

GOVERNMENT PROCUREMENT IN NEW ZEALAND

POLICY GUIDE FOR PURCHASERS

**Ministry of Economic Development
Regulatory and Competition Policy Branch**

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Suggestions regarding additions or alterations, or other comments on how to improve future editions of this booklet would be welcomed and should be addressed to:

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INTRODUCTION

This policy guide is intended to help government departments¹ and other taxpayer-funded agencies to support the Government's procurement policy. It is hoped that State-Owned Enterprises (SOEs) and local authorities will also base their procurement approach on this guide. It complements, and should be read in conjunction with, the detailed good practice guidance offered in the Auditor-General's June 2001 publication "Procurement: A Statement of Good Practice" which is available on the Internet at www.oag.govt.nz (under Publications).

In New Zealand's state sector management context, Chief Executives are responsible and strictly accountable for the efficient and effective operation of their agencies, and have substantial managerial discretion in operational matters such as procurement. Accordingly, this guide generally does not set down prescriptive purchasing rules or procedures. The only exceptions are certain mandatory information and notification requirements which Cabinet has decided should apply to government departments.

At the same time, managerial support of the procurement policy is crucial for its success. CEOs are asked to ensure that this policy guide is reflected in their agencies' internal procedures and purchasing manuals. Procurement managers should take similar steps to ensure that consultants, prime contractors and other agents engaged to advise on or assist with procurement are aware of the Government's policy and help the agency to support it.

The procurement policy has general application to acquisition by purchase, hire, lease, rental, exchange and competitive tendering and contracting (outsourcing) arrangements. In this guide the focus is on purchasing by agencies of goods and services either directly or through a third party, and the terms "procurement" and "purchasing" are used interchangeably.

¹ "Government departments" in this guide means the public service departments listed in the First Schedule to the State Sector Act 1988 plus New Zealand Police and New Zealand Defence Force.

GOVERNMENT PROCUREMENT POLICY

The Government expects its departments, and encourages other public sector agencies, to be guided in their procurement by the following principles, adopted following a policy review in April 2001:²

- best value for money over whole of life;
- open and effective competition;
- full and fair opportunity for domestic suppliers;
- improving business capabilities, including e-commerce capability; and
- recognition of our bilateral obligations to Australia (Closer Economic Relations) and Singapore (Closer Economic Partnership), and our trade policy interests in open and transparent government procurement markets.

The Government has also endorsed the 1999 APEC Non-Binding Principles on Government Procurement i.e. transparency, value for money, open and effective competition, fair dealing, accountability and due process, and non-discrimination.

The procurement policy approach supports the Government's sustainable industry and regional development objectives, through enhanced identification of competitive opportunities for domestic enterprises and their capabilities to exploit those opportunities. It does not, however, impose on purchasing agencies a requirement to use their purchasing as a direct lever for industry or regional development, e.g. through domestic price preference or mandatory "offsets" (requirements on government buyers to obtain commitments from overseas buyers to assist domestic industry)³.

As assurance that purchasers are not overlooking competitive opportunities for domestic suppliers, and potential value for money advantages of local supply, the Government requires departments to obtain origin and local content information in offers to supply, and to notify the New Zealand Industrial Supplies Office (NZISO) of intention to contract for purchases over \$50,000 (see pages 8 to 9 for details).

To improve the transparency of its procurement market for domestic and international suppliers, the Government also requires departments to post on the Internet brief notices of contract awards over \$50,000 (see page 10 for details).

The Government's procurement policy recognises the mutual commitment by New Zealand and Australia under CER to accord equal treatment to products and services of New Zealand and Australian origin. Similar mutual commitments were made by New Zealand and Singapore under the 2001 Closer Economic Partnership (CEP) Agreement. Details of these bilateral commitments are given in Appendix 3, on pages 22 to 23.

² "Government Procurement Policy" (CAB Min (01) 11/18)

³ Purchasing agencies may nevertheless wish to consider commercially viable offsets proposals which support their agency goals - see Annex: "Informal Voluntary Offsets Policy", page 28.

New Zealand also has a broader international interest in transparent and open government procurement markets for its exporters. New Zealand participates in continuing APEC work towards improved transparency and liberalisation of government procurement markets in the Asia-Pacific region. In the World Trade Organisation (WTO), New Zealand is taking part in discussions to lay the groundwork for negotiation of a multilateral agreement on transparency in government procurement (see also Appendix 3, pages 23 to 25).

New Zealand's own government procurement market is globally open and competitive, and the policy does not call for discrimination against foreign suppliers. The bilateral CER and CEP commitments explicitly require equal opportunity and treatment for Australian and Singaporean suppliers.⁴ The procurement policy does, however, also call for government purchasers to be able to show that they have not denied full, fair and reasonable opportunity to domestic suppliers to compete.

Agencies should also note that environmental issues are an increasingly important element in procurement policy, and they should ensure that their procurement is consistent with the environmental policies of the Government (see pages 11 to 12).

⁴ The CEP government procurement commitments to Singapore apply above a value threshold, which in 2002 equates to NZ\$134,500 but is subject to periodic review – see Appendix 3, page 23.

POTENTIAL VALUE FOR MONEY ADVANTAGES OF LOCAL SUPPLY

The Government expects its agencies to be fair but demanding buyers, who will purchase from internationally competitive domestic suppliers where they offer best value for money.

