



COVERSHEET

Minister	Hon David Parker	Portfolio	Minister for Economic Development
Title of Cabinet paper	Enhancing the Effectiveness of Government Procurement Policy – Report back	Date of release	21 June 2019

List of documents that have been proactively released

Date	Title	Author
21 June 2019	<i>Enhancing the Effectiveness of Government Procurement Policy – Report back</i>	<i>Office of the Minister for Economic Development</i>
21 June 2019	<i>CAB-19-MIN-0213.02</i>	<i>Secretary of the Cabinet</i>

Information redacted

YES / NO (please select)

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Chair, Economic Development Cabinet Committee

Enhancing the Effectiveness of Government Procurement Policy – Report back

Proposal

- 1 This paper seeks agreement to the proposed amendments to the Government Rules of Sourcing (the Rules).
- 2 The paper also updates Cabinet on progress made on:
 - implementing the priority set of outcomes to be leveraged through procurement that were previously approved in principle by Cabinet; and
 - establishing a monitoring and reporting framework to measure business participation in government procurement and effectiveness in leveraging the priority set of outcomes.

Executive Summary

- 3 In October 2018 I reported to Cabinet on Enhancing the Effectiveness of Government Procurement Policy, in line with our Government’s priority to reform government procurement. Price is of course always relevant, but procurement practices can also contribute to inclusive growth, prosperity and the transition to a low carbon economy.
- 4 Accountability is improved when the expectations of government are made clear. Accordingly, Cabinet agreed to prioritise four initial outcomes in designated contracts as summarised in the table below:

Table 1: Priority outcome and main focus areas to target for government procurement

Priority outcome	Initial designated contracts/areas to target
Increase New Zealand businesses’ access to government procurement	<ul style="list-style-type: none"> • ICT services/computer software contracts • Guidance on using NZ businesses in government procurement • Targeted initiatives for Māori enterprises, Pacific firms & firms in surge regions to better take part in government procurement processes
Increase the size and skill level of the domestic construction sector workforce	Construction contracts in excess of \$10 million
Improving conditions for New Zealand workers: <ul style="list-style-type: none"> • Employment standards • Health & safety 	Cleaning and security services contracts, forestry contracts for employment standards All contracts (as required by law) but focussed support to lift performance in high risk areas, starting with forestry & construction (the latter as part of the construction training priority above) for health and safety
Support the transition to a net zero emissions economy and assist the government to meet its goal of significant reduction in waste by 2020	Government fleet (emissions) Stationary heat (emissions) Office consumables (waste)

- 5 Cabinet invited me to report back to the Cabinet Economic Development Committee with an update on this work programme, including proposed amendments to the Rules in early 2019 [CAB-18-MIN-0516.01 refers].

- 6 The Rules are used to implement our reforms to government procurement. The proposed amendments to the Rules focus on public value, and include stronger and more explicit requirements on agencies to give effect to the outcomes prioritised by Cabinet in October. The amended Rules include five new broader outcome rules: a general rule for broader outcomes and individual rules for each of the four priority outcomes. These new rules set the Government's expectations in these areas while specific requirements will be set out in associated guidance. This approach provides the flexibility to add additional priorities and/or designated contracts in the future.
- 7 I propose that the amended Rules come into force for all new procurement activities started on or after 1 October 2019 to give agencies and suppliers time to familiarise themselves with the new requirements and update their processes.
- 8 To support implementation of the Rules, the Ministry of Business, Innovation and Employment (MBIE) has been working with other agencies and stakeholders on guidance and other policy settings to support and embed the new priorities for government procurement. This includes: i) developing an agreed definition of a New Zealand business; ii) identifying opportunities to implement broader outcomes in surge regions and for Māori through the Provincial Growth Fund; iii) working with agencies and industry bodies to develop efficient but robust options for supply chain assurance of employment standards and health and safety requirements; and iv) setting the expectation for agencies to lower their fleet emissions profile and monitoring the reduction to demonstrate progress against the goal of zero emissions from the government fleet by 2025/26.
- 9 This programme of work is a significant change to government procurement and will bring benefits. For example, based on high-level analysis MBIE estimates that over three years, up to 1,500 more people will receive training while working on government construction projects.. MBIE analysis also indicates that government could reduce its carbon emissions approximately 53 percent by 2030 and a substantial contribution to this reduction will be achieved by making changes to its light vehicle fleets and changing space and water heating methods.
- 10 The inclusion of broader outcomes in government procurement will likely involve increases in the upfront costs to government contracts but these increased costs will be justified by the longer-term benefits of public value procurement.
- 11 Monitoring and reporting will be critical for accountability and will help lift the procurement performance of agencies by improving transparency. I have tasked MBIE to develop a monitoring and reporting framework to track the extent to which broader outcomes are being implemented across government and to evaluate the impacts of these reforms.
- 12 While there are more opportunities to leverage government procurement, I propose that we focus on fully developing and embedding the initial set of priority outcomes before beginning work on additional outcomes. However, I also want to be sure that progress continues at pace. Therefore, I propose to report back to Cabinet at six-monthly intervals so that we can comment on the initiatives that are underway and have the opportunity to identify and discuss new opportunities if appropriate.

