.



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.

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. *Public Private Partnerships*
 - 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.

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. Core Crown Legal Matters.



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

Statutory appointments include appointments made by warrant from the Governor General under the Letters Patent, eg Crown Solicitors.

Ministerial appointments cover government board appointments made 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.

Core Crown Legal Matters are defined in Cabinet's *directions for the conduct of Crown legal business* 2012 (reference: Cabinet Office Circular CLO (12) 8). These are published in the Cabinet Manual.

Public Service departments must refer all their requirements for external legal services relating to Core Crown Legal Matters to the Solicitor-General. These matters are usually dealt with by the Crown Law Office.

RULE 13

Opt-out procurements

1. In certain circumstances, when a procurement is covered by the *Rules* (meets the requirements of Rules 6 and 7 or Rules 6 and 8), an agency can opt-out of applying all Rules to that procurement, except those listed in Rule 13.4 and 13.5. These circumstances are listed in Rule 13.3 and are called *opt-out procurements*.
2. When doing an *opt-out procurement*, an agency **should** still conduct its procurement according to the *Principles* and other procurement good practice *guidance*. It **should** also achieve the best value for money over the life of the contract, which isn't always the cheapest price.
3. The following is the list of valid *opt-out procurements*:
 - a. **Between government agencies:** Any of the following agencies can purchase goods, services or works from each other:
 - i. *Public Service* departments
 - ii. New Zealand Police
 - iii. New Zealand Defence Force
 - iv. agencies covered by the *Whole of Government Direction* (Rule 6.1)
 - v. *Crown Research Institutes*.However, if the purchasing agency chooses to use an open competitive process it **must** apply the *Rules*.
 - b. **Overseas:** Goods, services or works purchased outside of New Zealand for use outside of New Zealand.



Opt-out decisions

The opt-out Rule allows the government flexibility in the way it sources goods services or works in certain situations. Agencies should always consider their options and use good judgement to decide whether or not opting out of the *Rules* is the best way to meet their needs.

Agencies should always keep a record of their decision and the reasons for it.

- 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 *new 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.
- 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*.



Procurement between government agencies

Rule 13.3.a does not mean a listed agency can purchase goods, services or works under a contract that another listed agency has awarded to a third party supplier.



Conditional grants - for information about these, read the Auditor General's guide *Public sector purchases, grants, and gifts: Managing funding arrangements with external parties*, at: www.oag.govt.nz

RULE 13 CONTINUED

Opt-out procurements

3. Valid *opt-out procurements* continued:
- i. **International organisation:** Any procurement conducted under a procedure required by an international organisation or funded by an international grant, loan or other assistance that is inconsistent with the *Rules*.
 - j. **International agreements between countries:** Agreements between countries for the joint implementation of a project.
 - k. **Public services:** The provision of certain types of *health services, education services and welfare services*. See Chapter 7 *Definitions* for more information.
 - l. **Government's central financial control functions:** Central banking control functions on behalf of government such as those carried out by the Reserve Bank, and Crown debt management functions such as those carried out by the Treasury. See Chapter 7 *Definitions* for more information.
 - m. **Military and essential security interests:** Measures necessary for the protection of essential security interests, procurement indispensable for national security or for national defence, the maintenance or restoration of international peace or security, or to protect human health, including:
 - i. procurement of arms, ammunition or war materials
 - ii. stationing military or implementing a joint military project under an international agreement (eg a peace-keeping deployment)
 - iii. a measure to protect: public morals, order or safety; human, animal or plant life or health; intellectual property; or relating to goods, services or works of persons with disabilities, philanthropic or not-for-profit institutions, and prison labour.

4. The following *Rules* apply to all *opt-out procurements*:
 - a. Rule 5 *Protection of suppliers' information*
 - b. Rule 47 *Supplier complaints*
 - c. Rule 48 *Prompt payment*
 - d. Rule 49 *Maintaining records*
 - e. Rule 50 *Audit*.
5. The following *Rules* apply to *opt-out procurements* when relevant:
 - a. Rule 46 *Debriefing suppliers* (if the agency has used a competitive process)
 - b. Rule 55 *All-of-Government Contracts*
 - c. Rule 56 *Syndicated Contracts*
 - d. Rule 57 *Common Capability Contracts*
 - e. Rule 60 *Geospatial information and services*
 - f. Rule 61 *Intellectual Property*
 - g. Rule 62 *Public Private Partnerships*
 - h. Rule 63 *Business Cases and Investment Decisions*
 - i. Rule 64 *Investment Reviews*
 - j. Rule 65 *Timber and wood products*
 - k. Rule 66 *Employee transfer costs*.

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



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

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.

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.



Closed competitive and direct source

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

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

If an *exemption from open advertising* applies, 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.

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*, except when doing *secondary procurement* (Rule 15.9.i).

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.

Emergency



Read the *Quick guide to emergency procurement* at: www.procurement.govt.nz



Read more about **collusion and bid rigging** in the Commerce Commission's guidelines *How to recognise bid rigging* and *How to deter bid rigging* at: 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

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 be supplied by only one supplier and there is no reasonable alternative or substitute because:
 - i. for technical reasons there is no real competition, or
 - ii. the procurement relates to the acquisition of intellectual property or rights to intellectual property (including patents or copyrights), or other exclusive rights, or
 - iii. the procurement is for a work of art.
- d. **Additional goods, services or works:** Goods, services or works additional to the original requirements that are necessary for complete delivery. This Rule applies where all three of the following conditions are met:
 - i. the original contract was openly advertised, and
 - ii. a change of supplier cannot be made for economic or technical reasons, and
 - iii. a change of supplier would cause significant inconvenience or substantial duplication of costs for the agency.

eg

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

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

eg

A **technical reason** could be:

- › a need to match with existing equipment, software or services
- › where an agency has a bespoke IT system that was custom-designed for it and only the supplier that designed it fully understands the code base
- › where one supplier has, over a period of time, developed such an intimate knowledge of an outdated or complex system that the agency can reasonably claim that other suppliers would not have a similar level of readily available knowledge
- › where a spare part or component is only available from one supplier
- › where only one supplier has essential, highly specialised expertise, technology, qualifications or skills, eg an internationally recognised expert doing cutting edge work in a field of science or medicine.

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:

- e. **Prototype:** Purchasing a prototype for research, experiment, study or original development. Original development may include a limited production or supply if this is necessary to:
 - i. carry out field tests and incorporate the findings, or
 - ii. prove that the good or service or works can be produced or supplied in large numbers to an agreed quality standard.

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

- f. **Commodity market:** Goods purchased on a commodity market.
- g. **Exceptionally advantageous conditions:** For purchases made in exceptionally advantageous conditions that only arise in the very short term. This exemption does not cover routine purchases from regular suppliers.
- h. **Design contest:** Where a contract is awarded to the winner of a design contest. To meet this exemption:
 - i. the design contest **must** have been organised in a manner which is consistent with the *Rules*, and
 - ii. the contest **must** be judged by a panel whose members understand that the winner will be awarded a contract, and
 - iii. members of the panel do not have any conflict of interest in carrying out the judging of the contest.
- i. **Secondary procurement:** Where an agency has established a *Panel of Suppliers* (in accordance with Rule 54) or is purchasing under an *All-of-Government Contract* (Rule 55), *Syndicated Contract*

(Rule 56) or *Common Capability Contract* (Rule 57), it does not need to openly advertise individual contract opportunities that are awarded through that arrangement.

- 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.



