

Summary of substantive changes to the Rules of Sourcing

The Government Procurement Rules have been reviewed, primarily to reflect the Government's expectation that procurement is leveraged to achieve broader outcomes for New Zealand. This table outlines the substantive changes between the 3rd and 4th edition.

Rule	Change	New text
Context: Te Tiriti o Waitangi/ Treaty of Waitangi	<p>Adding a section into the context section of the rules, to ensure that agencies are aware of commitments to Treaty of Waitangi, and how it relates to procurement activity.</p>	<p>Tip box: Te Tiriti o Waitangi / Treaty of Waitangi</p> <p>Agencies should be aware of their obligations under Te Tiriti o Waitangi and how this relates to their procurement activities.</p> <p>New Zealand is party to International Agreements that include specific provisions preserving the pre-eminence of Te Tiriti o Waitangi. Te Tiriti o Waitangi exception provides flexibility for the Government to implement domestic policies in relation to Māori, including in fulfilment of the Crown's obligations under the Treaty. Pursuant to this provision New Zealand may adopt measures it deems necessary to accord favourable treatment to Māori, provided that such measures are not used as a means of arbitrary or unjustified discrimination or as a disguised restriction on trade in goods, trade in services and investment.</p> <p>Where an agency is considering the application of this provision in their procurement work, this should be discussed in the first instance with the Trade Law Unit at the Ministry of Foreign Affairs and Trade (DM-LGL@mfat.govt.nz).</p>
Rule 1: Principles and Government Charter	<p>In addition to the five Principles of Government Procurement, agencies must incorporate the Government Procurement Charter into their procurement policies. Also agencies should make these policies publicly available.</p> <p>The Charter sets out Governments expectations of how agencies should conduct their procurement activity to achieve Broader Outcomes.</p>	<p>Rule 1: Principles</p> <ol style="list-style-type: none"> Each agency must have policies in place that incorporate the five Principles of Government Procurement and the Government Procurement Charter. The Principles and the Charter apply to all procurements, even if the Rules do not apply. Each agency should consider making these policies publicly available.

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Rule 6: Below threshold procurement	<p>New wording has been added throughout the Rules to encourage government agencies to engage more directly with New Zealand businesses when procuring goods or services below threshold. Engagement with social enterprises and Māori, Pasifika and regional businesses are particularly encouraged.</p>	<p>Tip box: Below threshold procurement</p> <p>Where procurement is below the threshold agencies should consider if there is a capable New Zealand business, including Māori businesses, Pasifika businesses and social enterprises that could fulfil the contract opportunity.</p>
Rule 7: When the Rules apply - new construction works	<p>Thresholds for when the Rules apply are influenced by and must comply with New Zealand's international obligations. Although the \$10 million threshold for new construction works was compliant when the Rules were first established, changes in exchange rates now mean that a greater buffer is needed to ensure ongoing compliance with the World Trade Organisation's Agreement on Government Procurement. The threshold for new construction works is set to \$9 million and thresholds will be reviewed on an annual basis and updated if necessary.</p>	<p>Rule 7: When the Rules apply – new construction works</p> <ol style="list-style-type: none"> 1. The <i>Rules</i> apply: <ol style="list-style-type: none"> a. to the procurement of goods or services or works for <i>new construction works</i>, when b. the <i>maximum total estimated value</i> (Rule 8) of the procurement meets or exceeds the value threshold found at www.procurement.govt.nz 2. To estimate the <i>maximum total estimated value</i> (Rule 8) for <i>new construction works</i> an agency must take into account all: <ol style="list-style-type: none"> a. related services (e.g. design, architecture, engineering, quantity surveying, and management consultancy services) b. types of goods (e.g. construction material, health and safety equipment) c. phases of the construction through to completion d. subcontracted goods, services and works.
Rule 12: Opt-out procurements	<p>Rule 16 (Broader Outcomes) has been added to the list of Rules that apply to all opt-out procurements. This ensures that opt-out procurements remain subject to the Broader Outcomes rule.</p>	<p>Rule 6: Opt-out procurements</p> <ol style="list-style-type: none"> 4. The following Rules apply to all opt-out procurements: <ol style="list-style-type: none"> b. Rule 16: <i>Broader Outcomes</i>.
Rule 16: Broader Outcomes	<p>Broader outcomes are the secondary benefits which are generated due to the way a good or service is produced or delivered. These outcomes can be social, environmental, cultural or economic.</p> <p>The new rule requires agencies to consider, and incorporate where appropriate, broader outcomes when</p>	<p>Rule 16: Broader Outcomes</p> <ol style="list-style-type: none"> 1. Each agency must consider, and incorporate where appropriate, <i>Broader Outcomes</i> when purchasing goods, services or works. 2. <i>Broader Outcomes</i> are the secondary benefits that are generated from the procurement activity. They can be environmental, social, economic or cultural benefits.

