



COVERSHEET

Minister	Hon Phil Twyford	Portfolio	Economic Development
Title of Cabinet paper	Government Procurement: Supporting New Zealand's COVID 19 Economic and Social Recovery	Date to be published	16 September 2020

List of documents that have been proactively released

Date	Title	Author
6 July 2020	Government Procurement: Supporting New Zealand's COVID 19 Economic and Social Recovery	Minister for Economic Development
6 July 2020	Cabinet minute: CAB-20-MIN-0326	Cabinet Office

Information redacted

YES / NO (please select)

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Some information has been withheld for the reasons of:

- Free and frank opinions
- Commercial information
- Negotiations

In Confidence

Office of the Minister for Economic Development

Chair, Economic Development Cabinet Committee

Government procurement: supporting New Zealand's COVID 19 economic and social recovery

Proposal

- 1 This paper seeks agreement to:
 - 1.1 Strengthen the mandate of the Procurement Functional Lead (PFL),¹ by amending the Government Procurement Rules (the Rules), to give the PFL the discretion, to direct and undertake targeted procurement interventions, in response to an emergency, a crisis or a wider policy priority;
 - 1.2 Establish an enhanced procurement monitoring and assurance function that will enable the PFL to monitor and provide assurance procurement practices are fit-for-purpose, consistent and meet the required standards;
 - 1.3 Develop a Government Procurement Strategy which will set out government procurement priorities;
 - 1.4 Progress two procurement initiatives focused on supporting government-funded construction procurement.

Executive Summary

- 2 The public sector spends around \$42 billion each year through government procurement of goods and services from third parties. Individual agencies are responsible for their own procurement initiatives with some central advice from New Zealand Government Procurement (NZGP).
- 3 In this Cabinet paper I identify a number of issues and opportunities across the government procurement system and propose a number of changes to address these issues. The following table sets out how the proposals work together to address these issues and realise opportunities.

¹ In September 2012, the Government introduced procurement functional leadership. Cabinet expected the Procurement Functional Leader to improve government procurement by collaborating with public organisations and taking a "centre-led" approach. The Chief Executive of the Ministry of Business, Innovation and Employment is the Procurement Functional Leader for the Crown. NZGP, a branch within MBIE, operationalises the Procurement Functional Leader's role.

		Proposals					
		Strengthen PFL mandate	Enhance PFL monitoring & assurance	Government Procurement Strategy	Streamlined procurement approaches	Sustainable construction procurement	COVID-19 Procurement recovery initiatives
Issues and opportunities	Inconsistency - Procurement capability and capacity varies across the system	✓	✓	✓			
	Limitations of procurement effectiveness - Procurement of government-funded construction may be less effective due to capability and capacity issues	✓	✓		✓		
	PFL unable to intervene - Lack of power and reach to intervene to improve consistency and effectiveness	✓	✓				
	Broader outcomes, greater public value - Opportunity to leverage government procurement to achieve broader outcomes and support New Zealand’s economic and social recovery					✓	✓

4 This paper focuses on improving procurement practices rather than the outcomes we procure. Free and frank opinions [redacted]
[redacted]
[redacted]
[redacted]

Background

5 The public sector spends around \$42 billion each year through government procurement. The size and nature of this spend means that government procurement can be a critical enabler of New Zealand’s economic and social recovery from COVID-19.

6 Most of the \$42 billion spent each year through procurement is by government agencies, not through centre-led initiatives. Individual government agencies are responsible for their own procurement initiatives with some central advice provided in specific instances.

Procurement capability and capacity varies across agencies impacting the overall effectiveness of government procurement

7 Procurement capability and capacity varies across agencies, and some agencies are not well equipped to undertake larger scale or complex procurements. This impacts the overall effectiveness of government procurement. Evidence of this can be seen in responses to the

New Zealand Business Survey and the Procurement Capability Index² (PCI). Suppliers to government report³ that the quality of procurement varies between government agencies.

Variable procurement capability and practice could limit the effectiveness of government funded economic stimulus

8 Budget 2020 will see significant funding to boost critical public services and investment to support New Zealand's economic and social recovery and rebuild. In the short-term, this means that the amount the public sector spends, through government procurement will increase.

9 Commercial information; Free and frank opinions

10 I know that some government agencies will need support to adopt streamlined, efficient and fast-track procurement methods and to effectively procure and manage projects. Much work has already been undertaken, and is ongoing, to support the construction sector. NZGP will continue to support the Construction Sector Accord (the Accord), as it has since it was formed, to ensure the principles of the Accord and good practice are followed in the delivery of shovel-ready and other government construction projects.

The Procurement Functional Leader lacks the power and reach to undertake targeted intervention

11 The government procurement policy framework in New Zealand consists of a combination of principles, rules and good practice guidance. This includes the Rules, which govern the way in which mandated agencies procure goods, services and works; creating a fair environment for businesses to win government contracts.

12 Responsibility for leading improvements in the government procurement system rests with the Chief Executive of the Ministry of Business, Innovation and Employment as PFL for the Crown. NZGP, a branch within MBIE, operationalises the PFL's role and implements a collaborative, centre-led approach to procurement initiatives. To date, this has largely been achieved through the settings in the Rules as well as other initiatives like the

² The Procurement Capability Index is a self-assessment tool that measures agencies' procurement capability. All agencies that are mandated to use the Government Procurement Rules must undertake a PCI assessment on an annual basis.