This requires due consideration of potential commercial and practical advantages in purchasing locally produced goods and services. These may include:

- a better price and total or whole-of-life ownership cost;
- better through-life support (e.g. better availability of spare parts and after-sales service);
- shorter supply lines and/or delivery lead times;
- reduced inventory costs;
- reduction or elimination of exchange rate risks;
- easier and cheaper communications/transport;
- simpler and cheaper contract administration and dispute resolution;
- greater scope for cooperative and innovative product development and influence over the supply base;
- continuity of supply and more direct control over orders;
- goods/services better adapted to local conditions; and
- better knowledge of the producer's reputation and reliability.

In general, it will often make good business sense, in terms of value for money and a reliable supply base, that goods and services should be sourced from local suppliers where the necessary standards of competitiveness, quality and availability are met.

The Government's procurement policy does not give preference or weighting to local content in itself. Similarly, there should be no discrimination on the basis of ownership of a supplier or preference for domestic equity in itself. Having given domestic suppliers full and fair opportunity and assessed any commercial and practical value for money advantages associated with local supply, agencies should buy from the best source available, according to their own judgement of all costs and benefits.

INFORMATION ON ORIGIN AND LOCAL CONTENT

Ensuring opportunities for domestic suppliers to compete on the basis of value for money advantages, such as those identified above, requires knowledge of the origin and local content of the goods or services offered. Unless specifically requested, this information is not likely to be included in offers to supply. Buyers may also find that consultants or other agents engaged to make recommendations on purchases, or brokers organising supply contracts, have no knowledge of origin or local content when they recommend or select a supplier.

Accordingly, government departments have been directed to:

- require origin and local content information in all offers to supply goods, and to obtain this information from any brokers before buying goods under contracts arranged by them. Where there is difficulty in identifying local content (e.g. in complex technical purchases) this requirement should be undertaken on a “best endeavours” basis.

Elements of local content will vary depending on the product, but may include all or some of the following:

- place of final manufacture;
- source of major components or materials;
- place of modification and assembly;
- origin and ownership of intellectual property;
- location of research and development effort;
- origin of design; and
- contribution to service and support back-up.

For any given purchase, buyers should use their judgement and discretion in assessing value for money advantages associated with these elements. Undue time and effort should not be wasted in attempting to assess local content factors in imports which clearly have little significant local value added, or in small one-off purchases.

Similar considerations should apply, as appropriate, in the purchasing of services.

NOTIFICATION TO NEW ZEALAND INDUSTRIAL SUPPLIES OFFICE (NZISO)

The New Zealand Industrial Supplies Office (NZISO) was established to improve public sector buyers' awareness of New Zealand industry capabilities and encourage New Zealand industry to compete for supply opportunities (see Appendix 2, page 21 for further information on the role of the NZISO).

The April 2001 procurement policy review, however, found that many departments and other agencies were not using the NZISO's free information and liaison services. There was seen to be a need to enhance availability of information about government purchasing requirements, particularly for small businesses.

The Government now requires all departments to:

- notify the New Zealand Industrial Supplies Office (NZISO) of intention to contract for supplies of goods or services valued at over \$50,000 (excluding GST), whether by open or closed tender;
- consult the NZISO when reviewing preferred supplier lists for purchases over \$50,000 (excluding GST); and
- notify the NZISO of any intended purchases which are to be the subject of a public call for tender or registration of interest. These are posted on the NZISO's "Government Electronic Tenders Service" (GETS), in addition to other advertising.

The guidelines and rules for compulsory notification by departments to the NZISO list a number of exemptions designed to minimise unnecessary compliance costs for departments. The notification measures and exemptions are subject to revision from time to time. For up-to-date details of the current requirements and exemptions, purchasers should refer to the document "Policy Guidelines and Rules for Compulsory Notification to Industry NZ" on the website www.med.govt.nz (under Government Purchasing).

Agencies should notify the NZISO around the time of the decision to purchase. The NZISO will be able to draw on its industry capability database and expertise to suggest potential competitive New Zealand suppliers. The NZISO can also provide information on Australian business capabilities through its links with the Australian ISO network.

The NZISO will monitor the notification activity of departments and report to departmental CEOs on an annual basis.

PUBLICATION OF CONTRACT AWARD NOTICES

Another outcome of the April 2001 review of procurement policy was the decision to improve transparency of information on contracts awarded, with the aim of improving market information for all potential suppliers, domestic and international.

Accordingly, the Government requires departments to:

- publish notices of purchase contracts awarded over \$50,000 (excluding GST), at least quarterly, on the Internet.

The NZISO website provides a centralised point for publication of award notices, or links to notices published on individual departmental websites.

The post-award notification requirement is subject to review by 30 November 2002, and may be further revised from time to time. Departments should refer to the document “Guidelines and Rules for Publication of Contract Award Notices” on the website www.med.govt.nz (under Government Purchasing), for up-to-date details, including exemptions.

POLICY COMPLIANCE WHEN USING PURCHASING CONSULTANTS AND AGENTS

Public sector agencies sometimes employ consultants to advise on or manage the procurement process and make recommendations on purchasing decisions. The costs of dealing with a multiplicity of suppliers have in some cases led to agencies contracting out purchasing of goods and services to a prime vendor who assumes commercial responsibility for sub-contract sourcing decisions. In building projects, agents such as architects and prime contractors are likely to have considerable discretion in decisions affecting the sourcing of goods and services representing very significant business opportunities for subcontract suppliers.

In such cases, this policy guide should be incorporated or referred to in the relevant briefs, specifications and instructions to consultants, agents and prime contractors. They should be required to assist the agency to comply with the policy, especially in affording competitive opportunity to domestic suppliers. This should include encouragement to use the services of the NZISO to help in identifying potential competitive New Zealand sources.