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	<p>purchasing goods, services or construction works.</p> <p>This rule also explains designated contracts and the four priority outcomes. <i>Priority Outcomes</i> are the specific <i>Broader Outcomes</i> areas that Cabinet has agreed will be leveraged through procurement. To maximise the effects of these priorities, Government may <i>designate contracts</i> or sectors where one or more of the priority outcomes must be implemented.</p> <p>This new tip box explains broader outcomes and outlines the four priority outcomes.</p>	<ol style="list-style-type: none"> 3. Where contracts have been designated by Cabinet and/or Ministers of Finance and State Services to achieve a specific <i>Priority Outcome</i> (Rules 17-20), agencies must include requirements relating to that outcome in their procurement. Agencies can choose to incorporate other outcomes if appropriate. 4. Each agency must ensure that <i>Broader Outcomes</i> are incorporated in a way that does not discriminate against any supplier or result in any offsets (Rule 3). 5. Agencies must conduct reasonable due diligence and manage the contract to ensure incorporated <i>Priority Outcomes</i> are delivered.
Rule 17: Increase access for New Zealand businesses	<p>Priority one aims to increase access for New Zealand businesses to government procurement opportunities. The new rule requires agencies to consider how they can create opportunities for New Zealand businesses through their procurement opportunities.</p> <p>This new rule also encourages agencies to involve Māori, Pasifika, and regional businesses, as well as social enterprises in contract opportunities.</p>	<p>Rule 17: Increase access for New Zealand businesses</p> <ol style="list-style-type: none"> 1. For <i>designated contracts</i>, agencies must consider how they can create opportunities for <i>New Zealand businesses</i>. 2. Agencies must have regard to <i>guidance</i> published by MBIE on how to effectively involve New Zealand businesses in contract opportunities including Māori, Pasifika, and regional businesses, as well as social enterprises. 3. Agencies must conduct sufficient monitoring of <i>designated contracts</i> to ensure that commitments made in contracts are delivered and reported on.
Rule 18: Construction skills and training	<p>Priority two aims to grow the capability and capacity of the construction workforce. The new rule requires agencies to consider the skills, training and apprenticeship practices of the supplier.</p> <p>The new rule requires agencies to evaluate suppliers based on the skills, training and apprenticeship practices they provide their employees.</p>	<p>Rule 18: Construction skills and training</p> <ol style="list-style-type: none"> 1. When procuring construction works over threshold (refer to Rule 7) agencies must include questions around the skills development and training practices of the supplier and their sub-contractors. <ol style="list-style-type: none"> a. This must also include questions around what more a supplier would do over the course of the contract to improve or build skills. b. Where a weighted attribute model is used, agencies must ensure that questions around skills development and training practices of the

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		<p>supplier and their sub-contractors are included as weighted evaluation criteria.</p> <ul style="list-style-type: none"> c. Where a weighted attribute evaluation model is not used, agencies must ensure that reasonable consideration is given to skills development and training. 2. Agencies must have regard to any <i>guidance</i> published by MBIE on incorporating skills development and training in construction contracts. 3. Agencies must conduct sufficient monitoring of the contract to ensure that skills development and training commitments made in the tender process are delivered and reported on in compliance with any reporting framework published by MBIE. 4. Agencies must also consider the Health and Safety practices of a supplier, including the Health and Safety training they provide to their employee.
Rule 19: Improving conditions for New Zealand workers	<p>Priority three aims to protect workers from unfair and unsafe behaviour, and incentivises well-performing firms while ensuring they are not undercut by firms that have reduced costs through poor labour practices.</p> <p>In specifically designated contract areas, agencies must require their suppliers to ensure that their business, and supply chain, comply with all relevant employment and health and safety legislation.</p>	<p>Rule 19: Improving conditions for New Zealand workers</p> <ul style="list-style-type: none"> 1. Agencies should ensure their contracts set out the expectation that suppliers and sub-contractors comply with employment standards and health and safety requirements. 2. For <i>designated contracts</i>, agencies must require their suppliers to ensure and demonstrate that they, and their domestic supply chain, comply with all relevant employment standards and health and safety requirements. 3. Agencies must have regard to <i>guidance</i> published by MBIE on ensuring compliance with employment standards and health and safety requirements in government contracts. 4. Agencies must conduct sufficient monitoring of <i>designated contracts</i> to ensure that commitments made in contracts for ensuring good conditions for workers are delivered and reported on.