Background

- 13 Reforming government procurement is an agreed Cabinet Priorities Committee 2018 initiative. In October 2018, I reported to Cabinet on the effectiveness of the current government procurement policy, which consists of principles, the Rules and good practice guidance. The Rules set the standard for government procurement practice. They help deliver good commercial outcomes, ensure accountability and transparency, and reflect commitments made in New Zealand's free trade agreements.
- 14 While I found the government procurement policy framework fundamentally "fit for purpose", I proposed that government contracts, which annually amount to approximately \$41 billion, be

more explicitly leveraged to support the Government's economic strategy and broader outcomes. This entails leveraging contracts to achieve social, economic and environmental benefits that go beyond the immediate aim of purchasing goods and services.

- 15 Cabinet agreed to place a certain level of requirement on government agencies to leverage additional public value from government procurement [CAB-18-MIN-0516.01 refers]. Specifically Cabinet agreed to require agencies to initially leverage four priority outcomes, subject to further investigation and consultation, namely to:
 - 15.1 increase New Zealand businesses' access to government procurement;
 - 15.2 increase the size and skill level of the domestic construction sector workforce and provide employment opportunities to targeted groups;
 - 15.3 improve conditions for workers and future-proof the ability of New Zealand business to trade; and
 - 15.4 support the transition to a net zero emissions economy and assist the government to meet its goal of significant reduction in waste by 2020.
- 16 Cabinet also agreed that agencies target specific contracts to best leverage these outcomes. This avoids overloading any one industry or government contract with too many additional requirements. The clarity of objectives both aids implementation by agencies and allows agencies to be held accountable for the change we desire. The requirements will apply to new contracts or contract renewals.
- 17 Cabinet invited me to report back to the Cabinet Economic Development Committee on:
 - 17.1 proposed amendments to the Government Rules of Sourcing to give effect to leveraging these broader outcomes and to further enhance the effectiveness of government procurement;
 - 17.2 details on implementing the priority set of outcomes, following stakeholder consultation; and
 - 17.3 options for collecting data to provide a system-wide view of business participation in government procurement and for establishing a monitoring and reporting framework on leveraging broader outcomes. This was to include an agreed definition of a New Zealand business.
- 18 MBIE subsequently worked with industry and government agencies to identify the necessary amendments to the Rules and identify potential benefits and costs of the approach.
- 19 The amended Rules have been publicly consulted on and developed into the 4th edition entitled *Government Procurement Rules* which I'm presenting today for Cabinet's approval.