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



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



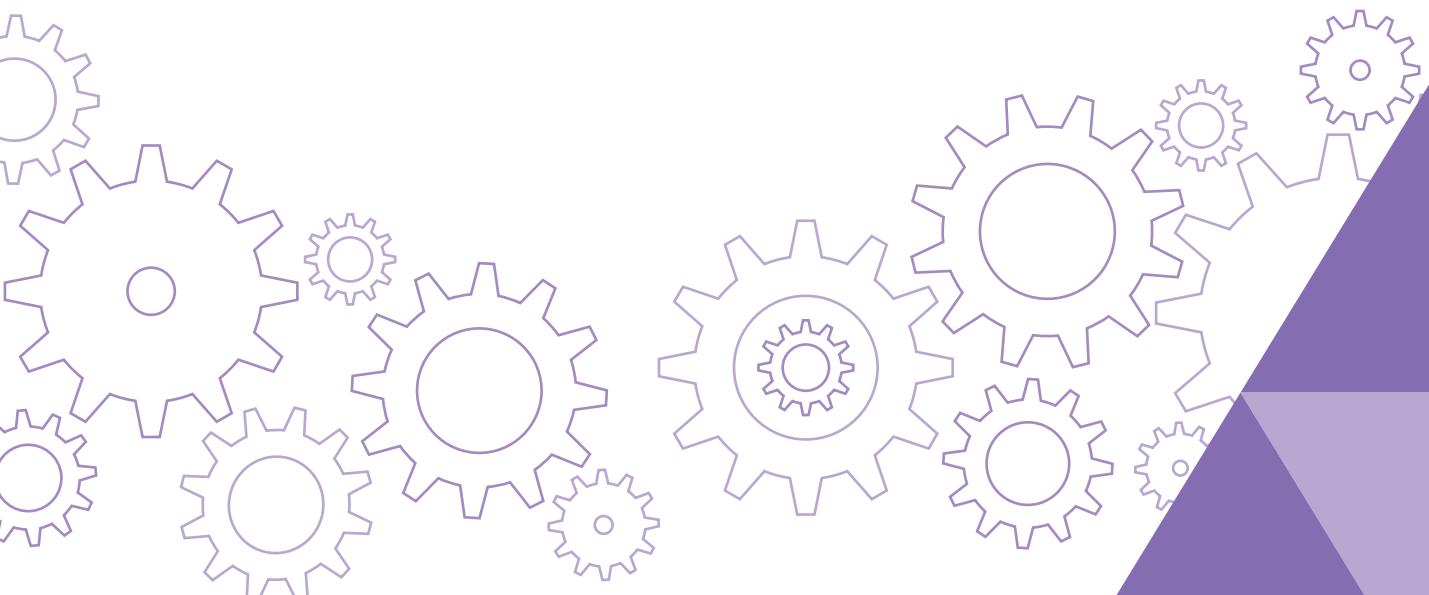
Exceptionally advantageous conditions include a one-time event such as a sale by public auction or a sale resulting from liquidation, bankruptcy or receivership.



An **unsolicited unique proposal** is an approach initiated by a supplier proposing a unique solution which is not available in the market place. Read more in MBIE's *Guide to unsolicited unique proposals* at: www.procurement.govt.nz

2.

Planning your procurement



RULE 16

Strategic Procurement Outlooks

[Rule 16 was rescinded by Cabinet on 30/03/2015]



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

If an agency is doing *secondary procurement* (purchasing from an existing panel contract, *All-of-Government, Syndicated or Common Capability Contract*), or is doing an opt-out procurement, it does not need to include this procurement in its APP.

You can read more about APPs and find the template at:
www.procurement.govt.nz

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**:
 - a. include a brief description of the agency's purpose and the types of goods, services or works it mainly buys
 - b. contain all known or anticipated *contract opportunities* that the Rules apply to.An APP may contain other contract opportunities that the Rules don't apply to, at the agency's discretion.
3. An APP is for planning purposes and does not represent an invitation for bids or pre-solicitation. It is not a commitment by the agency to purchase the described goods, services or works.
4. Each agency **must** review and update its APP at least once every six months. An agency may update its APP more often, if appropriate.
5. Updated APPs are due by 1 March and 1 October each year.

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 4 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.

RULE 19

Significant procurement plans

1. An agency **must** submit to MBIE, for review, *procurement plans* 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.

These are called *significant procurement plans*.

2. An agency **should** have regard to the advice and feedback provided by MBIE on its *significant procurement plans*.
3. This requirement does not apply where a *procurement plan* is part of a business case that is subject to review under another governance process (eg *Syndicated Contracts* (Rule 56) or *Business cases and investment decisions* (Rule 63)).



Review purpose

Significant procurement plan reviews enable MBIE to provide support and commercial expertise where needed and identify areas where procurement capability development should be focused. The review is a supportive peer assessment to help agencies:

- › improve procurement planning and the quality of decision making
- › focus on achieving the best *value for money* over the whole-of-life
- › identify opportunities to collaborate with other agencies to achieve cost savings and other benefits.

Review process

More information on the timing and process for the review of significant procurement plans is available at: www.procurement.govt.nz



A **procurement plan** is any document that sets out what you intend to procure, how you intend to approach the market and why, how you will evaluate bids and how you intend to contract. If these are covered in another document, eg a *business case*, send that document to MBIE.

More information about procurement planning and related **guides, tools and procurement plan templates** are available at: www.procurement.govt.nz

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.

For more information about early market engagement see the *Constructive market engagement* guide at www.procurement.govt.nz

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, otherwise the appropriate New Zealand technical regulations, standards, 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.



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



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

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

RULE 25

Pre-conditions

1. An agency **may** include essential conditions for participation in a procurement process in its *Notice of Procurement* (Rule 34). These are called *pre-conditions*.
2. Suppliers **must** meet all of the *pre-conditions* to be considered for the contract opportunity.
3. An agency **must** limit *pre-conditions* to the following critical areas:
 - a. legal capacity
 - b. financial capacity
 - c. commercial or operational capacity or capability to deliver
 - d. appropriate technical skills or expertise or relevant experience.
4. An agency **must not** make it a *pre-condition* that a supplier has been previously awarded a contract by a named buyer or a New Zealand government agency.
5. To assess whether a supplier meets the *pre-conditions*, an agency **must**:
 - a. evaluate responses against the *pre-conditions* that it published in its *Notice of Procurement* (Rules 34 and 35), and
 - b. take into account the supplier's business activities in New Zealand and overseas.



Pre-conditions

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

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

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

RULE 26

Sufficient time

1. An agency **must** allow *sufficient time* for suppliers to respond to a *Notice of Procurement* (Rule 34). 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!

Mandatory minimum time periods are explained in Rules 27 to 31. The examples here show that sufficient time may be longer than the minimum time periods and will vary depending on the nature and complexity of the procurement.

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
Total number of business days	14

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
Total number of business days	27



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.

RULE 27

Minimum time periods

1. The *Rules* set *minimum time periods* for each of the procurement processes listed in Rule 31.
2. If any *allowable reductions* apply (Rule 28), 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.
3. The *allowable reductions* for each type of procurement process (eg RFQ / RFP) are shown in Rule 31.

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* (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*.

eg

Calculation

Minimum time period 25

Prior listing in *Annual Procurement Plan* -3

Receive responses electronically -3

New *minimum time period* 19

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.



New Zealand national public holidays

New Zealand national public holidays are:

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

Check holidays for the current year at www.dol.govt.nz

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.



