

## Supplementary Paper: Public Procurement

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This paper is a supplement to the TINZ 2013 National Integrity System Assessment. The analysis in this paper was drawn on in the public sector pillar of that report.

### Overview and Findings

The public procurement system is advanced and progressive, increasingly reflecting international good practice. Procurement is administered with light-handed regulation through policies and principles which promote results, fairness, efficiency, value and accountability. Guidelines are produced by both the Ministry of Business, Innovation, and Employment (MBIE) and the Office of the Auditor-General (OAG), however practices and accountability are devolved to the executives of public entities and the resulting flexibility promotes innovation and adoption of procedures that are appropriate to the outcomes and business case. Current reforms aim to strengthen central guidance and standardise some elements in line with experience and international trade treaties.

In practice, procurement appears to be performing well and concerns raised by audits and select committee reports tend to focus on relatively marginal issues. Publicised cases are few but indicate that wrongdoing is usually discovered and previous cases revealing corruption have stimulated the recent reforms. However, systematic data are not readily available, so that actual performance and prevailing issues are unclear. Moreover, integrity and effectiveness are potentially limited in practice by several areas of risk. These include: the capability of staff (especially in smaller entities), and limited availability of private expertise; passive oversight with reliance on targeted discovery through Official Information Act (OIA) and Select Committee mechanisms, and on entity-level ex-post audits; conflicts of interest in a small market, which may be offset by a culture of fairness and recourse; and limitations on audit effectiveness arising from a cost-recovery mechanism.

Areas for improving effectiveness and risk mitigation in procurement include:

- Balancing the emphasis on business efficiency with greater emphasis on value for money and the interests of citizens and tax-payers;
- Extend proactive disclosure of project information, both upstream and downstream of tendering, including projects exempted from open tendering and without compromising commerciality; ;

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- Expanding upskilling of practitioners and dissemination of good practice guidance, especially for special circumstances such as limited and complex markets, emergencies, and public-private partnerships;
- Incorporating explicit anti-corruption provisions, conforming with international conventions, in procurement procedures and documents; and
- Improving requirements for record-keeping and complaint mechanisms.

## Introduction

The Government spends around \$30 billion a year (about 37 percent of appropriations or 90 percent of output expenses) in procuring works, goods and services to build and maintain infrastructure and to support public programmes<sup>2</sup>. The public procurement framework covers nearly 3,000 entities, including 29 public service departments, around 300 Crown entities and companies, and around 2,500 boards and institutions<sup>3</sup>.

The NIS assessment addresses public procurement directly in only one question (4.3.3) under the public sector pillar, with 28 guiding sub-questions, but several other questions touch on elements relating to procurement. The assessment in this report focuses on how the public procurement framework applies in particular to the core government departments,<sup>4</sup> and in a more general way to other entities, but excluding local government. The guiding questions and other elements have been combined under key areas for the purposes of discussion and to highlight the findings.

### A. Reduce Corruption Risks by Safeguarding Integrity in Public Procurement

**To what extent is there an effective framework in place to safeguard integrity in public procurement procedures, including meaningful sanctions for improper conduct by both suppliers and public officials, and review and complaint mechanisms?**

Score: 4

1. *Acquisition process; transparency and disclosure (open bidding and limitation to exceptions; ensuring objectivity in selection process; use of standard bidding documents; notifications to all bidders; publication of award; timely and comprehensive information available in practice).*<sup>5</sup>

The overall regulatory framework for public procurement in New Zealand supports transparency and accountability during the planning, bidding, and source selection phases of the public procurement process. The framework includes first a set of Principles which promote results, fairness, efficiency, value and accountability and, secondly, a set of Rules which are mandatory for the 29 public service departments and the police and defence force and advisory for other entities. New Rules issued

<sup>2</sup> Cited in "Government procurement – buying goods and services – the five principles", Ministry of Business, Innovation and Employment. [www.procurement.govt.nz](http://www.procurement.govt.nz), October 2012.

<sup>3</sup> Schedule 1 of the State Sector Act, 1988 and subsequent amendments (SSA).

<sup>4</sup> 29 public service entities in Schedule 1 of the SSA, plus NZ Defence Force and NZ Police.