³ NZGP runs an annual business survey to understand suppliers' and community service providers' experiences of government procurement.

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All-of-Government (AoG) panels, guidance, tools, templates and training of government procurement personnel.

- 13 NZGP lacks the power and reach to undertake targeted intervention and remedial actions (such as stepping in where there is a clearly incorrect application of procurement methods or there are material concerns about an agency's capability given the scale and risk of a procurement), where these are required.

Proposal

- 14 While previously there was reliance on support and guidance, now I am proposing:
- 14.1 A strengthened mandate that will enable the PFL to direct and undertake targeted interventions, where required, in response to an emergency, a crisis or a wider policy priority;
 - 14.2 An enhanced monitoring and assurance function that will enable the PFL to monitor and provide assurance that procurement practices are fit-for-purpose, consistent and meet the required standards.
 - 14.3 A Government Procurement Strategy that will set out government procurement priorities and help improve consistency of approach to government procurement across the system.
- 15 These changes will work together to build procurement capability and understanding, reduce inconsistencies in procurement approaches and enable the PFL to intervene early to more effectively drive change. Strengthening the ability of NZGP to intervene, oversee and provide assurance across the system will ensure appropriate procurement expertise, capacity and capability is in the right place, at the right time to enable agencies to deliver consistently and well.

Strengthened Procurement Functional Leadership

- 16 I propose we strengthen the PFL mandate, providing the authority to intervene early to mitigate risk and drive improvement across the government procurement system and to allow targeted interventions that will drive real change. This would enable the PFL to be more assertive in its approach and to work with agencies to deliver effective government procurement. In particular, I see the PFL role as:
- 16.1 Driving system-wide initiatives and improvements;
 - 16.2 Undertaking targeted interventions and remedial actions where required; and
 - 16.3 Providing added flexibility and responsiveness to circumstances.
- 17 This change is especially needed during this time of recovery, to ensure:
- 17.1 Rapid and widespread shifts in practice, behaviour and processes, ensuring greater consistency in the quality of government procurement across the system; and
 - 17.2 Procurement steps forward to play its part in the economic and social recovery of New Zealand.

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- 18 Under this proposal, the PFL would have the authority to (as appropriate and within set parameters) direct wholesale adoption of procurement measures and to step-in to accelerate key projects or areas of procurement activity in response to crisis situations and wider policy priorities. An example of how a targeted intervention might be carried out for a project that has not gone well is set out in Appendix A.
- 19 I propose that Cabinet approve a change to the Rules, in substantially the form set out in Appendix B, to include provisions for the PFL to intervene in the government procurement system, noting that:
- 19.1 Appendix C sets out the 135 agencies required to apply the Rules;
 - 19.2 This option makes use of the existing authorising environment of the Rules and the direction to support a whole of government approach issued under the Crown Entities Act 2004;
 - 19.3 If approval is obtained, NZGP will consult with key stakeholders before amending and publishing the Rules to this effect.

20 **Negotiations**

- 21 The proposed provisions for the Rules give the PFL discretion, in response to an emergency, a crisis or a wider policy priority, to determine and declare an appropriate procurement response measure or measures, so long as these are consistent with commitments made by New Zealand in its free trade agreements and in other international instruments with obligations on government procurement. Along a continuum of interventions and within those parameters, a procurement measure could (for example):
- 21.1 Prioritise key government projects, declare what principles, rules and processes apply to those projects, provide NZGP expertise or arrange for others' expertise in support, and direct targeted agencies to do certain things or use certain tools and templates in those projects; or
 - 21.2 Be a general declaration for a particular region that all procurements for a specified time period need only follow certain principles and processes; or
 - 21.3 Appoint a lead agency to run a major procurement or a series of procurements and direct other agencies with similar needs to club together with the lead agency on that procurement activity; or
 - 21.4 Be a series of 'permissions' for agencies in their procurements to act based on authoritative interpretations of the Rules and procurement policy and/or to adopt new ways to undertake procurements.
- 22 The new provisions for the Rules would be limited in that any procurement measure would be in response to a "national" or "regional" or "sectoral" concern. This is intended to give agencies confidence that this discretion would not be used to intervene unnecessarily.

- 23 To provide agencies further confidence and clarity, NZGP will develop, consult on and publish information about when the PFL would exercise this strengthened mandate, in response to an emergency, a crisis or a wider policy priority, and declare an appropriate procurement response measure or measures.

Bringing the new rule into effect for the recovery period

- 24 Should Cabinet agree to the amendment to the Rules proposed in this paper, I also seek Cabinet's approval that the PFL may then declare appropriate procurement measures under the new Rules for the COVID-19 recovery period. To bring the new rules into effect I propose that:
- 24.1 Cabinet approves the amendments to the Rules in substantially the form set out in Appendix B and their publication as part of the Government Procurement Rules;
 - 24.2 NZGP promptly consult with agencies on the proposed form of the new Rules;
 - 24.3 Following consultation, NZGP amends and publishes the new Rules, at which point NZGP may declare appropriate procurement response measures under the new Rules (working in conjunction with other agencies) for the COVID-19 recovery period^[1] (such as measures directing the adoption of streamlined procurement approaches for government construction projects);
- 25 **Negotiations** and putting in place assurance and monitoring functions will deliver benefits but could take some time to implement and for the benefits to be seen.