Summary of the amendments to the Rules

The substantive amendments give effect to leveraging the broader outcomes

- 20 Amendments to the Rules reinforce that agencies can, and for designated contracts are required, to leverage procurement to achieve broader outcomes. These amendments include:
 - 20.1 A shift in terminology from *value for money* to *public value*: agencies are expected to maximise their return on spending to achieve the best possible results for New Zealanders. Price remains important, but is not the only determinant.
 - 20.2 Five new Broader Outcomes Rules: a high level framework rule introducing the broader outcomes concept and a specific rule for each of the four priority outcomes, including expectations that agencies will monitor their contracts to ensure that commitments are delivered. Broader outcomes are also incorporated into the Rules covering the technical aspects of procurement, for example requiring transparency of outcomes and assessment criteria in tender documentation. Collectively these rules set out the

Government's high level expectations while specific requirements and designated contracts for each outcome (see table 2 below) will be set out in associated guidance documents. This approach provides greater flexibility to establish additional priorities and/or designated contracts over time.

Table 2: new Rules that apply to each broader outcome and designated contracts

New Rule	Designated contracts
Rule 16: Broader Outcomes	
Rule 17: Increase access for New Zealand businesses	<ul style="list-style-type: none"> • ICT and computer software • Surge regions • Māori enterprises and Pacific firms
Rule 18: Construction skills and training	<ul style="list-style-type: none"> • Construction contracts valued over \$10 million
Rule 19: Improving conditions for New Zealand workers	<ul style="list-style-type: none"> • Cleaning, security and forestry contracts for employment standards. • All contracts for Health and Safety with a particular focus on construction and forestry.
Rule 20: Transitioning to a net-zero emissions economy and designing waste out of the system	<ul style="list-style-type: none"> • Government light vehicles • AoG office supplies • Government buildings stationary heat.

- 20.3** Government Procurement Charter: a clear statement embedded in the Rules, setting out government's expectations for sustainable and inclusive procurement, including expectations that government will engage with suppliers that act with integrity and comply with the principles set out in a Supplier Code of Conduct.
- 20.4** The Rules now make reference to New Zealand's obligations to Māori under Te Tiriti o Waitangi/Treaty of Waitangi as is preserved in our free trade agreements.
- 20.5** Information has been added throughout the Rules that encourage government agencies to engage more directly with New Zealand businesses, particularly with Māori enterprises, Pacific firms and regional businesses, and include techniques that could be used to achieve this in a manner that is consistent with our international free trade obligations and the WTO Agreement on Government Procurement (GPA).
- 20.6** Other rules that respond to issues raised by suppliers include making it a requirement for agencies to pay invoices promptly, encouraging suppliers to promptly pay their subcontractors as well as encouraging agencies to push standards through supply chains.
- 20.7** A new rule requiring agencies to provide procurement data to the Procurement Functional Leader for the purposes of monitoring and reporting. This will provide a system-wide view of procurement activity and show progress on broader outcomes.

Additional amendments to improve practice and drive capability

- 21 There is a new requirement on agencies to have regard to the good practice advice in the Construction Procurement Guidelines and to document any departure from them. This will give effect to calls (particularly from industry) for this guidance to be mandatory.
- 22 There are new rules to drive procurement capability, including requirements on agencies to:
- 22.1** conduct appropriate planning, including a description of what constitutes a good plan;
- 22.2** submit a Procurement Capability Index self-assessment annually providing the agency with a view on areas for improvement and the Procurement Functional Leader with a

cross-government view of procurement capability and where more support may be required;

22.3 report on significant service contracts (contracts that are critically important to the agency), which ensures that agencies place the appropriate focus on managing these contracts; and

22.4 consult with the Treasury's interim Infrastructure Transactions Unit (which will form part of the proposed New Zealand Infrastructure Commission, Te Waihanga, once established) early in the development of the business case for infrastructure projects with a total cost of more than \$50 million and follow the advice published by the Unit.¹

23 The new Rules also remove outdated Rules that were not adding value but subjected agencies to administrative burden or were irrelevant (for example, Extended Procurement Forecasts, geospatial information procurement requirements and Registered Suppliers Lists).

24 **Annex 1** summaries the substantive changes to the new Rules. **Annex 2** provides a copy of the entire Rules document.

