



NEW ZEALAND
GOVERNMENT PROCUREMENT

Guide to supplier feedback and complaints

How to provide feedback or make a complaint about procurement



MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT

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Acknowledgement and thanks – development of this Guide

This guide is part of a Government initiative to help suppliers better engage with government and support good procurement practice. It has been developed under the New Zealand Government Procurement Reform Programme after consultation and discussion with the following stakeholders:

- **Business Reference Group:** Input and guidance were received from an advisory group comprising representatives of New Zealand businesses: Fulton Hogan, Westpac, Emendo, Wade Engineering, Gen-i, the Aviation Industry Organisation, Te Arahanga o Nga Iwi, Finewood Furniture, Westlake Consulting, the New Zealand Contractors' Federation and Starfish Consulting.
- **Procurement Development Technical Advisory Group:** Input and guidance were received from an advisory group comprising senior procurement advisers from government agencies: the Ministry of Foreign Affairs and Trade, the Ministry of Social Development, the Auckland District Health Board, the Ministry of Agriculture and Forestry, the Ministry of Justice, Inland Revenue and Public Trust.
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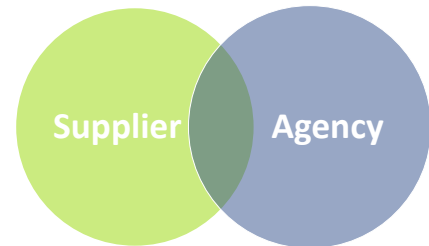
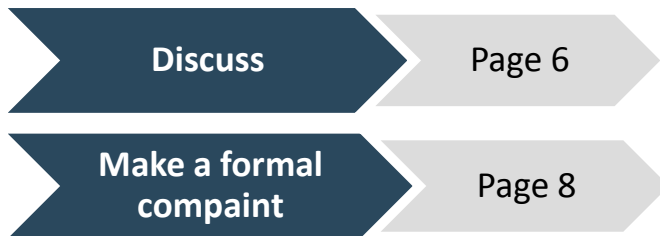
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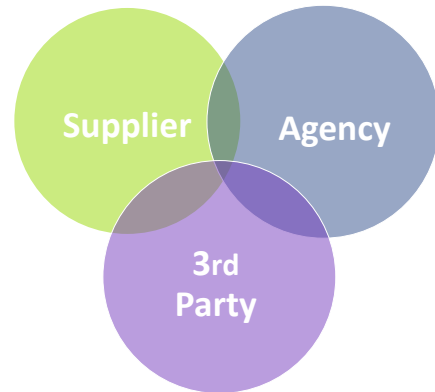
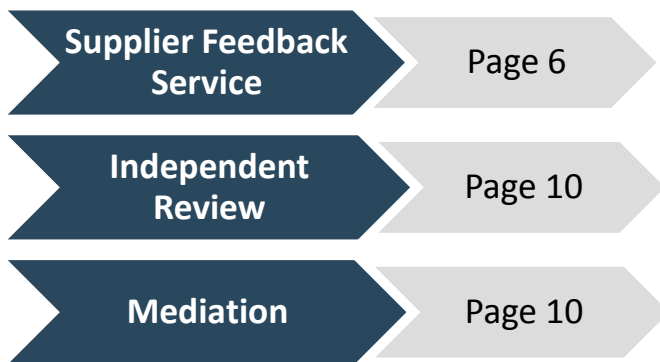
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Overview of Options

