

# Syndicated procurement

A quick guide for government agencies



**MINISTRY OF BUSINESS,  
INNOVATION & EMPLOYMENT**  
HĪKINA WHAKATUTUKI

## **Ministry of Business, Innovation and Employment (MBIE) Hīkina Whakatutuki – Lifting to make successful**

MBIE develops and delivers policy, services, advice and regulation to support economic growth and the prosperity and wellbeing of New Zealanders.

### **MORE INFORMATION**

Information, examples and answers to your questions about the topics covered here can be found on our website: [www.mbie.govt.nz](http://www.mbie.govt.nz).

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Online: ISBN 978-1-991409-52-2

August 2025

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## What is a syndicated contract?

**Syndicated contracts** – Syndicated procurement involves an individual agency or group of agencies collectively going to market for common goods and/or services. There are two types of Syndicated contracts; both types have a Lead Agency.

**Closed Syndicated (CS)** contracts are limited to a group of named agencies and **do not** require approval from MBIE. Agencies must be named in the contract in order to purchase off it and cannot be added to it retrospectively.

**Open Syndicated (OS)** contracts include amongst other things a common use provision clause allowing other unspecified agencies to contract with the supplier or panel of suppliers on the same terms and conditions. OS contracts can be established by any eligible organisation. They are established under Rule 40 of the Government Procurement Rules.

### [Rule 40: Syndicated contracts](#)

There are several features of an OS contract.

- OS contracts **must** go through a 3-stage MBIE review and approval process before they are available for joining.
- The Lead Agency **cannot** charge a Participating Agency an administration fee or levy.
- An OS contract **cannot** be extended or renewed past its final expiry date.
- Participation in OS contracts is **voluntary** for Eligible Agencies.
- Provisions allowing for common users **cannot** be added retrospectively to a tender document or single agency contract.
- Private sector suppliers **cannot** be authorised to purchase through an OS contract.

## What are the benefits of Open Syndicated Contracts?

### **New Zealand Government**

Supports a collaborative government approach, consistency in contracts, consistency in the goods and services purchased, and better use of taxpayer money by leveraging economies of scale.

### **Lead Agencies**

Able to manage their own requirements, help shape and direct the market, and achieve greater procurement value through aggregation. Seen to be supporting NZ Government collaborative initiatives.

### **Participating Agencies**

Achieve greater leverage and sourcing efficiencies - particularly time and resources on tendering activities and contract negotiations. Improve consistency in quality of goods, services, and contract management and provides opportunities to learn from Lead Agency specialist expertise.

### **Suppliers**

Aggregation of opportunity and aligned requirements provides bidding efficiencies, simplified contract management and streamlines access to multiple government agencies. It can also increase suppliers' domestic and international competitiveness.

## How do I join a syndicated contract?

To join an Open Syndicated contract, an Eligible Agency needs to:

- determine [Eligibility](#)
- look to see if there is an existing suitable contract on the [Contracts Register](#)
- review the contract information or make contact with the Lead Agency representative
- sign the Lead Agency's non-disclosure agreement or Pre-joining Letter
- review the Open Syndicated contract and rate card (*if applicable*), decide whether or not to proceed
- sign a Letter of Accession / Agreement (*or similar*) document, that enables the Eligible Agency to become a party to the Open Syndicated contract
- if relevant and agreed by the Lead Agency, negotiate a variation with the supplier
- engage with supplier(s) through a secondary procurement process (*if applicable*)
- negotiate a Statement of Work (SoW) or similar.

## Open Syndicated Contract - review and approval process

Lead Agencies must have key documents **approved** by MBIE during the 3-stage approval process. The process is designed to ensure the robustness of syndicated contracts for use by Participating Agencies. The criteria for assessment can be found [here](#).

### The collaborative procurement review process

Agencies are encouraged to engage us early in the process. Contact us at [procurementplanning@mbie.govt.nz](mailto:procurementplanning@mbie.govt.nz) for documents such as the Collaborative Contract Opportunity assessment.