Feedback from public consultation on amendments to the Rules

25 MBIE engaged directly with government agencies and targeted industries in order to identify and address issues and help shape the amendments to the Rules and supporting guidance. Representatives from the construction, forestry and cleaning industries all expressed strong support for the initiative. Cleaning and forestry industry representatives advised the rule for outcome 3 (improving conditions for workers) will support industry-led strategies to improve employment conditions in their industries by enabling a level playing field when competing for government contracts. The construction sector saw the procurement lever as having the biggest impact of the Construction Skills Action Plan initiatives and the greatest potential to stimulate construction skills training.

26 Public consultation took place from 30 January to 5 March 2019. Agencies and businesses were notified of the opportunity to input into the proposed amendments to the Rules. In addition to publishing the consultation document on MBIE's website, sessions were held with agency procurement professionals and MBIE's business reference group. MBIE received 194 submissions from government agencies, industry bodies, unions, and individuals, with approximately 1200 separate pieces of feedback. Free and frank opinions

27 A number of submissions asked for the broader outcomes rules to be mandatory for all government contracts. Consistent with Cabinet's agreement that areas will be targeted to ensure no single procurement is overloaded with competing new requirements, I propose that MBIE consider these suggestions as part of the forward work programme.

28 Businesses were generally supportive of the new emphasis on public value and broader outcomes. A number of businesses and unions noted that these new requirements could go even further and apply to all government contracts.

¹ Adjustments to Cabinet Office circular CO(15)5 *Investment Management and Asset Performance in the State Services* are required to enable the New Zealand Infrastructure Commission, Te Waihanga, to perform its role and to be consistent with the Rules. The Treasury will also use this opportunity to make a number of administrative updates to the Circular to reflect changes in Government policy and practice, for example to ensure the investment principles in the circular are consistent with the Government's wellbeing focus.

- 29 Some submissions were concerned that these new requirements were counterproductive and would create extra costs for agencies. I believe the priorities chosen are prudent and align well with the government's priorities.
- 30 While agencies supported the objectives of these changes, there were some concerns raised about the need for clear guidance on how to apply these outcomes and the associated costs (e.g. direct cost of the goods and services and the additional cost of managing contracts to ensure that the outcomes were delivered). MBIE is currently developing the guidance and tools that will support agencies and firms. Agencies and industry bodies (e.g. the cleaning and forestry industry associations and construction and IT sector) have offered to support MBIE in the development of this guidance.

Process for approving amendments to the Rules and entry into force

- 31 I propose that the amended Rules remain mandatory for Public Service departments, New Zealand Police, the New Zealand Defence Force, Crown Entities (except School Boards of Trustees) and Public Finance Act Schedule 4A companies. These are the same categories of agencies for which the Rules are currently mandatory.
- 32 To achieve this, Cabinet's approval is required to bind Public Service departments, New Zealand Police and the New Zealand Defence Force. The approval of the Ministers of Finance and State Services is needed to bind Crown Entities and Public Finance Act Schedule 4A companies. This approval ensures continuity of the Whole of Government Direction for Procurement Functional Leadership². This direction required Crown entities (including Public Finance Act Schedule 4A Companies but excluding School Boards of Trustees) to apply the Rules, as amended and published from time to time with approval by the Ministers of Finance and State Services.
- 33 Some agencies may be in a position to apply the new Rules immediately which I encourage; however, I propose that agencies are provided with a transition period to familiarise themselves with the new Rules and update their internal policies and procedures, and provide businesses with time to respond to the new requirements. I suggest that the new Rules come fully into force from 1 October 2019. This means government procurement opportunities put out for tender from that date forward will have to apply the new Rules, while government tenders issued before that date will be subject to the old Rules.

