



Summary of submissions on the *Consultation on implementation of changes to the Government Procurement Rules*

1. Consultation on the implementation of changes to the Government Procurement Rules (consultation factsheets) began on 21 October 2020 and closed on 23 November 2020. The Ministry of Business, Innovation and Employment (MBIE) received 19 submissions in total.
2. There were two consultation factsheets, one for Rule 12A: Procurement response measure (Rule 12A) and one for Rule 18A: Quality employment outcomes (Rule 18A). MBIE received 10 submissions for Rule 12A and nine for Rule 18A.
3. Respondents included public sector agencies who are required to follow the Government Procurement Rules (the Rules).
4. A high-level summary of the submissions received is set out below.

THE NEW RULES

5. On 6 July 2020 Cabinet approved a change to the Government Procurement Rules that will enable the Procurement Functional Leader (PFL) to direct and undertake targeted interventions, where required, in response to an emergency, a crisis or a wider policy priority. This is known as Rule 12A.
6. On 7 September 2020 Cabinet approved an additional procurement rule that will require agencies to consider how they can create quality employment opportunities for New Zealanders. This is known as Rule 18A.
7. Cabinet directed MBIE to consult with key stakeholders before amending and publishing the Rules. All mandated agencies were consulted on the draft Cabinet papers and summaries of their feedback were incorporated in the final versions presented at Cabinet. Mandated agencies were also consulted during the consultation period set out below.

Consultation process

8. The consultation began on 21 October 2020 and closed on 23 November 2020. The purpose of the consultation was to ensure the Procurement Functional Leader (PFL) was not overlooking vital areas of scope for Rule 12A and 18A. Factsheets on each of the new Rules were developed for agency consultation. The scope of the consultation included agencies required to apply the Government Procurement Rules and responses from other entities were not expected. Emails were sent out to approximately 137 mandated agencies, inviting

them to respond to the consultation. A news item was placed on the New Zealand Government Procurement (NZGP) website, and included in the NZGP newsletter as a reminder.

9. Once submissions were received, NZGP published a news article on the NZGP website thanking agencies for their submissions and stating that a summary of the submissions on the Rules consultation would be provided in due course.
10. This document provides the final summary on the Rules consultation.

OBJECTIVES AND WORDING OF NEW RULES

12A: Procurement response measure

11. Rule 12A's proposed objectives are to:
 - a. drive system-wide initiatives and improvements
 - b. undertake targeted interventions and remedial actions
 - c. provide added responsiveness to circumstances and
 - d. ensure government procurement plays its part in the economic and social recovery and growth of New Zealand.

18A: Quality employment outcomes

12. Rule 18A's proposed objectives are to:
 - a. ensure employment outcomes are considered as part of every procurement process, to create and support quality employment opportunities for New Zealanders
 - b. make explicit that employment outcomes are a consideration of all types of procurement
 - c. ensure government procurement continues to support the Government's broader economic and social objectives and outcomes and
 - d. build upon and complement the existing broader outcomes framework and Rules, eg Rule 17: Increase access for New Zealand businesses and Rule 18: Construction skills and training.

There was general support for the proposed objectives and wording of the new Rules

13. Most submitters supported the proposed objectives under the new Rules with minor changes. In particular, some noted that certain terms should be changed or clarified. For example, several submitters commented that the definition of a Māori owned business needs to be clarified for Rule 18A and the use of the term 'measure' needs to be changed to better reflect the intent of Rule 12A.
14. Submitters also suggested that, with respect to Rule 12A, additional factors should be added to guide the use and implementation of the Rule (eg more explicit reference to the factors that need to be considered prior to utilising the new Rule). This will provide greater certainty for agencies.

15. A majority of submitters noted that, from their perspective, the wording of the new Rules needed to reflect the intent and objectives of the new Rules.

Some submitters noted the importance of the Procurement Functional Leader (PFL) issuing clear ongoing guidance to agencies about the two Rules

16. Some submitters called for the PFL, whose role is operationalised by NZGP, to issue clear guidance on the new Rules. Many commented that it is important for the PFL to lead initial engagement with iwi and provide certainty with a centre-led approach.

IMPACTS ON CAPABILITY AND RESOURCES

17. The majority of submissions from mandated agencies raised some concern around the impact that the two new Rules may have on their capability and resources.
18. A common concern was how the use of the procurement response measure under Rule 12A would be funded, specifically whether the PFL would fund the response measure or whether mandated agencies would be required to take on any extra cost. Similar concerns were raised around the additional cost of achieving quality employment outcomes through government procurement activities.
19. Additional capability concerns included a concern around agencies' clarity about the Rules. The majority of submitters stated that agencies would need to ensure that the specific requirements for the two new Rules were understood and reflected in their supporting collateral, such as policies and procurement documentation.
20. Many agencies also noted that both new Rules have a high requirement for good relationship management between operational stakeholders and the PFL to ensure smooth implementation of the Rules. It was suggested, for example, that relationship management would include provisions for mutual discussions with agencies prior to a measure being declared under 12A, and explanations what 'sufficient monitoring' entails under 18A.

MISCELLANEOUS ISSUES

21. Other miscellaneous points of note included:
 - a. The crucial need for NZGP to provide guidance on unconscious bias when assessing Rule 18A.
 - b. Guidance around Rule 18A will need to emphasise more clearly how quality employment outcomes for agencies equates to financial savings in the longer-term.
 - c. Rule 12A should be clear about the expertise and skills required when declaring a measure that will affect specialised agencies.

NEXT STEPS

22. On 24 May 2021, Cabinet approved the final wording of Rule 12A: Procurement response measure and Rule 18A: Quality employment outcomes.

Rule 12A: Procurement response measure

1. From time to time, the Procurement Functional Leader may declare national or regional or sectoral procurement response measures consistent with New Zealand's international commitments on government procurement, including measures in response to a social, economic or environmental crisis that follows an emergency period or that is not otherwise an emergency situation as defined under Rule 14.9.a.
2. For the purposes of the Rules, such measures apply in accordance with their terms.

Rule 18A: Quality employment outcomes

When procuring goods, services or works, agencies must:

1. Consider how they can create quality employment opportunities, particularly for displaced workers and groups with traditionally high rates of unemployment or low labour force participation (specifically women, Māori, Pacific peoples, disabled people and youth).
 2. Have regard to guidance published by MBIE on how to create quality employment opportunities through government procurement activity.
 3. Conduct sufficient monitoring of government contracts to ensure that commitments relating to employment opportunities made in contracts are delivered and reported on.
23. Taking into account the submissions received, MBIE has been published guidance for agencies on Rule 12A and is working on developing guidance on Rule 18A.
24. [Rule 12A: Procurement response measure](#) came into effect on 1 June 2021. [Guidance](#) is available on our website.
25. [Rule 18A: Quality employment outcomes](#) comes into effect on 1 October 2021. Guidance and training opportunities will follow closer to the time.
26. If you have any questions, comments or concerns contact us by emailing NZGPolicy@mbie.govt.nz and read more on our [website](#).