

## Submission template: Consultation on proposed Government Procurement Rules 4th Edition



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### Your details

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### Use and release of information

MBIE intends to use the submissions it receives to inform decision-making regarding the proposed Government Procurement Rules 4<sup>th</sup> Edition and other related government policy.

MBIE may attribute submissions to particular organisations in Cabinet papers, but will not attribute submissions to any individuals without their prior written consent in accordance with the *Privacy Act 1993*.

MBIE does not intend to publish submissions but does have obligations under the *Official Information Act 1982* and to Parliament, which may require it to disclose submissions.

## Responses

### 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. 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.

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### General feedback and comments on the Rules

#### General feedback (*Do you have any general feedback or comment on the changes to the Rules*)

1. Following on from feedback from the Supplier Code of Conduct we want to state our overall support for the structure and content of the existing Government Procurement Rules and five overarching Principles of Government Procurement.
2. Overall the Government Procurement Rules are a well written, comprehensive, but easy to follow document providing sound guidance and context of what best practice is across the Public Sector.
3. The ability for some flexibility within the application of the Rules, by identifying what is a 'must' and what is a 'should' allows for a level of interpretation and common-sense approach to right sizing procurement approaches where practical.

## General feedback (*Do you have any general feedback or comment on the changes to the Rules*)

4. With the ability for interpretation, it is felt that this could be open to abuse and coercion and differing levels of application of the rules. While the Rules cover off context and well, it lacks any real level of senior leadership oversight and accountability.
5. While we consider the draft code to be *effective* in its current form and for operational application, for it to make an *impact* it has to be more explicit around:
  - a. The expected roles of senior leadership and ultimately the Chief Executive
  - b. The expected behaviours from senior leadership and ultimately the Chief Executive
  - c. Actions required where issues are identified, in-particular whistle blowing.
  - d. Consequences in the failure to abide by the Rules
  - e. Expected ethical behaviours of suppliers, and all tiers of their supply chain.
6. Transparency International New Zealand is very supportive of an *effective* set of Rules because:
  - a) It is an opportunity to reinforce the importance of open, transparent, and competitive government.
  - b) It reinforces the criticality of ethical business behaviour, which in turn is more likely to result in successful and sustainable outcomes for both the government and industry.
  - c) Provides for a transparency around processes, setting clear expectations for suppliers, giving them confidence in a fair and open contestability.
  - d) It considers first and foremost public value though a holistic view of the whole-of-life across social, economic, and environmental factors.

## Specific feedback and comments on the Rules

### Specific feedback

1. We strongly support greater emphasis on Protected Disclosures (whistleblowing) and its criticality as a part of the procurement process.
2. We strongly support greater integration of several elements within the Rules:
  - 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 benefits and outcomes at regular intervals during the contract period;
  - f. A focus on continuous improvement;
  - g. Clear consequences for not adhering to minimum standards in the Rules.
3. The Rules does not specifically address the Treaty of Waitangi and the associated procurement obligations under the Treaty. The Crown must act consistently with Treaty Principles, these Principles also apply to any supply chain that has a base of public funding.

## Feedback on specific Rule changes

Rule #	Feedback on changes to the existing Rules ( <i>please insert a new comment row for each Rule you are commenting on</i> )
<b>Rule #2</b>	<b>Integrity</b> More details around consequences for a breach of Conflict of Interest or confidentiality.
<b>Rule #3</b>	<b>Non-disclosures and off-sets</b> The Rules are silent around the process and protection for whistle blowers. Countries with systemic levels of corruptions, as illustrated in the <a href="#">Transparency International Corruption Perception Index</a> , should be subject to additional vetting.
<b>Rule #15</b>	<b>Planning</b> For transparency purposes, we feel that all public sector procurement should have a 'procurement plan' developed and agreed prior to any expenditure. This plan would be expected to be relevant in terms of content and complexity to the value and risk of the procurement activity, i.e. from 2-pages to 200-pages.
<b>Rule #25</b>	<b>Subcontracting</b> More focus on the visibility of tiers 2, 3+ within a supply chain activity, ensuring the government is not activity supporting terrorism, modern slavery/exploitation.

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

Our contact for this submission is:      Tod Cooper  
MDA to the Board  
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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](#), 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 2<sup>nd</sup> 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.