



All-of- Government (+) Contracting

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Agenda

- Eligibility
- Procurement rules – how they apply
- Secondary processes
- Different types of contracts
 - collaborative contracts
 - AoG
 - syndicated
 - common Capability
 - marketplace
 - framework agreements
- How to sign up
- Tips for reviewing.

Eligibility

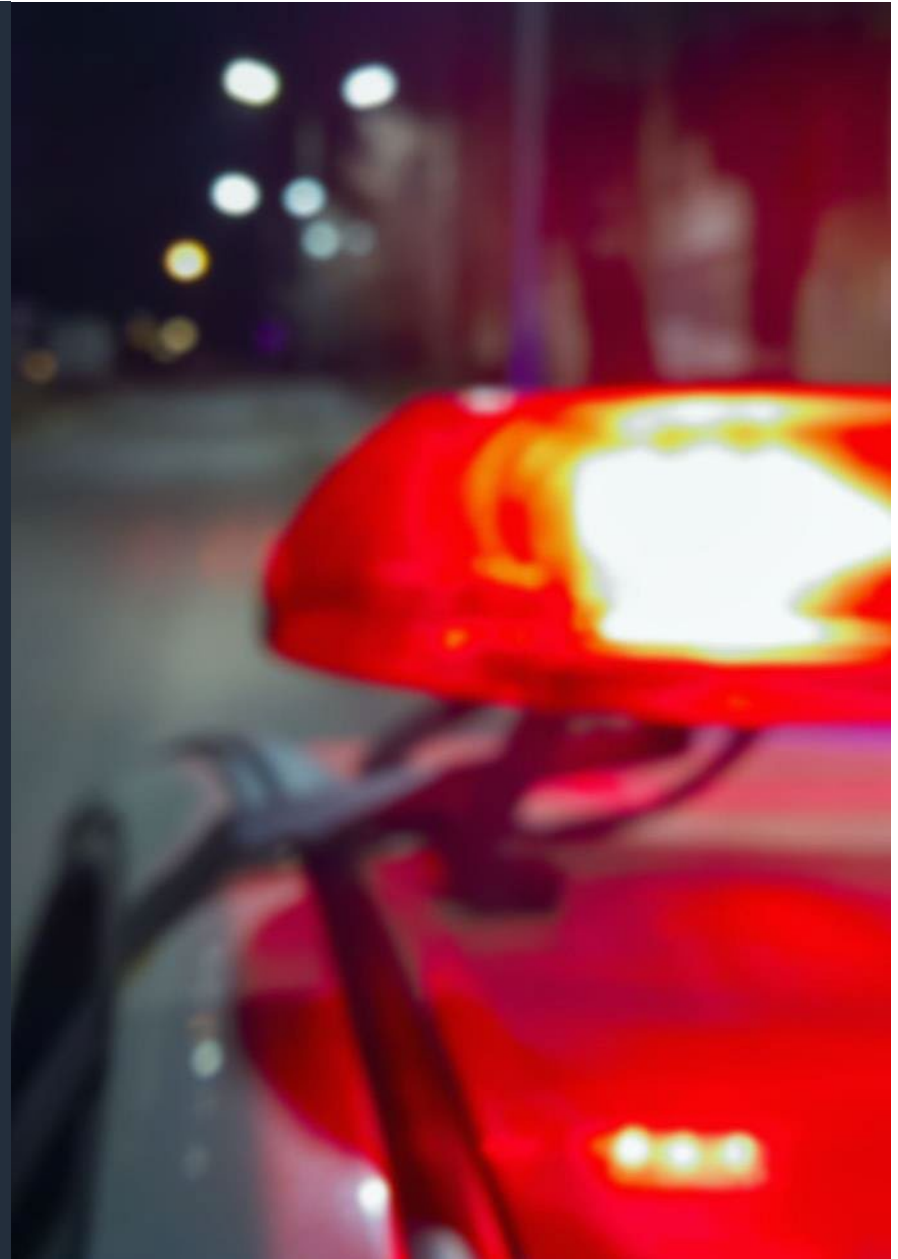
- Cabinet direction with list of agencies set eligibility over a decade ago
- Agencies subject to the procurement rules also eligible to use contracts
- List of agencies in Cabinet direction:
 - departments
 - Defence Force, Police, NZSIS, PCO, Clerk of the House of Representatives and the Parliamentary service
 - Crown entities
 - agencies in fourth schedule to Public Finance Act
 - Reserve Bank of New Zealand
 - Office of the Controller and Auditor-General, the Office of the Ombudsmen, and the office of the Parliamentary Commissioner for the Environment
 - state owned enterprises
 - local authorities.