ENVIRONMENTAL ISSUES

General

The Government has adopted a National Energy Efficiency and Conservation Strategy (September 2001) and a New Zealand Waste Strategy (March 2002). These set national targets for increased efficiency in energy and resource use in all sectors of society. Government agencies are expected to take account of these Strategies and targets in their procurement in ways that are consistent with the value for money and other policy and good practice considerations set out in this policy guide. International moves to limit and reduce emissions of greenhouse gases are likely to result in additional incentives for the adoption of renewable and energy efficient products, processes and technologies.

The Ministry for the Environment's booklet "Going Green: Your Easy Guide to an Environmentally Friendly Office" (1992) provides a brief overview of some ways to more efficiently use energy, paper, transport and waste disposal resources. Further guidance for government agencies will be developed and disseminated by the Ministry for the Environment as the New Zealand Waste Strategy is implemented (see www.mfe.govt.nz/wasteline).

Whole-of-life Procurement Factors

By taking account of cost savings obtainable from use of energy efficient products and technologies, agencies' procurement can contribute to achievement of the National Energy Efficiency and Conservation Strategy target of a 15 percent improvement in energy efficiency over five years in central government. The Energy Efficiency and Conservation Authority (EECA), the principal body responsible for delivering the Strategy, provides assistance to purchasing agencies under its EnergyWise Government programme (see website www.eeca.govt.nz). EECA provides partial funding for energy audits of buildings and vehicle fleets, and low cost loans to finance the purchase of energy efficient equipment. Eco-efficient vehicle purchasing guidelines are expected to be available from September 2002.

In their assessment of value for money over whole of life, purchasing agencies should give due consideration to minimisation of waste and disposal costs. By specifying products that can be reused and/or contain recycled content wherever reasonably possible and cost-effective, government agencies will help to maintain and develop the market demand which makes local waste collection, recovery and recycling industries viable and efficient.

Timber Procurement

The Government also expects its agencies to take all reasonable steps to ensure that timber and timber products procured, including tropical timber, are from legally logged and sustainably managed sources. An internationally recognised sustainable

forestry accreditation scheme (including New Zealand forests) is provided by the Forest Stewardship Council (www.fscoax.org).

Ozone Depleting/Hazardous Substances

New Zealand is a party to international environment agreements concerning: the protection of the ozone layer (Montreal Protocol); trans-boundary movements of hazardous wastes (Basel Convention); and imports/exports of a range of dangerous chemicals (Rotterdam and Stockholm Conventions). Related New Zealand measures are set out in legislation such as the Ozone Layer Protection Act 1996 and Regulations. The latter, for example, have implications for procurement and disposal of products and services involving ozone depleting substances e.g. refrigeration, air conditioning, and fire protection (for details of relevant controls and requirements see the websites of the Ministry of Economic Development (www.med.govt.nz) and the Ministry for the Environment (www.mfe.govt.nz/issues/ozone.htm).

Environmental Accreditation

Procurement managers and staff should familiarise themselves with environmental quality assurance schemes which are increasingly available to help simplify procurement decisions in this complex area. By including environmental accreditation among their criteria for evaluating suppliers' bids, agencies can help to improve the market for environmentally friendly and energy-efficient goods and services. Accreditation may be based on life cycle analysis (production, use and disposal) such as the Government-endorsed Environmental Choice New Zealand (www.enviro-choice.org.nz), on single resource use such as energy efficiency labelling of appliances, or on sustainable management practice such as the ISO 14000 series. Links to these resources are available from the Ministry for the Environment website (www.mfe.govt.nz).

Documentation/Supplier Information

Information sent to suppliers should include a statement of the agency's approach to compliance with the Government's environmental policies. Consideration should be given to developing appropriate standard clauses for tender and contract documentation. These could include requests for documentation on environmental impacts such as accreditations obtained, sustainable production practices, energy efficiency, recycled content, durability and reuse options, hazardous material content, and end-of-life disposal provisions. Unless specifically requested, such resource impact information is not likely to be included in offers to supply.

The NZISO may be able to assist in seeking environmentally friendly goods.

PROMOTING OPPORTUNITY THROUGH GOOD PRACTICE

Achieving the intent of the Government's procurement policy depends not only on awareness of the policy principles, but also on good practice. Cost-effective procurement may involve new approaches and procedures to take advantage of changes in the marketplace and technology, but competition remains a key principle of policy and good practice. This will help to ensure the best value for money, while avoiding unfair denial of opportunities or discrimination.

Agencies' purchasing procedures should be guided by the Auditor-General's publication "Procurement: A Statement of Good Practice" (www.oag.govt.nz under Publications). This sets out the principles of good practice and gives detailed advice on planning and conducting the procurement process, and contract management. As suggested in the Auditor-General's Introduction, "each public entity should use the statement as a benchmark for its own procurement policies and practices, and as a guide to what its own procurement manual should contain".

The following discussion in this policy guide supplements the Auditor-General's advice by commenting on some particular areas where lack of attention to good practice could frustrate the Government's procurement policy by unduly restricting competitive opportunities for domestic and other suppliers.

Purchasing Methods

Decisions on how to approach the market are best made in the context of a procurement plan which may be simple or complex, according to the degree of risk of the procurement and difficulty in specifying the requirement (see the Auditor-General's Statement 2.2 for advice on procurement planning). The plan should be based on adequate market research (see *Researching the Market*, page 15).

In principle, the advertising of an open request for tender should be the preferred method for substantial purchases, as it offers all interested domestic and other suppliers fair and equitable opportunity, and allows evaluation of a range of competing offers in the assessment of best value for money. For good practice guidance on open tendering, see the Auditor-General's Statement 3.5.

