



PSA Submission

Extending the Government Procurement Rules to government entities in the New Zealand public sector

November 2020

About the PSA

The New Zealand Public Service Association Te Pūkenga Here Tikanga Mahi (the PSA) is the largest trade union in New Zealand with over 77,000 members. We are a democratic organisation representing members in the public service, the wider state sector (the district health boards, crown research institutes and other crown entities), state owned enterprises, local government, tertiary education institutions and non-governmental organisations working in the health, social services and community sectors.

The PSA has been advocating for strong, innovative and effective public and community services since our establishment in 1913. People join the PSA to negotiate their terms of employment collectively, to have a voice within their workplace and to have an independent public voice on the quality of public and community services and how they're delivered.

The PSA is an affiliate of the New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU).

Our submission

Thank you for the opportunity to comment on extending the government procurement rules to government entities in the New Zealand public sector.

The PSA supports good procurement rules in New Zealand and supports extending the rules to cover more of the public sector.

This submission covers two areas:

1. Why we support the extension of the procurement rules
2. What the Government can do to enhance these rules.

Why we support the extension of the procurement rules

The Public Service Association (PSA) Te Pūkenga Here Tikanga Mahi represents over 77, 000 people working in central and local government, District Health Boards (DHBs) and in government funded community public services. Our members have a professional and personal interest in high quality public services and infrastructure, and in decent working conditions for people working to deliver publicly delivered and contracted services.

Currently, the procurement rules apply across our areas of coverage including to Public Service departments, Crown agencies, DHBs, autonomous and independent Crown entities and Crown

owned enterprises; as well as to some but not all Crown Research Institutes (CRIs). The extension of the rules would cover further organisations where our members work, including State Owned Enterprises (SOEs) and local authorities.

The PSA agrees that strong procurement rules provide an opportunity to achieve better social and economic outcomes for New Zealanders, as well as ensuring appropriate spending of taxpayer money. However, the PSA recommends that the current procurement rules are strengthened further and provide organisations with firmer guidelines on environmental and social outcomes. Extending the rules to mandatorily apply to more of the public sector is one step towards ensuring organisations are held to account for poor procurement practices.

What the government can do to enhance these rules.

Public by default

We would like to see a greater emphasis on building the capacity and capability of the public service to deliver services directly, and a move to a 'public by default' approach. We advocate for the introduction of a broad public interest test before a decision is made to contract out a service. Included in such a test would be consideration of the impact of outsourcing on democratic accountability and control of a service, employment conditions of workers, and an assessment of the full and long-term costs and benefits to the government and to communities of contracting out.

Public good

The PSA recommends that specific standards are introduced to ensure that companies follow the legal requirements of operating in New Zealand. It is not in the public interest to have companies securing contracts when they have committed offences and the state has a responsibility to ensure that good practice for public good is enforced.

The rules should specify minimum standards and sanctions when a supplier hasn't respected, protected or fulfilled obligations, especially with regards to minimum standards and overall, with regards to the public good and interest. In addition, selection criteria need to specify when interested suppliers shall be excluded from participation in a procurement procedure such as previous criminal offences, breaches of labour law, labour exploitation or trafficking.

Worker voice

Procurement processes and outcomes are greatly enhanced by the inclusion of mandated worker voice through the contract design, procurement and implementation process and should be included as part of every tendering process and decision. We recommend that this be required of all public tenders and that union representation should be mandatory in the ongoing monitoring of that contract. This is to ensure that good employment practices are maintained in an open and transparent way.

Employment conditions

Many of our members working in contracted public services – such as in social services and in health and disability services - experience low wages, minimal employment protections, and insecure work. Currently, the procurement rules require improved working conditions only for designated

contracts, and thus exclude all these workers. Poor procurement processes, and poor employment conditions, have a very real impact on the lives of these workers.

The narrow and limited application of the improved working conditions outcome in the procurement rules is disappointing and undermines the Government's overall employment relations priorities within the state sector. For instance, the requirement in the rules for suppliers to adhere to *minimal* employment regulations undercuts the government's commitment to pay the living wage to people working in the Public Service. We acknowledge the governments committed to pay the Living Wage to those contracting directly with public service departments and encourage the government to implement this more widely prior to it being a general requirement.

The rules are also inconsistent with the government's intention to ensure basic protection for workers in all forms of work including employees, self-employed (or contractors) and workers in a triangular employment relationship (or labour hire workers). Procurement is one important policy tool to provide decent work regardless of how people's work is classified. Some governments agencies, including, for instance, the Inland Revenue Department, currently use labour hire companies to provide the large scale labour required to undertake core public service activities. People working under these arrangements are paid well below the living wage and have no employment security.

There is no discussion in the document on the Government's commitment to eliminating gender employment inequities. All employers are prohibited by law from discriminating on the basis on gender (as well as ethnicity) – including in pay rates – the procurement rules should require the elimination of all gender and ethnicity employment inequities. The legal requirement of suppliers to ensure workplaces are free of gender and ethnic discrimination needs to be clear in this document and in, MBIE's *Suppliers Code of Conduct*.

Public services that are outsourced are fulfilling part of the role and function of the state and should be subject to the same legislative and regulatory standards as state agencies. The PSA argues therefore that certain provisions of the Public Service Act – such as the obligation to be a good employer – should apply to organisations contracted to deliver public services.

Health and Safety

We are disappointed that the procurement rules do not require best practice in the area of health and safety for workers in contracted out services. In 2013 the 'Working Safer' document produced by the then Government as a blueprint for H&S reform following Pike River said: 'The use of government procurement processes to encourage better compliance by businesses will be explored'. It is disappointing that seven years later we are not really any further forward. The PSA encourages the government to require companies to use the SafePlus H&S assessment tool as a prerequisite for contracts and implement a requirement that companies demonstrate that they have effective worker participation and engagement systems.

The state must play a leadership role in modelling and requiring best practice in health and safety, throughout the supply chain; the reliance on "adequacy" throughout the document fails this responsibility.

Considering the current Covid19 pandemic and the health risks associated with this, the procurement rules need to be strengthened to ensure excellent health and safety practices. As previously mentioned, one of our most vulnerable workforces during this pandemic is our home support workers, who are some of our most at-risk front-line workers. In order to ensure the

government reaches the aim to enhance the social and economic outcomes, this group of workers should be protected.

Links to other system reviews

In the recent report “Re-designing the Health System” head by Heather Simpson, one of the key recommendations is to consider the potential of a commissioning frame in the health system. The framework should specify core components that need to be nationally consistent, while allowing DHBs the flexibility to contract for services that best meet their population’s needs. This includes ensuring that it partners with the Māori Health Authority to include specific provisions for commissioning Māori health services. The requirement would ensure that all providers funded with public money should be expected to abide by the charter, and other provisions of the commissioning framework.

The PSA recommends that this report is considered when looking at further enhancement of the procurement rules.

Conclusion

The procurement rules are an important lever to achieve economic and social change in the wider economy. Public money should not be spent in a way that avoids paying a living wage and other decent terms and working conditions. The coverage of the procurement rules should be extended to apply to the entire public sector and all work contracted by public sector organisations.

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