

TRANS-PACIFIC STRATEGIC ECONOMIC
PARTNERSHIP AGREEMENT
(P4 FTA)
IMPLICATIONS FOR CORE PUBLIC SECTOR
PROCUREMENT

Tim Barber, Senior Advisor, Government Procurement Policy
Ministry of Economic Development
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Overview

- Existing Government Procurement Policy
- P4 FTA
- New Rules for Departments
- Coverage of the Rules
- Main Features of the Rules
- Exclusions from the Rules
- Exceptions to Open Tendering
- Impact
- Advice and assistance

Government Procurement Policy (1)

Endorsed by Cabinet in 2002

A framework of principles consistent with:

- individual agency autonomy and accountability for procurement decisions
- an open economy
- OAG guidelines on probity and good practice

Government Procurement Policy (2)

Guiding principles

- best value for money over whole of life
- open and effective competition
- full and fair opportunity for domestic suppliers
- improving business capability, including e-commerce
- recognition of bilateral obligations to Australia (CER) and Singapore (CEP)

Government Procurement Policy (3)

Trade

- we subscribe to APEC principles and participate in APEC work towards increased transparency and liberalisation in the region
- the agreements with Australia and Singapore are based on principles of non-discrimination and transparency

P4 FTA (New Zealand, Brunei, Chile, Singapore) (1)

Also based on principles of non-discrimination and transparency, but goes further by binding the Parties to ensure that procurement

- by their listed government entities
- at or above specified value thresholds

follows prescribed open and transparent procedures, which are set out in some detail

P4 FTA (2)

A key procedural requirement is that entities shall award contracts by means of open tendering procedures, i.e. public invitation to any interested supplier to:

- submit a tender, or
- apply to meet conditions for participation in a procurement process (i.e. register interest or qualify to be invited to tender)

New Rules for Departments

- MED consulted with MFAT and the Procurement Advisory Group to translate the P4 FTA procedural provisions into Rules
- The Rules were approved by Cabinet and became mandatory for departmental procurement initiated from 1 May 2006
- Announced by Minister of Commerce and published on MED's website

Coverage of the Rules

- The “public service” departments (State Sector Act schedule) plus NZDF and NZ Police
- Procurement by any contractual means
- At or above value thresholds – goods/services \$100k/construction services \$10m
- Below these values departments still expected to be guided by the existing framework of procurement policy/good practice principles
- Other agencies encouraged to act within this framework and to apply the Rules as appropriate

Main Features of the Rules (1)

- Open tendering is to be the norm (including staged tendering - open registration and/or pre-qualification followed by selective tendering)
- Technical specifications not to be unnecessarily restrictive and must, where appropriate, be in terms of performance/functional requirements
- Time limits to be reasonable in circumstances for all interested suppliers, and in no case less than 10 working days
- Government Electronic Tenders Service (GETS) to be the portal for globally open advertising of supply opportunities

Main Features of the Rules (2)

- Any supplier lists in continuing use must be published and open for application via GETS
- Contract award notices to be promptly published on GETS
- Debriefing of unsuccessful tenderers to be provided on request
- Supplier complaints are to be given impartial and timely consideration
- Departments are to prepare and publish on GETS by 1 July indicative Annual Procurement Plans, on a rolling basis (updated at least every 6 months)
- APPs to consist of a strategic procurement outlook statement supported by preliminary details of planned procurements

Exclusions from the Rules

- Confidential information where disclosure would prejudice legitimate commercial interests or the public interest (still subject to OIA)
- Protection of essential security interests
- Protection of public morals order or safety; human, animal plant life or health; intellectual property
- Procurement of health, education and welfare services for provision to the public

Exceptions to Open Tendering

- Absence of competition for technical reasons
- Spare parts or upgrades of existing equipment where need for interchangeability dictates only one supplier
- Extreme urgency
- Prototype developed at request of department under R&D contract
- Construction services added to a contract that have become necessary for unforeseeable reasons (not to exceed 50% of initial contract value)

Impact (1)

By introducing standard thresholds for open tendering, the new Rules do place new limits on departments' discretion to decide on procedures for each procurement, but

- not excessively detailed; allow some flexibility; and are broadly consistent with the current policy principles and good practice
- Tendering costs can still be managed through shortlisting stages (ROIs, ITRs etc)
- Departments already following competitive procedures consistent with the procurement policy and good practice should not find the new Rules involve major change or new compliance costs
- The Rules do not stand in the way of continuous “best practice” improvements e.g. streamlining and standardisation of tender documentation where appropriate, to reduce administration and transaction costs

Impact (2)

- Improved information, transparency and consistency of departmental procurement practice will benefit competitive suppliers
- Result will be a more competitive environment and improved value for money for departments
- And the Rules help us to meet our international trade obligations and global trade objectives

Advice and Assistance

- MED is consulting with Audit NZ on requirements for audit of compliance
- MED will shortly be increasing its capacity to monitor departments' procurement performance, including compliance with the Rules, by taking over the Syndicated Procurement Unit from SSC
- MED will also now administer GETS (ex NZTE)
- Continuing program of practitioner training and education – seminars, workshops
- Community of Practice Workspace FAQs
- MED website and direct enquiries to MED