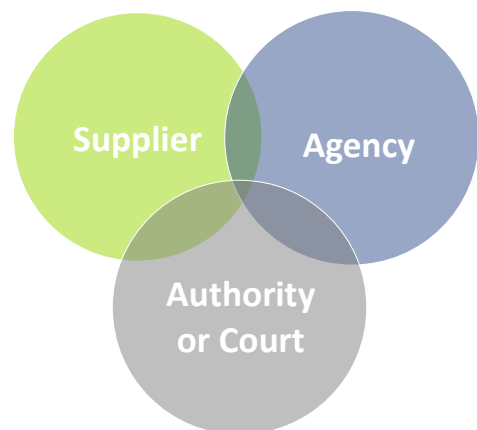
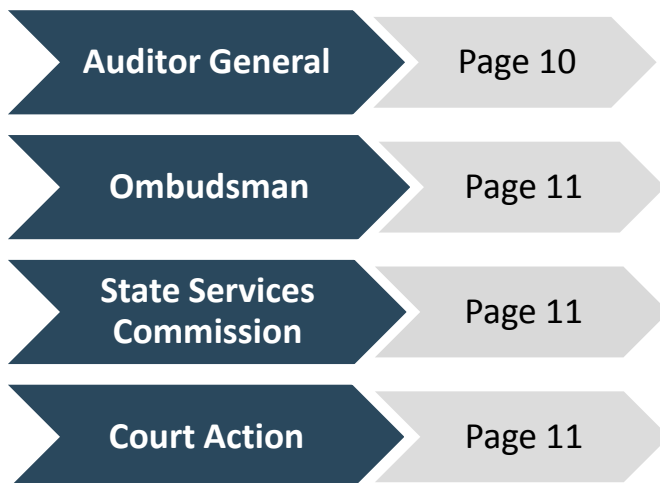
Step 1 Try and sort it out directly with the agency



Step 2 Engage 3rd Party to help you sort it out with the agency



Step 3 Escalate complaint to an authority and/or go to court



Introduction

What does this guide cover?

This guide is a short overview for suppliers about how to:

- give feedback or raise concerns about a government procurement process
- make a formal complaint about a government procurement process, and
- use other options to resolve a problem if previous steps haven't worked.

This guide also includes information about:

- the procurement process
- suppliers' rights in the procurement process
- the responsibilities of those involved in the procurement process
- the role of the Ministry of Economic Development, and
- useful contacts.

Why have a feedback and complaints process?

Good public services depend on good procurement. The government aims to demonstrate high standards in its procurement practice, but doesn't always get it right, and sometimes your experience may not be what you expected.

We want to make sure that any concerns you raise are treated seriously and that you receive a complete response.

Receiving feedback is an opportunity for government agencies to review their practice. Feedback can highlight examples of good practice. Complaints can identify areas for improvement. This process supports ongoing development and improvement in procurement across government.

How do I raise a concern?

If you have concerns about any part of a procurement process you can:

- raise your concern with the agency you are dealing with, or
- use New Zealand Government Procurement's Supplier Feedback Service.

Raising a concern with the agency

During the tender process

If you have a concern during the tender process, you should raise it with the agency as early as possible. If the problem is the result of a procedural mistake, there may be time to fix the mistake straightaway.

Concerns can often result from a misunderstanding – the agency may be able to resolve your concern by explaining the process used or the reason for its decision. Raising and resolving concerns early on in a process can reduce the chance of more serious problems arising later.

After an unsuccessful tender

If you have been unsuccessful in a tender and have a concern, you should first ask for a debrief from the agency. You should expect to be told the reasons why your tender was not successful, compared to the winning bid. These reasons may resolve your concern or clarify any problems that the agency needs to investigate further.

If you have raised your concern with the agency but it has not been resolved, you may need to contact someone more senior within the agency (such as a senior manager).

Using the Supplier Feedback Service

If you want to give feedback or raise a general concern about your procurement experience, you can use NZGP's Supplier Feedback Service. This is not the same as lodging a formal complaint.

You can also use the Supplier Feedback Service to give positive feedback about your procurement experience, as well as contacting the agency to tell them.

What is the Supplier Feedback Service?

The Supplier Feedback Service is a confidential service managed by NZGP that:

- allows suppliers to voice their concerns to a neutral agency, and
- gives government an understanding of what problems suppliers are experiencing with the procurement process

Feedback plays an important role in identifying difficulties and barriers that suppliers are experiencing. Feedback helps us identify improvements that may lead to better government procurement practices.

▶ To contact the Supplier Feedback Service, email procurement@mbie.govt.nz

What will NZGP do when they have heard my concern?

