Position Statement – Government Procurement
Updated 4 February 2016

Executive summary
The Government Rules of Sourcing and the five Principles of Government Procurement represent procurement best practice for government agencies, and are intended to provide a flexible framework for making balanced procurement decisions.

However the framework has not been properly implemented, with the consequence that Kiwi businesses – and therefore the wider New Zealand economy - are missing out on an opportunity to compete for a fair share of the Government's annual $40 billion procurement programme.

In particular, balanced decisions are not being made, even though all government agencies are required to do so. As a result, many government tenders are still being evaluated on upfront cost alone and not taking into account social, environmental and economic factors as specified in the 4th Principle.

In keeping with the spirit of the procurement framework, Steel Construction New Zealand (SCNZ) wants to see all government agencies follow a fair, transparent and competitive tender process for its procurement of all good and services. We are asking for:

• Clear guidance to be given by the Ministry of Business Innovation and Employment to all government agencies on how to apply the Principles;
• The 4th Principle on balanced decision-making to be enforced; and
• All agencies to be held to account for their procurement processes and decisions.

We are also asking for Rule 22, which currently states subcontracting by a prime contractor is not subject to the procurement framework, to be amended so that the Rules apply to subcontracting where the value of any sub-contracts in a construction project exceeds 10% of the total contract value.

We are not seeking special treatment for Kiwi businesses. But it is our strong view that if the Government’s procurement framework is implemented as intended, greater economic benefits will flow, not just to our members, but also to other local suppliers of goods and services to the government, and therefore to NZ Inc. as a whole.
Background

1. It is estimated the New Zealand Government is responsible for procuring goods, services and works (construction and infrastructure) worth approximately $40 billion, or 18 per cent of New Zealand’s GDP, every year. Recognising the significance of this spend to our economy, the Government Rules of Sourcing (the Rules) were first published in October 2013 and the third edition came into effect on 1 July 2015.

2. The Rules represent procurement best practice for government agencies and provide a flexible framework designed to help them to make balanced procurement decisions. Not all government agencies are bound to follow the Rules. The Rules aim to ensure government agencies:
   a. Provide accountability regarding how taxpayers’ dollars are spent
   b. Promote open, transparent and competitive government procurement that delivers best value for money (not the cheapest upfront cost), does not discriminate against suppliers (whether domestic or international), and meets agreed international standards
   c. Encourage better commercial practice by agencies
   d. Support economic development and export opportunities for New Zealand firms by adhering to the country’s obligations under our Free Trade Agreements and the World Trade Organisation Government Procurement Agreement

3. For government construction tenders, the Rules apply to projects with a value of $10 million or more.

4. The Rules are underpinned by the five Principles of Government Procurement (the Principles), which apply to all government agencies (there are approximately 140) and provide the overarching values for the procurement framework. While not all agencies are bound to follow the Rules, all agencies must apply the Principles to their procurement decisions. The five Principles are as follows:
   1. Plan and manage for great results
   2. Be fair to all suppliers
   3. Get the right supplier
   4. Get the best deal for everyone
   5. Play by the rules

5. The 4th Principle – get the best deal for everyone – concerns balanced decision-making and requires all government agencies to:
   a. Make balanced decisions – consider the social, environmental and economic effects of the deal
   b. Encourage and be receptive to new ideas and ways of doing things – don’t be too prescriptive
   c. Take calculated risks and reward new ideas
   d. Have clear performance measures – monitor and manage to make sure you get great results
   e. Work together with suppliers to make ongoing savings and improvements
   f. Be accountable for the results – it’s more than just agreeing the deal

The case for balanced decision-making

1. The intent behind the 4th Principle is that government agencies seek the best value for taxpayers’ money over the lifetime of the goods or services, and make balanced decisions by factoring in non-price criteria such as social, environmental and economic effects. However, SCNZ is aware of cases where balanced decision-making is not being applied as part of major government construction and infrastructure tenders. Instead, the agency has awarded a contract to a supplier based on the lowest upfront cost, an approach which tends to favour overseas suppliers from lower-cost economies.