Enhanced monitoring and assurance

- 26 NZGP currently undertakes a range of monitoring activities including:
- 26.1 Administering the annual New Zealand Business Survey and publishing the findings on the NZGP website;
 - 26.2 Reviewing agency Annual Procurement Plans;
 - 26.3 Hosting the Government Electronic Tenders Service, which generates data and information about government procurements and resulting contracts, and releasing published contract award notices as open data on the MBIE website;
 - 26.4 Gathering information about the level of capability across mandated agencies through tools such as the Procurement Capability Index.
- 27 The effectiveness of government procurement could be further enhanced by expanding on existing monitoring to include an assurance role. To enhance monitoring and assurance of the procurement system, I propose that:
- 27.1 A set of Key Performance Indicators (KPIs) on each agencies procurement performance is developed and reported to agencies and ministers, including each agencies progress on incorporating broader outcomes and simplifying procurement processes;

^[1] The duration of the COVID-19 recovery period will be specified in the declaration of appropriate response measures.

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- 27.2 An assurance function is developed in NZGP that:
- 27.2.1 applies different levels of monitoring and assurance based on a set of criteria for:
 - 27.2.1.1 Procurement projects (for example, based on complexity, project value, level of risk, project governance arrangements);
 - 27.2.1.2 Agencies (for example, based on capability, capacity, scale and value of procurement activity in the agency pipeline);
 - 27.2.2 Identifies and mitigates procurement system risk and identifies and drives opportunities for system improvement;
 - 27.2.3 Recommends remedial actions, where required.
- 27.3 This procurement assurance function will be funded from within baseline.

28 Information gathered through these monitoring activities will help to identify and confirm the need for additional support. NZGP will consult with agencies on the development of this monitoring and assurance function. There is some risk of fragmentation and duplication in the system in relation to the way the procurement assurance function interacts with other parts of the system. NZGP will work across the system with the State Services Commission, Treasury and other agencies to design interventions and the procurement assurance function to ensure cohesion and effectiveness in the system.

Government Procurement Strategy

29 I propose to put in place a Government Procurement Strategy (the Strategy). An overview of the proposed New Zealand Government strategic procurement priorities is included as Appendix D. This will inform the development of a more detailed strategy document. The Strategy will set out the government procurement priorities for agencies and suppliers and it will signal to suppliers what they can expect of government procurement. This will help to ensure a consistent approach to government procurement across the system.

Leveraging procurement to support New Zealand's COVID-19 economic and social recovery

30 The revised Rules which came into force on 1 October 2019, place greater emphasis on achieving broader economic, environmental and social outcomes (Broader Outcomes) for New Zealand through government's procurement of goods and services from third parties. Over the last year, significant progress has been made on ensuring government procurement achieves Broader Outcomes and increased public value.

31 NZGP can build on this platform to support the economic and social recovery of New Zealand through government procurement. There are many potential areas of focus, each resulting in different outcomes and there will be trade-offs between the achievement of core procurement objectives and secondary broader economic, social and environmental outcomes.

32 Focusing on achieving too many outcomes at once may lessen overall effectiveness and priority areas may get overlooked. It will also take time for agencies and NZGP to build the capability required to efficiently require and monitor broader outcomes. Decisions need to

be made about what outcome areas should be prioritised. Therefore, I propose that NZGP continue to work in consultation with agencies, on specific recovery initiatives that are being implemented as part of Broader Outcomes.

- 33 I will continue to work with the Employment, Education and Training Ministerial Group. I intend to bring a subsequent paper reporting back on progress on the Government's broader outcomes work and updating the committee on this work.

Government procurement recovery initiatives in the construction sector

- 34 Given the work in progress to leverage government-funded construction for economic recovery and the procurement challenges identified that could impact on the effectiveness of this economic stimulus I propose that, in the immediate-term, NZGP progress two key initiatives that focus on supporting government-funded construction procurement.

Enable the adoption of streamlined procurement approaches in the construction sector

- 35 The Accord has built good relationships across the construction sector and gained traction around addressing sector issues and improving practices and capability. NZGP will leverage the work already undertaken (i.e. addressing contract management issues in relation to COVID-19 site closures and identifying models for rapid delivery of construction projects) to ensure that construction procurement practices are based on good practice to get the best out of firms in the construction industry. Commercial information; Free and frank opinions

I propose that NZGP work with the Accord, the Infrastructure Commission and the IRG to:

- 35.1 Develop and issue, specific procurement guidelines and protocols for accelerated procurement approaches (incorporating Construction Sector Accord guiding principles);
- 35.2 Identify appropriate forms of contract that include cash flow provisions and provide clarity on risk allocation;
- 35.3 Develop approaches for providing additional expertise to agencies that lack the capability or capacity to procure or deliver construction projects at pace;
- 35.4 Agree and put in place appropriate measures and assurance approaches around acceptable timeframes for evaluating and awarding tenders for construction projects. These will need to be sufficiently flexible to account for projects with differing requirements (e.g. scope, scale, complexity, level of risk); and
- 35.5 Develop appropriate monitoring and assurance protocols to ensure construction projects are achieving recovery objectives.