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Rule 20: Transitioning to a net-zero emissions economy and designing waste out of the system	<p>Priority four supports the transition to a net zero emissions economy and design waste out of the system, helping support a circular economy. The new rule requires agencies to support the procurement of low-emissions and low-waste goods, services and works.</p> <p>In specifically designated contract areas, agencies must support the procurement of low-waste and low-emissions goods and services.</p>	<p>Rule 20: Transitioning to a net-zero emissions economy and designing waste out of the system</p> <ol style="list-style-type: none"> 1. Agencies should: <ol style="list-style-type: none"> a. support the procurement of low-emissions and low-waste goods, services and works. b. encourage innovation to significantly reduce emissions and waste impacts from goods and services. 2. For <i>designated contracts</i>, agencies must support the procurement of low-waste and low-emissions goods and services and encourage innovation to significantly reduce emissions and waste impacts from goods and services. 3. Agencies must have regard to <i>guidance</i> published by MBIE on the procurement of low-waste and low-emissions goods and services. 4. Agencies must conduct sufficient monitoring of <i>designated contracts</i> to ensure that commitments made in contracts are delivered and reported on.
Rule 25: Subcontracting	<p>Agencies should take into account Broader Outcomes and ensure that the secondary benefits are generated through their supply chains. This new rule suggests that agencies should ask that a prime contractor meet certain procurement standards in its subcontracting.</p>	<p>Rule 25: Subcontracting</p> <ol style="list-style-type: none"> 1. An agency should require prime contractors to meet certain standards in its subcontracting. The standards should be consistent with the <i>Principles, the Government Procurement Charter, the Supplier Code of Conduct, the priority outcomes</i> set out in Rules 16 to 20, and other <i>guidance</i>.
Rule 44: Reasons to exclude a supplier	<p>Actions that violate the Supplier Code of Conduct, compliance with relevant legislation (for example, human rights) and the agencies' trust and confidence in the supplier have been added to this rule to expand on the possible reasons to exclude a supplier.</p>	<p>Rule 44: Reasons to exclude a supplier</p> <ol style="list-style-type: none"> 1. An agency may exclude a supplier from participating in a contract opportunity if there is a good reason for exclusion. Reasons for exclusion include: <ol style="list-style-type: none"> f. an act or omission which adversely reflects on the commercial integrity of the supplier or offends against the Supplier Code of Conduct j. human rights violations by the supplier or in the supplier's supply chain. k. any matter that materially diminishes on an agencies' trust and confidence in the supplier

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Rule 48: Contract Award Notice	To support the gathering of information on Broader Outcomes and increase the take up of the New Zealand Business Number, two new fields have been added to the contract award notice rule.	<p>Rule 48: Contract Award Notice</p> <ol style="list-style-type: none"> 1. An agency must publish the Contract Award Notice on GETS within 30 business days of all parties signing the contract/s. The Contract Award Notice must include: <ol style="list-style-type: none"> i. a New Zealand Business Number (NZBN) where available and j. such other information, as requested by MBIE for example information on Broader Outcomes
Rule 51: Prompt Payment	To strengthen requirements that agencies should be paying their subcontractors promptly,	<p>Rule 51: Prompt payment</p> <ol style="list-style-type: none"> 1. Each agency must pay suppliers' invoices promptly. At a minimum, invoices must be paid at the time/s set out in the contract, or earlier if possible. 2. Agencies must encourage their suppliers to pay their sub-contractors promptly. 3. Agencies should encourage suppliers to offer subcontractors no less favourable payment terms than the ones they receive from agencies.
Rule 53: Reporting	Reporting ensures that we are able to measure and communicate the impact of an action. The new rule requires agencies to measure and report on the impact of introducing broader outcomes into their procurement framework.	<p>Rule 53: Reporting</p> <ol style="list-style-type: none"> 1. Agencies must provide data and information to the <i>Procurement Functional Leader</i> on procurement activity including <i>Broader Outcomes</i> as authorised by Cabinet and/or Ministers of Finance and State Services. <p>Tip box: Reporting</p> <p>Reporting is an important mechanism for driving real change and ensuring accountability and transparency. The Government is committed to developing a reporting and monitoring framework that provides a system-wide view of government procurement activity. This includes the outcomes (including Broader Outcomes) that agencies are achieving from their primary and secondary procurement activities. In line with open data principles, MBIE may, from time to time, publish the data and information collected.</p>