<sup>5</sup> The guiding questions (GQ) under Question 4.3.3 are numbered sequentially, and summarised in the parentheses.

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since this review and resulting from a two-year consultative process of reform will become effective in October 2013. In general, the regulatory framework requires, or encourages, government entities to develop and publish procurement plans, publish contract opportunities and awards through a centralised web-based clearinghouse, evaluate tenders in accordance with published evaluation criteria, and document the source selection process.

**Acquisition Planning.** The Mandatory Rules require government departments to develop a rolling Annual Procurement Plan (APP), providing detail of any planned procurements (including the estimated date of Notice of Procurement), and to update it at least every 6 months.<sup>6</sup> Government departments are required to publish these plans on the Government Electronic Tenders Service (GETS), which is a free web-based clearing house of contract opportunities and awards designed to promote open and fair competition in the New Zealand government market. The new Rules will require that a government department has listed a contract opportunity in its APP for at least 2 months before publishing the Notice of Procurement, thus ensuring greater visibility of the department's requirements and acquisition plans.<sup>7</sup>

For high-risk (typically larger dollar) procurements, the Cabinet has implemented a Gateway Review process which "examines programmes and projects at key decision points in their lifecycle to provide assurance that they can progress successfully to the next stage."<sup>8</sup>

**Tendering.** The Rules require open tendering as the default method of procurement and, to that end, require that all contract opportunities (over \$100,000 in value and to which the Rules apply) be published on GETS.<sup>9</sup> There are a number of reasonable exceptions to the open tendering requirements, including, for example situations:

- in which no tenders were submitted in response to prior solicitations;
- in which the required goods or services are available from only one particular supplier, and there are no reasonable alternatives; and
- where there are reasons of extreme urgency.<sup>10</sup>

To ensure accountability, departments are required to maintain a record or prepare a written explanation providing specific justification for any contracts awarded using any means other than open tendering.<sup>11</sup>

**Source Selection Process.** The Mandatory Rules seek to ensure objectivity in the source selection by requiring, inter alia, that departments must:

- have in place policies and procedures to eliminate potential conflicts of interest;
- accord all potential suppliers equal and equitable treatment; and

<sup>6</sup> *Mandatory Rules*, Rules 51 & 52.

<sup>7</sup> *Draft Rules*, Rule 17.

<sup>8</sup> <http://www.ssc.govt.nz/gateway> (last accessed 28 Feb 2013)

<sup>9</sup> *Mandatory Rules*, Rule 23.

<sup>10</sup> *Mandatory Rules*, App. 2, ¶ 1

<sup>11</sup> *Mandatory Rules*, App. 2, ¶ 2.

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- award the contract to the supplier that has been determined to offer the best value for money in terms of the essential requirements and evaluation criteria set forth in the tender documentation.<sup>12</sup>

The Mandatory Rules also prohibit the use of technical specifications that would unreasonably limit competition, create unnecessary obstacles to international trade or domestic supply, or create unfair advantage for a supplier.<sup>13</sup>

**Transparency and accountability.** The public procurement system is supportive of transparency and accountability, particularly with respect to acquisition plans, contract opportunities, and awards. Importantly, government departments are required to publish notices of contract awards on GETS, including awards made using other than full and open competition.<sup>14</sup> Although currently there is no requirement to identify the method of procurement used, the new rules will require departments to publish post-award notices indicating, *inter alia*, the type of procurement used and, if applicable, the circumstances that justified an exemption to open tendering.<sup>15</sup>

### **Procurement System in Practice**

In general, compliance with the key processes of open tendering, objective evaluation, and required disclosure appears high - especially for medium to large procurements which have to be tendered through the electronic tendering system, GETS. However, even though these published procurements totalled about 3,000 activities in the year to March 2013,<sup>16</sup> this may represent only about 10-15 percent of total annual public procurement by value. Furthermore, this estimate is not precise because the current system does not yield summary statistics on the value or characteristics of procurement activities, although MBIE reports that this should improve with the current upgrading of the functionality of the system.<sup>17</sup>

More broadly, there is a lack of systematic and readily-accessible data on procurement activities, the total procurement spend by a government department and on how often open tendering occurs (either as a percentage of total government procurement value or as a percentage of total contracts awarded). Because of this, the extent to which government departments rely upon sole source procurements or limited competition is unclear. The dearth of data arises both because of the limited scope of requirements for disclosure on published transactions and because there is no requirement to publish information on other procurement activities.