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 31.a and 31.b. 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	business days	
	RFQ	RFT/ RFP
<i>Minimum time period (Rule 27)</i>	13	25
<i>Allowable reductions (Rule 28)</i>		
a. Prior listing in <i>Annual Procurement Plan</i>	-1	-3
b. All tender documents available electronically on <i>GETS</i>	-3	-4
c. Suppliers' tenders or proposals accepted electronically	-1	-3
<i>New minimum time period (if all allowable reductions apply)</i>	8	15



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

Step one	business days ROI / ITP
Minimum time period (Rule 27)	20
<i>Allowable reductions (Rule 28)</i>	
a. Prior listing in <i>Annual Procurement Plan</i>	-3
b. All tender documents available electronically on <i>GETS</i>	-4
c. Suppliers' tenders or proposals accepted electronically	-3
New minimum time period (if all allowable reductions apply)	10
Step two	business days RFT / RFP
Minimum time period (Rule 27)	25
<i>Allowable reductions (Rule 28)</i>	
a. Tender documents available electronically to shortlisted suppliers	-5
b. Suppliers' tenders or proposals accepted electronically	-5
New minimum time period (if all allowable reductions apply)	15



Competitive Dialogue is a technical term for a type of open procurement process used for high-value, unique or complex projects 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. An independent probity auditor is often appointed to ensure the integrity of the process.

Key features of *Competitive Dialogue* include:

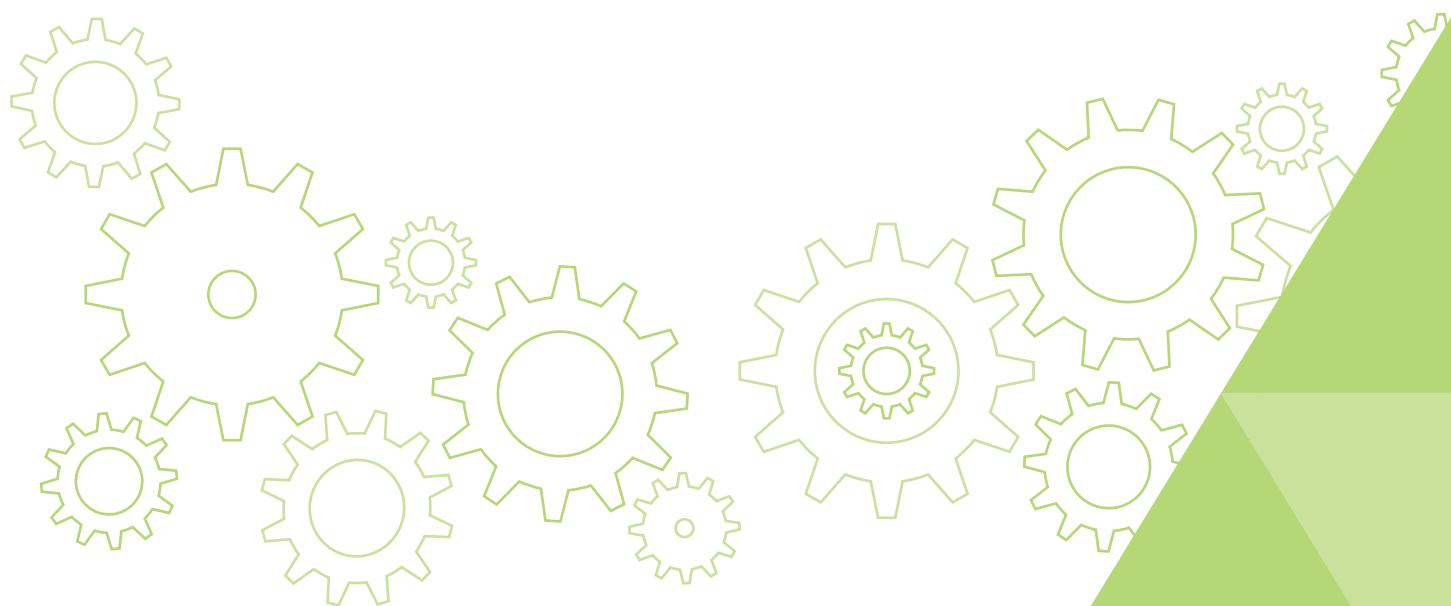
- › open advertising of an *Invitation to Participate* that states that it is a *Competitive Dialogue* process
- › shortlisted suppliers are often paid for their participation in the dialogue phase
- › the agency writes its specification of requirements during or at the end of the dialogue phase
- ›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

The *Guide to Competitive Dialogue* is essential reading for anyone considering using this process. It is available at:
www.procurement.govt.nz

Competitive Dialogue is not the same as **market engagement**, which is a generic term for any time you talk to suppliers. To learn more about options for market engagement, see the guide *Constructive Market Engagement* at www.procurement.govt.nz

3.

Approaching the market



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.

eg

Examples of a **Notice of Procurement** include:

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

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

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

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 years)
 - f. any service levels, response times or other performance measures suppliers will need to meet
 - g. any conditions for participating in the procurement process including any *pre-conditions* (Rule 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.). This is achieved by including the weighting for each criterion or, if you are not using weightings, by ranking the criteria in priority order.

Changes

If you need to change your *evaluation criteria* during the procurement process, see Rule 39 (*Changes to process or requirements*)

RULE 35 CONTINUED

Content of Notice of Procurement

3. continued:

- 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 35.4.c and 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 processes* detailed information can be made available only after shortlisting 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* (Rule 27).
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*.

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.

eg

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

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

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

RULE 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.

eg

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)
- › evaluation criteria
- › the ranking or weightings of the evaluation criteria
- › the deadline for responses or critical dates in the procurement process
- › the rules or conditions that apply to the procurement process.

RULE 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 completing the evaluation, an agency offers a supplier the opportunity to correct unintentional errors, it **must** offer the same opportunity to all participating suppliers.

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.



Bid rigging: 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 pasted content from each other's responses) and may be acting anti-competitively.

For more examples and guidance on preventing bid rigging, see the Commerce Commission's fact sheets *How to recognise bid rigging* and *How to deter bid rigging* at: www.comcom.govt.nz

A **conviction for a serious crime or offence** includes a conviction for foreign bribery (getting an advantage in an international transaction by offering bribes to foreign officials). For more information, read the OECD's *Foreign bribery fact sheet* at www.oecd.org For information about New Zealand law relating to bribery go to: www.sfo.govt.nz

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* and **must** include:
 - a. a summary of the rules that will apply to the *e-auction*
 - b. the specific criteria that will be used in the *e-auction*.
3. The automated evaluation method used in an *e-auction* **must** be based on the criteria set out in the *Notice of Procurement*.
4. Before beginning an *e-auction*, an agency **must** provide each participating supplier with:
 - a. a summary of the results of its initial tender evaluation
 - b. the automated evaluation method that will be used to re-rank suppliers based on their e-bids
 - c. the formula that the automated evaluation method is based on
 - d. any other relevant information about how the *e-auction* is run.
5. An agency **must** offer to train each participating supplier to use the hosted *e-auction* website or the *e-auction* software before the *e-auction* begins.