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Rule 65: Infrastructure	<p>Cabinet recently agreed to establish a new independent infrastructure commission, the New Zealand Infrastructure Commission, Te Waihanga, which is expected to be operational in around October 2019. The primary role of the new entity will be to provide advice to Ministers on a long-term strategy for NZ's infrastructure to improve our economic performance and social wellbeing. The new entity will also provide project advisory support to agencies in the planning, procurement and delivery of major infrastructure projects.</p> <p>The current Rule 65 on Public Private Partnerships has been extended to all infrastructure procurement to accommodate the new Infrastructure Commission. It also has removed the mandatory requirement for agencies to consider public private partnerships (PPPs) as a procurement option for all significant investments under the circular (while still providing flexibility for PPPs to be considered where appropriate, including in the transport sector).</p> <p>This change is subject to further Cabinet decisions on the Interim Infrastructure entity and the forthcoming Independent Infrastructure Body.</p>	<p>Rule 65: Infrastructure</p> <ol style="list-style-type: none"> 1. Agencies considering the procurement of infrastructure with a (total cost of ownership of more than \$50 million) must: <ol style="list-style-type: none"> a. consult with the Treasury's Interim Infrastructure Transactions Unit (or any new entity established to take over the functions of that Unit) (ITU) early in the development of the project's business case; b. follow relevant published ITU guidance; c. involve the ITU in the assessment of the project's business case and advice to Ministers; d. invite the ITU to participate in relevant project steering and working groups, and in the selection panels for all key advisor appointments in relation to the project; and e. use any standard form documentation developed by the ITU as the basis for any infrastructure contract and consult with the ITU over any material proposed modifications.
Rule 70: Planning for new construction works	<p>A new rule has been added on the Construction Guides to improve practice and consistency in construction procurement. This codifies earlier expectations set by Ministers.</p>	<p>Rule 70: Planning Construction Procurement Guides</p> <ol style="list-style-type: none"> 1. Agencies must apply the good practices set out in the Construction Procurement guides, where appropriate, when procuring construction works and be able to produce documented evidence of the rationale where they have not been followed.

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Rule 71: Procurement Capability Index	The Procurement Capability Index (PCI) tool assists agencies in evaluating and building their procurement capability. A new rule has been added on Procurement Capability Index. This new rule explains the Procurement Capability Index and states that each agency must complete the PCI self-assessment at least annually.	<p>Rule 71: Procurement Capability Index</p> <ol style="list-style-type: none"> An agency must submit a Procurement Capability Index (PCI) self-assessment to MBIE annually by 1 October each year. The Procurement Functional Leader may, at its discretion, exempt an agency from having to submit a PCI self-assessment.
Rule 72: Significant Service Contracts Framework	Significant service contracts are the important contracts that an agency manages. A new rule has been added outlining agencies' obligations when engaging in significant service contracts. This new rule explains significant service contracts and states that agencies must provide MBIE with a Significant Service Contracts Framework (SSCF) report.	<p>Rule 72: Significant Service Contracts Framework</p> <ol style="list-style-type: none"> An agency must submit to MBIE a Significant Service Contracts Framework (SSCF) report. Each agency must review and update its SSCF report at least once every six months. An agency may update its SSCF report more often, if appropriate. Updated SSCF reports are due to MBIE by 1 March and 1 October each year.