At the same time, the method should be appropriate to the market for the particular goods or services, and the circumstances of the procurement. These considerations may mean that open call for tender is not practicable or cost-effective. For advice on appropriate use of less open procedures, including emergency procurement, selective procurement, quotation and closed tendering, see the Auditor-General's Statement 3.1 to 3.4.

A staged approach, e.g. invitation for registration of interest and pre-qualification of suppliers followed by request for tender from selected respondents (closed tendering), may be needed to limit a large field of potential tenderers to those with a realistic chance of success, without unduly restricting opportunity at the outset. This

approach may be particularly appropriate for complex or high-value requirements, to minimise costs to suppliers and buyers in preparing and evaluating tenders.

General guidance on the multi-stage tender method is given in the Auditor-General's Statement 3.7. A guideline for a staged IT procurement process, which is competitive and consistent with the Government procurement policy and good practice, is set out on page 48 of the State Services Commission/Treasury publication "Guidelines for Managing and Monitoring Major IT Projects" (available on the Commission's website www.ssc.govt.nz).

Forward Procurement Plans

Publication of forward procurement plans with advance notice of requirements may enable suppliers to:

- develop and produce goods to order if they are given reasonable time to do so;
- modify their product(s) to meet the requirements;
- offer innovative and competitive solutions; and
- develop appropriate joint venture proposals.

Once the decision to procure has been confirmed, requirements regarding notification to the NZISO of intention to contract apply (see page 9).

Buying Patterns

Combining frequent purchases in long-term contracts or standing offer arrangements will often be more cost-effective for both buyers and suppliers. Purchasing of small and regular requirements under period contracts arranged by brokers may also be economical.

Collaborative procurement arrangements between public sector agencies are also encouraged by the Government, and are facilitated by e-procurement developments. Each agency should assess the possibility of savings through co-ordinating some or all purchases of goods and services in common use with other government organisations. "Syndicated procurement" arrangements being developed in association with the State Services Commission-led e-procurement project should be seriously considered. For current developments and opportunities to participate, agencies should consult the Commission's E-Government unit (for contact details see Appendix 4). For guidance on good practice issues involved in syndicated procurement, see also the Auditor-General's Statement, Part 3.

Agencies participating in the various types of arrangements mentioned should satisfy themselves that the Government procurement policy principles and applicable information and notification requirements (see page 5 and pages 8 to 10) are adhered to in the establishment of the arrangements and future contracting. Advantages of committing to supply arrangements over an extended period should be weighed against possible effects on competitive opportunities for domestic

suppliers, and agencies' own interests in maintaining a competitive and innovative supplier base.

Transparency of Opportunities for Suppliers

To promote competition, all publicly available opportunities (e.g. invitations to tender or submit proposals, pre-qualify or register interest) should be advertised in publicly accessible print and electronic media, such as the metropolitan newspapers and trade or specialist journals.

Specialist commercial publications which advertise public sector tenders free of charge are the "Tenders Gazette" (Christchurch) and "New Zealand Government and Local Body Tender" (Auckland). Both are available in print. The "Tenders Gazette" is also available on the Internet at www.tenders-gazette.co.nz. Another free tender advertising service is "Tenderlink" which is on the Internet at www.tenderlink.com.

Individual government agencies which advertise their calls for tender on their own internet websites should make such information accessible also from the "Government Tenders" heading of the New Zealand Government Online (NZGO) homepage at www.govt.nz. Establishment of a public e-tenders portal planned under the E-Government procurement project will further enhance transparency of opportunities for all suppliers (for information on progress of the E-Government procurement project, see the State Services Commission's E-Government Unit website www.e-government.govt.nz).

Publicly available opportunities should also be advertised (free of charge) on the "Government Electronic Tenders Service" (GETS) of the NZISO (www.nziso.govt.nz) to ensure regional New Zealand suppliers are made aware of the opportunities. Departments must notify the NZISO of public opportunities (see page 9).

Where the procurement is to be by closed tender, invitations to tender should be disseminated directly to a reasonable range of pre-qualified or other potential suppliers identified through appropriate market research (see below). Early notification to the NZISO will help to ensure that suitable competitive New Zealand suppliers have not been overlooked (see page 9 on notification requirements).

Publication of contract award notices provides a further source of market information to suppliers interested in future opportunities (see page 10 for post-award transparency requirements).

Researching the Market

The extent of market research should be in reasonable proportion to the value, significance and/or complexity of the requirement. If a public call for tender or registration of interest, or similar open approach to the market, is not considered cost-effective or appropriate, research should aim to identify a reasonable range of competitive suppliers. Even where open tendering or registration of interest is to be undertaken, the formal process should be preceded by sufficient market research to ensure that the documents are robust and meaningful.

Information about potential suppliers and alternative solutions will be available from various sources including informal contacts with firms, internal records, print and electronic publications (such as business directories, suppliers' brochures, trade journals, business directories), industry associations and environmental accreditation schemes (see Environmental Accreditation, page 12). A growing number of suppliers are making their company information available on the Internet.

Information about New Zealand suppliers, their products and their capabilities, is also freely available to government purchasers from the NZISO.

As agencies are ultimately accountable for their decisions about whom to approach in the market, procurement staff should document their market research, including any direct contacts with potential suppliers.

Established sources of supply and existing preferred supplier lists should be regularly reviewed, in consultation with the NZISO (see page 9). Existing lists should be open for application by new suppliers at any time, and an invitation to apply should be advertised at reasonable intervals.

Agencies should also keep a record of competitive suppliers who have responded to invitations in the past. Instances where suppliers have consistently proved to be uncompetitive or non-performing should also be documented in case of need to justify decisions to exclude them from selection in future.