The lack of disclosure is also an issue upstream for informing the market when other forms of tendering are being followed and giving suppliers a chance to respond or take recourse. Transparency would be enhanced if procuring entities were required to publish advance notices of their intent to award a sole source contract and the basis for their decision. For example, if the basis were that the goods or services could only be supplied by a particular supplier, other potential suppliers would have

<sup>12</sup> *Mandatory Rules*, Rules 14, 16, & 44.

<sup>13</sup> *Mandatory Rules*, Rules 19-22.

<sup>14</sup> *Mandatory Rules*, Rule 48.

<sup>15</sup> *Draft Rules*, Rule 43, p. 45.

<sup>16</sup> *The Noticeboard*: [www.procurement.govt.nz](http://www.procurement.govt.nz), Government Procurement Branch, March 2013

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the opportunity to make submissions demonstrating an ability to fulfil the agency's stated requirements (or alternatively that the stated requirements are unduly restrictive).

Efforts are currently under way to increase the compliance of public departments with the requirements for preparing and disclosing annual procurement plans (APP)<sup>17</sup> that would also improve information for the market.

Because the public procurement system relies heavily upon government departments to develop their own policies and procedures, the scope and depth of policies, procedures, and practices vary across central government. Areas that would benefit from standardisation across government departments include bidding documents, procurement-specific conflict of interest rules, and documentation requirements. Indeed, in 2007, the OECD cited conflicts of interest and lack of access to procurement records as risk areas in New Zealand.<sup>18</sup> And, in 2009, the OAG reported - "Our most common concern about public entities we reviewed was a lack of documentation of the procurement process."<sup>19</sup>

In addition, the procurement policies and procedures for many government departments are either not readily accessible, not informative, or both. For the most part, the departmental policies and procedures that have been published are either very general in nature, or simply refer back to the Mandatory Rules. However, there are, notable exceptions to this, such as the New Zealand Transport Agency (NZTA) which has a substantial degree of disclosure and content.<sup>20</sup>

The lack of registers and statistics on government contracts at central government or departmental levels makes it difficult to ascertain the extent to which the Principles and Mandatory Rules are followed in practice. For example, it is difficult to ascertain whether government departments 'create competition and encourage capable suppliers to respond'<sup>21</sup> because there are no readily available statistics on the use of open tendering procedures. Likewise, there are no databases on the number, types, and resolution of complaints lodged with government departments and other reviewing authorities.

Although the government does not systematically compile or report statistics on the value, number, and types of procurements conducted, this information can to some extent be found in the annual reports and financial review questionnaires completed by government departments and probably filed in the Parliamentary Library. A sampling of recent financial review questionnaires indicates that departments are typically required to provide, inter alia, the following information for external consultants or contractors engaged in the last three financial years:

- name of consultant or contractors;

<sup>17</sup> Interview with John Ivil and Murray Heyrick of the Ministry of Business, Innovation, and Employment (MBIE).

<sup>18</sup> OECD, *Integrity in Public Procurement: Good Practice From A to Z*, 2007, p. 24.

<sup>19</sup> OAG, *Central Government: Results of the 2007/2008 Audits*, May 2009, pp. 86-87.

<sup>20</sup> See NZ Transportation Agency, *Procurement Manual: For Activities Funded Through the National Land Transport Programme*, July 2009. (available at <http://www.nzta.govt.nz/resources/procurement-manual/procurement-manual.html>)

<sup>21</sup> Ministry of Business, Innovation, and Employment, *Principles of Government Procurement*, October 2012 (Approved by Cabinet [SEC Min (12) 10/5]).

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- type of service provided;
- date of contract;
- budgeted and actual cost;
- date of completion; and
- whether tenders were invited and if so, how many were received.

Prior to 1997, departments used a standard financial review questionnaire developed by the Finance and Expenditure Committee.<sup>22</sup> Today, the select committee responsible for reviewing the performance of a particular entity is also responsible for submitting questions to that entity. Notably, the questionnaires encompass only procurement of service providers and not goods.