Once you have discussed your concern with NZGP, it will generally follow up with the agency involved (while respecting your confidentiality).

NZGP cannot overturn an agency's decision, but it can review whether or not the agency has followed government procurement policy in making its decision.

▶ For more information, visit www.gets.govt.nz or email procurement@mbie.govt.nz

What happens if my concerns are not resolved?

If the problem is still not resolved, you may want to make a formal complaint. See the next section for guidance.

How do I make a formal complaint?

When should I make a formal complaint?

If you have made every effort to resolve your concern with the agency you are dealing with, but are still not happy, you may want to make a formal complaint.

What can I expect from a government agency if I make a complaint?

As a government supplier (or potential supplier), you have the right to approach agencies directly to have your complaint about a procurement process considered and investigated.

Agencies must allow you this right and must investigate your complaint fairly, impartially and promptly.

Agencies must not allow this complaint to affect any other current or future opportunities you may have with a government agency.

What should I say in my complaint?

You need to put your complaint in writing and clearly set out all the details. In your letter or email make sure you include:

- background information identifying the tender, the process and the relevant dates
- a brief summary of the problem or concerns you have
- an outline of your dealings with the agency
- details of any phone calls you had, emails or letters sent and the names of the people you were dealing with
- a summary of the information you were given at the debrief and why this does not resolve the problem
- an explanation of what you want the agency to do – for example, you might request that the agency provides more information or investigates specific facts, and
- your contact details – name, address, email address and phone numbers.

Who do I write to?

Address your complaint to the agency's chief executive and send a copy to:

- the manager of the agency's procurement team, and
- New Zealand Government Procurement.

What you should not say in your complaint

In your letter or email, you should *not*:

- make unpleasant or personal comments about individuals,
- use inappropriate language, such as swearing, or
- make accusations without credible evidence to back up your comments.



What happens after I send my complaint?

Acknowledging your complaint

The agency will immediately send you an acknowledgement of your complaint and will tell you the next steps. This could involve a meeting to clarify your problem, or further investigation by the agency to respond to the point you have raised.

Investigating your complaint

Agencies should deal with complaints promptly. For a straightforward matter you should expect to hear from the agency within 20 working days. However, depending on the details of your complaint, it may take some time to investigate. If this is the case, the agency should give you some idea how long the process is expected to take.

Responding to your complaint

Once the agency has investigated your complaint, it will give you a written response. This may outline the internal review of the process and provide the findings and conclusions. It should state the agency's decision and, where appropriate, say what steps will be taken to resolve your problem.

Other options to resolve your concern

What if I am not satisfied after raising a concern or making a formal complaint?

If you are not satisfied after raising a concern or making a formal complaint, there are several options available to you. These include:

- an independent review or investigation
- mediation or alternative dispute resolution
- investigation by the Auditor-General
- investigation by the Ombudsman
- investigation by the State Services Commission, or
- going to court.

However, before taking any further steps, it is important that you have first tried, in good faith, to resolve the problem with the agency. Given the variety of options available, we recommend you consult a lawyer to help you decide on the best option for your circumstances.

Independent review or investigation

You can ask for an independent review or investigation to be carried out. This is called a 'probity audit'. It can be by:

- Audit New Zealand
- your own auditor, or
- an independent auditor appointed by both you and the agency.

Before appointing an auditor, check with the agency about who will pay for the audit. The agency is not required to pay for the auditor.

Mediation or alternative dispute resolution

If the agency agrees, you can both refer the concern or complaint to mediation or some form of alternative dispute resolution. This is faster and cheaper than going to court. Each party usually funds their own costs and shares any mediator costs.

Investigation by the Auditor-General

You can report your concern or complaint to the Auditor-General, who has the power to investigate particular complaints and issue recommendations to Parliament. The Auditor-General has no power to cancel contracts or overturn procurement decisions.

▶ For more information visit www.oag.govt.nz

Investigation by the Ombudsman

You can report your concern or complaint to the Ombudsman, who can investigate complaints and make recommendations to the agency to resolve your problem.