Review process	Documents reviewed	Details of the review process
Initial Assessment	Collaborative Contract Opportunity assessment (CCO)	<ul style="list-style-type: none"><li>• Lead agency engages early through a start-up session with MBIE to discuss feasibility and overall approach.</li><li>• Lead Agency submits CCO assessment to MBIE.</li><li>• Allow 5 working days for review.</li></ul>
Stage 1	Procurement Plan	<ul style="list-style-type: none"><li>• Lead Agency sends Procurement Plan (or similar strategy document) to MBIE for review.</li><li>• MBIE reviews documents and forwards them to PFLG (and other System Leaders, if relevant) for endorsement.</li><li>• Feedback from PFLG and relevant System Leaders is incorporated into the review report and discussed by MBIE with the Lead Agency.</li><li>• PFLG endorsement given.</li><li>• MBIE approval to proceed.</li><li>• Allow 10 working days for review, extra to incorporate feedback, and any further reviews.</li></ul>
Stage 2	Tender Document(s) and Draft Agreement	<ul style="list-style-type: none"><li>• MBIE will review and approve all documents prior to their release to the market; documents must state it is an open syndicated procurement</li></ul>

		<p>initiative. Please see Appendix A for example text to include in a RFx document.</p> <ul style="list-style-type: none"> <li>• The draft Agreement is reviewed. Please see Appendix B for example clauses to include in an open syndicated contract.</li> <li>• MBIE approval to proceed.</li> <li>• Allow 10 working days for review.</li> </ul>
Stage 3	Evaluation Recommendation, Final Agreement	<ul style="list-style-type: none"> <li>• Lead Agency sends signed Evaluation Report (recommendation) and negotiated contract (prior to signature) to MBIE for review. Once MBIE has approved Stage 3 documents, the agency may proceed to contract signing.</li> <li>• Once the Open Syndicated contract has been signed it will be listed in the Contracts Register available on our website.</li> <li>• Allow 10 working days for review.</li> </ul>

For more information on syndicated procurement, contact us at [procurementplanning@mbie.govt.nz](mailto:procurementplanning@mbie.govt.nz). For general procurement guidance, visit our website [www.procurement.govt.nz](http://www.procurement.govt.nz).

## Open Syndication - Contractual Relationships between agencies and the supplier(s).



Document	Parties	Impact
<b>Open Syndicated Contract</b>	Lead Agency and Supplier	Establishes the Open Syndicated contract relationship.
<b>Non-Disclosure Agreement (NDA)</b>	Lead Agency and Eligible Agency	Enables an Eligible Agency to review the Open Syndicated contract and related pricing and commercial offerings to determine suitability for their agency.
<b>Letter of Accession (LoA)</b>	Lead Agency and Eligible Agency	Enables an Eligible Agency to be a Participating Agency under the Open Syndicated contract.  The Eligible Agency becomes a Participating Agency upon signing the Letter of Accession.
<b>Secondary Procurement Process (SPP)</b>	Participating Agencies and Suppliers	Establishes a process for a Participating Agency to select a Supplier from the Open Syndicated contract panel of Suppliers where applicable.
<b>Statement of Work (SOW) or Purchase Order (PO) or similar</b>	Participating Agency and Supplier	Establishes a buyer/supplier relationship for specific goods and/or services under the Open Syndicated contract.

## Lead Agency responsibilities

The Lead Agency is responsible for:

- all aspects of managing the Open Syndicated contract. Activities may also include escalation for dispute resolution, reporting, organising periodic review meetings as required
- developing a contract management plan, which details the level of contract and relationship management and how Participating Agencies will be engaged in this process over the life of the contract
- reviews, variations and re-negotiations of an Open Syndicated contract and must consult with Participating Agencies on these matters
- ensuring Participating Agencies are aware of approaching reviews and advised of review outcomes (including contract variations). A Lead Agency may involve all or some Participating Agencies in a review process
- reporting agency spend and any Economic Benefit requirements under the contract to MBIE annually.
- notifying MBIE and participating agencies at least 9 months in advance of any decision to end the contract or to no longer undertake the Lead Agency Role.
- notifying MBIE of:
  - a decision to take up any renewal options available
  - updates needed to the contract's webpage on the NZGP website
  - any significant issues with the contract, media attention or Minister's interest
- seeking MBIE approval for:
  - a change in Lead Agency
  - contract extensions outside those provided for in the contract
  - adding new suppliers to the contract
  - adding non-government organisations to the contract
  - closing a contract off to new agencies

- a replacement contract for an existing open syndicated agreement.

For the above notifications and approvals, please contact [procurementplanning@mbie.govt.nz](mailto:procurementplanning@mbie.govt.nz)

## Participating Agency Responsibilities

Participating Agencies are responsible for:

- managing and reviewing their supply relationships with the supplier under an Open Syndicated contract. Any comments or concerns about these relationships should be passed on to the Lead Agency
- publishing any individual contract awards including secondary procurement above \$100,000 on GETS or annually to MBIE.