Defining Requirements

In tender documents, avoid specifying any feature which unnecessarily discriminates, either directly or indirectly, against any supplier or group of suppliers (e.g. a feature specific to a particular technology or brand of product). If a brand name needs to be used, a term such as "or equivalent" should be added.

Requirements should be defined, and specifications written, in functional and performance terms wherever possible, in conjunction with a material or technical specification if necessary. This will encourage effective competition by giving opportunity for suppliers to develop solutions capable of satisfying the agency's requirements.

Pre-tender briefings and discussions may provide an opportunity for prospective parties to improve their understanding of the perceived requirement. It may be useful to consult relevant industry organisations and/or the NZISO. Certainly, more than one potential supplier should be involved in the preliminary discussions, to avoid supplier imprinting.

Specifications for standing requirements should be reviewed from time to time.

Dealing with Unfamiliar Products: Risk Aversion

A reason sometimes given by buyers reluctant to buy certain domestic products or services is that “they are unproven”, a risk averse attitude. This may be prudent in principle but can easily be taken to an undesirable extreme. It may unnecessarily reduce competition and cause buyers to miss out on innovative, cost effective and environmentally preferable solutions.

Procurement staff uncertain about a new domestic product should seek additional information from the NZISO, users of the product, or sources of environmental impact information (see Environmental Issues pages 11 to 12) as appropriate.

Specifying appropriate standards and quality assurance (see below) will also help to ensure fitness for purpose and minimise risk when accepting innovative solutions or sources of supply.

Standards

Specifications should refer to domestic and international standards applicable in New Zealand. Standards specified should be the same or equivalent for supplies from any source. Information about applicable standards is available from Standards New Zealand (www.standards.co.nz). Bureau Veritas (New Zealand) Limited (www.bvnewzealand.com) makes available a listing of all ‘S’ (Certified to Approved Standard) Mark products and their suppliers. There is also a range of environmental accreditation schemes (see Environmental Issues, page 12)

Quality Assurance

It will not be cost-effective to require formal quality assurance for all purchases, particularly small purchases with low cost of non-compliance or failure. In these cases, normal commercial or industry practice (e.g. suppliers’ or manufacturers’ guarantees) may give adequate assurance of quality.

Where it is determined that there is a need for formal quality assurance, as in the case of highly technical or critical supplies, the required standard should be nominated in the specification or request for offer. Third-party certification of a supplier’s quality assurance to a recognised standard, such as the ISO 9000 series, provides objective evidence that the supplier can consistently produce a good or service meeting the requirements and minimises the need for inspection of the product or production process by the purchaser.

An up-to-date listing of accredited certifying bodies in New Zealand and Australia is available on request from the Joint Accreditation System of Australia and New Zealand (www.jas-anz.com.au). JAS-ANZ has also compiled a register of certified suppliers which can be consulted to determine the quality assurance status of potential suppliers of the product or service required.

The Telarc Limited Q-Base standard, which is based on ISO 9000, makes certification more accessible to smaller companies with limited resources and may well be adequate as an alternative formal quality system for less critical supplies (see website www.telarc.co.nz).

The NZISO also includes suppliers' quality assurance certification details in its domestic industry capabilities database.

Evaluation

Tenders should be evaluated against selection criteria which have been disclosed, in broad categories at least, in the tender documents (as disclosure may create enforceable obligations, the Auditor-General's Statement of Good Practice recommends legal advice in deciding the level of detail to be disclosed). Suppliers' claims should be checked, particularly regarding standards and quality assurance, domestic servicing and through-life support, and environmental impact from production, use and disposal.

Applicable customs duties and GST must be taken into account in the pricing of imported goods. A customs broker or the New Zealand Customs Service will be able to advise if the goods are subject to duty.

Purchasing agencies should also be alert to the possibility of low-priced tenders involving dumped or subsidised imports which unfairly compete with New Zealand products and could be subject to an application for trade remedies under the Dumping and Countervailing Duties Act 1988. For advice in such cases, purchasers should contact the Trade Remedies Group of the Ministry of Economic Development.

Adequate records of the evaluation process and the reasons for final decisions must be kept. Purchasing agencies are accountable for purchasing decisions and may be required to provide information about them in cases of queries raised by unsuccessful tenderers and complaints investigations by the Ministry of Economic Development or the Auditor-General, or requests under the Official Information Act, for example.

Debriefing

Information to tenderers should include notice that debriefing will be available on request, and give relevant contact details. This is important for good working relationships between buyers and suppliers, and may be a source of useful feedback from the marketplace, particularly in more complex purchases.

The debriefing process should be as transparent as possible, with frank and honest exchange of information. Limits will be imposed, however, by the requirements of commercial confidentiality and need to maintain fair competition between suppliers.

Debriefing should help unsuccessful domestic and other suppliers understand what they did, or are doing, to make their bids uncompetitive or how their goods or

services might be further developed. Successful tenderers may also be interested in knowing how they performed against the evaluation criteria to help them in continuing to prepare competitive bids for future purchasing requirements.

Supplier Complaints

Purchasing agencies should give fair and objective consideration to complaints from domestic suppliers that they have not been given full, fair and reasonable opportunity, or from foreign suppliers that they have been discriminated against. Unresolved complaints may be investigated by the Ministry of Economic Development (Regulatory and Competition Policy Branch) in consultation with the purchasing agency (see page 20). If necessary the Ministry will report to relevant Ministers with recommendations on appropriate action. The Auditor-General may also investigate complaints of unfair treatment or mismanagement. Procurement managers and purchasing staff should take care not to let a previous genuine and reasonable (even if mistaken) complaint prejudice their fair treatment of the supplier concerned in future.

