

**Civil Contractors New Zealand submission on the proposed Government Procurement Rules (5<sup>th</sup> Edition 2025)**

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**Introduction**

Thank you for the opportunity to submit on the proposed Government Procurement Rules.

**Civil Contractors New Zealand (CCNZ)** the industry association for horizontal construction in New Zealand. We represent more than 800 member businesses and organisations involved in horizontal infrastructure construction, including more than 550 large, medium-sized, and small businesses in civil engineering, construction, and general contracting. Our 300 associate members provide valuable products, support, and services to contractor members. We live and work in all communities across New Zealand.

Our members play a vital role in the development of our country, our economy, and our way of life. They are responsible for the physical construction and maintenance of NZ's transport networks, water networks that bring fresh water to houses and wastewater to treatment plants, cables that bring the internet to homes and businesses, ports, airports and private developments.

They work to construct wetlands as part of projects, as well as maintaining riverbanks, parks and great walks, and a significant amount of work is procured by central and local government clients. In short, government procurement is relevant to civil contractors because they construct and maintain the country's horizontal infrastructure.

CCNZ has been involved in procurement consultation, and has in the past conducted significant research on construction procurement processes, not least in [\*Creating value through procurement: a report into public sector procurement of major infrastructure projects\*](#), known as the 'Entwine Report', commissioned as a wide-ranging overview of government infrastructure construction procurement practices.

## EXECUTIVE SUMMARY

The [announcement of the new rules](#) from Hon. Nicola Willis focuses on making it easier for businesses to participate, reducing complexity and applying an 'economic benefit' test. CCNZ supports the intent to reduce complexity and ensure the rules are adding value.

Our submission focuses on the following points:

- **Reducing the number of rules**

The Government Procurement Rules are currently too cumbersome for both clients and service providers to understand and apply consistently. So, they are used in an arbitrary way.

CCNZ supports moves to reduce complexity in the government procurement rules. We recommend the rules are reduced in number and complexity so they can be well understood and consistently applied

- **Supporting the shift from vague 'broader outcomes' to economic benefit**

While we understand the intention behind the establishment of 'broader outcomes' initiatives from the previous edition of the procurement rules, these have not been applied consistently, or in a way that has enabled the industry to deliver both broader outcomes and value for money. Often, these initiatives had no costs allocated.

CCNZ supports the replacement of the broader outcomes rules with economic benefits criteria. Especially the notes on application, which include skills, training, qualifications and local workforce.

- **Recognising the role of procurement in improving capability and capacity**

Procuring to increase construction workforce capability and capacity through training and qualifications will increase quality and reduce project costs in the long term.

- **Ensuring the rules add value**

The procurement rules should be held to the lens of whether they are adding value or just increasing workload. For instance, if prequalification is done, this should add value by supporting future tenders and reducing the workload on suppliers by reducing duplication in provision of information.

- **The importance of market engagement**

Suppliers often have valuable knowledge that can contribute to a project in its development, through supplier engagement. CCNZ supports rules that allow for early supplier engagement to highlight project practicalities and deficiencies and ensure the latest techniques and technologies can be recognised through procurement.

- **Supporting positive payment times**

CCNZ supports positive payment times and swift payment of invoices, but provides the caveat that the system used to manage this should be fit for purpose.

## Detailed submissions

### 1. Reduction of number of Rules

It's pleasing to see rules have been somewhat reduced, from 71 to 47.

**However** – the Rules remain incredibly complex. In some areas, they are contradictory (e.g. use of All of Government panels vs engaging small to medium businesses, most of whom struggle to apply with the time and compliance requirements involved in ongoing AOG panel representation).

A large proportion of the Rules are not core or relevant to all agencies. Also, it appears the Rules do not need to apply for Construction works if the whole of life cost is \$9M or less. This is a loophole that allows agencies to ignore the Rules for a huge number of contracts.

Add to this the dozens of documents contained under the [Construction procurement guidelines](#) (although these are helpful resources), and it is clear that meeting the full range of terms in the current rules is exceedingly difficult.

Some small agencies may not have the capacity or capability to follow all of the rules. So, the rules are often picked and chosen as suits agencies, with differing levels of priority applied to different rules.

Non-compliance is rife, not only due to the confusion and complexity, but also because the rules are not mandatory for many public sector organisations, because some of the rules are seemingly contradictory, and because there do not appear to be any common sanctions or meaningful penalties for breaches.

