

New Government procurement rules

A guide about 4th edition rules for public agencies

August 2019







Government procurement rules: 4th edition

These rules are the Government's standards of good procurement practice. The 4th edition sets out Government's expectations for how procurement will be leveraged to achieve broader outcomes.

- The Government would like to contribute to the wellbeing of New Zealanders by ensuring public sector spend delivers value to the public (public value) and promotes inclusivity, transparency and sustainability
- The 4th edition includes 11 new rules in four main areas:
- Procurement capability, reporting and planning
- Targeting public value though considerations of broader outcomes
- Changes to construction procurement
- Removal of three outdated rules

- The Government has created a Procurement Charter and a Supplier Code of Conduct to outline expectations of agencies and suppliers
- Procurement capability through the procurement capability index is 5% of the Government's investor confidence rating (ICR) for agencies
- The new rules come into effect on 1 October 2019 for all public service and state service 1 agencies. All agencies are expected to build the principles, charter and supplier code into their procurement projects



A strategic approach involves... ...undertaking adequate planning, sourcing suppliers and managing relationships to successfully deliver

against public policy objectives and business needs, while delivering public value.

Source: Government procurement rules, pg4





Key themes from the rule changes

These key themes have significant implications for agencies.



Secondary considerations

Agencies must strike a balance between value for money and broader outcomes; this could cause confusion as how this can be achieved is likely to be situational. Agencies should clearly what outline the evaluation method is, the weighting of criteria, contractual obligations and what supplier actions would result in exclusion or termination.



Designated contracts

The Government has seven designated priority areas. Agencies must use AoG contracts in these areas, conduct due diligence, and manage contracts to ensure the priority outcomes are achieved. Agencies should know and deliver on expectations for these contracts and target this standard for other major contracts.



Monitoring and compliance

There is a greater requirement on agencies (and their suppliers) to monitor broader outcomes and issues relating to supplier conduct. Currently, few agencies are set up to do this; additional skill sets and resourcing may be required.



Reporting and performance

Agencies must report to MBIE about their procurement capability, designated contracts, and significant service contracts. Gaps in capability, risks and issues with contracts will be more visible. Shortfalls may flow into Investor Confidence Ratings (ICR), so agencies need to be proactive.



Implication for all agencies

Agencies must build the principles, charter and supplier code into how and what they do for sourcing. All agencies must demonstrate how the objectives of the charter drive their everyday sourcing activities and decisions.



Supply chain implications

The rule changes not only apply to Government providers, but to the providers' subcontractors and suppliers within New Zealand as well. The international supply chain requirements are lighter and limited to dealing with any issues that are discovered. This expectation should be communicated clearly and early to suppliers.



Key objective: public value

Public value means using resources economically and considering the net benefits of a procurement, its contribution to specific results and broader outcomes for New Zealand.

		Good price	Upfront price	The price paid at the sourcing of the good or service
for money			Ongoing and end of life	Lifetime costs of the goods, services and works
3rd Ed: value for money			Effective	Meets objectives of the agency/public need
	4th Ed: public value	Good quality	Efficient	Delivered in the right way, and within a reasonable time frame
	4th Ed: pu	tth Edi pu	Economic	Market and supplier skills training and development
		Broader outcomes	Social	Benefits to groups like Māori, Pasifika, regional and social enterprises
			Environmental	Support low-emissions and low-waste economy
			Cultural	Partnering with Māori

Source: Government Procurement rules 4th edition, Government Rules of Sourcing 3rd edition.



The principles of Government procurement

These remain the same, however four have been expanded to incorporate the new overarching objective of public value. All agencies must have policies in place that incorporate these principles.