Given the current low level of internal reporting, this study recommends consideration be given to expanding the range of proactive disclosure to include the key inputs for the statistics and information which are useful both for oversight and for revealing actual practice in procurement to practitioners and external observers alike. GETS and the procurement administration systems in each entity provide the information technology platform to facilitate this. Guidance from international practice, such as the construction sector transparency initiative (CoST),<sup>23</sup> which can be generally applicable to most public procurement, could be useful in this respect. Crucially, this includes downstream information on the variations and completion of contracts and projects. This is often an area of disconnect with the original tender and is pertinent information on overall performance.

Finally, the Mandatory Rules and good practice guidance overlook another important risk area, the foreign supply chain. It is not uncommon for government contractors to subcontract with, or otherwise acquire goods and services in support of their prime contracts from, foreign suppliers. In some cases, those suppliers are located in countries where bribery and corruption, or strategic undermining of prices, is endemic. However, neither the Mandatory Rules nor good practice guidance requires government departments to develop and implement policies and procedures to ensure the integrity of their supply chains. To the contrary, the new Rules make clear that, once a supplier is awarded a contract, the supplier is not bound by the new Rules when subcontracting - although agencies may “ask” that their prime contractors meet certain procurement standards in subcontracting.<sup>24</sup> The new Rules do not elaborate on which standards would be appropriate.

2. *Institutions, staffing and administration (bodies responsible for control of public procurement activities and independence; supervision of contract implementation and enforcement; centralised procurement agency, resourcing and independence; qualifications of those involved in public contracting; evaluation*

<sup>22</sup> McGee, David, *Parliamentary Practice in New Zealand*, 3rd ed., Dunmore Publishing Limited, Wellington, 2005, Chapter 36.

<sup>23</sup> See [www.constructiontransparency.org](http://www.constructiontransparency.org)

<sup>24</sup> *Draft Rules*, Rule 20, p. 22.

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*staff different from those preparing bidding documents and controlling procurement activity).*

The public procurement system is characterised by a central policy, strongly decentralised responsibility for procedures and practices, and oversight through ex-post audit. The newly formed Ministry of Business, Innovation, and Employment (MBIE) is responsible for central government's procurement policy, including promulgation of the Mandatory Rules and policy guidance. It monitors how well policy has been understood and implemented, and it investigates complaints.<sup>25</sup> Ultimately, however, responsibility for development and implementation of specific procurement policies and procedures falls to individual government departments and other public entities. To that end -

*A public entity should develop its own procurement policies and procedures that are tailored to its working environment and that take into account the basic principles, the practical considerations, any relevant government policy on procurement, the Mandatory Rules for Procurement by Departments (where appropriate), and other applicable statements of good practice and guidelines.<sup>26</sup>*

Each government department is also responsible for conducting its own procurements and administering its own contracts. Administrative procedures such as maintaining separate contractual, financial, and project authorities, or rules governing the administration of contracts lie within the discretion of the Chief Executives.<sup>27</sup>

Neither the law nor central policy requires that individuals involved in the procurement process have special qualifications related to their tasks. Notwithstanding, MBIE is actively engaged in building the capacity of the government departments by offering procurement-related training courses and assisting government departments with procurements.<sup>28</sup> By way of example, the New Zealand Procurement Academy was established in 2010 as part of the Government Procurement Reform Programme. The Academy assists public and private sector procurement practitioners and generalists in accessing a range of world-class procurement training courses and undertaking study towards internationally recognised procurement qualifications. As noted by OECD, "As more countries have adopted a more decentralised approach, enhancing professionalism in procurement has become all the more important."<sup>29</sup> New Zealand has been cited as a positive example in this regard.<sup>30</sup>

There are two areas of concern which fall under the discretion of the Chief Executive but which may deserve stronger guidance. First, the separation of the contracting or procurement function from the end-user, through a separate contracting function

<sup>25</sup> Ministry of Economic Development, Government Procurement in New Zealand: Policy Guidance for Purchasers, August 2007, App. 1.

<sup>26</sup> OAG, Procurement Guidance For Public Entities, June 2008, ¶ 2.19

<sup>27</sup> Ministry of Economic Development, Government Procurement in New Zealand: Policy Guidance for Purchasers, August 2007, App. 1.

