

Government Procurement Rules: Benefits and rationale for changes from the 4th to 5th edition

What are the benefits of the Government Procurement Rules?

- They are a flexible framework to enable government agencies to make good commercial decisions and maintain accountability and public trust in spending taxpayer money through fair procurement practices.
- The Rules emphasise the importance of commercial and procurement functions within agencies and the critical role they play in delivering an agency's strategic objectives through third party suppliers.
- They make it clear how procurement can meet the Government expectations on the public sector to deliver high quality public services and achieve its wider objectives of growing the New Zealand economy.

Key shifts to improve procurement practice and achieve greater public value

- **Support New Zealand's economic growth** by seeking economic benefits in each procurement and engage New Zealand businesses where they can deliver.
- **Procurement is efficient.** The new Principle sets the expectation that every procurement will be proportionate and right-sized based on the value, risk and complexity. That it has appropriate cost and resourcing impacts on your agency and on suppliers. Use this principle to justify adapting current policies, practices and your approach to engaging with suppliers to achieve efficiencies.
- **Fairer operation of supplier panels and transparency of secondary procurement spend.** Most agencies have set up panels of suppliers for their own use, which can be efficient and cost effective. However, suppliers can find their operation inconsistent and market distorting. The Rules introduce good commercial disciplines in establishing and managing them well and for greater visibility of spend to improve transparency and insights.
- **Delivering value through effective contract management.** There are new requirements to improve the New Zealand public sector's contract management practices to realise value over the life of the contract, improve delivery and manage risks.
- **Stronger integrity, transparency and accountability** requirements, aligned to international standards, will enhance public confidence and trust in procurement.

Key changes and their rationale:

Change	Related rules	Rationale / explanation
New principle: “Be proportionate and right-size the procurement”	Principles of Procurement	- Procurement processes, particularly sourcing, can be overly complex and costly. - This principle emphasises that activities must be right-sized and proportionate to the value, risk and complexity to the opportunity. It is reinforced in Rules 6: Planning, Rule 10: Requirement to openly advertise and Rule 35: Contract Management Plan. - This will reduce cost, time and effort from both suppliers and government and deliver greater value to the New Zealand economy.
New Rule 8 requiring agencies to seek economic benefits to New Zealand - Over \$100k threshold, including minimum 10% weighting in evaluation criteria; - For under \$100k, an expectation to award contracts to capable NZ businesses. This replaces the broader outcomes rules. - Rule 16: Broader Outcomes - Rule 17: Increase access for New Zealand businesses - Rule 18: Construction skills and training - Rule 18A: Quality employment outcomes	Rule 8: Economic Benefit to New Zealand	- The Government wants to support New Zealand businesses and benefit the economy as part of achieving public value and spending public money. - The new Economic Benefit to New Zealand Rule provides a framework for considering the economic benefits as part of an assessment of public value in every procurement. - The weighting is intended to ensure that there is an evaluation of economic benefit to New Zealand, as well as the key requirements of the procurement, such as functional and contractual objectives (e.g. quality and delivery of the solution and price) as part of the assessment of public value. The proposed weighting is a minimum requirement. Agencies can place a stronger emphasis on economic benefit. - The under \$100k rule is intended to increase access to government contracts for New Zealand businesses. - There is guidance available to support agencies.

Change	Related rules	Rationale / explanation
- Rule 19: Improving conditions for New Zealand workers - Rule 20: Transitioning to a net-zero emissions economy and designing waste out of the system		
<i>Setting up a supplier panel</i> There are some new requirements for establishing supplier panels, which includes Collaborative contracts (AoG, Common Capability, Syndicated) and panels set up by agencies for their own use. In addition to publishing information on agency panels, the key requirements include, when setting up a panel, having a contract management plan and guide for how the panel will operate. <i>Contract award notice</i> There is a new requirement for publishing a contract award notice for any secondary procurements over \$100k on GETS or reported annually to NZGP.	Rule 22: Panel of Suppliers (Rule 32 for contract award notices)	- Suppliers have advocated for more transparency, certainty and fairness from panels around upcoming work, panel arrangements and contract information. - Secondary procurement processes can be inconsistent and uncertain for suppliers and contract and supplier management needs significant improvement. - Procurement done through panels represents a significant portion of government spend and there is currently limited transparency of it. This requirement for reporting secondary procurement is aimed at better transparency of government spending and better insights for use by everyone (government, suppliers, civil society groups and the public). - Therefore, this rule is intended to apply to any spend through a panel, including panels set up by agencies for their own use and Collaborative contracts (AoG, Common Capability, Syndicated). DIA's Marketplace has a range of contracts on it and, for the purposes of transparency under this rule, can be considered secondary procurement (unless it's clearly stated primary procurement).