APPENDIX 1: ROLE OF THE MINISTRY OF ECONOMIC DEVELOPMENT

The Ministry of Economic Development has a number of roles in relation to government procurement policy set out in this guide which are discharged by the Regulatory and Competition Branch.

- **Policy:** development and review of New Zealand’s general procurement policy, including the role of the NZISO and international aspects, for example, in the World Trade Organisation (WTO) and the Asia Pacific Economic Cooperation (APEC) regional grouping, and under bilateral agreements with Australia and Singapore. The Branch reports to the Minister of Commerce as the Minister responsible for Government procurement policy.
- **Monitoring:** periodic informal surveys of government departments, other central government agencies, major Crown-owned entities and SOEs are to be conducted to monitor how effectively the Government’s procurement policy has been understood and implemented; what problems may be encountered; and how the policy can be implemented most effectively.
- **Complaints Investigation:** complaints of alleged failure by public sector agencies to give domestic suppliers full, fair and reasonable opportunity are investigated by the Regulatory and Competition Policy Branch in consultation with the purchasing agency concerned. The purchasing agency is expected to cooperate fully in such investigations and to be able to show that purchasing decisions and procedures are consistent with the policy and these guidelines. Valid complaints which have not been satisfactorily resolved between the parties will be referred to the Minister of Commerce and other relevant Ministers with recommendations for further action as appropriate. The review process is equally available to any foreign suppliers’ complaints of discrimination.

The Ministry is the “designated body” responsible for investigation of complaints by Australian or Singaporean suppliers of non-compliance by New Zealand government agencies with the ANZGPA and Part 8 of the New Zealand/Singapore CEP Agreement, respectively (see page 22 and page 23).

APPENDIX 2: ROLE OF THE NEW ZEALAND INDUSTRIAL SUPPLIES OFFICE (NZISO)

The New Zealand Industrial Supplies Office (NZISO), a unit within Industry NZ, facilitates contacts and exchange of information between public sector purchasers and domestic suppliers. It offers its services free of charge.

The NZISO maintains an extensive New Zealand industry capability database. Through its links with the network of ISOs in the Australian States, the NZISO also has access to information on Australian industry capabilities. The NZISO can thus assist by identifying possible suppliers in New Zealand and Australia, evaluating their capability to meet requirements and suggesting suitable suppliers. It does not, however, have responsibility for agencies' supplier selection, or any role in purchasing negotiations or decisions. In addition to its direct contact with firms, the NZISO has established regional links through which bidding opportunities can be disseminated to registered New Zealand industry clients. This networking service has been enhanced by the NZISO's "Government Electronic Tenders Service" (GETS) on its website. Where purchasers require specific tenders to be openly available, the NZISO also provides this service.

The NZISO may also play a useful role in any facilitating offsets opportunities associated with major procurement from overseas (see pages 28 to 30 for a description of the Informal Voluntary Offsets Policy).

All public sector purchasers are encouraged to cooperate and liaise with the NZISO to assist it in supporting the Government's procurement policy. Government departments are required to notify the NZISO of intention to contract for purchases valued at over \$50,000, and to advertise all publicly available tender opportunities on GETS. Other agencies are encouraged to do the same (see page 9).

Purchasing agencies can benefit from utilising NZISO assistance, free of charge, to seek out competitive potential New Zealand suppliers and to research New Zealand producers' capabilities. Providing the NZISO with information on past, existing and forward purchasing requirements will also help to maximise opportunities for New Zealand producers to compete.

Contact details for further information on the NZISO's services are given in Appendix 4 (see page 26).

APPENDIX 3: INTERNATIONAL AGREEMENTS

Australia New Zealand Government Procurement Agreement (ANZGPA)

In Article 11 of the CER Agreement, the Australian Commonwealth Government and the New Zealand Government agreed that the maintenance of domestic purchasing preferences was inconsistent with the objectives of CER, and agreed to treat Australian and New Zealand content equally in their government purchasing. Subsequently, the Australian State and Territory Governments joined with the Commonwealth and New Zealand in the Australia New Zealand Government Procurement Agreement (ANZGPA).

Under the ANZGPA, the Australian (Commonwealth, State and Territory) and New Zealand Governments are committed to giving Australian and New Zealand goods, services and suppliers equal treatment and opportunity to compete on the basis of value for money in a “single trans-Tasman government procurement market”.

New Zealand’s CER/ANZGPA commitments are consistent with the Government’s globally non-preferential procurement policy. Some Australian jurisdictions maintain preference margins which may be applied against third country suppliers, but not New Zealand suppliers.

Entity Coverage

The ANZGPA commitments apply to procurement by New Zealand departments and statutory authorities directly controlled by the Government. New Zealand has also undertaken that the Government will use its best endeavours to encourage wider application of the Agreement, consistent with good commercial practice, by other authorities and bodies, SOEs and local government bodies, for example. Similar obligations have been undertaken in respect of New Zealand suppliers, goods and services by Australia at federal and state/territory government levels.

Monitoring/Complaints

The ANZGPA includes monitoring and complaints procedures, through designated bodies in each government, to investigate and try to resolve any claims of discrimination. New Zealand’s Designated Body is the Ministry of Economic Development (Regulatory and Competition Policy Branch).

Review

The ANZGPA is subject to 5-yearly review, and may be revised at any time, as agreed between the signatories. Up to date copies of the Agreement are available from the Regulatory and Competition Policy Branch of the Ministry of Economic

Development. The text is also available on the Internet at www.apcc.gov.au (under Publications).