1. Plan and manage for great results	2. Be fair to the suppliers	3. Get the right supplier	4. Get the best deal for everyone	5. Play by the rules
 Set up the right team Involve suppliers early Take time to understand the market and your impact on it Choose the right process Encourage e-business Identify what you need, plan and 	 Create competition and encourage capable responses Treat all suppliers equally Make it easy for all suppliers to do business Clearly explain how you will assess proposals Talk to unsuccessful suppliers so they can learn and improve Give New Zealand suppliers a fair opportunity to compete and 	 Be clear about what you need and demonstrate fairness in how you assess Choose the right supplier Build demanding, but fair and productive, relationships with suppliers Make it worthwhile for suppliers Identify relevant risks and get the right person to manage them and 	 Take calculated risks and reward new ideas Have clear performance measures Work together with suppliers to make ongoing improvements Make balanced decisions - consider social, environmental, and economic effects Get best value for money including whole of life costs and 	 Be accountable, transparent and reasonable Ensure participants act responsibly lawfully and with integrity Stay impartial Protect suppliers' commercially sensitive information and IP
	 Seek opportunities to involve New Zealand businesses including: Māori, Pasifika, regional businesses and social enterprises 	 Choose suppliers that comply with the Government's Supplier Code of Conduct 	 Achieve best public value Consider cultural outcomes 	
		The Supplier Code of Conduct incorporates expectations of (see pg9): • ethical behaviour • labour and human rights • health and safety • environmental sustainability • corporate social responsibility.	Sources: Government P	rocurement rules 4th edition, Government Rule

of Sourcing 3rd edition - Procurement rules, Grant Thornton summary

Government Procurement Charter

The charter is a new statement setting out the Government's expectations of how agencies should conduct procurement activity. All agencies must have policies in place to incorporate the charter.

		Why	How	What
1	Seek opportunities to include New Zealand businesses	Increase access for New Zealand businesses and grow their skills	Openly work to create opportunities for local businesses to participate in supply chains	
2	Undertake initiatives to build a low emissions economy and promote greater environmental responsibility	Environmental responsibility	Transitioning to a low emissions, low waste economy	
3	Look for new and innovative solutions	Achieve better outcomes	Give businesses the opportunity to demonstrate their expertise	
4	Engage with businesses with good employment practices	Achieve integrity, transparency and accountability	Ensure compliance with employment standards and good conduct	
5	Promote inclusive economic development within New Zealand	Promote inclusive economic development within New Zealand	Engage with Māori, Pasifika and regional businesses and social enterprises	
6	Manage risk appropriately	Reduce risk	Responsibility for managing risks should be with the party best placed to manage it	
7	Encourage collaboration for collective impact	Removing siloed views and approaches to get better collective outcomes	Collaboration across agencies, businesses and other organisations	

Source: Government Procurement rules 4th edition – Procurement Charter, Grant Thornton insights.



The Supplier Code of Conduct

The Government has formalised a Supplier Code of Conduct for all suppliers. It covers five key areas that all agencies must implement with suppliers, effective immediately.

- Suppliers are often an extension of an agency's business, so the same high standards for agencies are expected of suppliers and their subcontractors
- All agencies must apply the code, but agencies can implement it in a way that is appropriate to their circumstances. Agencies may continue to use their own code of conduct or require their suppliers to commit to the Government supplier code
- An agency may exclude a supplier from participating in a contract opportunity if there is evidence of non-compliance to the Code
- Agencies may request that their suppliers provide them with evidence of their compliance with this Code within their New Zealand supply chain. Non-compliance may be grounds for termination, depending on the situation and contractual terms. It will be up to the agency to determine how they will enforce the expectations in this code
- The code is intended for full New Zealand supply chains. However, suppliers are expected to monitor human rights and take reasonable steps to resolve any breaches that come to their attention in their international supply chains

Sources: Government Procurement Supplier Code of Conduct, Procurement. govt.nz guidance, Grant Thornton summary.

The five elements of code





Appendix

What the agencies need to know about each rule change.

Contents

Designated contracts used to target priority outcomes

The Government has specified seven contract areas to target its priority outcomes that focus on effectively leveraging the main secondary outcome from specific industries and contracts while avoiding overloading requirements.