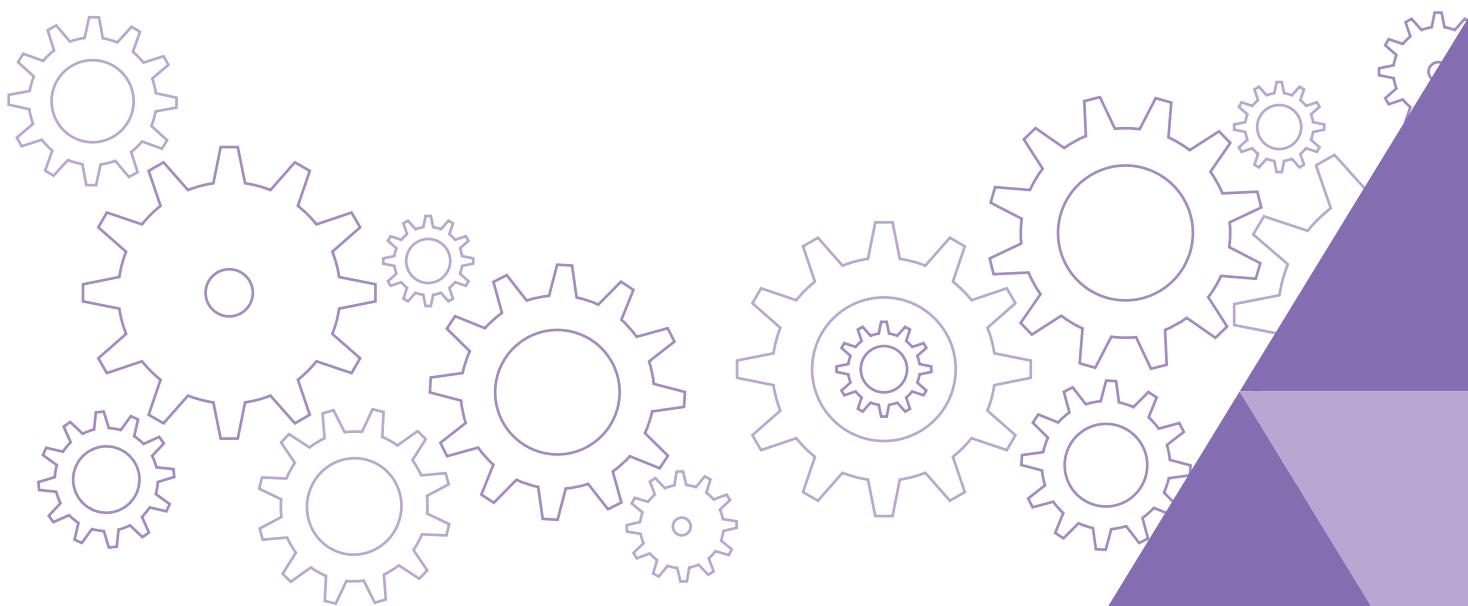
An **e-auction** is an online reverse auction. It gives suppliers the opportunity to bid against each other to improve their offers. An *e-auction* can be run on specialist in-house software or as a hosted service.

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

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

4.

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 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*.

eg

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.



Value for money

To determine which supplier(s) offer the *best value for money*, consider all the relevant information from your evaluation process, due diligence and reference checks.

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 an abnormally low bid could impact negatively on service delivery. It could even indicate that the supplier is involved in a cartel or taking advantage of its market power in breach of section 36 of the Commerce Act 1986. For more information, including fact sheets *How to recognise bid rigging*, and *How to deter bid rigging* go to: www.comcom.govt.nz

RULE 44

Informing suppliers of the decision

- 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.

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:

- the agency's name and address
- the successful supplier's or suppliers' name/s and address/s
- a description of the goods, services or works
- the date the contract/s was awarded
- the term of the contract/s
- the expected spend under the contract/s, or the highest and lowest offers the agency evaluated to award the contract
- the type of procurement process used
- if the agency claimed an *exemption from open advertising* (Rule 15), the circumstances that justify the *exemption*.

RULE 45

Contract Award Notice

- An agency **must** publish a *Contract Award Notice* on GETS when it has awarded a contract that is subject to the *Rules*. This *Notice* **must** be published whether or not the contract was openly advertised, unless it is:
 - an opt-out procurement* (Rule 13) or
 - secondary procurement* (Rule 15.9.i).



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.

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.

RULE 46

Debriefing suppliers

1. All suppliers **must** have the opportunity to be debriefed following a procurement. An agency **must** offer each unsuccessful supplier a debrief.
2. When a supplier asks an agency for a debrief, the agency **must** debrief that supplier within 30 *business days* of the date the contract was signed by all parties, or 30 *business days* of the date of the request, whichever is later.
3. At the debrief, an agency **must not** disclose another supplier's confidential or *commercially sensitive* information (Rule 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

RULE 47

Supplier complaints

1. A supplier may complain to an agency if it believes the agency has not followed the *Rules*. An agency **must** consider and respond promptly and impartially to a complaint. An agency **must** try to resolve any complaints in good faith.
2. The way the agency deals with the complaint **must not** prejudice the supplier's ongoing or future participation in contract opportunities or affect any right the supplier may have to a judicial review or other remedy.
3. An agency **must** keep good records of its procurement process and decisions. These records **must** be made available to any authority competent to hear or review a supplier's complaint (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.

See the *Guide to supplier feedback and complaints* at:
www.procurement.govt.nz

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.



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 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.

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.



What to expect from an audit

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

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

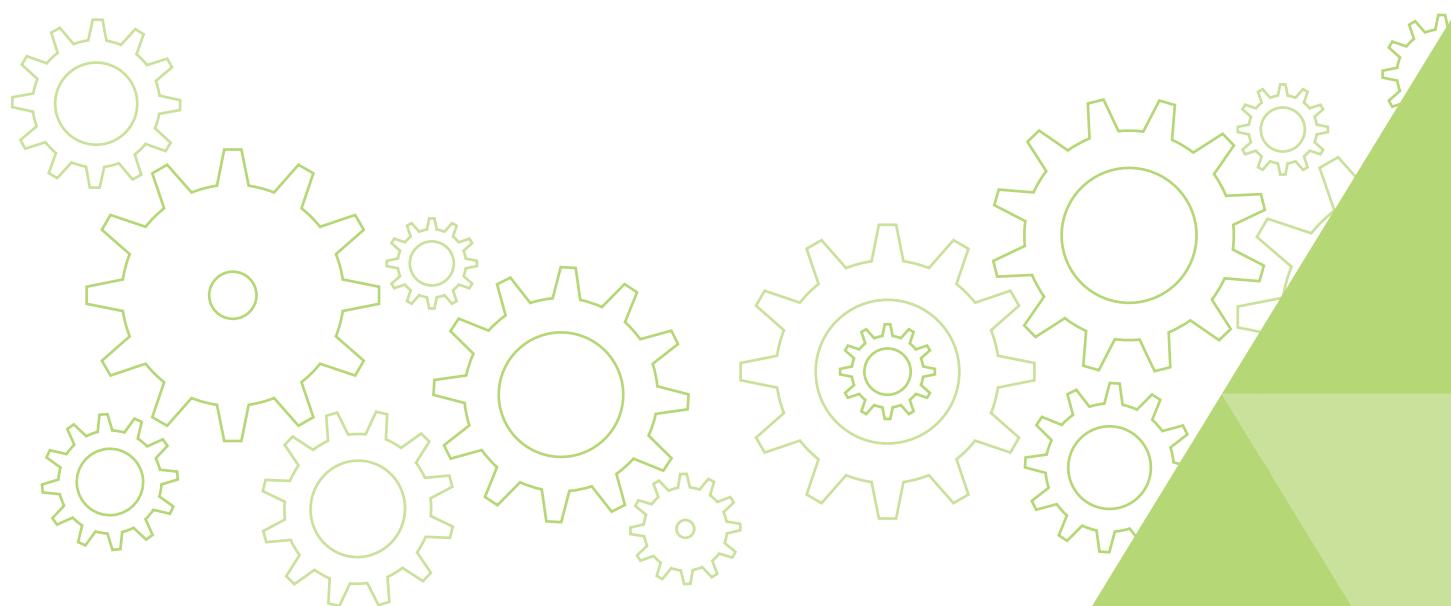
RULE 50

Audit

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

5.

Types of supplier lists



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 individual contract opportunities that meet or exceed the appropriate value threshold (Rules 14 and 32).

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

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 an *Invitation to Register* (a type of *Notice of Procurement*) on *GETS* and make it continuously available
 - b. allow suppliers to respond at any time, or at specific deadlines for responses
 - c. clearly describe, in the invitation, the specific type of goods, services or works the agency is interested in procuring
 - 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.

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 code/s* to receive notifications.

Establishing a Pre-qualified Suppliers List

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

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

Pre-qualification is not the same as 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.

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) 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 method (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 (eg for a Syndicated or All-of-Government Contract).

