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Government Procurement Guidelines, Code of Conduct for Suppliers.

Submission, Transparency International New Zealand (TINZ)

Our Expertise on this Topic

Transparency International New Zealand (TINZ) welcomes the opportunity to make a submission on this matter. It fits closely with our objectives, and we are pleased to offer an expert civil society perspective.

In preparing this submission TINZ has formed a team from its Board and selected Members with Delegated Authority (MDA) who have experience in this topic.

- The leading contributor is Tod Cooper MCIPS (Chartered). He is a Member with Delegated Authorities on procurement and whistleblowing for Transparency International NZ. Tod is a Commercial and Procurement Consultant. He is National Chair of the New Zealand Chartered Institute of Procurement and Supply, and a member of the Procurement Excellence Forum. Tod's passion is leading and developing commercial and procurement capability within an organisation; increasing engagement internally and externally; and creating a value based culture.
- Brendon Wilson is a Director of TINZ with a special interest in Business Integrity. He has held leadership roles in airlines, the technology sector, a major professional membership body and in government. He believes that "the combination of vigorous open democracy, good governance, healthy competitive integrity in business and strong vibrant communities offers a platform for all New Zealanders to achieve the opportunities and prosperity we should expect. The success of our country in an increasingly difficult and complex world demands that we commit ever more firmly to these principles, the stakes are high."
- Suzanne Snively has expertise in procurement in both the private and public sectors. She is an economic strategist, former PricewaterhouseCoopers Partner, now Managing Director of MoreMedia Enterprises Ltd. Suzanne holds Directorships on a diverse range of NGO and business organisations including the New Zealand Army Leadership Board, Health Research Council, New Zealand Opera and the Maori Whanau Ora Commissioning Agency, Te Pou Matakana.
- Julie Haggie, CEO has held the pen. She has considerable experience leading industry advocacy on public procurement.
- Several of the team have also been actively involved in TINZ's National Integrity Systems Assessment update, including putting considerable thought into what a transparent procurement system would look like.

General Comment

1. Our first general point is that whilst we support the concept of a Code, we think the statement of expectations in its current form is so light touch and open to interpretation that it is unlikely to have impact, i.e. be enforceable, measurable or generate better outcomes. It repeats 'good practice' statements, without a requirement to action these. A code is almost pointless without both context and accountability. For these reasons we do not consider the draft code to be *effective* in its current form. For us *effective* has specific outcomes:
 - a. The expected behaviours identified within the code are integrated into business and organisational culture, owned by governance and applied across the supply chain.
 - b. Actions as a result of the code have measurable outcomes.
 - c. Failure to abide by the Code has specific consequences
2. Our second general comment is that we recommend consideration of a 'Good Procurement Code' which would place obligations on both parties, and enable them to negotiate in good faith on matters of integrity and best behaviour practice, with mutually agreed binding to ensure accountability. The term 'Code of Conduct' implies a one-sided and potentially pedantic approach to the rules. For that reason we use the term 'Code' in our submission.
3. Transparency International New Zealand is very supportive of an *effective* code (as described above) because:
 - a) It is an opportunity to reinforce the importance of integrity and trust in business practice.
 - b) Ethical business behaviour is more likely to result in successful and sustainable businesses.
 - c) A code that is integrated into the business of contractor and contractee organisations helps protect the brand of each organisation.
 - d) A code sets clear expectations for suppliers in a way they can consult and engage with.
 - e) Codes that are effective are of particular importance if the business obtains and sources materials and products from countries where environmental and labour law enforcement are not solid.
 - f) Despite rhetoric that would suggest otherwise, the main procurement aims remain lowest price and risk allocation. Greater emphasis on ethical behaviours, if *effective*, are likely to improve outcomes.

Specific Comment

4. We strongly support greater emphasis on the integration of several elements within the Code, several of which are not included in this draft:
 - a. Governance responsibility and engagement;
 - b. Risk Assessment, including in relation to the supply chain;
 - c. Independent and internal auditing of outcomes against expenditure;
 - d. Monitoring, through audit and proactive discussions on ethical business practices and challenges;
 - e. Reporting against the elements of the Code at regular relevant intervals during the contract period;