Sustainable construction procurement

- 36 Procurement provides a vehicle for government to take a leadership role in facilitating the building and construction sector to transition to a low-emissions, climate-resilient future, complementing this Government's wider policy goals across urban development, water and energy efficiency and waste minimisation. Given the work in progress to leverage

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government construction for economic recovery and New Zealand's goal of reducing greenhouse gas emissions and building climate resilience, I propose that NZGP work with key agencies and stakeholders to support efforts to reduce greenhouse gas emissions resulting from new government builds.

- 37 The Government has committed to reducing greenhouse gases (except biogenic methane) to net zero by 2050. The building and construction sector is a large contributor to greenhouse gas emissions from:
- 37.1 The production of construction materials, constructing buildings and the waste from demolishing buildings;
 - 37.2 The energy used in buildings.
- 38 Our current emissions accounting methods mean that the full scale of building and construction greenhouse gas emissions is not known⁷. MBIE is currently working with Statistics New Zealand to better understand the sector's contribution to New Zealand's emissions profile. Recent research⁸ estimates that the building and construction sector could be responsible for around 20 percent of New Zealand's domestic emissions. About half of these emissions are from the construction of buildings and infrastructure and half from the ongoing operation of buildings. This demonstrates there is a significant opportunity for the sector to help New Zealand reduce greenhouse gas emissions as part of our efforts to achieve our environmental and climate change goals.
- 39 Work is already underway, commissioned by the Minister for Building and Construction, to develop a work programme to set out how the building and construction sector will help New Zealand meet its climate change goals. The Accord is also developing a workstream aimed at transitioning the sector to meet the Government's climate change objectives. NZGP will ensure that government procurement activity is supportive of these activities and reflects the expertise and input of industry that is fostered through the collaborative approach of the Accord.
- 40 Greenhouse gas emissions are generated over the whole lifecycle of a building. The level of emissions over the whole-of-life of a building depends on a range of factors, including how building materials are produced, the amount of materials used, how the building is maintained, and how materials are disposed of at the end of the building's life.
- 41 I propose introducing a minimum requirement for procuring agencies to consider, for government new builds, at the initial concept/request for proposal stage, the amount of emissions generated by:
- 41.1 Building materials, this includes raw materials, transportation of raw materials and materials manufacturing processes;

⁷ It has been estimated that buildings are directly and indirectly responsible for up to 20% of New Zealand's greenhouse gas emissions. These emissions arise from manufacture and transport of materials used in construction, use of fossil fuels for heating and cooking and use of electricity for space heating and cooling, water heating, lighting and plug loads, part of which is supplied using fossil fuels.

⁸ Thinkstep, (2019), Under construction: Hidden emissions and untapped potential of buildings for New Zealand's 2050 carbon goal.

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- 41.2 Construction processes, this includes transportation of building materials and the construction processes used during the build.
- 42 Agencies choosing not to select the tender option with the lowest upfront carbon emissions, where, on balance and all other things are equal would need to document the reasons for this decision.
- 43 I propose that NZGP work with key stakeholders and agencies to develop appropriate guidance on assessing carbon emissions generated by building materials and construction processes on government funded new builds.

Issues and trade-offs

- 44 While this approach does not assess the whole-of-life embodied greenhouse gas emissions of new buildings, it represents a first step towards making this transition. Agencies may take further steps and choose to consider emissions over the whole-of-life of a building. Taking a phased approach will enable agencies and the sector to transition and adapt to the new minimum requirement.
- 45 Implementing this approach may add additional contract costs as well as placing additional resource demands on agencies to assess and monitor additional requirements. Quantifying the additional costs is not possible at this stage and can only be assessed for each individual contract. There will be trade-offs between delivering sustainable outcomes that help meet government's goal of reducing greenhouse gases to net zero by 2050 and the cost of this. Where there are additional costs agencies will need to weigh the trade-offs and reprioritise within existing baseline or seek additional funding as part of the budget process.

Report back on the Government Procurement Recovery Plan

- 46 I intend to report back to Cabinet on progress against the Plan in February 2021. The report back will:
- 46.1 Outline results from the consultation and seek further agreement on the mechanisms to support the implementation of the PFL Rule;
 - 46.2 Report back on specific "COVID-19 recovery broader outcomes" that would be implemented as part of Broader Outcomes;
 - 46.3 Present an overview of the method for measuring the effectiveness of the initiatives. This might include a mix of quantitative and qualitative data such as stories about effective government procurement practice.
- 47 A subsequent paper will report back on progress on the Government's agreed broader outcomes **Free and frank opinions**

Financial Implications

- 48 The additional resources required to carry out the procurement assurance function will be funded from within baseline.

Legislative Implications

- 49 Approval by Cabinet of amendments to the Rules as set out in this paper includes approval by the Minister of State Services and the Minister of Finance, respectively for the purposes of the procurement whole of government direction issued under the Crown Entities Act 2004.
- 50 No other current legislative implications have been identified in this paper. The strengthened mandate that I recommend be approved for the PFL does not require legislative change. This can be put in place quickly, as approved by Cabinet and through amended and published Rules. It will apply to those agencies required to apply the Rules (as set out in Appendix B), but cannot override legislation.