#### Recommendation:

- One option is to start from scratch. Develop a core set of rules (maximum 15) that apply to all (not just the Charter and the Principles, which are too vague and subject to interpretation to be applied consistently or useful as Rules).
- Provide clear requirements for all public sector organisations to follow the rules
- If the new Rules are to be successfully implemented, there needs to be greater audit function and clarity hand-in-hand with the Rules, alongside focused training programmes to increase compliance with the Government Procurement Rules.

### 2. Scoring systems

There appear to be no requirements for agencies to develop scoring systems in advance of reviewing the responses. This is distinct from the evaluation criteria, which are required to be notified (see Rule 18).

This is a fundamental and critical omission. A lack of predetermined factual scoring mechanisms frequently leads to subjective scoring. Or sometimes scoring on the basis of what is seen in responses, rather than clarifying client priorities for businesses looking to tender on government projects so they can make an accurate tender based on project needs.

#### Recommendation:

A new rule should be put in place that all procurements should be supported by a pre-determined, fact-based scoring system that:

- is reviewed and agreed by evaluators prior to review of the responses; and
- minimises generic, inexplicit or subjective descriptions (such as “Excellent” etc).

### 3. Contract management requirements

We support the inclusion of requirements for contract management systems and plans.

However, Rules 34 and 35 are silent on any requirement to monitor whether undertakings made in a successful proposal are delivered by the contractor. This practice is fundamental to ensuring that the value promised that contributed to the decision to award the contract to the successful tenderer, is delivered.

The Procurement Lifecycle components are currently often disjointed and fragmented: elements of the Procurement Planning are not effectively used to guide sourcing tools; and the basis for sourcing successful suppliers is absent from contract management systems. Further, review of whether the contract’s desired outcomes were delivered is seldom completed and only rarely or informally incorporated into future planning

#### Recommendation:

Inclusion of outcome monitoring mechanisms within the contract management system – i.e. that those undertakings in the winning tender which contributed to their success, are then captured in detail; and a basis for monitoring them is included within the Contract Management Plan; and reported on within the Contract Management System.

Where relevant, the reports should be incorporated into planning for future associated contracts.

### 4. Revised focus on public value

We are strongly supportive of the renewed focus on Public Value and economic benefits to NZ.

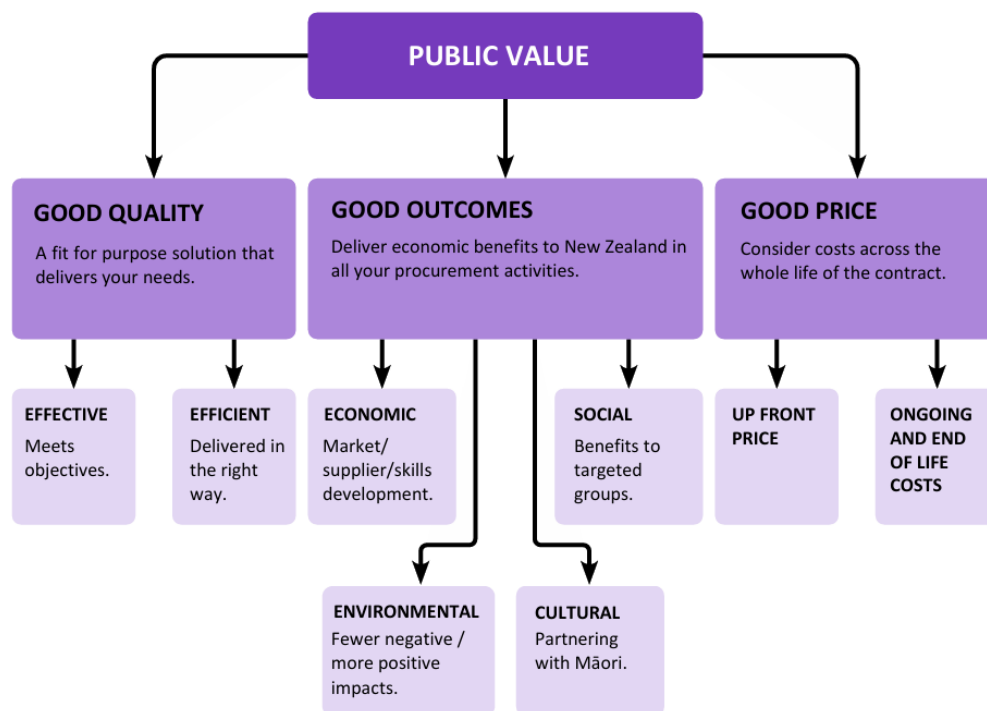
The legacy of targets that were previously put in place under the precious broad social outcomes approach have become well embedded in procurement practice.

