

8 April 2025

Ministry of Business, Innovation and Employment

By email: nzgprulesreview@mbie.govt.nz

Tēna koē

Re: Submission on the proposed Government Procurement Rules 5th edition

Thank you for the opportunity to submit on the proposed 5th edition of the Government Procurement Rules (Rules). This submission reflects the views of Engineering New Zealand. Engineering New Zealand represents over 23,000 engineers, many of whom engage in government contracts.

Engineering New Zealand is supportive of the efforts to simplify the Rules and enhance clarity, transparency and accountability. These changes should make the Rules easier to understand and use. We have long advocated on ways to improve government procurement practices to help ensure procurement delivers the best possible outcomes for government, industry and New Zealand.

While procurement practices have improved over time and there has been a lot of work done to strengthen and streamline procurement practice across government and industry, the industry still has concerns about some of the common behaviours. The use of special conditions in standard contracts remains the primary concern for the sector. The use of these conditions often inappropriately alters the balance of risk, and increases costs and time for all those involved in the procurement process.

Support for Submission from ACE New Zealand

Engineering New Zealand endorses the submission made by the Association of Consulting and Engineering New Zealand (ACE New Zealand), which has been developed with support from engineers with significant experience with government procurement. Their submission raises many points of key concern for engineers and provides recommendations that would help improve outcomes of infrastructure projects. We wish to highlight the following points from the ACE New Zealand submission:

- Concerns around protracted and bespoke procurement practices by government agencies. This is the number one challenge the industry faces when engaging in government procurement.
- The need to grow procurement capability in the public sector and encourage effective partnerships between the public and private sector.
- The recommendation to capture data on the economic benefits of procurement to provide better understanding of the economic benefits being applied and implemented (Rule 8). This could also help those applying for AOG contracts to understand economic benefits that are a priority for each agency and would likely improve proposals in the future.
- Concerns around Rule 15- Pre-conditions. We agree that there is a trend where pre-conditions are not being used in line with the intent of this Rule, instead they are sometimes used to circumvent negotiation of reasonable contract terms. This behaviour can cause the industry to become more risk adverse and exclude small to medium businesses that cannot take on additional risk.

- The acknowledgment that the costs to tender can be high and this needs careful consideration in the procurement process (Rule 18).
- The recommendations provided surrounding All-of-Government Contracts (Rule 38). The industry has worked with Government to agree terms for the NZS3910 and the AOG CCCS but special conditions are still being used to inappropriately transfer risk or add unnecessary cost to the process. These recommendations would go a long way to improve practice and behaviours for both the government and industry.
- Calls to create a more responsive pathway to address concerns about compliance with the Rules (Supplier Complaints). Issues raised during the process need to be addressed fairly and quickly without affecting issues of probity.

Additional comments on Rules 34 and 35

Engineering New Zealand is strongly supportive of Rules 34 and 35 that require agencies to have contract management systems and plans. This should help create more transparent and efficient procurement processes. However, we believe that contract management practices could be improved by:

- Enabling agencies to bring technical experts in early and at the decision-making table. This will help ensure projects have realistic estimates, scope and risks are appropriately managed from the beginning.
- Requiring evaluation and lessons learnt practices. Agencies should have a focus on continuous improvement that fosters a culture of no blame. This would help ensure both agencies and industry learn from each project and work together to improve.
- Supporting agencies to improve their scope management processes. Scope creep and scope variations can have significant impacts on costs and time.

Increased use of Crown Infrastructure Delivery

There are agencies with considerable expertise in good procurement practices that could be better leveraged. For instance, Crown Infrastructure Delivery could be called on to assist in infrastructure procurement.

Conclusion

Engineering New Zealand appreciates the opportunity to provide feedback on the Rules. We are supportive of the simplified structure and efforts to improve clarity, transparency and accountability. Overall, these changes should make the Rules simpler to use and will improve procurement practices, if accompanied by training and improved capability. However, there is an opportunity to further enhance the proposed Rules as outlined.

Nakū, nā



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Chief Executive