## MBIE responsibilities

MBIE is responsible for:

- approving:
  - the activities listed as requiring approval under the Lead Agency responsibilities
  - the establishment of an Open Syndicated Contract via the 3-stage review process
- reporting on Open Syndicated contract spend
- making changes to the contract page on the NZGP website
- the decision as to whether a contract should be closed to new agencies after assessment with the Lead Agency. This may be as a result of a supplier complaint, notification by the Lead Agency, the annual spend reporting highlighting an issue or other impacting factors.

## Frequently Asked Questions

### **What if an Open Syndicated contract is superseded by an All-of-Government (AoG) contract or a mandated Common Capability (CC) contract?**

Agencies that are mandated to participate in AoG contracts or mandated CC contracts should not join an Open Syndicated contract covering the same or similar supplies as an extant AoG contract or mandated CC contract.

Mandated agencies participating in an Open Syndicated contract that is superseded by an AoG contract or a mandated CC contract are required to transition to that contract. The agency needs to consider the commercial terms of the existing open Syndicated contract and transition over at the most practicable point.

### **Can an Open Syndicated contract be extended or renewed?**

Only if a right of extension or renewal exists. Syndicated contracts that have expired and have no further renewal terms stated in the contract, cannot be extended.

### **What happens if the Open Syndicated contract ends?**

Agencies party to an Open Syndicated contract that ends can:

- go back to market as a group seeking either a Closed Syndicated or Open Syndicated procurement solution
- join another approved Open Syndicated contract, AoG, or CC contract; or
- approach the market independently through an open procurement process

Whichever option is taken the Government Procurement Rules apply. Syndicated contracts that have expired and have no further renewal terms stated in the contract, cannot be extended.

**Can a Participating Agency continue its supply arrangement when the Lead Agency decides not to extend or renew an Open Syndicated contract?**

Yes, where the Open Syndicated contract still has terms to run, a Participating Agency may continue its supply arrangements with the supplier if agreed between them. This would be a new contractual agreement - but could be on the same terms and conditions as the OS contract. In this situation the Participating Agency is still required to apply the Government Procurement Rules.

**Can the Lead Agency terminate the Open Syndicated contract?**

The Lead Agency may terminate its relationship with the supplier or panel of suppliers (which may involve terminating the Open Syndicated contract) according to the provisions set out in the Open Syndicated contract.

However, this does not necessarily impact on relationships between the supplier and other Participating Agencies under the Open Syndicated contract, who may agree to continue these relationships. In these circumstances, if the syndicated contract is to continue one of the Participating Agencies will need to step into the role of the Lead Agency.

**Can a Participating Agency terminate the Open Syndicated contract?**

A Participating Agency can only terminate its supply relationship with the supplier under an Open Syndicated contract, according to the provisions set out in the Open Syndicated contract. Any such termination does not terminate the Open Syndicated contract nor affect the relationships between the supplier and other Participating Agencies under that contract.

# Example text to include in RFX document

[Remove green explanatory notes, replace red bracketed descriptors with appropriate details, remove brackets, and return colour to black.]

## Syndicated Procurement – Common Use Provision

- (i) It is intended that any contract/s awarded will include a Common Use Provision clause (CUP clause) subject to final approval by New Zealand Government Procurement, a branch within the Ministry of Business, Innovation and Employment (MBIE).
- (ii) If any contract resulting from this RFX includes a CUP clause, then, at any stage during the life of the contract, [subject only to the agreement of **[name of the Lead Agency]** (the Lead Agency)], any Eligible Agency (as defined below) may become a party to the contract under the same terms and conditions as the Lead Agency for the remaining life of the contract.
- (iii) Except as expressly set out in any contract resulting from this RFX, the Lead Agency will have no responsibility or liability whatsoever for any supply relationship formed between the successful supplier and any Eligible Agency (as defined below) that may choose to become a party to the contract pursuant to its CUP clause.

In this paragraph **[x]**, Eligible Agency means:

- (a) each department and departmental agency, as each term is defined in section 5 of the Public Service Act 2020;
- (b) the New Zealand Defence Force, the New Zealand Police, the New Zealand Security Intelligence Service, the Parliamentary Counsel Office, the Office of the Clerk of the House of Representatives and the Parliamentary Service;
- (c) each Crown Entity, as defined in section 7 of the Crown Entities Act 2004;
- (d) each organisation listed in the fourth schedule to the Public Finance Act 1989;
- (e) the Reserve Bank of New Zealand;
- (f) the Office of the Controller and Auditor-General, the Office of the Ombudsmen, and the Office of the Parliamentary Commissioner for the Environment;
- (g) each corporation listed in the first schedule to the State Owned Enterprises Act 1986;
- (h) each local authority, as defined in section 5 of the Local Government Act 2002; and
- (i) any other person, organisation or entity that does not fall within the above categories but which, New Zealand Government Procurement, a branch within the Ministry of Business, Innovation and Employment, determines should be treated as an Eligible Agency for the purposes of this Common Use Contract.