New Zealand/Singapore Closer Economic Partnership (CEP) Agreement

Part 8 of the CEP Agreement is based on the concept of a “single New Zealand/Singapore government procurement market”. Accordingly, New Zealand and Singapore agree to provide to each other’s suppliers, goods and services equal opportunity to compete on the basis of value for money. Procuring entity coverage is similar to that in the ANZGPA. The New Zealand/Singapore commitments, however, explicitly apply only to procurement above a value threshold of 50,000 SDRs (IMF Special Drawing Rights), which in 2002 equates to NZ\$134,500. (The SDR threshold is expressed in fixed New Zealand and Singapore currency equivalents which are subject to periodic review).

New Zealand and Singapore also undertake that their procurement procedures shall be conducted in a manner consistent with the APEC Non-Binding Principles on Government Procurement and good commercial practice. This includes a commitment to advertising invitations to tender, or to register interest, in a publicly accessible medium. Post-award contract information, and supplier debriefing are to be made readily available on request. The Parties will enhance transparency at all stages and endeavour to provide a single point of publication for opportunity and contract award information, e.g. on the internet.

The Ministry of Economic Development (Regulatory and Competition Policy Branch) is New Zealand’s “designated body” for investigation of complaints by Singaporean suppliers that New Zealand Government agencies have not complied with their CEP Part 8 obligations. Any unresolved complaints may ultimately be subject to the formal Dispute Settlement chapter of the CEP.

The CEP Agreement, including Part 8, is subject to periodic review, and may be revised from time to time. The current text is available on the Ministry of Foreign Affairs website at www.mfat.govt.nz. Hard copies may also be obtained from the Ministry of Economic Development (Regulatory and Competition Policy Branch).

World Trade Organisation (WTO)

Government purchasing is recognised in the World Trade Organisation (WTO) as an important area remaining outside the multilateral trading framework. Many countries restrict access to their procurement markets and discriminate against foreign suppliers.

The plurilateral WTO Agreement on Government Procurement (AGP) has had a limited effect in terms of global liberalisation because of its relatively small membership (most developing countries are not members), value thresholds and bilaterally negotiated exclusions of purchasing entities or industry sectors. New Zealand has not joined. To date it has been judged that AGP membership would entail a prescriptive approach to purchasing procedure at odds with New Zealand’s

deregulated and decentralised public sector management regime, and would be likely to increase administrative and transaction costs. This position is subject to periodic review, in the light of international trade and procurement policy developments.

Efforts are being made in the WTO to bring government procurement under multilateral rules. WTO Ministers agreed at their meeting in Doha in November 2001 that discussions should continue to lay the basis for negotiations to begin on a multilateral agreement on transparency of procurement policies and practices. Negotiations are also continuing on bringing government procurement of services under the WTO General Agreement on Trade in Services (GATS).

New Zealand's objective in these negotiations is to reach agreement on a multilateral approach which would eventually integrate government procurement with the WTO system without requiring countries such as New Zealand to re-regulate public procurement regimes which are already liberalised. New Zealand's unrestricted open market approach is compatible with normal WTO principles of non-discrimination and transparency.

New Zealand has also been active in WTO and other multilateral negotiations seeking to ensure a positive working relationship between international trade law and policies adopted to promote sustainable development and protect the environment.

Asia-Pacific Economic Cooperation (APEC)

Under the Osaka Action Agenda signed in 1995, APEC economies including New Zealand agreed to the following objectives in government procurement:

“(a) develop a common understanding on government procurement policies and systems, as well as on each APEC economy's government procurement practices; and

(b) achieve liberalisation of government procurement markets throughout the Asia-Pacific region in accordance with the principles and objectives of the Bogor Declaration, contributing in the process to the evolution of work on government procurement in other multilateral fora.”

The APEC Government Procurement Experts' Group (GPEG), which was established in 1995 as a subgroup of the APEC Committee on Trade and Investment, has developed agreed non-binding principles and illustrative best practice lists to guide APEC economies' work towards voluntary liberalisation of government procurement. The principles and practices adopted relate to transparency, value for money, open and effective competition, fair dealing, accountability/due process, and non-discrimination.

The Group has also established a process for individual APEC economies to review and report back to the Group on the consistency of their government procurement systems with the agreed non-binding principles. In addition, through their APEC Individual Action Plans (IAPs), the member economies set out their plans and timetables for voluntary alignment of their government procurement systems with the non-binding principles.

The New Zealand and Singapore Governments have, in their CEP Agreement, committed themselves to implement the APEC Non-Binding Principles on Government Procurement. The Principles document is accessible from the APEC Government Procurement Homepage on the Internet at www.apecsec.org.sg/govtproc/gphome.html.

APPENDIX 4: CONTACT DETAILS OF RELEVANT ORGANISATIONS

Regulatory & Competition Policy Branch
Ministry of Economic Development
PO Box 1473
Wellington
Phone: (04) 472 0030
Extension: 8677
Fax: (04) 499 1791
Website: www.med.govt.nz

New Zealand Industrial Supplies Office
Industry New Zealand
PO Box 2878
Wellington
Phone: (04) 910 4949
Fax: (04) 910 4304
Email: general@nziso.govt.nz
Website: www.nziso.govt.nz

Office of the Controller and Auditor-
General
Private Box 3928
Wellington
Phone: (04) 917 1500
Fax: (04) 917 1549
Email: information@oag.govt.nz
Website: www.oag.govt.nz

E-Government Unit
State Services Commission
PO Box 329
Wellington
Phone: (04) 495 2840
Fax: (04) 495 6669
Email: e-government@ssc.govt.nz
Website: www.e-government.govt.nz