<sup>28</sup> Interview with John Ivil and Murray Heyrick of the Ministry of Business, Innovation, and Employment (MBIE).

<sup>29</sup> OECD, Integrity in Public Procurement: Good Practice From A to Z, 2007, p. 13.

<sup>30</sup> Ibid, p. 70.

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either within or outside a government department, helps ensure that there is a cadre of procurement professionals who understand and can execute the procurement process in an efficient, effective, and consistent manner. The separation of contractual, financial, and project authorities also enhances the integrity and neutrality of the public procurement system.<sup>31</sup> Scale is an important factor and exceptions or special provisions would be required for small entities.

Secondly, there could be stronger and more specific requirements regarding contract administration particularly with respect to contract variations, performance monitoring, and the transparency of subcontracting.<sup>32</sup> In 2009, the OAG recommended that government departments maintain an entity-wide contract management system that allows senior management to monitor the nature, size and compliance of contracts.<sup>33</sup>

3. *Recourse and complaint mechanisms (sharing of clarifications and amendments during bidding; publication of award decisions; registers and statistics on contracts; requesting review of procurement decisions)*

The public procurement system provides multiple avenues of redress for complaints. As a first step, suppliers are generally required to attempt, in good faith, to resolve their complaints with the procuring agency. To that end, the Mandatory Rules require that government departments must be open to, and accord impartial and timely consideration to, any complaints.<sup>34</sup> If this fails, suppliers have a number of other options available to them, including:

- an independent review or investigation;
- mediation or alternative dispute resolution;
- investigation by the Auditor-General;
- investigation by the Ombudsman;
- investigation by the State Services Commission; and
- litigation in court.<sup>35</sup>

In addition, suppliers can use MBIE's Supplier Feedback System to provide feedback or raise general concerns about the procurement process.<sup>36</sup>

Notwithstanding the multiple avenues of redress available to suppliers, the complaint system suffers from at least one significant shortcoming; namely, there are no specific rules governing challenges to the procurement process or specific remedies available to administrative reviewing authorities if a challenge is upheld. For example, the Mandatory Rules do not:

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<sup>31</sup> *Ibid*, pp. 24, 25 & 61.

<sup>32</sup> *Ibid*, p. 25.

<sup>33</sup> OAG, *Central Government: Results of the 2007/2008 Audits*, May 2009, p. 87.

<sup>34</sup> *Mandatory Rules*, Rules 49 & 50.

<sup>35</sup> Government Procurement Development Group, Ministry of Economic Development, *Guide to Feedback & Complaints: How to Provide Feedback or Make a Complaint About Procurement*, July 2010, p. 10.

<sup>36</sup> *Ibid*. p. 6.

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- establish timeliness requirements for post-award debriefings;
- establish timeliness requirements for submitting challenges;
- establish timeliness requirements for resolving complaints;
- require government departments to suspend contract award or contract performance pending resolution of challenges (or specify those circumstances under which such a suspension can be overridden); or
- specify the specific remedies available to the reviewing authorities.

The new Rules address one of the items listed above by requiring agencies to debrief suppliers within three calendar months of contract award.<sup>37</sup> However, to the extent the debriefing reveals grounds for challenging the evaluation and contract award, the opportunity for meaningful redress – such as re-evaluation of tenders – may have already passed by the time the debriefing occurs. As a practical matter, the lack of an established process and remedies may dissuade suppliers from expending additional time and resources pursuing complaints.

In addition, there are no publicly available databases on the numbers and types of complaints being lodged, and neither government departments nor administrative reviewing bodies appear to systematically publish decisions resulting from challenges. Published decisions, whether binding or simply persuasive, help ensure consistency and transparency, and help educate those involved in the procurement process.

*Administrative sanctions* for individuals or companies that have been found guilty of criminal offences or other wrongdoing in connection with public procurement are very limited. Under the Mandatory Rules, government departments may exclude a supplier from a contract opportunity because the supplier made 'false declarations pertaining to a procurement' or because the supplier had a 'significant deficiency in the performance of any obligation under a prior contract'.<sup>38</sup> The new Rules also permit government departments to exclude suppliers for bankruptcy, a serious crime or offence, professional misconduct, an act or omission reflecting upon the commercial integrity of the supplier, or failing to pay taxes.<sup>39</sup> There do not appear to be any other administrative sanctions available and few, if any, civil or criminal provisions specifically addressing wrongdoing in the context of public procurement.

