

Response by

## Hamilton City Council Staff

### EXTENDING THE GOVERNMENT PROCUREMENT RULES TO GOVERNMENT ENTITIES IN THE NEW ZEALAND PUBLIC SECTOR - MBIE DISCUSSION DOCUMENT (OCTOBER 2020)

23 November 2020

It should be noted that the following response is from staff at Hamilton City Council and does not necessarily represent the views of the Council itself.

#### 1.0 SUMMARY OF KEY POINTS

- 1.1 Support the overall intent and direction of MBIE's October 2020 discussion document 'Extending the Government Procurement Rules to Government Entities in the New Zealand Public Sector'.
- 1.2 The rules and processes used by New Zealand's larger councils (including HCC) are almost entirely based on the Government's Procurement Rules.
- 1.3 For Waka Kotahi Transport Agency funded work, HCC follow their manual "to the letter".
- 1.4 Our principles are based on stated principles of MBIE - there is very little beyond 'local impact' factoring which does not mirror Government Rules.
- 1.5 HCC is a member of the Waikato Local Authority Shared Services (WLASS), which was initially established to provide local authorities in the Waikato Region with a vehicle to procure shared services.
- 1.6 The key purpose of WLASS has evolved and it now drives collaboration between councils, and aims to improve customer service and performance, and to reduce costs.
- 1.7 Our response also supports the submission made by SOLGM to the Discussion Document released by MBIE, and in particular the following key points:
- 1.8 *Local government is an autonomous sphere of government, and not an arm of the Crown.*
- 1.9 *The statutory purpose of local government empowers local authorities to play a broad role in promoting the sustainable development of their district. In so doing local authorities and their communities are likely to prioritise different outcomes quite differently or even reach different solutions for local problems.*
- 1.10 *For example, many local authorities operate variants of buy local policies - where local authorities will favour local suppliers where a price is within a defined range of the lowest bidder. Other local authorities have an expectation that their suppliers will be paying a living wage to the suppliers' staff. It appears that central government intends to replace the local authority's judgements with their own.*
- 1.11 *The sector accepts that central government is accountable to the taxpaying public and therefore that it should accept that funding an activity provides central government with some skin in the game, and some right to setting the rules.*

## 2.0 INTRODUCTION

- 2.1 Staff from Hamilton City Council (HCC) support the overall intent and direction of the Ministry of Business, Innovation and Employment's discussion document 'Extending the Government Procurement Rules to Government Entities in the New Zealand Public Sector' (referred to throughout this response as the Discussion Document).
- 2.2 The view of many of the Procurement staff from Waikato Local Authority Shared Services (WLASS - refer Section 4.0) is that these rules are an attempt to 'reign in' smaller councils where there is not a large level of adoption to the Government Rules of Procurement, and where there have been some concerns from the Office of the Auditor General.
- 2.3 The rules and processes used by New Zealand's larger councils (including HCC) are almost entirely based on the Government's Procurement Rules. For Waka Kotahi New Zealand Transport Agency funded work, HCC follow their manual "to the letter".
- 2.4 Our principles are based on stated principles of the Ministry of Business, Innovation and Employment (MBIE) - there is very little beyond 'local impact' factoring which does not mirror Government Rules.
- 2.5 That said, we do not believe that a wholesale adoption would be the correct course for HCC, as we would then be handing over any 'local nuanced elements' where we have autonomy for our processes and procedures to work for our community in our Procurement activity.
- 2.6 Our response to Part 2 of MBIE's questionnaire is outlined in Section 5.0 - 8.0.

## 3.0 SUPPORT FOR SOLGM'S SUBMISSION

- 3.1 Overall, we support the content of SOLGM's submission to the Discussion Document, and in particular the following key points:
  - *Local government is an autonomous sphere of government, and not an arm of the Crown.*
  - *The statutory purpose of local government empowers local authorities to play a broad role in promoting the sustainable development of their district. In so doing local authorities and their communities are likely to prioritise different outcomes quite differently or even reach different solutions for local problems.*
  - *For example, many local authorities operate variants of buy local policies - where local authorities will favour local suppliers where a price is within a defined range of the lowest bidder. Other local authorities have an expectation that their suppliers will be paying a living wage to the suppliers' staff. It appears that central government intends to replace the local authority's judgements with their own.*
  - *The sector accepts that central government is accountable to the taxpaying public and therefore that it should accept that funding an activity provides central government with some skin in the game, and some right to setting the rules.*

## 4.0 HCC IS A MEMBER OF WAIKATO LOCAL AUTHORITY SHARED SERVICES (WLASS)

- 4.1 HCC is a member of Waikato Local Authority Shared Services (WLASS - refer [here](#)), which was initially established to provide local authorities in the Waikato Region with a vehicle to procure shared services.
- 4.2 The key purpose of WLASS has evolved and it now drives collaboration between councils, and aims to improve customer service and performance, and to reduce costs.
- 4.3 Some of the WLASS achievements are Shared Valuation Data Service (SVDS), Local Government Health and Safety Pre-qualification Scheme, Insurance, Waikato Building Consent Group, Road Asset Technical Accord (RATA), Waikato Regional Transport Model (WRTM), Future Proof, Aligned Resource Consent Planning, Regional Infrastructure Technical Specifications (RITS), Collaboration Agreement

with Energy Efficiency Conservation Authority (EECA), Professional Services Panel (PSP), IT Professional Services Panel, Waikato Regional Aerial Photography Service (WRAPS), and more.