Identifying and monitoring benefits

- 34 The new focus on public value and leveraging government procurement to achieve broader outcomes will support Government's goals for inclusive growth. MBIE has been in the process of assessing the benefits of the four priority outcomes based on the information currently available and identifying where there are gaps that need to be addressed. We have the most data available to assess the potential benefits for priority outcome 2, construction workforce training, and outcome 4, emissions and waste reduction.
- 35 Leveraging government procurement for construction skills and workforce development is one of 6 initiatives of the Construction Skills Action Plan (CSAP). MBIE estimates that the successful delivery of the CSAP will result in up to 1,500 more people receiving training while working on government construction projects over three years. Agencies have already been asked to start building these new requirements into their construction procurements. The construction sector sees the procurement lever as being fundamental to achieving the broader outcomes of the CSAP as central government spends approximately \$4.8 billion a year on non-residential and infrastructure construction.
- 36 Outcome 4, emissions and waste reduction, supports the Coalition Agreement priority for the government vehicle fleet, where practicable, to become emissions free by 2025/26. MBIE and EECA analysis identifies that the state sector can reduce approximately 53 percent of its

² Notified in the New Zealand Gazette no 65 on 19 June 2014 under section 107 of the Crown Entities Act 2004

carbon dioxide emissions by 2030 through energy efficiency improvements in heating, lighting and transport. Government agencies can contribute towards this reduction by simply changing the types of passenger vehicles they purchase.

- 37 However, efficiency and fuel switching for heating accounts for around 87 percent of the aforementioned potential emissions reductions. The greatest potential to reduce energy-related emissions is in space and water heating in District Health Board (DHB) facilities, schools and tertiary institutes. While the Rules are mandatory for DHBs, for schools and tertiary institutes they are only good practice guidance. In order to maximise the reduction in government energy-related emissions, further work will be required to ensure the right policy settings are in place for schools and tertiary institutions to make capital investment decisions that take into account their emissions footprint.
- 38 Reforming government procurement to give New Zealand businesses greater access is also a coalition priority. Government contracts can give New Zealand businesses' an important source of revenue that can lead to the creation of additional jobs. Experience in contracting with the New Zealand government can potentially be an important reference that can lead to success in bidding for government contracts offshore. As a first step, MBIE will be developing a baseline from which to measure participation in government procurement by New Zealand businesses, including Māori enterprises, Pacific firms and firms in surge regions.
- 39 Requiring suppliers to ensure employment standards are met across their domestic contracting chain will reward well performing firms over poor ones, raise standards across the supply market and better protect vulnerable workers. We know large government projects have been tainted by breaches in employment standards including the Ultra-Fast Broadband roll-out. We are targeting industries where we can make a real difference for low paid and vulnerable workers and where procurement can complement and extend the reach of our regulatory system. Government has significant market influence in many of these industries.
- 40 Monitoring and reporting are critical for accountability and will help lift the procurement performance of agencies through improved transparency. I have instructed MBIE to develop a monitoring and reporting framework to obtain a system-wide view of government procurement activity including broader outcomes. This will include establishing a baseline and tracking the extent to which the outcome rules are being implemented across government and the impact these reforms are having.
- 41 The Rules will be used as a point of reference for determining the scope of the reporting framework. For example, while the procurement activity of all government entities is of interest, MBIE has greater visibility of those agencies that are mandated to apply the Rules. It will require further time and investment to acquire visibility of procurement activity that is not required to be posted on the Government Electronic Tenders Service (GETS) while taking into account the protection of sensitive information of agencies such as the Government Security Bureau and the New Zealand Security Intelligence Service.

Definition of a New Zealand business

- 42 For purposes of increasing New Zealand businesses' access to government procurement, as well as baselining and tracking activity and reporting results on this outcome, it is important to have an agreed definition for a New Zealand business. Following consideration of various options and in consultation with stakeholders, MBIE has developed the following definition:
- A business that originated in New Zealand (not being a New Zealand subsidiary of an off-shore business), is majority owned or controlled by New Zealanders, and has its principal place of business in New Zealand.*
- 43 To qualify as a New Zealand business, a business would have to meet all the requirements of this definition. The definition is not intended to be used as a definition across government or as the basis of other government policies. Confidential advice to Government

- 44 I will further update Cabinet on the monitoring and reporting framework in my next update on implementation of the broader outcomes.