The Ombudsman may recommend the agency gives you a voluntary payment for any loss or inconvenience you have suffered. (This is called an 'ex gratia' payment – the agency is not legally obliged to give you this payment but may choose to.)

If the agency does not accept the recommendation, the Ombudsman may decide to report the matter to Parliament.

▶ For more information, visit www.ombudsmen.govt.nz

Investigation by the State Services Commission

If your concern or complaint is about the integrity of the agency, report it to the State Services Commission.

Agencies must meet the minimum ethical standards set out in the Standards of Integrity and Conduct code issued by the State Services Commissioner. If you are claiming that the agency has breached this code and has not corrected their actions, the State Services Commissioner may decide to investigate.


▶ For more information, visit www.ssc.govt.nz

Going to court

If you have tried, in good faith, to get your concern or complaint heard, but feel that it has not been properly resolved, you can take the matter to court. You may be able to claim legal remedies. A lawyer will be able to advise on the merits of your case. The court will carry out an independent judicial review of the agency's decision.

You should go to court only as a last resort. Make sure you get independent legal advice before taking this step.

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



Understanding Government procurement

Take the time to become familiar with government procurement processes

Government procurement is going through significant reform. A key part of this reform will be a move towards simpler processes and more accessible information for suppliers.

If you are a supplier interested in providing services to government, you will need to invest some time and effort into understanding how to bid effectively.

Asking a question about government procurement policy

If you have a question about government procurement policy, either you or the agency can ask NZGP to explain. Contact procurement@mbie.govt.nz

Can agencies contract suppliers without asking them to bid through a tender process?

In some instances an agency can contract suppliers without going through a tender process. This is called 'direct source' or 'sole source'. However, this approach is usually only taken for low-value, low-risk one-off purchases.

If the contract is valued at \$100,000 or more (or \$10 million for construction works) Public Service agencies, New Zealand Police and New Zealand Defence Force are required to publish the opportunity on GETS (see page 14). Following the tender they must also post brief details of the contract that has been awarded and whether the procurement was by open tender or not.

This allows public scrutiny and gives other interested suppliers the chance to challenge the contract.

If a supplier presents an unsolicited proposal to an agency can the agency 'go to market' on it?

If a supplier directly approaches an agency with an unsolicited proposal (that is, one the agency hasn't asked for), the agency may still have to ask for tenders from other suppliers. The supplier that originally presented the proposal will not necessarily be awarded a contract for the work.

The agency is responsible and accountable for getting the best value for money over the whole life of the contract. This must generally be done through a transparent competitive process (for example, a tender process).

What is procurement?

Procurement is the process of buying goods or services.

Procurement spans all steps, including developing a business case, selecting a supplier, and managing delivery and eventual re-sale or disposal.

Procurement can involve inviting suppliers to bid for work through a tender process.



Suppliers' rights to be treated fairly

What can I expect when dealing with a government agency?

The government requires that public agencies recognise the right of suppliers to be treated fairly, impartially and consistently at all stages of the procurement process. This includes maintaining ethical standards of behaviour throughout the procurement process.

What principles apply to government spending?

The following principles that apply to all government spending mean that you have the right to a fair, impartial and prompt investigation of a complaint about a procurement process.

Accountability

Agencies are accountable for their performance and must be able to give a complete account of how they have spent public funds.

Openness

Agencies are transparent in their administration of funds.

Value for money

Agencies use resources effectively and efficiently. In purchasing goods or services they should take into account the total costs and benefits over the whole of the life of the goods or services. This does not necessarily mean selecting the lowest price.

Lawfulness

Agencies must act within the law and meet all of their legal obligations.

Fairness

Agencies have a general public law obligation to act fairly and reasonably. They must be impartial when making decisions. They must act in a fair, open and unbiased manner.

Integrity

Agency staff must act with the utmost integrity.

► Full details of these principles are available from the Auditor General at www.oag.govt.nz

Agencies must respect your right to raise a concern or make a complaint

Agencies may not stop giving you work or exclude you from future tenders just because you have raised a concern or made a complaint.

