

# **Government Procurement – Rules and Guidelines for Compulsory Notification by Departments to Industry Capability Network New Zealand (ICN)**

Revised February 2004

## **Policy Context**

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1. The guiding principles of the Government's procurement policy are:

- 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 (CER) and Singapore (CEP), and our trade policy interests in open and transparent government procurement markets.

2. The Government also endorses the APEC Non-Binding Principles on Government Procurement relating to transparency, value for money, open and effective competition, fair dealing, accountability and due process, and non-discrimination.

3. Government departments, as listed in the First Schedule to the State Sector Act 1988 plus New Zealand Police and New Zealand Defence Force, are expected to conduct their procurement in line with all the principles set out above. Other public sector organisations are encouraged to do the same.

4. The Government has identified a need to improve transparency of procurement. As one aspect of this, the Government wishes to ensure that information about government purchasing requirements is readily available to New Zealand industry. To assist this process, Cabinet has adopted measures as follows in paragraphs 9–11 below (CAB Min (01) 11/18). These measures establish notification requirements which are compulsory for government departments. The Government also encourages other public sector organisations to follow the same practice.

## **Implementation Rules and Guidelines**

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5. These rules and guidelines for implementation of the notification measures have been drawn up, in accordance with Cabinet's direction, by the Ministry of Economic

Development in consultation with departments, and agreed to by the Associate Minister of Commerce and the Minister of Economic Development.

## **Interpretation of These Rules and Guidelines**

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6. Issues of interpretation of these notification rules and guidelines should be discussed with the ICN in the first instance and if necessary referred to the Ministry of Economic Development.

## **Industry Capability Network New Zealand (ICN) Role**

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7. The ICN maintains an industry capability register, linked electronically to a similar register maintained by the Australian State/Territory ICNs, and can advise government buyers of any potential competitive New Zealand and Australian suppliers. The Government Electronic Tenders Service (GETS) is an online ICN service to New Zealand and Australian businesses and regional economic development agencies, which informs them of opportunities to bid for, or register interest in, supply to government agencies in New Zealand and Australia.

8. The ICN has an advisory and information role only. It is not empowered to be involved in purchase negotiations or decisions, or to delay the procurement or tender process. While the listing of publicly available opportunities in GETS should enhance exposure of those opportunities to New Zealand industry, decisions on what is purchased, where it is sourced from, and the method of tendering (open or selective) or other procedures followed, remain the responsibility of the purchasing department, within the broad procurement policy framework.

## **The Notification Requirements**

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9. All departments, as defined in paragraph 3, must notify the ICN of their intention to procure supplies of goods or services for use within New Zealand, involving expenditure of departmental Vote funds above a value threshold of \$50,000 (excluding GST).

10. Departments which maintain preferred supplier lists for procurements above the \$50,000 threshold must also consult the ICN when reviewing these lists.

11. In addition to notification to the ICN, all publicly available opportunities (i.e. where a decision has been made to issue a public call for tender or registration of interest, or some other similar open approach to the market) are required to be listed in GETS (in addition to other advertising), irrespective of whether the procurement exceeds the \$50,000 threshold.

12. Other public sector organisations, including Crown entities, local bodies and SOEs, are encouraged to comply with the notification requirements.

## **Procurements Involving Third Parties**

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13. The notification requirements cover procurements which are to be arranged with the advice and assistance of third parties. Third parties include consultants,

architects, supply brokers or other agents. The procuring department is responsible for complying with the notification requirements.

14. Where a department intends to enter into or renew an agreement with a third party (such as a period contracts participation agreement) that may involve the department nominating certain product categories to be purchased under the agreement, the department must notify the ICN of its intention to procure the goods or services.

15. Departments are not required to notify intended subcontract procurements which are the commercial responsibility of a prime contractor, but have an obligation to encourage the prime contractor to notify the ICN (see also Exception h below).

## **Syndicated Procurement**

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16. Where a group of departments collaborate to select a preferred vendor for goods or services under a syndicated procurement arrangement, the notification of the intention to procure the supplies may be made by a lead department on behalf of the group, noting names of participating departments and agencies.

17. Where a department has the option to join a previously established syndicated contract utilising the provisions of that contract for the balance of the term, the department must notify the ICN of its intention to procure those goods and services before any decision is made to utilise the provisions of that syndicated contract.

## **Term Supply Contracts**

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18. Procurements through term supply contracts are covered by the notification requirements, subject to Exception g.

19. Where the total value of a procurement through a term supply contract is not determined in advance, but is likely on an estimated annual basis to exceed the \$50,000 value threshold, the procurement is covered by the notification requirements, subject to Exception g.