Further consideration of opportunities to extend to other industries and contracts

- 45 This programme of work is the most significant development in government procurement in a number of years. In order to ensure that the changes we are making endure and deliver real benefits to New Zealanders, I propose that we fully develop and embed the priority outcomes established in October before embarking on additional outcomes or designating additional contract areas.
- 46 MBIE will work with agencies that want to apply additional broader outcomes to their procurement beyond the initial focus areas and to explore further opportunities, for example possible pilots or models that support indigenous procurement.
- 47 I also want to be sure that progress continues at pace. Therefore, I propose to report back to Cabinet at six-monthly intervals so that we can comment on the initiatives that are underway and have the opportunity to identify and discuss new opportunities if appropriate.

Progress on implementing the four broader outcomes

- 48 While the Rules are fundamental in setting the policy requirements for procurement, work is underway on a number of cross-agency workstreams and initiatives to implement the broader outcomes. Key progress highlights are set out below.

Priority 1: Increase New Zealand businesses' access to government procurement

- 49 Progress to date on this outcome includes:
- Launching a digital marketplace by the Government Chief Digital Officer (GCDO) to better connect government organisations and ICT suppliers; and
 - Building broader outcomes into the Provincial Growth Fund (PGF) funding criteria and identifying and implementing broader outcomes in projects in the surge regions.
- 50 I note the Minister for Māori Development and I will report back to Cabinet in a separate paper with an assessment of the benefits of indigenous procurement policies [CAB-18-MIN-0516.01 refers]. We intend to report to Cabinet in July.

Priority 2: Increase the size and skill level of the domestic construction sector workforce

- 51 This priority outcome is part of the Government's Construction Skills and Action Plan. To give effect to this priority:
- Letters were sent to Chief Executives of mandated agencies setting out the Government's expectation to implement skills and workforce development as part of construction projects; and
 - Work is underway to refresh the existing suite of Construction Procurement Guidelines including developing new guides on how to build in skills development and how to manage risk.

Priority 3: Improving conditions for workers

- 52 MBIE has been working with:
- procuring agencies and industry bodies to develop efficient but robust options for supply chain assurance of employment standards and to develop associated tools and guidance;

- the Ministry for Primary Industries to explore whether, in addition to Health and Safety requirements, appropriate One Billion Tree funding agreements could require grant recipients to ensure that employment standards are met for all employees planting trees under that grant (e.g. when planting is being undertaken by silviculture contractors); and
- the Government Health and Safety Functional Lead in a working group involving government agencies, unions and industry representatives to develop overarching guidance on incorporating health and safety outcomes in all government procurement. In tandem, MBIE is refreshing its specific construction procurement health and safety guidance.

Priority 4: Support the transition to a net zero emissions economy and reduction in waste by 2020

53 To support this outcome:

- Chief Executives received a letter in February 2019 setting out the new requirement to purchase replacement vehicles with carbon dioxide (CO₂) emissions profiles at least 20 percent below their agency's current fleet average; and
- MBIE has been working with the New Zealand Transport Agency to develop a government fleet emissions dashboard to demonstrate government's leadership in lowering emissions from its fleet. This dashboard shows the estimated average CO₂ emissions profile and light vehicle fleet size of approximately 135 government departments and Crown entities.
- Ministry for the Environment intends to work with MBIE to progress a sustainable procurement policy.

Consultation

54 Public service departments, departmental agencies and major Crown entities, including The Treasury, Inland Revenue Department, Ministry of Defence, Ministry of Foreign Affairs and Trade, Ministry for the Environment, Ministry for Primary Industries, Ministry of Social Development, Department of Corrections, EECA, Environmental Protection Agency, Crown Law Office, Department of Internal Affairs, Department of Conservation, Ministry of Health, Government Communications Security Bureau, Ministry of Justice, Land Information New Zealand, Ministry for Culture & Heritage, Serious Fraud Office, Statistics New Zealand, Te Puni Kōkiri, Ministry of Transport, Department of Prime Minister & Cabinet, New Zealand Customs Service, New Zealand Defence Force, Housing New Zealand Corporation, Education Review Office, Ministry of Education, Ministry for Pacific Peoples, New Zealand Security Intelligence Service, State Services Commission, Ministry for Women, New Zealand Transport Agency, Pike River Recovery Agency, Social Investment Agency, ACC, Worksafe and Oranga Tamariki were consulted on this paper.