Impact Analysis

Regulatory Impact Statement

- 51 A regulatory impact analysis is not required.

Climate Implications of Policy Assessment

- 52 The Ministry for the Environment has been consulted and confirms that the Climate Implications of Policy Assessment (CIPA) requirements do not apply to this proposal as the emissions impact is indirect and unable to be accurately quantified. The Ministry notes that this proposal has the potential to contribute to an overall reduction in net emissions through increased consideration of emissions from the building and construction sector in the procurement of government infrastructure.

Population Implications

<i>Population Group</i>	<i>Implications</i>
<p><i>Māori and Pasifika</i></p> <p>Māori and Pasifika tend to be disproportionately impacted by economic shocks, resulting in increased unemployment. Economic recession can lock in long-term unemployment, poverty (including in-work poverty), and poor health outcomes, reinforcing a cycle of inter-generational inequality.</p> <p>Māori populations represent a growing majority in the construction and forestry sectors. As of June 2019, around 35,000 Māori workers were employed in the utilities and construction sector. As of June 2019 around 16,000 Pasifika workers were employed in the utilities and construction sector.</p>	<p>Initiatives in this Plan which support the construction and forestry sectors to recover will benefit Māori and Pasifika.</p>
<p><i>Women</i></p>	

<p>Emerging evidence from overseas⁹ and the Ministry for Women suggests that women are being disproportionately socially and economically impacted by COVID-19, resulting in higher levels of unemployment, and exacerbation of pre-existing inequalities.¹⁰</p> <p>Women in the New Zealand labour forces are more likely to work in lower-paid occupations,¹¹ hold less secure jobs and are more likely to be employed in the informal sector.¹² Labour market downturns tend to result in higher levels of unemployment for women, and that is likely to be the case in the New Zealand employment market.¹³</p>	<p>The development of a set of specific COVID-19 recovery initiatives will consider how government procurement can be leveraged to support groups that are disadvantaged by the economic and social impacts of COVID-19.</p>
<p>Disabled people</p> <p>People with a disability experience inequality in the labour market, and therefore are more likely to be negatively impacted by the economic downturn expected as a result of COVID-19.</p>	

Human Rights

- 53 No human right implications have been identified in this paper. Initiatives proposed in the Procurement Recovery Plan are consistent with Article 7 of the International Covenant on Economic Social and Cultural Rights which recognises the right of everyone to the enjoyment of “just and favourable conditions of work”, including specific reference to a “decent living for themselves and their families”.

Targeted Consultation to inform the development of the Plan

The development of the proposals in this paper has been informed by discussion with the Procurement Functional Leaders Group (PFLG), the Business Reference Group and key stakeholders to inform the development of the Recovery Plan.

- 54 The PLFG includes representatives from, Kāinga Ora, Auckland University, Department of Internal Affairs, Auckland Council, Department of Corrections, Nelson Marlborough District Health Board, Ministry of Education, Ministry of Foreign Affairs and Trade, Accident Compensation Corporation, Department of Conservation, New Zealand Transport Agency.
- 55 The Procurement Business Reference Group¹⁴ includes representatives from, Clever Buying, Business New Zealand, Avoria, Medical Technology Association of New Zealand (MTANZ), Link Consulting, Metals New Zealand, BIA, New Zealand Trade and Enterprise (NZTE), and DML Surveys.

⁹ United Nations, (April 2020), Policy Brief: The impact of COVID-19 on women. Retrieved at <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2020/policy-brief-the-impact-of-covid-19-on-women-en.pdf?la=en&vs=1406>

¹⁰ Ministry for Women, (April 2020), COVID-19 and Women. Retrieved at <https://women.govt.nz/news/covid-19-and-women>

¹¹ Ministry for Women, (April 2020), COVID-19 and Women. Retrieved at <https://women.govt.nz/news/covid-19-and-women>

¹² United Nations, (April 2020), Policy Brief: The impact of COVID-19 on women. Retrieved at <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2020/policy-brief-the-impact-of-covid-19-on-women-en.pdf?la=en&vs=1406>

¹³ <https://data.unwomen.org/resources/surveys-show-covid-19-has-gendered-effects-asia-and-pacific>

¹⁴ The Business Reference Group is a group of business representatives that meet with NZGP regularly to discuss government procurement.

Consultation on the Cabinet paper

- 56 A list of the agencies that were consulted on the draft Cabinet paper is included in Appendix E. A summary of agency feedback on the draft Cabinet paper is included in Appendix F.

Communications

- 57 NZGP will use its usual communications channels to inform relevant stakeholders of the initiatives agreed.

Proactive Release

- 58 Following Cabinet Office circular CO (18) 4 regarding the proactive release of Cabinet papers, I intend to proactively release this paper subject to redactions as appropriate under the Official Information Act 1982.