No guarantee of work

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

Open and closed panels

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

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

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 *framework agreement*)
 - b. the method/s 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*.
7. The *Notice of Procurement (Notice)* can be:
 - a. a one-off *Notice* to establish the *Panel*
 - b. a standing *Notice* which is made available continuously on *GETS* that allows interested suppliers to respond on an ongoing basis
 - c. an occasional *Notice* that is published from time to time when an agency wants to refresh or expand the *Panel*.
8. It is expected that an agency will appoint more than one supplier to a *Panel*.



Contract Award Notice

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

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

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

Secondary procurement process

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

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

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

RULE 54 CONTINUED

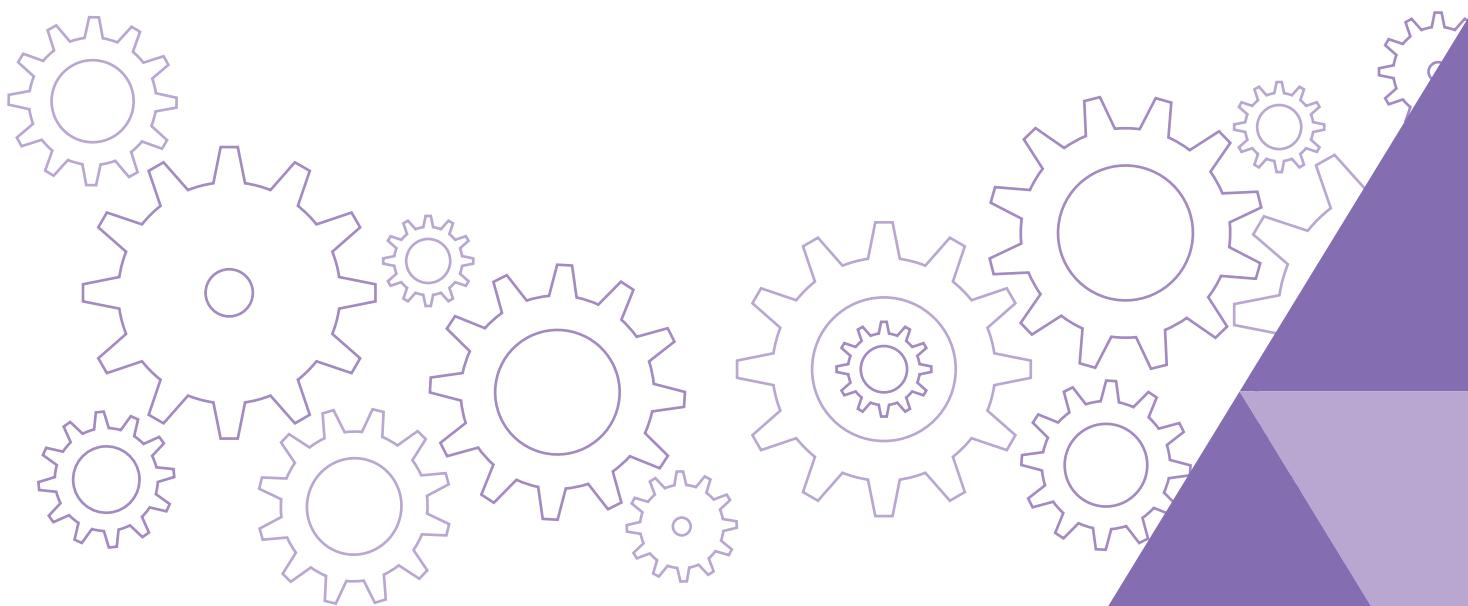
Panel of Suppliers

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 the *Panel*. This supplier receives most of the opportunities unless it has a conflict of interest or is unable to supply. If this happens, the agency will award the opportunity to the next-ranked supplier from the *Panel*
- g. **location:** Award opportunities to the supplier who is best able to deliver based on their location and the location of the work.

6.

Other Rules you need to know



RULE 55

All-of-Government Contracts

1. An *All-of-Government Contract* (AoG) is a type of approved collaborative contract. AoGs establish supply agreements with approved suppliers for selected common goods or services purchased across government. AoGs are developed under the oversight of the *Procurement Functional Leader* and managed by appointed procurement Centres of Expertise.
2. All agencies **must** purchase from the AoGs, unless there is a good reason not to.
3. Agencies who want to opt-out of 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 New Zealand 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

RULE 56

Syndicated Contracts

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



For more information about *Syndicated Contracts* and the process of obtaining approval, see the *Syndicated procurement* guide at: www.procurement.govt.nz



What's different about *Common Capability Contracts*?

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

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

For more information see the *Common Capability Contracts Guide* at: www.procurement.govt.nz

RULE 57

Common Capability Contracts

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



How mandatory common capabilities apply across the Public Sector

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



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 with the approval of the *Procurement Functional Leader*.

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

Seamless provision of ICT goods and services

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

Further information on the types of CC-ICT contracts available and how to purchase from them can be found at: www.procurement.govt.nz

RULE 58

Web standards

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



For further information on **web standards** visit: webtoolkit.govt.nz

RULE 59

Approved Government Model Templates

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



Approved Government Model Templates

A-GMTs are developed to improve the consistency of procurement practices across government. They are simple, plain English templates that make it easier for both agencies and suppliers to do business.

In order to avoid confusion with general procurement templates available at www.procurement.govt.nz (eg the 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

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*.



Goespatial information or services as part of a wider procurement

This requirement to consult includes instances where geospatial information or services is a component of a broader ICT procurement or a by-product of procurement for other services.



What is geospatial information?

Geospatial information means knowing where things are or where they relate to other things. It includes:

- › maps or mapping
- › topography
- › descriptions of location
- › names of features beneath, on or above the earth's surface
- › geo-referenced data
- › place-based information
- › spatial information
- › addresses

Geospatial information can also be different location-related datasets combined into complex layers. An example is data about land use, population density, and traffic flows combined to help with urban planning.

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

For more information about the New Zealand Geospatial Office go to: www.linz.govt.nz/nzgo and 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
 - b. for procurement of goods, services or works in the context of *Public Service research contracts*: *Cabinet guidelines for intellectual property from Public Service research contracts*, available at: www.procurement.govt.nz



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

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

Various guidance has been developed to help 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

1. Agencies considering Public Private Partnership (PPP) procurement **must**:
 - a. consult with the Treasury PPP Team early in the development of the project's business case;
 - b. follow relevant Treasury guidance and instructions;
 - c. involve the Treasury PPP Team in the economic and financial assessment and advice to Ministers;
 - d. invite the Treasury PPP Team to participate in relevant project steering and working groups, and in the selection panels for all key PPP advisor appointments;
 - e. use the Treasury's Standard Form PPP Project Agreement as the basis for any contract and consult with the Treasury PPP Team over any proposed modifications.

These are available at
www.treasury.govt.nz/ppp



A **Public Private Partnership** 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** go to: www.treasury.govt.nz/ppp

RULE 63:

Business cases and investment decisions

1. Cabinet approval is required for certain types of expenditure, lease or asset disposal proposals from departments, Crown Agents and other Crown Entities. If an agency wants to undertake a project which meets certain criteria, it **must** consult with the Treasury and the project proposal will be assessed and reviewed against the Treasury's published *business case* standard.
2. The criteria for determining which investment decisions require Cabinet approval are available at:
www.treasury.govt.nz/publications/guidance/mgmt/majorprojects

RULE 64

Investment reviews

1. Depending on the size, scale and type of investment, corporate centre reviews may be required for significant projects and programmes that involve procurement. The criteria for determining when these reviews are required are available at: <http://www.treasury.govt.nz/publications/guidance/mgmt/majorprojects>
2. If the review criteria are met, an agency **must** complete a risk profile assessment for the project or programme, and submit it to the Treasury, which will determine whether corporate centre reviews are required.