Change	Related rules	Rationale / explanation
New contract management rules – requirement to have a plan and a system for tracking and managing contracts: - requiring agencies to put a contract management plan in place after awarding a contract and keep records to identify the contracts it has. - agencies will be expected to have contract management plans that are right sized and proportionate based on the contract's value, risk and duration. An agency can make proportionate decisions, including to put a contract management plan across a category of spend and/or by tiers of suppliers.	Rule 34: Contract Management System and Rule 35: Contract Management Plan	- Good contract management ensures that the contract is delivered, and the benefits achieved. The current rules are silent on this, and the new rules fill this gap. - There are poor contract management practices in government. - Raising investment and capability in contract and supplier management is vital to realising and reporting on achieving public value and keeping pace with international best practice.
Reflecting changes made in October 2024, there are prompt payment requirements to pay: 90% of domestic trade eInvoices within 5 business days - other domestic trade invoices within 10 business days. Agencies report payment times to MBIE quarterly.	Rule 36: Prompt payment times	- Cash flow is critical to business, especially for SMEs; therefore, promptly and using e-invoicing to pay invoices will benefit businesses, ensuring faster distribution of money into the economy - Part of the increased attention to integrity, efficiency and digitisation in government procurement. - Supports greater efficiency and cash flow to businesses that supports their sustainability and growth, especially small and medium sized businesses.
Reflecting changes made in October 2024, there are eInvoicing capability requirements on agencies that send and receive more than 2000 domestic trade invoices.	Rule 44: eInvoicing capability	- Drive significant economy-wide productivity improvements. - eInvoicing allows invoices to be processed digitally, reducing instances of human error and fraud.

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There is a new requirement for large businesses to submit eInvoices (by 2027).		A large supplier has the same meaning as in section 45(b) of the Financial Reporting Act 2013 to ensure regulatory cohesion. The requirement aims to incentivise large businesses towards a faster uptake in eInvoicing, which will lead to more rapid adoption across the New Zealand economy.
New Rule 25: Due Diligence – inclusion of due diligence considerations that are proportional to the procurement	Rule 25: Due Diligence	There are risks across the system due to a lack of attention to appropriate due diligence throughout the whole procurement lifecycle, including supplier integrity and performance.
Agencies' procurement policies must be publicly available.	Rule 1: Principles and the Government Charter	- Currently a lack of public transparency of individual agency government procurement policies. - Making them publicly available will increase public confidence and trust in government procurement and provide suppliers with greater predictability and certainty of the procurement processes and practices applied by agencies - An agency's overarching procurement policy will meet this expectation where it covers: core procurement objectives; ways of working throughout the procurement lifecycle; roles and responsibilities; thresholds for different types of approaches, for example open, closed competitive, direct sourcing/and delegation.
Introduced a requirement for agencies to incorporate a Supplier Code of Conduct in every contract.	Rule 2: Integrity	- Government expects its suppliers to act with integrity. - To address issues with suppliers not meeting the high standards expected when doing business with government.
Introduced more criteria into planning considerations	Rule 6: Planning	Good upfront planning is critical to the success of the procurement.

Change	Related rules	Rationale / explanation
		Planning that is proportionate to the value, risk and complexity of procurements will mitigate risks and improve contract outcomes.
New opt-out procurements' requirements include: - Must provide a thoroughly documented rationale - Post a contract award notice	Rule 11: Opt-out procurements and Appendix 1	- Documenting the rationale and the visibility of the resulting contract award will build more integrity into the process and support better value outcomes from government contracts and public trust. - The changes reinforce that opting out is not an 'easier' substitution from openly advertising as all the principles for spending public money still apply and agencies must still be able to demonstrate that they have met these principles when opting out.
Exemptions from open advertising - New exemption – Judicial court order - Removed secondary procurement as an exemption so there is no need for internal sign-off to purchase from Collaborative contracts and agency panels - The requirement that "A senior manager must endorse the rationale before the agency undertakes the procurement." has been relaxed for agencies to "the name and position of the person approving the decision to exempt the procurement".	Rule 12: Exemption from open advertising and Appendix 2	- Make the procurement processes for agencies more straightforward, less onerous and clarify circumstances where agencies can more easily apply them to their contexts. - For example, secondary procurement is inherently exempt from open advertising (it has already happened). A secondary procurement exemption in the previous version of the Rules caused confusion and some agencies were seeking approval through their internal processes to be exempted from openly advertising each time they purchased from a supplier panel via secondary procurement.
Clarification that agencies must not make it a technical specification that a supplier has been	Rule 15: Technical specifications	To enable a level playing field for all suppliers to bid for work and demonstrate past performance.