# Example clauses to include in Open Syndicated Contract

[Remove green explanatory notes, replace red bracketed descriptors with appropriate details, remove brackets, and return colour to black.]

## Syndication – Common Use Provision

1. At any stage during the term of this Agreement, [with the written consent of the [Lead Agency]] an Eligible Agency may procure [goods/services] under this Agreement for the balance of its term by signing an [Accession Letter] in the form attached at [Schedule x] and giving a signed copy of that [Accession Letter] to the [Lead Agency] and the [Supplier].
2. The terms and conditions of this Agreement will apply to the provision of [goods/services] by the [Supplier] to each Eligible Agency that has signed an [Accession Letter] (a Participating Agency) and:
  - (a) The obligations of each Participating Agency are owed to the [Supplier] severally and separately (and not jointly with any other Participating Agency and/or the [Lead Agency]).
  - (b) The obligations of the [Supplier] are owed to each Participating Agency severally and separately (and not jointly with any other Participating Agency and/or the [Lead Agency]).
  - (c) No Participating Agency will be liable to the [Supplier] for the obligations of any other Participating Agency or the [Lead Agency].
3. No commitment or guarantee is given that any Eligible Agency will participate in, or procure any volume of [goods/services] during the term of, this Agreement.
4. In this clause [x], Eligible Agency means:
  - (a) each department and departmental agency, as each term is defined in section 5 of the Public Service Act 2020;
  - (b) the New Zealand Defence Force, the New Zealand Police, the New Zealand Security Intelligence Service, the Parliamentary Counsel Office, the Office of the Clerk of the House of Representatives and the Parliamentary Service;
  - (c) each Crown Entity, as defined in section 7 of the Crown Entities Act 2004;
  - (d) each organisation listed in the fourth schedule to the Public Finance Act 1989;
  - (e) the Reserve Bank of New Zealand;
  - (f) the Office of the Controller and Auditor-General, the Office of the Ombudsmen, and the Office of the Parliamentary Commissioner for the Environment;
  - (g) each corporation listed in the first schedule to the State Owned Enterprises Act 1986;
  - (h) each local authority, as defined in section 5 of the Local Government Act 2002; and
  - (i) any other person, organisation or entity that does not fall within the above categories but which, New Zealand Government Procurement, a branch within the Ministry of Business, Innovation and Employment determines should be treated as an Eligible Agency for the purposes of this Agreement.

## APPENDIX C

# Example Letter of Accession (LoA)

[The Letter of Accession is the document between the Lead Agency and an Eligible Agency that enables the Eligible Agency to access the Open Syndicated contract. Remove green explanatory notes, replace red bracketed descriptors with appropriate details, remove brackets, and return colour to black.]

[Date]

[Insert name of Eligible Agency]

[Insert address of Eligible Agency]

**RE: [insert reference to subject matter]**

The [Lead Agency] has agreed preferential terms with the [Supplier] for the supply of [goods/services] to your agency, as an Eligible Agency, as set out in the enclosed [describe agreement] (the Agreement). The Agreement governs the relationship between the [Lead Agency] and participating Eligible Agencies in relation to the supply of [goods/services] by the [Supplier].

Capitalised terms used but not defined in this letter have the same meaning as in the Agreement.

In accordance with clause [x] of the Agreement, to participate and benefit from the preferential terms of the Agreement, your agency must accept and agree to comply with the terms and conditions of the Agreement (which are not negotiable) as if it were a party to the Agreement.

If your agency wishes to procure [goods/services] under the Agreement and is willing to be bound by the terms of the Agreement, please complete and sign this letter and return (or scan and email) that signed copy to:

[Insert contact details for Lead Agency]

[Insert contact details for the Supplier]

Please retain a copy of the signed letter and the enclosed Agreement for your records.

The identity and contact details of the representative of your agency must be included below:

### **Representative**

Name: [insert details here]

Physical address: [insert details here]

Telephone number: [insert details here]

Email address: [insert details here]

If you have any questions, please contact [name] at [email address] or on [telephone number].

Yours sincerely,

[Insert signatory for Lead Agency]

[Insert name of Eligible Agency] accepts and agrees to comply with the terms of the Agreement.

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Signed for and on behalf of [Insert name of Eligible Agency].

[Insert Name of signatory]

[Insert Title of signatory]

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[Insert Date]