If you think you are being treated unfairly, you can contact NZGP's Supplier Feedback Service to discuss your concerns (see page 6).

Who is responsible for what?

What are government agencies responsible for?

Government agencies are expected to:

- ensure that all staff who spend government money understand government procurement policies and demonstrate good procurement practice
- carry out market analysis before asking for tenders from suppliers. This can involve some contact with suppliers, testing and refining initial needs analysis, investigating options within a market, and looking for innovative solutions
- be open to your requests for further information during a tender. In answering your request, however, the agency must avoid giving you unfair advantage or special treatment. Usually this means that when the agency answers your request, it will also give the information to other suppliers
- at the end of the tender, offer you a debrief on how your proposal was evaluated. The debrief should cover the relative strengths and weaknesses of your proposal. Because of commercial sensitivities, agencies are limited in what they can tell you about other suppliers' proposals
- try to quickly resolve any concern or problem you have, through communication and clarification
- ensure your right to a fair, impartial and prompt investigation of any complaint, and
- if the contract is valued at \$100,000 or more, publish the name of the successful supplier and details of the contract on GETS (the Government Electronic Tenders Service) including whether the procurement was by open tender. (Note: This currently only applies to Public Service agencies, the New Zealand Police and the New Zealand Defence Force.)

What am I responsible for?

The government expects suppliers to:

- invest time and effort in understanding the government market and government procurement processes
- invest time and effort in developing skills in responding to tenders
- act with integrity when dealing with government officials, and
- not use a complaint to second guess how the agency has assessed the technical merits of tenders from other suppliers.

What is GETS?

GETS is a free online service run by NZGP. It is designed to promote open and fair competition in government contract opportunities, as well as meet New Zealand's international trade agreement commitments. For more information, visit www.gets.govt.nz

The role of New Zealand Government Procurement

Monitoring complaints

New Zealand Government Procurement (NZGP) monitors the number and nature of supplier complaints. If necessary, it will clarify procurement policy and practice guidance for agencies so that similar problems are less likely to arise in the future. NZGP must be sent copies of all written complaints (and related correspondence) that government agencies' chief executives receive.

Providing policy advice and informal mediation

NZGP can help agencies and suppliers at any stage of the complaint process by:

- clarifying procurement policy, or
- providing informal mediation between the parties if asked.

NZGP has an advisory role only. It does not have the power to suspend or overturn an agency's procurement decisions. An agency must always carry out its own formal review of a complaint.

Agencies and suppliers should always consult their own legal advisors, even if they have had help from NZGP.

Providing recommendations to agency chief executives

If a supplier makes a complaint while the procurement process is still underway, NZGP can recommend to a chief executive that the agency delays, restarts or suspends the process.

NZGP will only do this:

- in exceptional circumstances (for example, if market competition would be significantly affected by a flaw in the procurement process), or
- if it will not unfairly advantage the complainant over other suppliers.

Reporting non-compliance to ministers

If an agency is continually not complying with government procurement policy, NZGP will report this to the relevant ministers and recommend appropriate action.

Investigating complaints under trade agreements

Under trade agreements with Australia and Singapore, NZGP is responsible for investigating supplier complaints of agency non-compliance with reciprocal government procurement obligations. In these cases, NZGP consults with the equivalent agency in the other country. If it cannot resolve a complaint, NZGP must refer the complaint to the relevant ministers for a decision.

Similarly, NZGP (in consultation with the Ministry of Foreign Affairs and Trade) investigates any alleged breaches of government procurement obligations under other trade agreements.

Useful contact information

New Zealand Government Procurement

If you have any questions about this publication or about government procurement processes, contact NZGP procurement@mbie.govt.nz

Audit New Zealand

www.auditnz.govt.nz

Office of the Auditor-General

www.ombudsmen.govt.nz

State Services Commission

www.ssc.govt.nz

GETS

For more information about GETS (the Government Electronic Tenders Service), visit www.gets.govt.nz