Priority outcome and designated contract areas	Minimum Government requirement for designated contracts	Implication for agencies
1 Access for New Zealand businesses	Agencies must consider how they can create opportunities for New Zealand businesses (defined as those that originated in New Zealand), is majority	Taken in context of the Government's 'cloud first' policy and preferred software solutions, this will mostly apply
ICT services/computer software	owned or controlled by New Zealanders, and has its principal place of business in New Zealand.	in private cloud and IT implementation.
2 Construction skills and training	For construction works over \$9 million whole-of-life costs, agencies must consider skills development and training practices of the supplier and their subcontractors.	This applies to construction works below the threshold of ITU involvement as well as agencies not primarily
Construction	Reasonable consideration must be given, such as a weighted criteria when a weighted evaluation model is used.	involved in major works.
3 Employment standards	Agencies need to ensure that suppliers demonstrate compliance with employment standards (with a focus on low wage employment) through the domestic supply	Agencies will need to develop internal policy and SOPs for these areas and conduct reasonable due diligence
Cleaning and security services, forestry cotracts	chain. The supply chain is defined as all employees and sub-contractors who are employed as cleaners, security staff or forestry workers.	accordingly.
4 Health and safety	All agencies must comply with their responsibilities under Health and Safety at Work Act 2015. Agencies must require their suppliers to ensure and demonstrate	Within forestry and construction, reasonable due diligence of H&S practice could involve supplier audits
All contracts, particularly in forestry & construction	that they, and their domestic supply chain, demonstrate good health and safety practice.	or compliance with external H&S standards.
5 Reducing emissions	When purchasing vehicles from the AoG motor vehicles contract, agencies need to procure vehicles that are	This requirement is comparative, so all agency fleets are continue to improve. Additional budget may be required
Light vehicles	20% below their current emissions profile. Agencies can find out what their current emissions profile is in the Government's guidance about fleet emissions.	for appropriate replacement vehicles.
6 Reducing emissions	When purchasing heating systems for a Government building, agencies need to ensure that they are buying	While there are many options available to meet this
Stationary/process heating systems	a low emission heating option. Agencies must not purchase coal boilers.	requirement, agencies must be careful to not just replace heating systems like-for-like.
7 Reducing waste	When purchasing office supplies from the AoG Office	AoG suppliers will be able to provide suitable options to
Office supplies	supplies contract, agencies need to buy items that produce low amounts of waste and/or are recyclable.	meet this requirement, however new processes may be needed eg, print cartridge recycling.

Sources: Government Procurement rules 4th edition, Procurement.govt.nz guidance, Cabinet minute (CAB-18-MIN-0516.01) from 23 October 2018.

The Supplier Code of Conduct

The minimum expectations of suppliers and subcontractors has been formalised in the Government's new Supplier Code of Conduct.

	The code		What it means	
Expected	Ethical behaviour	 The Government expects its suppliers to: manage themselves with integrity in accordance with laws, regulations and ethical standards not engage in any form of corruption be transparent about their ethical policies and practices. 	• The Government expects suppliers to conduct their business in accordance with the highest ethical standards, including meeting industry standards/codes, and by acting fairly, honestly and treating people with respect	
	Labour and human rights	 The Government expects its suppliers to: adhere to international human rights standards in their workplace, and monitor and address these standards within their supply chain comply with New Zealand employment standards and refrain from unlawful discrimination. 	 In domestic supply chains, suppliers must adhere to human rights standards. In international supply chains, suppliers are expected to monitor and reasonably address any human rights breaches that are discovered 	
	Health, safety and security	 The Government expects its suppliers to: maintain healthy and safe work environments and comply with all laws and regulations comply with any security requirements notified to them by the Government adequately protect any items provided by the Government and return these promptly. 	 Agencies should detail specific security and safety requirements as part of contracts with suppliers. Security obligations should be managed by the party best positioned to do so 	
	Environemental sustainability	 The Government expects its suppliers to: conduct their business in accordance with applicable laws, regulations and standards regarding the mitigation of impacts on, and protection of, the environment work to improve their environmental sustainability and reduce their environmental impacts. 	• Suppliers should establish environmentally responsible business practices and proactively improve their environmental performance in: preservation of the environment, and reducing waste, emissions and pollution	
Encouraged	Corporate social responsibility	 The Government encourages its suppliers to be good corporate citizens and contribute positively to their communities. Some suggestions are: pay their subcontractors promptly consider including local, Māori, and Pasifika businesses to deliver the contract. 	 Corporate social responsibility is encouraged and could be built into an agency's Supplier Code of Conduct or specific contracts and agreements 	

Sources: Government Procurement Supplier Code of Conduct, Procurement.govt.nz guidance, Grant Thornton summary.



1. New rules about procurement capability, reporting and planning

The Government would like procurement planning to achieve public value. It is focusing on monitoring and reporting on broader outcomes, risks and capabilities.