- 4.4 Member councils pay a small annual levy, depending on their size. Services obtained are funded on a user pays basis – each council pays for and receives the financial benefits of its share of any particular service.
- 4.5 The contracts currently available to all shareholding councils are:
- Accommodation.
  - Courier and Postal Services.
  - Economic Data.
  - Financial Accounting Package.
  - Fleet Management.
  - Health and Safety Training.
  - Insurance Brokerage Services.
  - Internal Audit Services.
  - IT Professional Services Panel.
  - Laboratory Services.
  - Multi-function Devices (through BOPLASS).
  - Occupational Health Services.
  - Print, Mail house and e-services.
  - Professional Services Panel.
  - Vehicle Utilisation.
  - Water Chemicals (access to some providers restricted).
- 4.6 WLASS is a party to numerous joint procurement contracts between the company, shareholding councils and suppliers. Some contracts involve all of the shareholding councils, while others only have some of the shareholding councils participating.
- 4.7 Syndicated contracts are also available to all shareholders through HCC for library book buying, pipe procurement and access to an HR Panel.
- 4.8 Support is available to assist shareholding councils to use the 'All-of-Government' (AoG) suite of contracts. Further procurement opportunities continue to be identified and implemented.

## **5.0 PART 2 – SECTION 1 AND 2 OF THE RULES**

- 5.1 **Rules 1 to 34 (excluding Rules 16-20). Note: MBIE's introductory text for Questions 13 and 14 is outlined in Section 5.2.**
- 5.2 *These rules broadly deal with the applicability of the Rules and procurement planning, including:*
- *Who the Rules apply to.*
  - *When the Rules apply (e.g. to procurement above a certain value).*
  - *Requirements to openly advertise procurement opportunities.*
  - *Provisions relating to principles, integrity/corruption and non-discrimination.*
  - *Fair procurement conditions, such as allowing sufficient time for suppliers to respond to*

*procurement opportunities and technical specifications.*

5.3 **Question 13. Does your organisation apply Rules 1 to 34 (excluding Rules 16 to 20)?**

- None of the Rules
- A few of the Rules
- Some of the Rules
- **MOST OF THE RULES** (Note: Our response is very close to 'All of the Rules'. Although there are some very small differences, in essence we follow 99.9% of these particular Rules).
- All of the Rules
- Not sure

5.4 **Question 14. What would be the impact on your organisation if it were required to apply these Rules?**

- No impact
- **LOW IMPACT**
- Moderate impact
- High impact
- Significant impact
- Not sure

## **6.0 PART 2: SECTION 1 AND 2 OF THE RULES 'BROADER OUTCOMES'**

6.1 **Rules 16 to 20 – 'Broader Outcomes'. Note: MBIE's introductory text for Questions 15 and 16 is outlined in Section 6.2 - 6.6.**

6.2 *Broader outcomes are the secondary benefits that are generated by the way a good, service or work is produced or delivered. These outcomes can be social, environmental, cultural or economic benefits, and will deliver long-term public value for New Zealand.*

6.3 *Broader outcomes can also be described as 'social procurement' and require government entities to consider not only the whole-of-life cost of the procurement, but also the costs and benefits to society, the environment and the economy.*

6.4 *Government has taken a targeted approach to leveraging broader outcomes and is placing greater requirements on government entities to leverage a priority set of broader outcomes. These areas are:*

- *Increase New Zealand businesses' access to government procurement: increasing the number of New Zealand businesses contracting directly to government, and within the supply chain. This includes Māori businesses and Pasifika businesses.*
- *Increase the size and skill level of the domestic construction sector workforce: the government is leveraging procurement through construction to encourage businesses to increase the size and skills of their workforces.*
- *Improve conditions for workers and future-proof the ability of New Zealand businesses to trade: this priority protects workers from unfair and unsafe behaviour, and incentivises well-performing firms while ensuring they are not undercut by firms who have reduced costs through poor labour practices.*
- *Support the transition to a net zero emissions economy and assist the Government to meet its goal of significant reduction in waste by 2020 and beyond.*

6.5 *To maximise the effects of these priorities, government will designate contracts or sectors where one or more of the priority outcomes must be implemented.*