Financial Implications

- 55 Consultation with government agencies indicates that the inclusion of broader outcomes in government procurement will likely involve increases in upfront costs to government contracts. For example, outcome 2 requirements for bidders to include a skills development element in construction projects are likely to add up-front costs, impact delivery times or result in additional contract management costs. Similarly, for outcome 3; improving conditions for workers, there are likely to be increased costs for some government contracts if costs were previously priced on the basis of non-compliance with employment standards and there are likely to be additional compliance costs for agencies and firms.
- 56 These increased upfront costs, however, will be justified by the longer-term benefits of public value procurement such as more skilled workers in the construction sector (which will lead to more competitive future contracts), increased employment opportunities for NEETs and fairer and safer work conditions for workers.

57 There will also be some increases in administrative costs, at least initially, for government agencies while they incorporate the changes to the Rules into their procurement processes. MBIE has sought to mitigate the administrative cost by giving agencies until 1 October 2019 to transition to the new Rules.

Legislative Implications

58 No legislative implications have been identified in this paper.

Regulatory Impact Analysis

59 A regulatory impact analysis is not required.

Human Rights

60 No human right implications have been identified in this paper.

Gender Implications

61 No gender implications have been identified in this paper.

Disability Perspective

62 No disability issues have been identified in this paper.

Publicity

63 If Cabinet approves the amendments to the Rules, I will issue a media release announcing the forthcoming changes to government procurement and its relation to the Government's broader objectives of enhancing government procurement. In addition, MBIE will explore opportunities for publicising the approval of the Rules and engaging with stakeholders, both government and suppliers, to ensure good understanding of the amendments and what will be expected from 1 October 2019.

Proactive Release

64 Following Cabinet Office Circular CO (18) 4 regarding the proactive release of Cabinet papers, this paper will be proactively released subject to redactions as appropriate under the Official Information Act 1982.

Recommendations

65 The Minister for Economic Development recommends that Cabinet:

1. **Note** that the Government Rules of Sourcing have been renamed as the Government Procurement Rules (Rules) and been amended to achieve wider public value, and to leverage government procurement to achieve social, economic and environmental benefits;
2. **Note** that the new Rules prioritise four outcomes, which are achieved by targeting the different categories of procurement contracts which are most relevant to each priority;
3. **Note** that the Minister of Finance and the Minister of State Services have approved implementation of the amendments set out in the Government Procurement Rules by Crown entities covered by the Whole of Government Direction on Functional Leadership, which ensures continuity of application of the new Rules;
4. **Approve** the amendments to the Rules as set out in Annex 1 to this paper which will be published in a 4th edition of the Rules to be applied from 1 October 2019, with support from the Ministry of Business, Innovation and Employment (MBIE) for agencies that wish to implement the changes earlier;

5. **Note** that MBIE has developed the following definition of a New Zealand business for the purposes of increasing New Zealand businesses' access to government procurement and monitoring and reporting results:
 - a. *A business that originated in New Zealand (not being a New Zealand subsidiary of an off-shore business), is majority owned or controlled by New Zealanders, and has its principal place of business in New Zealand.*
6. **Note** the progress on implementation of the priority outcomes and development of a monitoring and reporting framework;
7. **Note** that the Minister for Māori Development and I will report back to Cabinet in July with an assessment of the benefits of indigenous procurement policies;
8. **Note** that the inclusion of broader outcomes in government procurement will likely involve increases in the upfront costs to government contracts but these increased costs will be justified by the longer-term benefits of public value procurement; and
9. **Invite** the Minister for Economic Development to update Cabinet on progress across the programme of work at six-monthly intervals.

