

The Chair
Cabinet State Sector Reform and Expenditure Control Committee

Proposed Directions under the Crown Entities Act 2004 to support a whole of government approach for Procurement, ICT and Property Functional Leadership

Paper 2 of 4: Procurement Functional Leadership and Government Rules of Sourcing

Proposal

- 1 This paper proposes extending the mandatory application of the Government Rules of Sourcing to apply to Crown entities using a section 107 direction under the Crown Entities Act 2004 to support a whole of government approach. Approval is also report back to Cabinet on consultation with entities about the proposed extension.
- 2 This is the second in a suite of four papers concerning whole of government approaches for the three functional leadership areas. The first in the suite, *Proposed Directions under the Crown Entities Act 2004 to support a whole of government approach for Procurement, ICT and Property Functional Leadership: Paper 1 – Overview*, explains the scope, purposes and processes for section 107 directions.

Executive Summary

- 3 Procurement Functional Leadership was established to improve procurement performance across the State sector. The Government Rules of Sourcing (Rules) support the objectives of Procurement Functional Leadership by placing a stronger focus on upfront planning, robust buyer-supplier engagement, encouraging innovation and better, more transparent processes.
- 4 The Rules reflect internationally recognised minimum standards of good procurement practice but currently apply only to Public Service Departments, New Zealand Police and New Zealand Defence Force. This has resulted in inconsistent procurement practices across government agencies and opportunities to improve the way that government agencies do business with suppliers are being missed.
- 5 To maximise the benefits from clear expectations and a more consistent approach to good procurement practice, the Rules should apply to a broader set of government agencies.
- 6 The recent amendments to the Crown Entities Act 2004 (Act) provide greater scope for issuing directions supporting a whole of government approach (directions). Extending mandatory application of the Rules to Crown entities would secure economies or efficiencies and develop expertise and capability, two of the purposes underpinning directions set out in the Act.

- 7 I propose a whole of government approach providing for the mandatory application of the Rules be issued to all Crown agents, Autonomous Crown entities, Independent Crown entities, Crown entity companies; and companies listed in Schedule 4A of the Public Finance Act 1989. I propose that the inclusion of the 2,425 School Boards of Trustees be deferred until after the implementation of the proposed direction because of the large number of entities involved and the limited understanding of their procurement practices.

Background

- 8 The first in this suite of papers (Overview) sets out the general grounds and requirements for issuing of directions supporting a whole of government approach under section 107 of the Crown Entities Act 2004, including the scope and purposes of a direction and the required processes.
- 9 In April 2013 Cabinet endorsed new Government Rules of Sourcing (Rules) issued by the Ministry of Business, Innovation and Employment (MBIE) in its role of Procurement Functional Leader. Cabinet directed all Public Service departments, plus the New Zealand Police and the New Zealand Defence Force, to apply the Rules from 1 October 2013¹.
- 10 The Rules reflect internationally recognised minimum standards of good procurement practice. As such, Cabinet noted that to get the full benefit of the Rules, they should be used as widely as possible.
- 11 At the same time, Cabinet noted that extension of the new Rules to Crown entities would be facilitated by proposed amendments to the Crown Entities Act 2004 which expanded the grounds for issue of directions that support a whole of government approach. MBIE was directed to prepare for the issuing of a direction that would extend the new Rules to Crown entities as soon as possible after enactment of the proposed amendments (which are now in force).

Advantages to applying the Government Rules of Sourcing

- 12 The Rules set the standards for choosing and managing relationships with businesses and NGOs delivering services on behalf of government, which is critical to delivering better public services for New Zealand.
- 13 Having a consistent and effective Rules framework will help businesses to become more competitive in both domestic and international markets. Businesses will get more information about government procurement opportunities and have longer timeframes for responding to tenders. This means they should have more time to put together a response or collaborate with other businesses to submit a joint response. The Rules also strengthen accountability and trust that government spending is well planned and executed.
- 14 The Rules provide agencies with a single source of procurement rules that align with international best practice and are written in plain English that is easy for agencies and suppliers to understand. They encourage agencies to:
- use more strategic approaches and undertake robust planning
 - design processes that promote the five Principles of Government Procurement and deliver results

¹ CAB Min (13) 10/4A refers.