Rule 15: Planning				
Objective	Direction	Application		
 Through early and holistic procurement planning, the Government is trying to achieve more consistent positive outcomes and secondary benefits of spend 	 Agencies must conduct appropriate planning based on the size, risk and complexity of procurements Agencies must consider what broader outcomes can be leveraged Agencies should consider existing AoG contracts and collaboration with other agencies 	 Procurement plans should include objectives, scoping statement, market and demand analysis, sourcing approach, risk assessment, stakeholder engagement, sufficient timelines, evaluation methodology and criteria, contractual arrangements, relevant funding and approvals 		
Rule 53: Reporting				
Objective	Direction	Application		
 The Government is committed to the development of reporting and monitoring to provide a system-wide view This includes achieving broader outcomes so MBIE can publish the data and information collected 	 Agencies must provide data and information to the procurement functional leader on procurement activity including broader outcomes as authorised by cabinet and/or ministers of finance and state services 	 Agencies must collect information on broader outcomes achieved in designated contracts and advised to collect information from other contracts MBIE is likely to provide further guidance about this 		
Rule 71: Significant service contracts framewo	rk			
Objective	Direction	Application		
 Reporting provides visibility of what the Government's significant contracts are This ensures the right agency staff are engaged in managing opportunities, issues and risks The Government has early warning of risks and issues with key contracts 	 An agency must submit to MBIE a Significant Service Contracts Framework (SSCF) report to MBIE using the reporting tool Each agency must review and update its SSCF report and provide this to MBIE at least once every six months, due 1 October and 1 March at a minimum 	 SSC are services that are critically important to the delivery of business objectives of an agency, and pose a significant risk and/or significant impact in the event of supplier failure A reporting tool has been developed to help collect data and report internally and to MBI 		
Rule 70: Procurement capability index				
Objective	Direction	Application		
 Improve ability to undertake critical procurements, manage providers and work with markets and sectors to deliver better investment outcomes These assessments will allow a cross agency view of procurement capability and areas where more support may be required 	 Agencies must submit a procurement capability index (PCI) self-assessment to MBIE by 1 October each year The agency's self-assessment should be a whole-of-agency view and supported with evidence 	 The PCI tool helps agencies to evaluate and build procurement capability The PCI is managed and run by the New Zealand Government procurement and property. It is worth 5% of the total investor confidence rating (ICR) 		

Source: Government Procurement rules, Procurement.govt.nz guidance, Grant Thornton insights.

2. Targeting public value through broader outcomes

The Government would like collective spend to contribute to the wellbeing of New Zealand beyond primary benefits through inclusivity, transparency and sustainability.

Objective	Direction	Application
 Use Government procurement to support wider social, economic and environmental outcomes that go beyond the immediate purchase of goods and services 	 Agencies must consider and incorporate where appropriate, broader outcomes in procurements Where contracts have been designated by cabinet to achieve a specific priority outcome, agencies must include requirements relating to that outcome 	 Agencies must ensure that broader outcomerare incorporated in a way that does not discriminate against any supplier or result in any offsets Agencies must conduct reasonable due diligence and manage contracts to ensure designated priority outcomes are delivered
Rule 19: Improved conditions for New Zealand Objective	Direction	Application
 To help agencies and their suppliers meet responsibilities under the Health & Safety at Work Act, and applicable regulations and codes of practices through early engagement with suppliers Rule 17: Increase access for New Zealand busi 	 Ensure contracts set out that suppliers and sub-contractors comply with employment and H&S requirements Agencies must conduct monitoring of designated contracts for commitments to be delivered and reported 	 Agencies must ensure suppliers and subcontractors demonstrate good H&S practice within forestry and construction Fair treatment of staff in the domestic supply chain within cleaning, forestry and construction
Objective	Direction	Application
 Increase access to Government contracts for New Zealand businesses and grow their skills A particular focus improving access to ICT procurements and opportunities for Māori, Pasifika and regional businesses 	 Agencies need to ensure they proactively seek to identify opportunities for Māori and Pacific businesses, regional businesses and social enterprises through seeking to involve them in supply chains 	 The contract award must be determined based on public value and must not preclud other suppliers Agencies must conduct monitoring of designated contracts for commitments to be delivered and reported For ICT, agencies must consider opportunitie for New Zealand businesses
Rule 20: Transitioning to a net-zero emissions e	conomy	

Objective	Direction	Application
• Support the transition to a zero net emissions economy and reduce waste from industry	 Agencies should support sourcing of low emissions and low waste For designated contracts, agencies must support the sourcing of low waste and low emissions and encourage innovation 	 Vehicle purchases must have 20% lower emissions New heating systems need to be low emission options Office supplies be low waste and/or are recyclable Agencies must conduct monitoring of designated contracts for commitments to be delivered and reported

Source: Government Procurement rules, Procurement.govt.nz guidance, Grant Thornton insights.

