

Consultation on extending the Government Procurement Rules

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To whom it may concern

Thank you for the opportunity to submit on extending the Government Procurement Rules ('the Rules') to government entities in the wider public sector.

Rule 64: Infrastructure

Rule 64 requires agencies, currently subject to the Rules, who are considering procurement of infrastructure with a total cost of ownership of more than \$50 million to:

- a. "consult with Treasury's Infrastructure Commission [now Te Waihangā/New Zealand Infrastructure Commission established as an Autonomous Crown Entity] early in the development of the project's business case
- b. follow relevant published Infrastructure Commission guidance
- c. involve the Infrastructure Commission in the assessment of the project's business case and advice to Ministers
- d. invite the Infrastructure Commission 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 Infrastructure Commission as the basis for any infrastructure contract, and consult with the Infrastructure Commission over any material proposed modifications."

Increasing the number of entities subject to this Rule has the potential to increase the resource requirements upon Te Waihangā. Under the proposal, the scope of infrastructure entities that could be required to follow the Rules includes:

- 78 regional and territorial local government entities (responsible for delivering approximately half of New Zealand capital infrastructure)
- Tertiary education institutes and wananga
- City Rail Link Ltd
- Crown Infrastructure Partners Ltd
- Genesis
- Mercury
- Meridian
- Kiwirail
- Transpower

- Kordia
- Tamaki Regeneration Company
- Otakaro Ltd

Any new resourcing requirements that result from this change will need to be highlighted with the Treasury so Te Waihanga can be resourced appropriately.

An alternative approach to managing this resourcing impact would be to increase the \$50 million threshold. We would be happy to discuss an appropriate threshold with New Zealand Government Procurement further.

The case for extending the Rules to the wider public sector

While we support the Rules as a matter of good practice, we are not aware of any particular shortcomings in infrastructure planning and delivery within the wider public sector entities listed above that the Rules directly address.

However, we are conscious of the cost impact that regulatory compliance can have on public entities. Minimizing the regulatory burden upon public procuring entities is particularly relevant in the case of infrastructure, where many of those entities, particularly local government, are already struggling to deliver infrastructure services to their communities within fiscal and resource constraints.

To introduce new compliance requirements on infrastructure entities, we would expect to see a compelling case as to how the public will benefit from the wider public sector being required to adopt the Rules (noting they are already 'encouraged' to do so). We encourage New Zealand Government Procurement to articulate the case for change and explain the wider public benefits that will come from this change.

Many of the infrastructure and procurement-related issues that infrastructure entities face relate to the institutional, governance and regulatory settings that can disincentivize entities from maximizing public value from their investment decisions. For example, having a large number of small councils individually procuring infrastructure means we lose the opportunity to bundle packages of works together and achieve economies of scope and scale. Secondly, a lack of professional expertise at the governance level of some political institutions can drive less than satisfactory procurement outcomes.

However, we see these are matters would be addressed through reform of the Local Government Act 2002 and Public Finance Act 1989 rather than the Government Procurement Rules.

Updating Rule 64 to reflect Te Waihanga's status as an Autonomous Crown Entity

Finally, we would like to inform New Zealand Government Procurement that in September 2019 Te Waihanga was formed as an Autonomous Crown Entity, separate from the Treasury.

We would appreciate if the wording of Rule 64 could please be updated to reflect this.

Thank you for the opportunity to submit. I am available to discuss the contents of this submission.

Yours Sincerely



Ross Copland
Chief Executive