Eligibility

- MBIE can approve further agencies individually, if not in a listed category, subject to a Cabinet-approved “control” test
- Approximately 2,500 eligible agencies, including schools
- MBIE’s procurement website has a list of eligible agencies
- Contracts are subject to negotiation, so eligibility can be slightly different for different contracts, depending on position agreed with suppliers.

Procurement Rules

- The agency that establishes a Collaborative Contract undertakes the primary procurement process – openly advertises
- No requirement under the Rules on agencies to openly advertise
 - rule 14.9.i – procurement under a Collaborative Contract is a “secondary procurement”.



Procurement Rules

To use a Collaborative Contract agencies can:

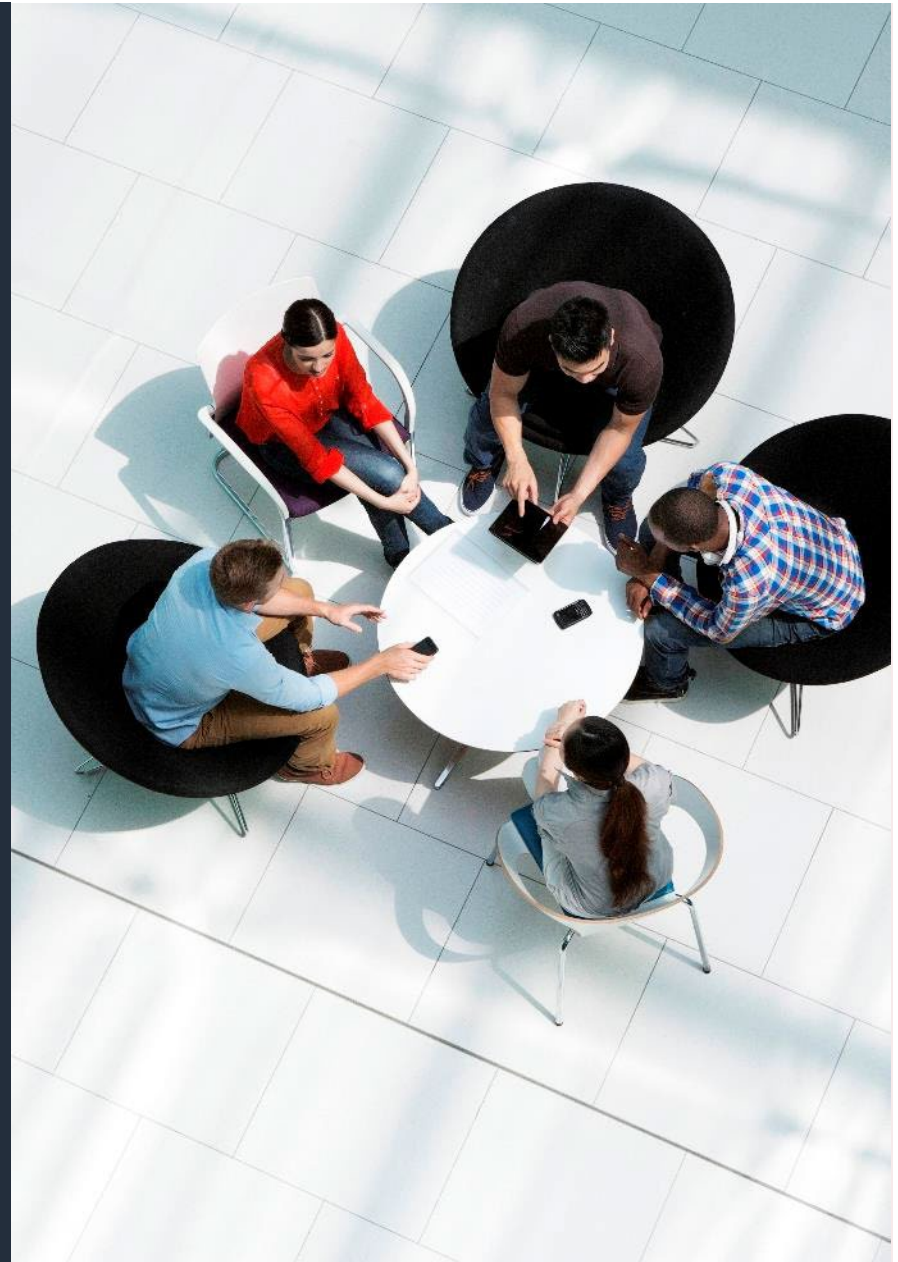
- Purchase direct from one supplier
- Run a closed tender to two or more providers on a Collaborative Contract panel (agency can chose to go to all or only some of panel)
- Run an open tender where some respondents may propose to contract under a Collaborative Contract