- replace red tape with sound commercial judgement
- engage with the market early to stimulate competition and innovation
- work with suppliers to develop effective solutions
- deliver the best value for money over the whole-of-life of the contracts, which is not always the cheapest price

Whole of government approach to Rules of Sourcing

- 15 The scope of, and purposes for which, a direction may be issued under the Crown Entities Act 2004 are set out in the Overview paper. Among the purposes listed, "to secure economies or efficiencies" and "to develop expertise and capability" have particular relevance to procurement.
- 16 Wider mandatory adoption of the Rules meets these purposes. It would support the aims of Procurement Functional Leadership by improving the efficiency and effectiveness of government procurement. With agencies across the state services consistently applying the good procurement practice standards required by the Rules, there will be less time spent on procurement processes that do not achieve value for money and ultimately better public services.
- 17 Wider mandatory application of the Rules brings economies and efficiencies through:
- Greater savings and less duplication of procurement effort from requirements to purchase from all-of-government contracts
 - Greater potential for more collaborative procurement across a wider set of agencies arising from the cross-agency view that MBIE will have
 - Less cost and effort arising from the application of standardised approaches and documentation
- 18 Wider mandatory application of the Rules will also contribute to the development of procurement expertise and capability development. With agencies working to a clear set of government expectations and practical support from MBIE, such as supportive peer reviews planning documents, a broader set of agencies will develop their procurement capability.
- 19 The proposed direction would also address concerns raised by businesses about inconsistent procurement practices by government agencies. The Rules are designed to improve the way that government agencies do business with suppliers through more consistent practices, better buyer-supplier engagement, encouragement of innovation and better more transparent processes. They reflect internationally recognised minimum standards of good procurement practice.
- 20 withheld under section 9(2)(j), Official Information Act 1982

Coverage of the proposed direction

- 21 To maximise these benefits, the proposed direction should cover the widest possible range of agencies within the bounds of section 107 (2) and 107 (2A) of the Act. Accordingly, I propose that a direction to apply the Government Rules of Sourcing be issued to all agencies listed in Appendix 1 of the Overview paper except School Boards of Trustees.
- 22 I have not included School Boards of Trustees as I believe that it would be better to defer this group until we have successfully implemented the direction to the entities set out in paragraph 21. Collectively School Boards of Trustees procure a significant amount and more work is required to better understand their procurement practices. MBIE is engaging with School Boards of Trustees in respect of participation in all-of-government contracts and in this context is likely to come to an initial understanding of whether applying the Rules will deliver benefits to this group.

Impact and risks

- 23 The impact of the proposed direction on individual agencies will vary, depending on the extent to which they already voluntarily apply the new Rules. The proposal covers a wide range of size and type of agencies that are likely to have quite differing procurement profiles and capability.
- 24 Some agencies may suggest that application of the Rules introduces a new level of administrative burden and increased cost to the agencies. The Rules prescribe a minimum standard of good procurement practice. Agencies should be applying them to their procurement in any case so that they obtain value for money and ultimately deliver better public services.
- 25 In any event, the consultation process that is required before issuing a direction will ascertain the magnitude of this impact and identify appropriate mechanisms for addressing serious concerns.

Consultation on the use of a direction

- 26 Subject to Cabinet approval, consultation will occur with the entities to which the direction is proposed to apply and others the Ministers of Finance and State Services consider represent the interests of those likely to be substantially affected (section 108(1) of the Act). In this regard, businesses interested in supplying to government are likely to be affected by the proposed direction.
- 27 A range of mechanisms for obtaining the views of entities and other parties affected by the proposed direction will be used. A preliminary letter will be sent jointly by the Ministers of State Services and Finance, in anticipation of consultation for the three proposed whole of government directions around functional leadership.
- 28 MBIE will be publishing information on its procurement website (www.procurement.govt.nz). This website is well-known and frequently accessed by procurement practitioners across government. Entities will also be provided information through the regular newsletter published by MBIE and emailed to entities.
- 29 The main avenue for this consultation will be briefing sessions and workshops, where entities will be invited to attend to hear information on the proposed direction and provide their views on it. Views will be accepted orally or in writing for the duration of the consultation period.