Change	Related rules	Rationale / explanation
previously awarded a contract by a named buyer or a New Zealand government agency.		
New minimum timeframe of 20 business days for suppliers to respond to a Notice of Procurement.	Rule 16: Sufficient time	- Provides smaller entities more valuable time to complete responses. - The Rule is streamlined and simplified considerably from the 4th edition, which had multiple minimum timeframes and criteria for reducing time.
For a Notice of Procurement, it must now include: - where known and appropriate, the expected budget available to spend on the goods, services or works. - the procurement process being used.	Rule 17: Notice of Procurement	- Suppliers have asked for more information to be able to compete fairly and openly for work. - More value from government contracts due to a fairer and more competitive environment for suppliers.
Managing National Security Risks assessment tool made more user friendly (Former Rule 44 split into new Rule 26 and Rule 28: Reasons to exclude a supplier)	Rule 26: Managing National Security Risks	- This information was previously referred to as part of 4th edition Rule 44: Reasons to exclude a supplier, with supporting guidance. - It is now its own rule for ease of understanding and priority.
Accepting and facilitating oral responses	Rule 27: Treatment of responses	- Using traditional written methods of procurement in all cases can limit access to some suppliers. - Opportunities to use the market to find innovative solutions efficiently and effectively are being missed. - Increased awareness and understanding of alternative competitive processes may lead to more suppliers participating and more successful competitive outcomes.

Change	Related rules	Rationale / explanation
		This practice is already happening, and the Rules bring it into the Government's good practice framework.
Additional reasons to exclude a supplier, including: - fraud, corruption and anti-competitive behaviour (e.g. bid-rigging, bribery including foreign bribery, collusion, etc.) - suppliers sanctioned by the New Zealand government - failure to disclose or falsely reporting beneficial ownership, where requested	Rule 28: Reasons to exclude a supplier	- Provides more clarity around what serious issues can be considered in the context of decision making and give agencies more confidence in their decision making. - Increase focus on security and integrity issues when choosing suppliers.
Requirement to publish a cancellation notice on GETS outlining why a procurement was cancelled.	Rule 29: Awarding the contract	- Stakeholders have commented that agencies do not usually provide information or justification for cancelling contracts leading to mistrust from the market. - Greater accountability to explain processes and decisions fosters trust with suppliers and improves the reputation of government.
Obligations on the prime contractor to provide information about subcontractors on request, increasing transparency of the supply chain.	Rule 31: Subcontracting	- The 5th edition of the Rules sets a stronger expectation that agencies should be aware of which suppliers are delivering contracted goods and services under a subcontracting arrangement. - These expectations have been strengthened in response to recent concerns about who in the supply chain is responsible for delivering the contract, resulting in undeclared and unmanaged conflicts of interest. There have also been recent concerns around ensuring that suppliers to government, including subcontractors working under government contracts, are maintaining expected standards of integrity and conduct.

Change	Related rules	Rationale / explanation
		- The requirements are intended to apply where a prime contractor enters into an arrangement with a separate third-party to deliver part of the contracted goods or service, not in relation to the prime contractors' wider supply chain. - For some contracts and sectors, it will be difficult for agencies to meet these expectations, and in these cases, taking best endeavours approach will be sufficient.
The Procurement System Leader may publish an agency's procurement data and information if it is in the public interest.	Rule 45: Reporting	- The public is entitled to see where and how its funds are being spent. - Enables the Procurement System Leader to continue to publish information about system wide government spending to improve transparency and accountability of government activities and provide insights that benefit all stakeholders (including government, business and the public).
Consistency with the use of "must", "should" and "expected to". The term "should" is no longer used in a Rule, rather it indicates good practices found in the More Information sections.	All	Make the expectations clearer on what agencies are required to do.
New format and layout for each Rule: Primary Requirement; Application; More Information.	All	- Puts the core of the Rule upfront. - Simpler, more accessible and a better user experience. - Stakeholders found certain rules confusing, specifically around whether rules were mandatory requirements or good practice.
New structure of the Rules: Context, Parts One - Four, Definitions	All	Core principles and values that underpin procurement are at the front.

Change	Related rules	Rationale / explanation
Part One – Core values <i>Enduring rules that underpin good procurement practice</i> Part Two – Procurement lifecycle steps – Planning Part Two – Procurement lifecycle steps – Approaching the market Part Two – Procurement lifecycle steps - Awarding the contract <i>Practical process requirements that follow the lifecycle of a procurement activity</i> Part Three – Procurement System Requirements <i>Agencies’ responsibilities to the Procurement System Leader</i> Part Four – General information <i>Definitions, applicability, roles and responsibilities, and other general guidelines</i>		• Easier to read and navigate. • The Procurement Lifecycle Steps set out a more linear end-to-end process to support procurers using the Rules. • Procurement System Leader requirements are all together. • General information that will apply to all procurements is at the end. Users who are familiar with the material can refer it when needed.

What agencies need to do
• Review and familiarise themselves with the 5th edition of the Government Procurement Rules. • Update procurement policies and procedures, as relevant. • Keep informed of new guidance and resources to support transition from the 4th to the 5th edition of the Rules on NZGP’s website. • For further advice and support, contact procurement@mbie.govt.nz.