Recommendations

59 The Minister for Economic Development recommends that Cabinet:

Procurement Functional Leader and Enhanced Monitoring and Assurance

1. **Note** that procurement capability and capacity varies across agencies, and some agencies are not well equipped to undertake large-scale or complex procurement processes.
2. **Note** the Procurement Functional Leader currently has a limited ability to intervene in poor procurement practices.
3. **Note** that there could be further benefits and acceleration of improvements in procurement practices if New Zealand Government Procurement had an assurance function that identifies and mitigates procurement system risk and recommends remedial action where required.
4. **Note** that in establishing a procurement assurance function it would be important to avoid duplication or further fragmentation of the role that other agencies already have in monitoring and assurance across the government system.
5. Negotiations
6. **Agree** to establish a procurement assurance function in New Zealand Government Procurement that identifies and mitigates procurement system risk and recommends remedial action where required.
7. **Direct** the Ministry of Business, Innovation and Employment to establish a procurement assurance function in New Zealand Government Procurement and the monitoring and assurance activities that will be undertaken by that function.
8. Negotiations
9. **Direct** the Ministry of Business, Innovation and Employment to work with Treasury, the State Services Commission and other key organisations to establish the monitoring and assurance activities that will be undertaken within the NZGP procurement assurance function to ensure continued cohesion and effectiveness in the government system.

Response to events

10. **Note** that providing additional authority to the Procurement Functional Lead through the Government Procurement Rules will enable it to respond to an emergency or crisis or wider policy priority and declare an appropriate procurement response measure or measures for the government procurement system.
11. **Note** that the exercise of the additional authority by the Procurement Functional Lead, enabling it to declare measures in response to a social, economic or environmental crisis, must be compliant with New Zealand's international obligations relating to government procurement.
12. **Agree** that the Procurement Functional Lead may declare appropriate procurement measures, under the new Rule, for the COVID-19 economic recovery period.
13. **Approve** the proposed amendments to the Rules, substantially in the form set out in Appendix B, and their publication as part of the Rules.

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14. **Direct** the Ministry of Business, Innovation and Employment to consult with key stakeholders before amending and publishing the Government Procurement Rules to this effect.

Government Procurement Strategy

15. **Note** that the development of a Government Procurement Strategy that sets out the government procurement priorities for agencies and suppliers and signals to suppliers what they can expect of government procurement will help to ensure a consistent approach to government procurement across the system.
16. **Direct** the Ministry of Business, Innovation and Employment to develop a Government Procurement Strategy, informed by the New Zealand Government Strategic procurement priorities set out in Appendix D, to set out government procurement priorities for agencies and suppliers and to signal to suppliers what they can expect of government procurement.

Leveraging construction procurement to support New Zealand's COVID-19 recovery

17. **Note** the procurement challenges identified may be a barrier to timely economic stimulus through Government construction procurement.
18. **Note** that the construction sector, through the engagement model of the Construction Sector Accord, will continue to be an area of focus to improve procurement practice and to drive economic, social and environmental outcomes during the recovery phase.
19. **Note** NZGP, in consultation with the Infrastructure Commission, the Infrastructure Reference Group and the Construction Sector Accord, will develop and issue specific procurement guidelines and protocols to support construction procurement, including guidance to support the use of appropriate accelerated procurement approaches.
20. **Note** while the building and construction sector is currently considered to emit relatively low levels of greenhouse gas emissions, recent research estimates that the sector could be directly and indirectly responsible for up to 20% of New Zealand's greenhouse gas emissions and about half of these emissions result from the materials and processes used in the construction of new buildings.
21. **Direct** the Ministry of Business, Innovation and Employment to work with key stakeholders and agencies to develop appropriate guidance on assessing carbon emissions generated by building materials and construction processes in government funded new builds.
22. **Agree** to introduce a minimum requirement for procuring agencies to consider, for government new builds, at the initial concept/request for proposal stage, the amount of emissions generated by:
 - a. Building materials, this includes raw materials, transportation of raw materials and materials manufacturing processes; and
 - b. Construction processes, this includes transportation of building materials and the construction processes used during the build.

Other recovery initiatives

23. **Direct** the Ministry of Business, Innovation and Employment report back to Cabinet by February 2021 on progress with implementing specific procurement recovery initiatives.
24. **Authorise** the Minister of Economic Development to approve on behalf of Cabinet any changes to the Government Procurement Rules required to give effect to these recommendations.

I N C O N F I D E N C E

Authorised for lodgement

Hon Phil Twyford

Minister for Economic Development

I N C O N F I D E N C E

Appendix A: Example of how a targeted intervention might be carried out for a procurement that has not gone well

The procurement:

- A District Health Board was seeking an innovative approach to providing health care services to rural communities.
- The Chief Executive led the project and a decision was made to directly approach a provider of virtual health care services and to enter into a two-year trial contract with the provider. The Chief Executive intended that at the end of the two-year trial the DHB would go back to the market and undertake a formal tender process based on what it had learned during the two-year trial.

The issues:

- There was no formal planning for the procurement, no documented analysis of the market or of options available before the provider was approached.
- The procurement was not signalled in the DHB's Annual Procurement Plan.
- A business case and procurement plan were only prepared after the draft contract had been prepared.
- No advice was sought from the legal team or procurement advisor until after the draft contract had been prepared.
- There was no evidence of any consideration of the Government Procurement Rules or internal procurement policy.
- A review of the service at the end of the two-year trial period found that the service had cost significantly more than estimated.