- 30 Depending on what emerges, MBIE may also have targeted one-on-one meetings, where necessary to work through specific issues or concerns. A number of the affected agencies (such as ACC, District Health Boards, New Zealand Transport Agency) have already been informally socialised to the proposition that the Government Rules of Sourcing will become mandatory and have been keenly interested to understand any differences between their current practices and the requirements under the Rules.
- 31 To ensure entities have sufficient opportunity to consider what is being proposed and respond formal consultation will commence in December 2013 and is expected to continue over the early stages of 2014.

Draft Text of Proposed Direction

- 32 I propose that the following draft text be the basis for consultation with agencies to which the direction would apply and with other affected parties, in accordance with section 108 of the Act:

"The Minister of State Services and the Minister of Finance, pursuant to section 107 of the Crown Entities Act 2004, direct all entities subject to a direction as a group under section 107 (2) and section 107 (2A) of the Act, except School Boards of Trustees as follows:

In order to complement Procurement Functional Leadership in supporting a whole of government approach to procurement policy and practice, and in order to secure economies and efficiencies and develop procurement expertise and capacity, all entities subject to a direction under section 107 (2) and section 107 (2A) of the Crown Entities Act 2004, except School Boards of Trustees, are directed to apply the Government Rules of Sourcing (including any subsequent amendments that may occur from time to time.

The entities are further directed to be guided by the Ministry of Business, Innovation and Employment, as Procurement Functional Leader, in any issues arising in the application of the Rules, and to co-operate fully with the Ministry in any monitoring of compliance".

Consultation on the suite of papers

- 33 See *Overview* paper.

Financial Implications

- 34 The cost to entities of eventually implementing the direction to apply the Government Rules of Sourcing is expected to be funded from within their existing funding, with transitional support from the Ministry of Business, Innovation and Employment. The consultation process will inform whether there are any serious implementation concerns and potential mechanisms for addressing them.

Human Rights

- 35 See *Overview* paper.

Legislative Implications

- 36 See *Overview* paper.

Regulatory Impact Analysis

- 37 See *Overview* paper.

Publicity

38 See *Overview* paper.

Recommendations

39 It is recommended that the Committee:

- 1 **Note** that wider mandatory application of the Government Rules of Sourcing would support the aims of Procurement Functional Leadership by improving the efficiency and effectiveness of government procurement through consistently high standards of procurement practice;
- 2 **Note** that to maximise improved procurement economies and efficiency and develop procurement expertise and capability, the Government Rules of Sourcing should be applied as widely as possible;
- 3 **Note** that including School Boards of Trustees has been deferred until after implementation of the direction proposed in this paper so that better information can be obtained on their procurement practices and whether the application of the Rules will deliver benefits from their inclusion;
- 4 **Note** that the proposed text of the direction for consultation is:

The Minister of State Services and the Minister of Finance, pursuant to section 107 of the Crown Entities Act 2004, direct all entities subject to a direction as a group under section 107 (2) and section 107 (2A) of the Act, except School Boards of Trustees as follows:

In order to complement Procurement Functional Leadership in supporting a whole of government approach to procurement policy and practice, and in order to secure economies and efficiencies and develop procurement expertise and capacity, all entities subject to a direction under section 107 (2) and section 107 (2A) of the Crown Entities Act 2004, except School Boards of Trustees, are directed to apply the Government Rules of Sourcing (including any subsequent amendments that may occur from time to time).

The entities are further directed to be guided by the Ministry of Business, Innovation and Employment, as Procurement Functional Leader, in any issues arising in the application of the Rules, and to co-operate fully with the Ministry in any monitoring of compliance.

- 5 **Invite** the Ministers of State Services and Finance to report back on the outcome of the consultation process when complete.


Hon Steven Joyce
Minister for Economic Development

23/11/12