## **Non-Avoidance**

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20. Departments are not to select a valuation method, or divide procurements into separate contracts, in order to avoid the obligation to notify.

## **Impact on Purchasing Process**

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21. Initial contact with the ICN should take place around the time the decision to procure is made. The intention of the notification rules is to encourage early consultation between departments and the ICN so that departments can be made aware of the existence of any potential, competitive New Zealand suppliers and take those suppliers into account in determining the purchasing procedure to be used. However, as noted above, the role of the ICN is advisory only. Departments must make their own value for money decisions about purchasing procedure and sourcing.

## Exceptions

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22. The following list of exceptions is designed to remove compliance costs where notification would be inappropriate or add little value in terms of opportunity for New Zealand industry. The list refers only to exceptions from the specific requirements to notify the ICN. The normal procurement policy principles (as stated in paragraphs 1 and 2) apply. In particular, departments must still consider how to provide full and fair opportunity for New Zealand suppliers.

- a. Emergency procurements from known suppliers. However, if time permits, the ICN should be consulted for urgent advice on alternatives.
- b. Procurements the details of which are secret or sensitive on the grounds of national security or law enforcement.
- c. Procurements of services concerning litigation, or other contentious or sensitive matters, where disclosure of the intention to procure is inappropriate for policy, privacy, legal or financial reasons.
- d. Employment contracts for permanent staff or staff engaged under term contracts.
- e. Procurement of proprietary spare parts or extensions for repairs, maintenance or upgrades where these are needed to maintain the integrity of existing supplies, services or installations and where procurement is cost-effective from only one supplier or from overseas. However, the department may in some cases wish to request advice from the ICN on the long-term possibility of domestic production under licence.
- f. Upgrades of installed proprietary software and maintenance contracts for software and IT equipment.
- g. Individual purchases or consignments under term supply contracts provided that the department's intention to enter into a term contract has been notified in accordance with these rules.
- h. Subcontract procurements to be made independently by a supplier who has been awarded the prime contract. However, departments must brief the prime contractor on the aims of the Government's procurement policy and encourage them to notify the ICN.
- i. Facilities management and maintenance services. However, departments must brief service providers responsible for subcontract purchasing of inputs of equipment and supplies on the aims of the Government's procurement policy and encourage them to notify the ICN. This exception does not cover office fit-outs or refurbishment.
- j. Public utilities services and fuel supplies.
- k. Motor vehicles, other than special purpose vehicles and vehicles being adapted for a special purpose.

- l. Telephone and data services (other than equipment and software procurements).
- m. Insurance, financial, legal and human resource services.
- n. Advertising.
- o. Translation services.
- p. Travel and accommodation services.
- q. Real property leases.
- r. Contracts for the provision of public health, education and social welfare services. This exception does not apply to contracts for IT services or software to support such public services, but see also Exception f
- s. Where a department procures a prototype or a first product or service which is developed at its request in the course of, and for, a particular contract for research, experiment, study or original development. When such contracts have been fulfilled, subsequent procurements of products or services must be notified, subject to any ongoing intellectual property requirements of the original contract.
- t. Contracts awarded to the winner of a design contest provided that the opportunity to participate in such a contest has previously been notified.

Departments may apply for other exceptions, on a case by case basis, to be agreed with the Ministry of Economic Development and the ICN, and jointly approved by the Associate Minister of Commerce and the Minister for Economic Development. Departments wishing to apply for further exceptions to the notification rules should approach the Ministry directly, see paragraph 25.

## **Official Information Act**

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23. Information about procurements not notified according to these rules will nevertheless be subject to the Official Information Act 1982 on an ongoing basis.

## **Contact Details and Further Information**

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24. Industry Capability Network New Zealand (ICN)

Email: [info@icn.govt.nz](mailto:info@icn.govt.nz)  
Telephone: 04-910 4949  
Webpage: <http://www.icn.govt.nz>

25. Ministry of Economic Development:

Regulatory and Competition Policy Branch  
Email: [info@med.govt.nz](mailto:info@med.govt.nz)  
Telephone: 04-472 0030  
Webpage: [http://www.med.govt.nz/irdev/gov\\_pur.html](http://www.med.govt.nz/irdev/gov_pur.html)

26. For further information on the broader Government procurement policy context the following publication may be consulted: *Government Procurement in New Zealand: Policy Guide for Purchasers* (July 2002). This is available on the Internet at [http://www.med.govt.nz/irdev/gov\\_pur/purchasers/](http://www.med.govt.nz/irdev/gov_pur/purchasers/) and hard copies are available free of charge from the Ministry of Economic Development.

Regulatory and Competition Policy Branch  
Ministry of Economic Development

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