What is the corporate centre?

The corporate centre includes the State Services Commission, Treasury, the Department of Prime Minister and Cabinet, and *Functional Leaders* appointed by the Cabinet to provide leadership across government on specific areas such as procurement, information technology and property investment.

The corporate centre uses a variety of approaches to support investment reviews. For more information visit: <http://www.treasury.govt.nz/publications/guidance/mgmt/majorprojects>

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.

More information is available at:
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:

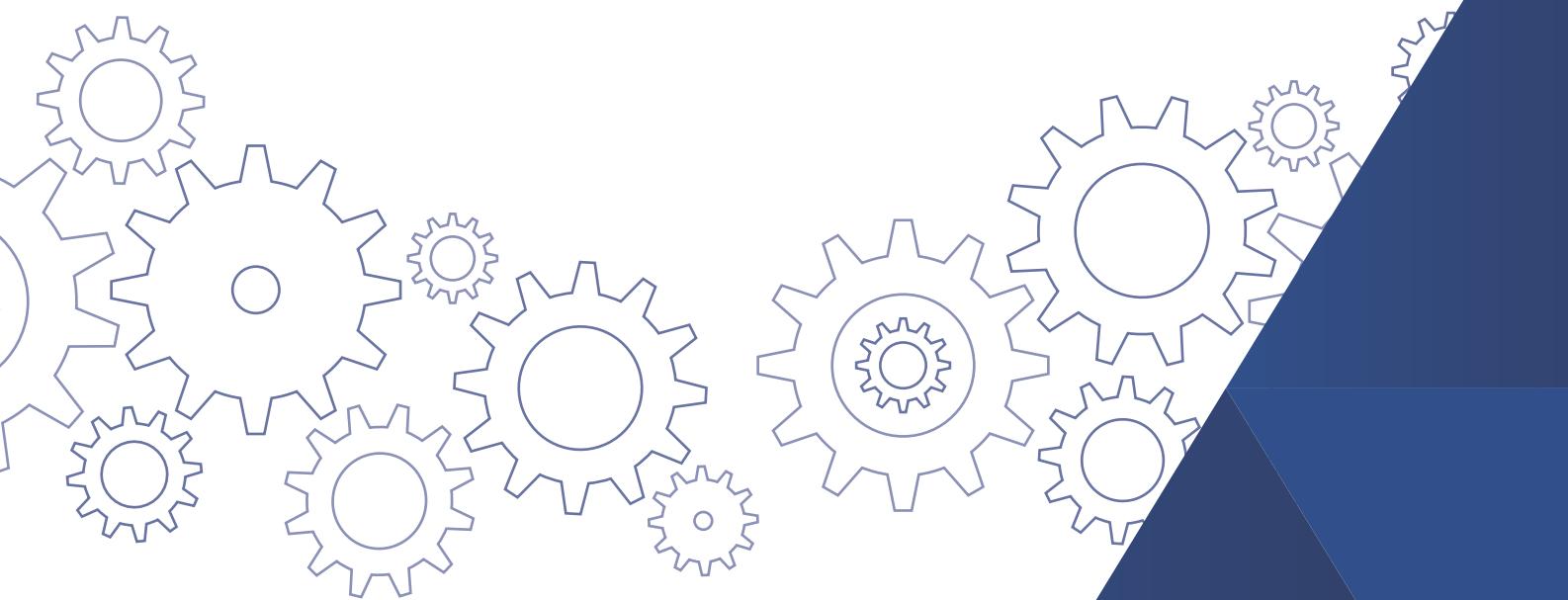
- Education sector – cleaning, food catering, caretaking and laundry services
- Health sector and Age-related Residential Care – cleaning, food catering, orderly and laundry services
- Public Service, airports and any other place of work – cleaning and food catering services.

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

7.

Definitions



DEFINITIONS

Word or phrase	Reference	Definition
agency	all Rules	A generic term used in the <i>Rules</i> to refer to New Zealand government entities across the <i>Public Sector</i> .
All-of-Government Contracts (AoG)	Rule 55	<p>A type of collaborative contract that has been approved by the <i>Procurement Functional Leader</i> (the Chief Executive of MBIE).</p> <p>AoGs are usually <i>Panel Contracts</i> established by MBIE or other agencies that are approved Centres of Expertise for common goods or services (eg vehicles, laptops, and recruitment services).</p>
allowable reduction	Rules 28 and 31	<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"> • 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> • all tender documents are made available electronically at the same time as the publication of the <i>Notice of Procurement</i> • it accepts responses electronically. <p>The number of <i>business days</i> for each <i>allowable reduction</i> is specified in Rule 31.</p>
Annual Procurement Plan (APP)	Rule 17	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.
Application to Qualify (ATQ)	Rule 53	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.
approach to market	Chapter 3	The formal process of giving notice of a contract opportunity to potential suppliers and inviting them to respond. An example of an approach to the market is a <i>Request for Tender</i> published on <i>GETS</i> .
business activities	Rule 25	Any activity that is performed with the goal of running a business. For the private sector, these are activities associated with making a profit (eg operations, marketing, production or administration).
business case	Rules 19 and 63	A management tool that supports decision-making for an investment. It sets out the reasons for a specific project, considers alternative solutions and identifies assumptions, constraints, benefits, costs and risks.
business day	Rules 26 to 31	Any week day in New Zealand, excluding Saturdays, Sundays, New Zealand (national) public holidays and all days from Boxing Day up to and including the day after New Year's Day.

clear business day	Rule 29	One full <i>business day</i> from 9am to 5pm.
closed competitive process	Rule 15	A tender process where an agency asks a limited number of known suppliers to tender for a <i>contract opportunity</i> . The contract opportunity is not openly advertised.
collusion	Rule 30	A secret agreement or cooperation between two or more parties to cheat or deceive others by illegal, fraudulent or deceitful means.
commercially sensitive information	Rule 5	Information that, if disclosed, could prejudice a supplier's commercial interests (eg trade secret, profit margin or new ideas).
commodity market	Rule 15	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).
Common Capability Contracts (CCs)	Rule 57	<p>A type of collaborative contract that has been approved by the <i>Procurement Functional Leader</i>.</p> <p>CCs establish various supply agreements (eg for ICT goods or services purchased across government with approved suppliers).</p> <p>CCs differ from <i>All-of-Government</i> and <i>Syndicated Contracts</i> because, in a CC:</p> <ul style="list-style-type: none"> • in some instances, a private sector supplier may be authorised to purchase from a CC when it is acting on behalf of an agency (authorised agent) • in some CCs, the lead agency may charge a participating agency an admin fee or levy.
competition	Rules 5, 15 and 21	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.
Competitive Dialogue	Rule 31	<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 see the <i>Guide to competitive dialogue</i> at: www.procurement.govt.nz</p>

<i>conflict of interest</i>	Rules 15 and 54	A conflict of interest is where someone's personal interests or obligations conflict, or have the potential to conflict, with the responsibilities of their job or position or with their commercial interests. It means that their independence, objectivity or impartiality can be called into question. For more information see the <i>Quick guide: Conflict of interest</i> at: www.procurement.govt.nz
<i>Contract Award Notice</i>	Rules 15, 45 and 54	A notice containing the information listed in Rule 45.2.
<i>contract opportunity</i>	Rules 15, 21, 25, 28, 32, 33, 40, 41, 52, 53 and 54	An opportunity for suppliers to bid for a contract for goods, services or works.
<i>Crown Research Institutes</i>	Rule 6	Companies established under the Crown Research Institutes Act 1992. For a full list of Crown Research Institutes go to www.ssc.govt.nz
<i>deadline for responses</i>	Rule 33	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.
<i>direct source</i>	Rule 15	A tender process where the agency asks a single supplier to tender for a contract opportunity, and the contract opportunity is not openly advertised.
<i>discrimination</i>	Rule 4	Making an unfair and prejudicial judgement for or against a person or product.
<i>e-auction</i>	Rule 42	An online reverse auction that takes place in real time. It gives suppliers the opportunity to bid against each other to improve their offers.
<i>education services</i>	Rule 13	A generic term for public education services provided by government that includes: <ul style="list-style-type: none">• primary education services: preschool and primary school• secondary education services: general and higher, technical and vocational• higher education services: post-secondary, sub-degree technical and vocational, and those leading to a university degree or equivalent• adult education services: for adults not in the regular school and university system• other education services: not definable by level, excluding sport and recreation education.