Ministry for the Environment
PO Box 10-362
Wellington
Phone: (04) 917 7400
Fax: (04) 917 7523
Email: info@mfe.govt.nz
Website: www.mfe.govt.nz (links to
guidelines and environmental accreditation
schemes to be available from early
2002/2003 on www.mfe.govt.nz/wasteline)

EECA (Energy Efficiency and Conservation
Authority)
PO Box 388
Wellington
Phone: (04) 470 2200
Fax: (04) 499 5330
Website: www.eeca.govt.nz

Environmental Choice New Zealand
PO Box 56533
Dominion Road, Mt Eden
Auckland 1003
Phone: (09) 845 3330
Fax: (09) 845 3331
Email: info@enviro-choice.org.nz
Website: www.enviro-choice.org.nz

Standards New Zealand
Private Bag 2439
Wellington
Phone: (04) 498 5990
Fax: (04) 498 5994
Email: snz@standards.co.nz
Website: www.standards.co.nz

Telarc Limited
Private Bag 28901
Remuera
Auckland 1136
Phone (09) 525 0100
Fax: (09) 525 1900
Website: www.telarc.co.nz

Manager – New Zealand
JAS-ANZ (Joint Accreditation System of
Australia and New Zealand)
Level 5, 22 The Terrace
PO Box 708
Wellington
Phone: (04) 474 3348
Fax: (04) 474 3349
Website: www.jas-anz.com.au

Bureau Veritas (New Zealand) Limited
PO Box 74545
Market Road
Auckland
Phone: (09) 520 8790
Fax: (09) 520 5229
Email: bv.nz@nz.bureauveritas.com
Website: www.bvnewzealand.com

ANNEX: INFORMAL VOLUNTARY OFFSETS POLICY

Offsets Defined

An offset consists of a benefit or contract for manufacturing and/or services which is awarded to a New Zealand firm. An important feature of an offset may be the inflow of new or improved technology to New Zealand. Offset production may be for the domestic or export markets.

The Policy

It is not mandatory for agencies to require offset proposals in tenders by overseas suppliers for government contracts. However, the informal voluntary policy recognises that commercially viable proposals may offer worthwhile and economically sound benefits for New Zealand.

Operation of the Offset Policy

The policy may be implemented by individual departments and other purchasing agencies exercising the option of seeking or considering offset proposals when calling for or evaluating bids for public sector contracts by overseas suppliers.

The only requirement of Government is that the Ministry of Economic Development (Regulatory and Competition Policy Branch) should monitor proposed offset arrangements to ensure consistency with general policy.

Possible Advantages of Offsets

Offsets may have particular benefits for government purchasers with interests in developing a goods or services supply base relevant to their agency needs. They may, for instance:

- raise the levels and range of technology in New Zealand;
- encourage internationally competitive manufacture and services;
- improve industrial design and quality assurance;
- open up new markets;
- provide servicing or backup advantages; and
- have logistical benefits.

Typical Offset Arrangements

Typical offset arrangements include:

- Joint manufacture of assemblies or sub-assemblies of the specific equipment under tender for internal use or for export;
- Collaboration in design, development and production;
- Training of specialist staff, provision of manuals/computer software etc;
- Technology transfer; and
- Joint research and development.

Participants in Offset Arrangements

Parties to an offset arrangement can be:

- the successful tenderer;
- associates of the successful tenderer;
- the purchasing agency; and
- other New Zealand-resident or registered parties.

The products or services arising from the offset arrangement may be used by the successful tenderer within the main contract from which the offset is derived, or in any other contract undertaken by the tenderer within New Zealand or overseas. Alternatively, offsets may be taken up by associates or third parties.

Procedures for Purchasing Agencies

Purchasing agencies should be aware that some overseas suppliers offering offsets are accustomed to building a premium into the total tender price in order to cover costs that may be incurred, especially in meeting mandatory offset requirements imposed by some countries. New Zealand's informal voluntary policy is designed to avoid this by encouraging arrangements which are commercially acceptable to all parties, and do not undermine competitive tender pricing. Where bidders are invited or volunteer to include offset proposals in tenders, they should be requested to make any premium transparent by quoting alternative tender prices with and without the proposed offsets.

To be effective, the offset policy requires dialogue between public sector purchasing agencies and domestic industry to ensure that opportunities for mutual benefit are fully explored.

- Where acceptable offset proposals are forthcoming from overseas bidders, the purchasing agency should engage in consultation with domestic industry on appropriate responses.
- To the maximum extent possible, purchasing agencies should also keep domestic industry informed in advance of their forward planning for procurement which may give rise to offset opportunities.

The services of the New Zealand Industrial Supplies Office (NZISO) are available to all interested parties to provide advice and liaison to promote offset opportunities. Purchasing agencies should strongly encourage overseas bidders interested in developing offsets proposals to consult the NZISO.

Purchasing agencies should advise the Ministry of Economic Development of any offset proposals being considered. While it is not intended to interfere in purchasing decisions, the Ministry has a brief from the Government to monitor any proposed offset arrangements to ensure that they are not inconsistent with the general approach in industry policy.

It should be noted that under Article 11 of the CER Trade Agreement, New Zealand and Australia have agreed not to require offsets in relation to Australian and New Zealand content in government purchases. Under the CEP Agreement, New Zealand and Singapore have agreed not to impose, seek or consider offsets in relation to government procurement from New Zealand or Singapore suppliers. The CEP Agreement defines offsets as “measures used to encourage local development or improve the balance of payments accounts by requiring domestic content, licensing of technology, investment, counter-trade or similar requirements”.