3. Changes to construction procurement

Agencies must plan new construction works in conjunction with the infrastructure transactions unit and look to include upskilling in construction in procurements.

Rule 64: Infrastructure				
Objective	Direction	Application		
 The Government has recognised the need to develop capability to support the delivery of major infrastructure projects The infrastructure transactions unit (ITU) has been established to lift the quality of infrastructure procurement and delivery Its primary role will be to support agencies and local authorities to procure and deliver major infrastructure projects 	• Agencies procuring significant infrastructure must consult early with treasury's ITU and involve ITU in business cases to ministers	 Agencies considering the procurement of infrastructure with a total cost of ownership of more than \$50 million must consult, engage with and follow guidance from the ITU Agencies must use any documentation developed by the ITU as the basis for infrastructure contracts and consult with the ITU material proposed modifications 		
Rule 18: Construction skills and training				
Objective	Direction	Application		
 Increase the size and skill level of the domestic construction sector workforce and provide employment opportunities to targeted groups 	 Agencies must include questions in construction tenders on skill development and training practices of the supplier and their subcontractors Tender evaluation must reasonably consider skills development and training 	 When procuring construction works over \$9m (whole-of-life cost), agencies must consider skill development and training of staff and subcontractors Agencies must conduct monitoring to ensure that commitments made in the tender are delivered and reported 		
Rule 69: Planning for new construction works				
Objective	Direction	Application		

Objective	Direction	Application
• The Government seeks to improve workplace safety construction projects through applying common good practices more consistently in often complex public infrastructure projects	• Agencies must apply the good practices set out in the Construction Procurement Guides when procuring construction works and produce documented evidence of the rationale where they have not been followed	 A procurement plan could include consideration of: matching capability to complexity delivery and contracting building information modelling (BIM) risk and value management H&S and employment standards.

Source: Government Procurement rules, Procurement.govt.nz guidance, Grant Thornton insights.



4. Removal of outdated rules

The Government has removed three rules that have become outdated since the last version of the procurement rules. These eliminations reduce reporting requirements.

3rd ed rule 52: Registered supplier lists						
Reason	Change	Implication				
 Registered supplier lists were under-utilised as a way of understanding the market for a good or service Maintaining public lists of suppliers was impractical for agencies and suppliers 	Registered supplier lists, and the requirements on how to establish and operate them, are no longer contained in the Government procurement rules	 The rules around registered supplier lists no longer need to be followed by agencies However, maintaining a registered supplier list is not inconsistent with the remaining rules, should an agency decide to continue to do so 				
3rd ed rule 60: Geospatial information and ser	vices					
Reason	Change	Implication				
 Geospatial data is now recognised as being one specific type of data, recognising many other specific types, and so the approach to this is being aligned to other data types The New Zealand geospatial office (NZGO) was dissolved back into LINZ in 2017 	 Agencies no longer need to consult with the NZGO before approaching the market to procure geospatial information or services 	Less consultation required for agencies for geospatial procurements				
3rd ed rule 18: Extended procurement forecast	3rd ed rule 18: Extended procurement forecasts					
Reason	Change	Implication				
 This rule potentially exceeded general planning expectations and so there was often insufficient information available Extended procurement forecasts (EPF) were often not submitted or submitted in enough 	Agencies are no longer required to submit an EPF to MBIE for cross-Government planning	• Agencies no longer have to annually review and update EPFs of contract opportunities in the four-year forward pipeline				

Source: Government Procurement rules, Procurement.govt.nz guidance, Grant Thornton insights.

detail and accuracy to be useful



Procurement specialists at Grant Thornton

Get in touch if you would like to discuss what these changes mean for you.



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