<i>evaluation criteria</i>	Rules 35 and 42	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 <i>Registration of Interest</i> or criteria to rank responses in awarding the contract).
<i>exemption from open advertising</i>	Rule 15	The recognised circumstances (eg a procurement in response to an emergency) where an agency does not need to openly advertise the <i>contract opportunity</i> .
<i>framework agreement</i>	Rule 54	Usually used in relation to <i>Panel Contracts</i> . It is the umbrella agreement that governs the relationship between the agency and the <i>supplier(s)</i> . It sets out the terms and conditions (including pricing) that the parties agree to contract on in the event that the <i>Supplier</i> is allocated a contract for supplying the covered goods, services or works. When the agency wants to buy something under the framework agreement, the parties then enter into a separate contract that refers to the terms and conditions contained in the framework agreement.
<i>Functional Leader</i>	Rule 57	A government Chief Executive appointed by the Cabinet to drive performance across the State Services in a particular area, eg procurement, ICT and property.
<i>GETS</i>		An acronym for Government Electronic Tenders Service. <i>GETS</i> 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 are made freely available through <i>GETS</i> .
<i>GETS listing</i>	Rule 33	The summary of a contract opportunity that is published on <i>GETS</i> . It includes key information such as the: <ul style="list-style-type: none">• name of the buying agency• approach to market process that will be used (eg Request for Proposals)• deadline for responses• address for any enquiries.
<i>goods</i>	Rules 7 and 8, and throughout subsequent rules	Items which are capable of being owned. This includes physical goods and personal property as well as intangible property such as Intellectual Property (eg a software product).

<i>government's central financial control functions</i>	Rule 13	<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>
<i>grant</i>	Rules 12 and 13	<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"> • a conditional grant, where the recipient undertakes specific obligations in return for the money, or • an unconditional grant, where the recipient has no specific obligations to perform in return for the money.
<i>GST</i>	Rule 9	<p>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.</p>
<i>guidance</i>	Page 5	<p>A generic name for a range of New Zealand government good procurement practice guides, tools and templates. These can be found at: www.procurement.govt.nz</p>

health services	Rule 13	A generic term for health services provided by government for the public good, including: <ul style="list-style-type: none">• 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.• general and specialised medical services• military hospital services and prison hospital services• residential health facilities services other than hospital services• ambulance services• services such as supervision during pregnancy and childbirth and the supervision of the mother after birth• services in the field of nursing (without admission) care, advice and prevention for patients at home, the provision of maternity care, children's hygiene, etc• physiotherapy and para-medical services, ie services in the field of physiotherapy, ergotherapy, occupational therapy, speech therapy, homeopathy, acupuncture, nutrition instructions, etc.
Invitation to Participate (ITP)	Rule 31	An invitation to suppliers, published on <i>GETS</i> , to apply to be included in a <i>Competitive Dialogue</i> process.
Invitation to Qualify (ITQ)	Rule 53	An invitation to suppliers, published on <i>GETS</i> , to apply to be included in an agency's <i>Pre-Qualified Supplier List</i> .
Invitation to Register (ITR)	Rule 52	An invitation to suppliers, published on <i>GETS</i> , to register their interest in supplying a specific type of good or service. Suppliers who register their interest are included in a <i>Registered Suppliers List</i> .
maximum total estimated value	Rule 9	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.
minimum time periods	Rules 27 and 31	The least amount of time, set by the <i>Rules</i> , that an agency must allow suppliers to respond to a particular contract opportunity.
multi-step process	Rule 31	A procurement process with more than one step, (eg a <i>Registration of Interest</i> followed by a <i>Request for Proposals</i>).

<i>new construction works</i>	Rule 8	<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"> • demolition of previous structure • pre-erection works at construction sites, including site investigation work • construction work for buildings, residential and non-residential • construction work for civil engineering • 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 • special trade construction work such as foundation work, including pile driving, water well drilling, roofing and water proofing, concrete work, steel bending and erection, erection work from purchased or self-manufactured structural steel components for buildings or other structures such as bridges, overhead cranes or electricity transmission towers, steel reinforcing work and welding work • masonry work • 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) • 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 • renting services related to equipment for construction or demolition of buildings or civil engineering works.
<i>Notice of Procurement</i>	Rules 34 and 35	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>).
<i>Official Information Act 1982</i>	Rule 5	A New Zealand law that sets out the information that government must make freely available to the New Zealand public.

offset	Rule 3	Within the context of the <i>Rules</i> , an offset is a condition or undertaking intended to develop the local economy or improve the balance-of-payments accounts by requiring or encouraging suppliers to purchase national products.
open advertising	Rule 14	Publishing a contract opportunity on GETS and inviting all interested domestic and international suppliers to participate in the procurement.
opt-out procurements	Rule 13	Specific types of procurement activities where agencies can choose to opt out of applying most of the <i>Rules</i> .
Panel Contract	Rule 35	A type of <i>framework agreement</i> 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 to provide specific goods, services or works.
Panel of Suppliers	Rule 54	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.
Panel Supplier	Rule 54	A supplier included in a <i>Panel of Suppliers</i> .
pre-conditions	Rule 25	A condition that a supplier must meet to be considered for a particular contract opportunity.
pre-qualified supplier	Rule 53	A supplier included in a <i>Pre-qualified Suppliers List</i> .
Pre-qualified Suppliers List	Rule 53	A list of suppliers an agency has pre-approved as having the capability and capacity to deliver specific goods or services. It is the New Zealand government equivalent of the World Trade Organization Agreement on Government Procurement's 'multi-use list'.
Principles	Rule 1	Short for the <i>Principles of Government Procurement</i> . The five <i>Principles</i> are: <ul style="list-style-type: none"> • plan and manage for great results • be fair to all suppliers • get the right supplier • get the best deal for everyone • play by the rules.
procurement		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.

Procurement Functional Leader	Page i Rules 55, 56, 57 and 59	The Chief Executive of the Ministry of Business, Innovation and Employment, who has been appointed by the Commissioner for State Services as the Functional Leader for procurement activities across government.
procurement plan	Rule 17	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.
prototype	Rule 15	An early sample, model or pilot study used to test a concept or process.
Public Sector	Rule 6	<p>This includes agencies in the:</p> <ul style="list-style-type: none"> • <i>Public Service</i> (departments and ministries) • the wider <i>State Services</i> (eg Crown Entities, Crown Research Institutes, entities listed in Schedules 4 and 4A of the Public Finance Act 1989, and School Boards of Trustees) and • the wider <i>State Sector</i> (eg Offices of Parliament, Tertiary Education Institutes and State Owned Enterprises) and • Regional Councils and Territorial Authorities (as defined in s5 of the Local Government Act 2002). <p>A list of these agencies is available at: www.ssc.govt.nz</p>
Public Service	Rule 6	<p>The New Zealand government public service departments and ministries listed in Schedule 1 of the State Sector Act 1988.</p> <p>A list of these agencies is available at: www.ssc.govt.nz</p>
Public Private Partnerships (PPPs)	Rule 62	A long-term contract for the delivery of a service, involving 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.