6.6 *For example, the All-of-Government motor vehicles contract is a designated contract for the priority: Support the transition to a net zero emissions economy. This means that government entities must take this priority into account when purchasing new vehicles.*

6.7 **Question 15. Does your organisation procure for social or broader outcomes?**

- Never
- Seldom
- Sometimes
- **MOST OF THE TIME** (Note: This depends on the interpretation of the question - HCC factors wider outcomes into its consideration, especially when tendering. However, there will always be transactional purchases where broader outcomes are not that relevant. But in essence, we adopt the mantra of “where appropriate” as per the Government Procurement Rules).
- Always
- Not sure

6.8 **Question 16. What would be the impact on your organisation if it were required to apply Rules 16 to 20?**

- No impact
- **LOW IMPACT** (Note: As we are currently developing our Broader Outcomes Rules to consider these in Procurement, we have local impact currently and are also tailoring. We attempt to increase access to local business, so in essence we have these in place already. If there was an impact, it would be very low, only the customisation).
- Moderate impact
- High impact
- Significant impact
- Not sure

## 7.0 PART 2: SECTION 3, 4 AND 5 OF THE RULES

7.1 **Rules 35 to 57.** Note: MBIE’s introductory text for Questions 17 and 18 is outlined in Section 7.2.

7.2 *These rules cover approaching the market in a fair and transparent way, awarding the contract to a successful supplier and rules about supplier lists. It includes rules about:*

- *Open advertising of procurement opportunities.*
- *Minimum information standards in the procurement notice/request for tender or proposal.*
- *Treatment of responses from suppliers.*
- *Informing suppliers of the decision to award the contract.*
- *Debriefing unsuccessful suppliers.*
- *Prompt payment of suppliers.*
- *A Pre-Qualified Suppliers List – a list of suppliers who a government entity has pre-approved as capable of delivering specific types of goods or services.*
- *A Panel of Suppliers – is a list of suppliers approved by a government entity as capable of delivery*

and who have agreed to the terms and conditions of supply, after which individual contract opportunities may be conducted as secondary procurements (and not openly advertised).

7.3 **Question 17. Does your organisation apply rules 35 to 57?**

- None of the Rules
- A few of the Rules
- Some of the Rules
- **MOST OF THE RULES**
- All of the Rules
- Not sure

7.4 **Question 18. What would be the impact on your organisation if it were required to apply Rules 35 to 57?**

- No impact
- **LOW IMPACT** (Note: These would be very minor, e.g. we use Tenderlink as a go-to-market platform instead of GETS - just very small differences).
- Moderate impact
- High impact
- Significant impact
- Not sure

## 8.0 PART 2: SECTION 6

8.1 **Rules 58 to 71. Note: MBIE's introductory text for Questions 19 and 20 is outlined in Section 8.2.**

8.2 *This section contains rules relating to government collaborative contracts, reporting and other standards. They include:*

- *The All-of-Government Contract (AoG). The AoGs establish supply agreements with approved suppliers for selected common goods and services purchased across government. All-of-Government contracts are designed to:*
  - *Save money by leveraging the collective purchasing power of government.*
  - *Improve engagement with suppliers.*
  - *Standardise procurement engagement with government.*
  - *Improve overall service quality for both government and suppliers. All government entities covered by the Rules must purchase from the AoGs unless there is a good reason not to.*
  - *All government entities covered by the Rules must purchase from the AoGs unless there is a good reason not to.*
- *Approved Government Model Templates that must be operationalised by government entities covered by the Rules. These templates were developed to improve the consistency of contractual terms across government.*
- *A reporting requirement to submit a Procurement Capability Index (PCI) self-assessment annually. The PCI is a tool that assists with evaluating and building procurement capability. It helps government entities identify areas where additional focus or resources may be required. It also provides MBIE with a cross-government view of procurement capability and identifies areas where more support is needed.*

8.3 **Question 19. Does your organisation apply Rules 58 to 71?**

- None of the Rules
- A few of the Rules
- Some of the Rules
- **MOST OF THE RULES**
- All of the Rules
- Not sure

8.4 **Question 20. What would be the impact on your organisation if it were required to apply Rules 58 to 71?**

- No impact
- **LOW IMPACT**
- Moderate impact
- High impact
- Significant impact
- Not sure

**9.0 FURTHER INFORMATION AND OPPORTUNITY TO DISCUSS OUR RESPONSE**

- 9.1. Should the Ministry of Business, Innovation and Employment require clarification of the above points, or additional information, please contact Igor Magud (Procurement Manager), phone 07 838 6923 or email [igor.magud@hcc.govt.nz](mailto:igor.magud@hcc.govt.nz) in the first instance.
- 9.2. Hamilton City Council staff would welcome the opportunity to discuss the content of our response with the Ministry of Business, Innovation and Employment in more detail.

Yours faithfully



**Richard Briggs**  
**CHIEF EXECUTIVE**