#### Recommendation:

The re-focus on public value and economic outcomes must be strongly reinforced to recalibrate procurement priorities in practical contexts. Training and audit practices should be put in place to heighten awareness of the obligations of agencies to focus on these areas.

### 5. Public Value definition

Note that the diagram on page 7 provides a useful roadmap for Public Value definition.



However, there are some overlaps between Social Outcomes and Cultural Outcomes, and in the interest of reducing complexity, perhaps these functions should be combined.

The description of the sole 'Cultural Outcomes' as "Partnering with Māori" omits consideration of other cultures or acknowledgement that NZ has increasingly diverse cultures represented.

#### Recommendation:

Combine Social and Cultural Outcomes and broaden the explanation to include 'benefits to communities' or 'benefits to groups' – this is inclusive of Māori, but provides a broader and more inclusive perspective on the diverse nature of NZ communities, including (for example) community volunteer or environmental initiatives, immigrants, diverse ethnic, racial and religious groups, heritage groups, sports and interest groups, etc.

Perhaps the simplest way to put this would be to combine cultural and social outcomes, and change the definition to 'Benefits to Māori and other communities'.

## 6. Increased emphasis on planning

We support the clear increased emphasis on planning, particularly the focus on economic benefits.

**Value of market analysis:** The inclusion of market analysis provides invaluable intelligence to enable right-sizing of the procurement tools, so that a competitive yet manageable number of suppliers responds.

Many procurement teams however do not currently focus sufficiently on market analysis in their planning, or in engaging with suppliers around forward works intentions, which results

in poor understanding of project needs, and too few (or too many) responses to result in a cost-efficient yet competitive process.

**Risk and Opportunity Analysis – Focus on Supplier-controlled risks:** We note that the inclusion of risks and opportunity analysis most often omits consideration of the risks and opportunities that are under potential suppliers' control; and focus solely on agency procurement risks.

Understanding and management of risks that are under suppliers' control, and opportunities that suppliers may bring to add value to a project, are fundamental drivers to effective supplier selection. Suppliers that demonstrate understanding and effective management of project-specific risks and opportunities will inevitably deliver better contract outcomes.

#### **Recommendations:**

- Early supplier engagement should be strongly encouraged as part of planning, particularly to support right-sizing of procurement processes so that time and effort is not wasted on unsuitable responses.
- The Risk and Opportunity analysis section of procurement planning should clearly focus on supplier-controlled risks, whose analysis should then provide clear alignment to the methods, tools and scoring systems developed for supplier selection.

## **7. Supplier panels**

It is helpful to see focus on supplier panels (Rule 23).

However, we note that Supplier Panels and All of Government Contracts often exclude small to medium businesses due to the complexity of application and compliance costs, hence can be counter-productive to elements of the Principles and the Charter that encourage provision of opportunities to these types of organisations.

Information on page 29 (rule 12) notes exemptions to open advertising if there is a supplier panel. Supplier panels and all-of-government panels often have large numbers of members.

Allowing “appropriate selection” – see Rule 23 section 7a – i.e. exemptions from open advertising *within that panel* - implies that agencies may invite certain tenderers from that panel without extending the opportunity to all those eligible from the panel. This can lead to subjective decisions leading to exclusion of capable suppliers from procurement opportunities.

Where tenders are not advertised to all panel suppliers, this effectively creates the potential for anti-competitive behaviour and favouritism to be allowable within those panels.

We note that Rule 24 on Pre-Qualified Suppliers requires agencies to openly advertise the contract opportunity, noting the qualification requirement.

#### **Recommendation:**

- For consistency, open advertising should be required within a Supplier Panel or All of Government Panel (with the relevant preconditions noted)



## 8. Strong positive feedback on Rule 36 on Prompt Payment times

CCNZ strongly supports prompt payment times, as cashflow is very important to businesses in conducting their business efficiently.

However, as noted above, what systems will be put in place to monitor this and what sanctions will be due to those who do not.

### Recommendation:

- Ensure a working and efficient system is in place before bringing in this rule
- Ensure agencies are compliant and audited on performance regarding this rule

## 9. Strong positive feedback on Rule 36 on Prompt Payment times

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## CONCLUSION

Thank you for your time in reading this submission.

CCNZ looks forward to the implementation of a simpler set of value-based rules, and is happy to contribute in more detail if required.

Several of our members have advised us of the issues their businesses have faced due to existing procurement issues, and what they think would be required to overcome these issues. We are happy to present to you further on these issues to provide examples of where procurement has not been successful, if that is helpful.

Yours sincerely,



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Principal Business Partner





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