Although both the Mandatory Rules and the new Rules permit government departments to exclude suppliers for cause, neither takes up procedural issues such as specifying the notice and due process afforded to suppliers whom the agencies exclude. To that end, the Government may wish to adopt uniform regulations (or at least guidance) regarding suspension and/or debarment of individuals and companies from doing business with the Government.

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<sup>37</sup> *Draft Rules*, Rule 44, p. 46.

<sup>38</sup> *Mandatory Rules*, Rule 36

<sup>39</sup> *Draft Rules*, Rule 39, p. 41.

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The provisions on whistle blowing under the Protective Disclosures Act 2000 encourage people to report serious wrongdoing in their workplace by providing protection for employees making the disclosures and are not unique to public procurement.

4. *Accountability: effectiveness of audits and civil monitoring (audit mechanisms, civil or social control mechanisms; administrative sanctions)*

Accountability is underpinned through three channels: first, through the accountability of the chief executive of each public entity to the SSC for the policies, processes and performance of the entity including procurement; secondly, an ex-post accountability through formal audits or inquiries conducted by the OAG; and thirdly, through general oversight mechanisms, including parliamentary procedures and civil access to information under the OIA.

*The OAG performs important functions in the public procurement system:*

- *Good practice guidance.* Periodically, the OAG publishes good practice guidance for government departments and other public entities alike. Most recently, in 2008, the OAG issued Procurement Guidance for Public Entities, which provides comprehensive guidance on: planning procurements; conducting and evaluating tenders; and awarding and administering contracts. This guidance, like central procurement policy, is principles-based and supportive of transparency and accountability. However, the OAG makes clear that it 'does not tell public entities what procurement decisions to make or what policies and procedures they should follow in any particular case'. Those matters are left to the discretion of the individual entity.
- *Financial audits and performance audits.* In its statutory duty to carry out an annual financial audit of about 4000 public entities, OAG has discretion on the scope of the audit. The extent to which procurement policies and practices are examined, if at all, depends on the judgement of the auditor. This can also be constrained by resources, given an obligation on the audited entity to pay the audit costs. OAG also conducts performance audits under section 16 of the Public Audit Act 2001, which occasionally focus on public procurement matters. Thus there is no standing requirement for an audit to examine procurement and any reliance on ex-post audits as an integrity safeguard for procurement appears to be limited in practice.
- *Inquiries.* Although the OAG has discretion to conduct inquiries occasionally into various issues of concern, it is not an avenue for resolving individual complaints or concerns, such as those relating to a procurement action.

Thus the OAG plays an important role in furthering transparency and accountability in the public procurement system, but that role is limited by the discretionary nature of its good practice guidance, the focus of the annual financial audits, and the *ad hoc* nature of its performance audits and inquiries.

*Ad hoc* controls for accountability are exercised through parliamentary select committees, which conduct both regular and special reviews of each public service

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entity including matters of procurement. The committee findings, initially confidential to Parliament, are subsequently accessible through the parliamentary library. There is no formal mechanism for civil society monitoring, but all citizens and entities in the country are entitled to access information under the OIA. Although the OIA process does not require the individually requested information to be made available to all, some entities publish a compilation of requests and replies on their website. As noted in 1. above, transparency would be more effective if there were a wider range of proactive disclosure throughout the procurement cycle – this would reduce the volume of basic OIA requests and provide a more reliable picture of procurement performance across government.

##### 5. *Special cases, State services and Crown entities*

While a substantial amount of government procurement is covered by the rules and standard procedures, the high risks and high interest or publicity are often associated with complex or high profile cases and in emergency situations.