How the procurement issues would be addressed under the new regime:

- At any time NZGP could be contacted by any concerned party in the DHB (or elsewhere) to provide procurement assurance and assistance. This could include support from qualified and experience procurement professionals either remotely or in person, an assessment of any documents that had been created or identification of any missing documentation and remediation if appropriate. A review would be carried out across the system to identify if the supplier was operating elsewhere and what kind of risk might arise in other contracts as a result of the issues identified in this particular project.
- Once a procurement issue was identified NZGP would be able to provide and support the DHB to mitigate risk. Such mitigations could include, reviewing and assisting the DHB to develop and introduce enhanced internal processes and procedures, boosting procurement capacity and capability in the short-term and support the DHB to develop internal capacity and capacity in the longer-term. It could also include the provision of qualified and experienced resource to step-in and either continue or end the procurement process if necessary with the appropriate authority having been obtained.
- There may be a number of agencies either in the health sector or in other sectors that have a need for technology solutions to support communities. A cross-sectoral approach could be taken led by the PFL or agencies with specific expertise in this area, where appropriate. A strategic approach could help to avoid ad hoc purchasing decisions. Sectoral approaches could include agencies seeking to support clusters of suppliers to develop innovative solutions for communities across the health and social sectors, for example.

Appendix B: Proposed new Procurement Functional Leader rule for the Government Procurement Rules

New Rule 12A - Procurement response measures

1. Free and frank opinions



2. For the purposes of the *Rules*, such measures apply in accordance with their terms.

Appendix D: New Zealand Government Strategic Procurement Priorities

New Zealand Government Strategic Procurement Priorities	
<i>Government Procurement is required to deliver public value for New Zealand</i>	
To achieve this Government will:	Government Agencies will be required to:
Drive change through leadership	<ul style="list-style-type: none"> • Involve senior leaders early and ensure procurement analysis is incorporated into strategic planning, reporting and decision-making. • Operate at pace; challenge organisational behaviours, procurement practices and appetite for risk.
Strengthen capability and assurance	<ul style="list-style-type: none"> • Ensure procurement professionals are properly trained and capable. • Enhance organisational understanding of procurement and deliver services where and when needed. • Ensure appropriate assurance of procurement activities.
Realise public value and increase benefits	<ul style="list-style-type: none"> • Use procurement strategically to deliver economic and social recovery. • Ensure procurement policies and processes are flexible, simple, accessible and encourage innovation. • Ensure procurement decisions are not driven by cost alone.
Build resilience in supply markets	<ul style="list-style-type: none"> • Create more opportunities for businesses of all sizes including enabling easy access to and improved distribution of government contracts. • Build and maintain sustainability of key supply markets and supply chains.
Use technology to deliver results	<ul style="list-style-type: none"> • Invest in and use technology to support strategic planning, managing, monitoring and reporting on procurement activities.

Appendix E: Agencies consulted on the draft Cabinet paper.

Accident Compensation Corporation, AgResearch Limited, Airways Corporation of New Zealand Limited Arts Council of New Zealand Toi Aotearoa, Auckland District Health Board, Bay of Plenty District Health Board, Broadcasting Commission (NZ On Air), Broadcasting Standards Authority, Callaghan Innovation, Canterbury District Health Board, Capital and Coast District Health Board, Children's Commissioner, City Rail Link Limited, Civil Aviation Authority of New Zealand, Commerce Commission, Counties Manukau District Health Board, Criminal Cases Review Commission, Crown Infrastructure Partners Limited, Crown Irrigation Investments Limited, Crown Law Office, Department of Conservation, Department of Corrections, Department of Internal Affairs, Department of the Prime Minister and Cabinet, Drug Free Sport New Zealand, Earthquake Commission, Education New Zealand, Education Payroll Limited, Education Review Office, Electoral Commission, Electricity Authority, Energy Efficiency and Conservation Authority, Environmental Protection Authority, External Reporting Board, Financial Markets Authority, Fire and Emergency New Zealand, Government Communications Security Bureau Government Superannuation Fund Authority, Guardians of New Zealand Superannuation, Hawke's Bay District Health Board, Health and Disability Commissioner, Health Promotion Agency, Health Quality and Safety Commission, Health Research Council of New Zealand, HealthSource New Zealand Limited, Heritage New Zealand (Pouhere Taonga), Human Rights Commission Hutt District Health Board, Independent Police Conduct Authority, Inland Revenue Department, Institute of Environmental Science and Research Limited, Institute of Geological and Nuclear Sciences Limited, Kāinga Ora—Homes and Communities, Lakes District Health Board, Land Information New Zealand, Landcare Research New Zealand Limited, Landcorp Farming Limited, Law Commission, Local Government New Zealand, Maritime New Zealand, Massey University, Meteorological Service of New Zealand Limited, MidCentral District Health Board, Ministry for Culture and Heritage, Ministry for Pacific Peoples, Ministry for Primary Industries, Ministry for the Environment, Ministry for Women, Ministry of Business, Innovation and Employment, Ministry of Defence, Ministry of Education, Ministry of Foreign Affairs and Trade, Ministry of Health, Ministry of Housing and Urban Development, Ministry of Justice, Ministry of Social Development, Ministry of Transport, Museum of New Zealand Te Papa Tongarewa Board, National Institute of Water and Atmospheric Research Limited, Nelson Marlborough District Health Board, New Zealand Antarctic Institute, New Zealand Artificial Limb Service, New Zealand Blood Service, New Zealand Customs Service, New Zealand Defence Force, New Zealand Film Commission, New Zealand Forest Research Institute Limited, trading as Scion, New Zealand Green Investment Finance Limited, New Zealand Infrastructure Commission/Te Waihanga, New Zealand Lotteries Commission, New Zealand Police, New Zealand Productivity Commission, New Zealand Qualifications Authority, New Zealand Symphony Orchestra, New Zealand Tourism Board, New Zealand Trade and Enterprise, New Zealand Transport Agency, New Zealand Walking Access Commission, Northland District Health Board, NZ Growth Capital Partners, NZ Health Partnerships Limited, Office for Māori Crown Relations - Te Arawhiti, Office of Film and Literature Classification, Oranga Tamariki – Ministry for Children, Otakaro Limited, Parliamentary Counsel Office, Pharmaceutical Management Agency, Predator Free 2050 Limited, Privacy Commissioner, Public Trust, Radio New Zealand Limited, Real Estate Agents Authority, Research and Education Advanced Network New Zealand Limited, Reserve Bank of New Zealand, Retirement Commissioner, Serious Fraud Office, Social Wellbeing Agency, Social Workers Registration Board, Society of Local Government Managers, South Canterbury District Health Board, Southern District Health Board, Southern Response Earthquake Services Limited, State Services Commission, Statistics New Zealand, Tairāwhiti District Health Board, Takeovers Panel, Tamaki Regeneration Limited, Taranaki District Health Board, Te Puni Kōkiri (Ministry of Māori Development), Te Reo Whakapuaki Irirangi (Maori Broadcasting Funding Agency), Te Taura Whiri I Te Reo Maori (Māori Language Commission), Telarc Limited, Television New Zealand Limited, Tertiary Education Commission, The Network for Learning Limited, The New Zealand Institute for Plant and Food Research Limited, The Treasury, Waikato District Health Board, Waitematā District Health Board, Whanganui District Health Board.