- f. Continuous improvement which should include proactive use of new tools to improve ethical performance;
 - g. Clear consequences for not adhering to minimum standards in the Code.
5. The Code does not address the Treaty of Waitangi. Since the Crown must act consistently with Treaty Principles, this requirement should also apply to any supply chain that has a base of public funding.
 6. The Code is very general in relation to standards that could be met. There are very good international standards already available. The expectations set out under 'Labour and Human Rights' and in all other areas of the statement of expectations need to be more specific about particular standards to reach, for example:
 - United Nations Global Compact principles
 - OECD Procurement
 - UN universal declaration of human rights
 - UN global compact
 - ILO International labour standards
 - ISO 14000 : ISO 14000 is a set of international voluntary standards and guidelines regarding environmental management systems, eco labelling, environmental auditing, environmental performance evaluation, environmental aspects in product standards, and life cycle assessments.
 - SA 8000 : SA 8000 is an international standard to ensure good working conditions that covers topics such as: preventing child labour and forced labour, workplace safety and health, freedom of association and right to collective bargaining, anti-discrimination, discipline, remuneration, working hours, and HR management systems.
 7. Under the Labour clause we also recommend the inclusion of freedom of association.
 8. Under prompt payment a standard is needed, and that should be mutually followed (i.e. purchaser and contractee organisations). Unfortunately Government agencies are not well known for setting a high bar in relation to prompt payment. In addition, whilst prompt payment is useful, we suggest taking a broader approach to encourage good and fair business practices. Some examples would be fair competition behaviours, high standards when conducting trials, and animal welfare.
 9. Under 'Ethical Behaviour' the term 'actively engage sustainable policies and processes' is so broad that it is unlikely to be enforceable or measurable.
 10. The Statement of Government Expectations should use the term *encourage* less and *expect* more. If joint responsibility, disclosure, discussion and action are the basis of the Code, then the positive nature of encouragement can be made a requirement.
 11. One conspicuous omission is lack of any requirement for 'speak up' policies. A 2011 OECD report noted the importance of clear legislative frameworks to support organisational culture improvements towards whistleblowing in both public sector and businesses:

Encouraging and facilitating whistleblowing, in particular by providing effective legal protection and clear guidance on reporting procedures, can also help authorities monitor

compliance and detect violations of anti-corruption laws. Providing effective protection for whistleblowers supports an open organisational culture where employees are not only aware of how to report but also have confidence in the reporting procedures. It also helps businesses prevent and detect bribery in commercial transactions. The protection of both public and private sector whistleblowers from retaliation for reporting in good faith suspected acts of corruption and other wrongdoing is therefore integral to efforts to combat corruption, promote public sector integrity and accountability, and support a clean business environment.¹

12. There are other equally important omissions from the expectations around conflicts of interest, and confidentiality of information.
13. There is insufficient emphasis on privacy including how businesses protect the privacy of clients, customers, staff and within data sets that they have management or access to.
14. Consistent with our earlier comment in this submission, we recommend mutual/joint responsibility for a Procurement Code which would involve ongoing processes between the parties, with regular reviews in which full disclosure and remediation of lapses or changing risks are required and discussed to enable all parties to agree and monitor the best response.

Thank you for the opportunity to consult on this matter. We would welcome the opportunity to have discuss our submission.

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About Transparency International (TINZ)

Our mission is *a world with trusted integrity systems in which government, politics, business, civil society and the daily lives of people are free of corruption.*

TINZ is an independent chapter of [Transparency International](https://www.transparency.org/), the global civil society organisation against corruption. We are a not-for-profit incorporated society with charitable status; non-political and non-partisan. We are proud to be a leading civil society caretaker of New Zealand's high trust, high integrity society. Our reports, assessment documents and facilitation of discussions have positively impacted New Zealand's approaches towards corruption prevention and open government.

Our expertise is proven in documents such as *[Integrity Plus 2013 New Zealand National Integrity System Assessment \(NIS\) and subsequent updates in 2015 and 2018 towards a 2nd edition](#)*, as well as the *[Corruption Perceptions Index](#)* produced by the global body. TINZ has worked with central government agencies on specific initiatives to strengthen transparency, open government, and integrity systems. An example is innovative Public Sector CEO Leadership Integrity Forums, jointly hosted with the Office of the Auditor General.

We bring critical and constructive voices to the table wherever anti-corruption expertise, advocacy and action are needed. Our portfolio is broad. We have a large network of committed stakeholders, and our strong Pacific and international connections enable us to fight corruption within a global socio-political context that is ever more challenging.

¹ OECD, "Protection of Whistleblowers: Study on Whistleblower Protection Frameworks, Compendium of Best Practices and Guiding Principles for Legislation, 2011