The Canterbury Earthquake Recovery Authority (CERA), set up as a special purpose public service entity, has faced a complex range of procurement tasks.<sup>40</sup> Post-emergency situations are notoriously at high risk of procurement mismanagement, fraud and corruption.<sup>41</sup> Adopting policies and procedures from other departments, CERA has used the Mandatory Rules for its core business, including surveys, demolition contracts, and services.<sup>42</sup> The challenges have been many: for example, conflicts of interest were prevalent and had to be managed; and probity auditors have been deployed for large or complex projects needing innovative and fast approaches. For the horizontal infrastructure of roads, water supply and sanitation, the alliance model between Crown, funding partners, and contractors - adopted from NZTA - has resulted in excellent delivery but poses significant governance issues in terms of defining quantities and evaluating financial performance. The next stage, the central city recovery, involves purchasing and clearing land and procuring large scale facilities - such as a convention centre, library and bus interchange - all of which will require special expertise and procedures and may involve more foreign supply chain risks. While the results of oversight scrutiny are yet to emerge, the recovery is stimulating significant innovations and will generate many lessons for the future.

The case of complex procurement for an *international convention centre in Auckland* has raised a large number of questions addressed in a recent OAG report.<sup>43</sup> The report found that the initial request to the market was unclear in the scope of competition and on the rules and criteria that would apply, and subsequently the Government chose to negotiate directly with one party which was bottom-ranked in the initial evaluation. Key lessons from the case include the need for:

- *clarity and consistency* of the rules being applied from the outset with documented explanations of any changes;

<sup>40</sup> Comments in this section based on an interview with David Mills, Chief Financial Officer, CERA on 1 March 2013.

<sup>41</sup> Peter Dent of Deloitte Canada, and NZ Serious Fraud Office cited in article "Huge Fraud Potential in Chch Rebuild", Richard Meadows, Fairfax NZ News, 18 Sept. 2012 at [www.stuff.co.nz](http://www.stuff.co.nz)

<sup>42</sup> These include over 50 small contracts of less than \$1 million and about 30 contracts up to \$15 million so far in one year of operation.

<sup>43</sup> Office of Auditor General, February 2013, as reported in "Procurement Lessons From The Sky City Report – A Pokie In The Eye From The Audit Office", Government/Public Law, February 2013 at [www.bellgully.com](http://www.bellgully.com)

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- *fairness* to be applied to all parties throughout the process; and
- *transparency* at all stages to ensure that issues are identified as early in the process as possible so that they can be managed effectively and fairly.

*The payroll system of the Ministry of Education (“Novopay”)* is another case of complex procurement, for outsourcing the development and operation of information technology, which has experienced a high cost over-run and 90 percent time overrun, together with highly visible and significant performance shortcomings. This has occurred despite an apparently sound tendering process and significant oversight by key stakeholders during the development and pre-implementation phases. Notably, the Ministry of Education has released substantial information under the OIA<sup>44</sup> which shows a tendering, evaluation, risk mitigation and due diligence process that was judged by an Independent Quality Assurance entity to be appropriate, fair and equitable, adequately documented, and conforming with OAG guidelines. However, the disclosures omit all price information from the project. While the case will soon be subjected to a formal review, it appears that the specification and complexities of the functional requirements and the management of the related risks and implementation process could be key factors in the subsequent performance issues.

**Crown entities**

The more than 2,700 Crown entities, which operate under the principles and guidance on public procurement but not under the Mandatory Rules, account for the majority of public procurement - spending two-thirds of the resources budgeted for the Government. Large Crown entities, such as the NZ Transport Agency, have well-articulated and disclosed plans and procurement rules, and also significant innovations in striving for more efficient procurement and better outcomes.<sup>45</sup> Other entities have special needs which are not well-suited to open and competitive procurement, such as research institutions and social welfare entities (including those dealing with Māori and cultural affairs). Small and sometimes remote organisations like school boards, where capability and numbers are thin, can also be at risk. Procurement in these cases needs to focus on achieving and demonstrating results and value for money, and preventing mismanagement, fraud and corruption. “While the smallness of NZ can be a threat, it is also seen as a protection to procurement, because it is hard to keep information secret and people keep an eye on each other.”<sup>46</sup> The flexibility and scope of the NZ public procurement system is supportive of this wide range of needs, especially through support institutions such as the Commercial Pool and Procurement Academy and knowledge materials.

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<sup>44</sup> See [www.minedu.govt.nz/theMinistry/NovopayProject](http://www.minedu.govt.nz/theMinistry/NovopayProject)

<sup>45</sup> See [www.nzta.govt.nz](http://www.nzta.govt.nz)

<sup>46</sup> Nicola White, Deputy Auditor-General, in an interview on 13 March 2013.