Appendix F: Summary of agency feedback on the draft Cabinet paper

- 1 Many of the agencies were broadly supportive of the strengthened PFL mandate but noted that clear principle-based criteria or guidance should be developed in consultation with agencies and to set out when and under what circumstances the PFL would use the new Rule to intervene in the government procurement system. A small number of agencies expressed some concern that strengthening the PFL mandate may have a negative impact on the agency's procurement function or would result in additional cost, particularly for small agencies.
- 2 A number of agencies expressed support for the enhanced monitoring and assurance function, for example, noting that it will increase focus on outcomes. However, some noted that the enhanced monitoring and assurance function could result in increased resource requirements for both agencies and suppliers in order for them to meet new reporting and compliance requirements. This should be taken into consideration when developing the new function.
- 3 There was a high level of support from some agencies of the proposal to introduce a sustainable construction procurement requirement. It was suggested that a whole-of-life approach should be taken to maximise the benefits of the proposal. A number of agencies noted that the proposal is likely to add cost and complexity to the procurement process for both agencies and suppliers.
- 4 It was noted by several agencies that while there are likely to be benefits from enabling accelerated procurement processes, pace would need to be balanced with ensuring that:
 - 4.1 Procurement processes are sufficiently robust to avoid issues with quality and manage risks;
 - 4.2 Other outcomes, such as ensuring fair and safe working conditions, are also achieved;
 - 4.3 New Zealand businesses are not disadvantaged.
- 5 Most agencies supported increasing access to government procurement for New Zealand business but suggested that a range of other initiatives or outcomes should also be included , such as ensuring a continued focus on fair and safe working conditions for workers, increased emphasis on skills and training, improving wages and addressing modern slavery issues, supporting people to get off the 'bottom-rung', requiring family friendly policies, increasing the emphasis on supporting Māori and Pasifika workers and businesses, ensuring New Zealand workers and businesses benefit and reducing barriers for small businesses to enable them to compete for government contracts.
- 6 Agencies were generally supportive of using technology to improve efficiency and to streamline and automate. In particular, a number of agencies noted that the real-time procurement pipeline has the potential to add value but noted that there is the potential for some level of duplication to be introduced and that this could result in additional administrative burden for agencies. It was also noted that if agencies do not update the procurement pipeline until procurements are certain the pipeline will not provide a good view of forward procurement opportunities. These factors are being taken into consideration as the implementation of the procurement pipeline proceeds. For example, the Infrastructure Commission recommended that NZGP work with them to avoid duplication between the procurement pipeline and the Infrastructure pipeline.

- 7 A number of agencies supported the PFL providing additional procurement capability. One agency noted that funding of this would need to be carefully considered to ensure small agencies are able to access this support without undue cost. A number of agencies noted that additional capability needed to be tailored to the needs of the particular agency and project (e.g. specific sector or technical knowledge) to ensure maximum benefit and that other skills are sometimes required for complex procurements, such as project management support.
- 8 The State Services Commission note that the proposal to change the scope, mandate and assurance functions are broadly consistent with the direction of travel for functional leads; but that this should occur in consultation with the State Services Commission.
- 9 Negotiations