Authorised for lodgement

Hon David Parker
Minister for Economic Development

Annex 1: 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	I propose adding an additional 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>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, I propose that agencies must incorporate the Government Procurement Charter into their procurement policies. I also propose that 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"> 1. 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. 2. Each agency should consider making these policies publicly available.
Rule 6: Below threshold procurement	New proposed 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	<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	Change	New text
	encouraged.	
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. I propose that 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>I propose adding Rule 16 (Broader Outcomes) 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>I intend to introduce a new rule which requires agencies to consider, and incorporate where appropriate, broader outcomes when purchasing goods, services or construction works.</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. 3. Where contracts have been designated by Cabinet and/or Ministers

Rule	Change	New text
	<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>	<p>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.</p> <ol style="list-style-type: none"> 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.
<p>Rule 17: Increase access for New Zealand businesses</p>	<p>Priority one intends to increase access for New Zealand businesses to government procurement opportunities. I intend to add a new rule that 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.
<p>Rule 18: Construction skills and training</p>	<p>Priority two intends to grow the capability and capacity of the construction workforce. I intend to add a new rule that 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 supplier and their sub-contractors are included as weighted evaluation criteria. c. Where a weighted attribute evaluation model is not used,

Rule	Change	New text
		<p>agencies must ensure that reasonable consideration is given to skills development and training.</p> <ol style="list-style-type: none"> 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.
<p>Rule 19: Improving conditions for New Zealand workers</p>	<p>Priority three intends 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> <ol 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.
<p>Rule 20: Transitioning to a net-zero emissions economy and designing waste out of the system</p>	<p>Priority four intends to support the transition to a net zero emissions economy and design waste out of the system, helping support a circular economy. I intend to introduce a rule that requires agencies to support the procurement of low-emissions and low-waste goods, services and works.</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.

Rule	Change	New text
	In specifically designated contract areas, agencies must support the procurement of low-waste and low-emissions goods and services.	<ul style="list-style-type: none"> b. encourage innovation to significantly reduce emissions and waste impacts from goods and services. <ol style="list-style-type: none"> 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	I propose that the agencies should take into account Broader Outcomes and ensure that the secondary benefits are generated through their supply chains. This new proposed rule suggests that agencies should ask that a prime contractor meet certain procurement standards in its subcontracting.	<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 <i>Rules 16 to 20</i>, and other <i>guidance</i>.
Rule 44: Reasons to exclude a supplier	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>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: <ul 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
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, I propose that two new	<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

Rule	Change	New text
	fields to be added to the contract award notice rule.	<p>Notice must include:</p> <ul 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 subcontractor 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. I intend to introduce a new rule which 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>
Rule 65: Infrastructure	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	<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:

Rule	Change	New text
	<p>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>I propose extending the current Rule 65 on Public Private Partnerships to all infrastructure procurement to accommodate the new Infrastructure Commission. It is also proposed to remove 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>	<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	I intend to add a new rule on the Construction Guides to improve practice and consistency in construction procurement. This codifies earlier expectations set by Ministers.	<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.
Rule 71: Procurement Capability Index	The Procurement Capability Index (PCI) tool assists agencies in evaluating and building their procurement capability. I intend to add a new rule on Procurement Capability Index. This proposed 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"> 1. An agency must submit a Procurement Capability Index (PCI) self-assessment to MBIE annually by 1 October each year. 2. The Procurement Functional Leader may, at its discretion, exempt an agency from having to submit a PCI self-assessment.
Rule 72: Significant Service Contracts	Significant service contracts are the important contracts that an agency manages. We intend to	Rule 72: Significant Service Contracts Framework

Rule	Change	New text
Framework	introduce a new rule outlining agencies' obligations when engaging in significant service contracts. This proposed new rule explains significant service contracts and states that agencies must provide MBIE with a Significant Service Contracts Framework (SSCF) report.	<ol style="list-style-type: none"> 1. An agency must submit to MBIE a Significant Service Contracts Framework (SSCF) report. 2. 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. 3. Updated SSCF reports are due to MBIE by 1 March and 1 October each year.

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Annex 2: Government Procurement Rules 4th Edition

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