2. Taking a lowest upfront cost approach places our members at a disadvantage because, while its quality is world-class, New Zealand-fabricated structural steel can be 10-15 per cent more expensive than imported product. But modelling by economists BERL shows the multiplying effect of local jobs and taxes more than offsets the cost difference – a $10m saving in upfront cost is offset by a $14m benefit to the New Zealand economy.

3. SCNZ notes the progressive approach to steel procurement being taken by the UK Government which like the entire EU has signed up to the WTO GPA of which NZ is also a party to. The Public Contracts Regulations 2015 aim to remove barriers which prevent UK steel suppliers from competing effectively for public sector contracts. In October 2015 guidance was issued to UK government agencies regarding the procurement of steel on infrastructure, construction or other major procurement projects with a significant steel component3. The guidance includes specific instructions for:
   a. assessing the health and sustainability of potential suppliers in the supply chain at selection stage, including compliance with relevant health and safety and employment legislation;
   b. ensuring that the price or cost calculations are based on an assessment of the whole life cost and not lowest purchase price; and
   c. taking account of appropriate social and environmental impacts at the award stage where they are linked to the subject of the contract.

4. We also note the Canadian government – like New Zealand, a Trans-Pacific Partnership Agreement signatory – is seeking to include provisions in its procurement policy that reward sustainable practice and provide opportunities for Canada’s first-nation people.

5. Further, in markets such as the UK, the USA and Canada, governments are considering introducing tariffs in response to unfair trade practices, such as the dumping of cheap steel by China. Incorporating balanced decision-making into government tenders will help create a level playing field should such unfair trade practices occur in New Zealand; by taking the focus away from upfront cost, the need for sanctions could be avoided.

Subcontracting

1. Rule 22 encourages prime contractors that the Rules are considered in their subcontracting, however it is not mandatory. However, in the construction industry subcontractors are responsible for up to 90 per cent of the work performed. It makes no sense to exempt this vital part of the construction industry workforce from what is intended to be a best practise procurement approach.

2. Rule 22 needs to be amended to say the Rules should apply to all subcontracting and shall be applied to any subcontract where the value of the subcontract will exceed 10% of the total contract value.

What we are seeking

1. We want what’s best for NZ Inc. in the context of our international trade obligations, including our Free Trade Agreements and the World Trade Organisation Government Procurement Agreement. We support policy that benefits our industry and the country’s economy as a whole, especially if it leads to improved productivity and competitiveness, and the creation of more skilled jobs. Therefore, we support the overall intent of the Government’s procurement framework.

2. In keeping with the spirit of the procurement framework, Steel Construction New Zealand would like to see all government agencies follow a fair, transparent and competitive tender process, regardless of the goods or services being procured. All government agencies are obligated to observe the five Principles of Government Procurement. However, there is evidence the 4th Principle is not being applied, largely because agencies have not been given clear guidelines on how to apply the Principles, and there is no enforcement or accountability.

3. Therefore, we are asking for:
   a. Clear guidance to be given by the Ministry of Business Innovation and Employment to all government agencies on how to apply the Principles, in particular the 4th Principle on balanced decision-making;
   b. the 4th Principle to be enforced for all government procurement; and
   c. All agencies to be held to account for their procurement processes and decisions

4. In addition, we are seeking an amendment to Rule 22 so subcontracting is subject to the Rules where the value of the subcontract is in excess of 10% of the total contract value.

We are not seeking special treatment for Kiwi businesses. But it is our strong view that if the Government’s procurement framework is implemented as intended, greater economic benefits will flow, not just to our members, but also to other local suppliers of goods and services to the government, and therefore to NZ Inc. as a whole.

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Ends

Note: this position statement is to be published on the SCNZ website as a resource for members, industry, regulators and media, and be regularly updated as required