<i>refurbishment works</i>	Rule 7	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. <i>Refurbishment works</i> does not include replacing a construction. That is deemed to be <i>new construction works</i> .
<i>registered supplier</i>	Rule 52	A supplier included in a <i>Registered Suppliers List</i> .
<i>Registered Suppliers List</i>	Rules 8, 51 and 52	A list of suppliers who have registered an interest in supplying specific types of goods, services or works to an agency.
<i>Registration of interest (ROI)</i>	Rule 31	Also known as an Expression of Interest. A formal request from an agency asking potential suppliers to: <ul style="list-style-type: none"> • register their interest in an opportunity to supply specific goods, services or works • provide information that supports their capability and capacity to deliver the goods, services or works. It's usually the first formal stage of a multi-step tender process.
<i>Request for information (RFI)</i>	Rule 34	A market research tool. A formal request from an agency to the market, for information that helps identify the number and type of suppliers and the range of solutions, technologies and products or services they can provide. It is not a type of <i>Notice of Procurement</i> . It must not be used to select or shortlist suppliers.
<i>Request for proposal (RFP)</i>	Rule 31	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. An agency may be open to innovative ways of achieving the outcome.
<i>Request for quote (RFQ)</i>	Rule 31	A formal request from an agency asking potential suppliers to quote prices for 'stock standard' or 'off-the-shelf' goods or services or works, where price is the most important factor.
<i>Request for tender (RFT)</i>	Rule 31	A formal request from an agency asking for offers from potential suppliers to supply clearly defined goods or services or works. Often there are highly-technical requirements and a prescriptive solution.

response	Rules 28 and 33	A supplier's reply to a <i>Notice of Procurement</i> . Examples include: <ul style="list-style-type: none"> • registering of interest in an opportunity • submitting a proposal • submitting a tender • applying to qualify as a <i>Pre-qualified Supplier</i>.
Rules		A short name for the <i>Government Rules of Sourcing</i> , which are the Rules 1 to 66 and the definitions in this Chapter. Information in boxes and diagrams accompanying the Rules are not part of the <i>Rules</i> but may be used to help with understanding the <i>Rules</i> .
secondary procurement	Rules 15, 45 and 54	Where an agency purchases goods, services or works from a <i>panel of suppliers</i> , an <i>All-of-Government Contract</i> , <i>Common Capabilities Contract</i> or <i>Syndicated Contract</i> .
services	Rule 7	Acts or work performed for another party, eg accounting, legal services, cleaning, consultancy, training, medical treatment, or transportation. 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: <ul style="list-style-type: none"> • cannot be stored or transported • are instantly perishable • only exist at the time they are provided.
significant procurement plans	Rule 19	<i>Procurement plans</i> for any procurement that meets one or more of the criteria in Rule 19.
sourcing	Context	The parts of the procurement lifecycle that relate to planning, market research, approaching the market, evaluating responses, negotiating and contracting.
State Sector	Rule 6	This includes <ul style="list-style-type: none"> • <i>Public Service</i> (departments and ministries) • the wider <i>State Services</i> (eg Crown Entities, Crown Research Institutes, entities listed in Schedules 4 and 4A of the Public Finance Act 1989, and School Boards of Trustees) • offices of Parliament, Parliamentary Service and the Office of the Clerk of the House of Representatives • Tertiary Education Institutes • State-owned enterprises A list of these agencies is available at: www.ssc.govt.nz

State Services	Rule 6	<p>This includes:</p> <ul style="list-style-type: none"> the <i>Public Service</i> (departments and ministries) Non-Public Service departments (including New Zealand Defence Force and New Zealand Police) Crown agents, autonomous Crown entities, independent Crown entities, Crown entity companies, and Crown entity subsidiaries, <i>Crown Research Institutes</i> entities listed in Schedules 4 and 4A of the Public Finance Act Reserve Bank of New Zealand School Boards of Trustees. <p>A list of these agencies is available at: www.ssc.govt.nz</p>
sufficient time	Rule 26	<p>The 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"> quality responses the integrity of the process the agency's reputation as a credible buyer.
supplier		<p>A person, business, company or organisation that supplies or can supply goods or services or works to an agency.</p>
supplier debrief	Rule 46	<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"> the strengths and weaknesses of the supplier's proposal against the tender evaluation criteria and any <i>pre-conditions</i> the reasons the successful proposal won the contract anything else the supplier has questioned.
Syndicated Contracts	Rule 56	<p>A type of collaborative contract that has been approved by the <i>Procurement Functional Leader</i>. Syndicated Contracts typically involve a group of agencies aggregating their needs and collectively going to market for common goods, services or works. If the contract includes a common use provision (CUP), to allow other agencies to contract with the supplier on the same terms later, it is an <i>Open Syndicated Contract</i>. If the contract is limited to a group of named agencies, it is a <i>Closed Syndicated Contract</i>.</p>

<i>technical specifications</i>	Rule 24	A tendering requirement that either: <ul style="list-style-type: none"> • 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 • addresses terminology, symbols, packaging, marking or labelling requirements, as they apply to a goods, service or works.
<i>tender watch code/s</i>	Rule 33	Codes used on <i>GETS</i> to classify goods, services and works. They are based on the United Nations Standard Products and Services Code (UNSPSC). You can find these codes at: www.gets.govt.nz
<i>The Crown</i>	Rule 62 information box	The short name for "the Sovereign in Right of New Zealand" as the bearer of governmental rights, powers, privileges and liabilities in New Zealand.
<i>third party agent</i>	Rule 20	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.
<i>total cost of ownership (TCO)</i>	Page 3	An estimate of the total cost of the goods, services or works over the whole of their life. It is the combination of the purchase price and all other expenses and benefits that the agency will incur (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 <i>business case</i> stage of a procurement.
<i>unsolicited unique proposal</i>	Rule 15	An approach initiated by a supplier proposing a unique solution which is not available in the market place. For more information, the <i>Guide to unsolicited unique proposals</i> is available at: www.procurement.govt.nz
<i>value for money</i>	Page 3 Rules 4, 13 and 43	Value for money is not always the cheapest price. It is the best available outcome for the money spent. It means using resources effectively, economically, and without waste, and taking into account: <ul style="list-style-type: none"> • the total costs and benefits of a procurement (total cost of ownership), and • the procurement's contribution to the results you are trying to achieve. <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>

value threshold	Rules 7, 8 and 9	The minimum NZ\$ value at which the <i>Rules</i> apply to a particular procurement type. It excludes GST.
welfare services	Rule 13	A generic term for public welfare services provided by government, which includes: <ul style="list-style-type: none"> • social services, including residential and non-residential welfare services to the old, handicapped, children and other social assistance clients • compulsory social security services (administration of benefits).
Whole of Government Direction	Rule 6	The <i>Whole of Government Direction Regarding Procurement Functional Leadership</i> given by the Ministers of Finance and State Services, on 22 April 2014, under section 107 of the Crown Entities Act 2004 (notified in <i>New Zealand Gazette</i> No. 65 on 19 June 2014). <p>This direction requires certain types of State Services agencies to apply the <i>Rules</i>. A list of these agencies is available at: www.procurement.govt.nz</p> <p>The direction is available at: www.ssc.govt.nz</p>
works	Rules 7 and 8	A generic term which covers <i>new construction works</i> for a new build or <i>refurbishment works</i> to an existing construction.
WTO Agreement on Government Procurement	Page iii, Rule 6	Also known as the GPA. A free trade agreement established by the World Trade Organization (WTO). It is a legally-binding treaty between participating countries, based on the principles of openness, transparency and non-discrimination, and sets out detailed rules for good procurement processes. The main aim of the GPA is to improve access to government procurement markets and remove barriers to international trade.