Some Collaborative Contracts are mandatory, some are not:

- Mandate to use differs for different types of agencies
- Departments must use all mandatory contracts (Cabinet direction)
- Crown entities directed to apply Procurement Rules (direction under Crown Entities Act), e.g. Rules state agencies must use AoG contracts
- Other agencies not under legal obligation to use contracts, but expected to

Collaborative Contracts

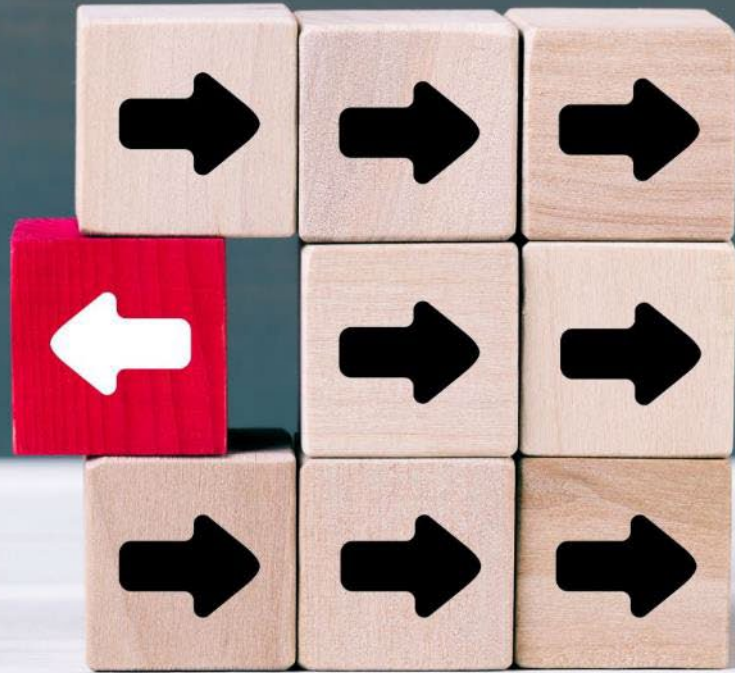
- Government Procurement Rules 58-60
- Three types – not all “AoG” are AoG
 - All-of-Government (21)
 - Common Capability Contracts (4 + Marketplace)
 - Syndicated contracts (27)
- No particular form or content makes each category – form is largely established through common practice.



All-of-Government contracts

- Eg external legal services, IT hardware
- Managed by MBIE
- “All agencies” must use “unless there is a good reason not to”
- Mandatory for Departments and Crown entities
- Must get MBIE approval to “opt-out”
- Form = “letter of accession”
- Terms of head agreement between MBIE and supplier then apply to create new and separate agreement on same terms but between agency and supplier
- Have administration fee, generally payable to supplier and passed on to MBIE.

**Syndicated
contracts**



Syndicated contracts

- The original 'cross-government contract'
- Eg aviation fuel, interpretation services
- Can be managed by any agency (with MBIE's prior approval)
- None are currently mandatory
- Obligation in Rules to check if there is an agreement that fits needs
- Can be either open to any agency or closed to group of named agencies
- "Common Use Provision" enables use by other agencies
- No standard form
 - some are similar form as AoG
 - some have separate terms for lead agency / participating agency
- Typically no administration fee.



**Common
Capability
Contracts**

Common Capability Contracts

- Only available for ICT or property
 - property - workplace furniture and property consultancy
 - ICT - IaaS and TaaS
- Managed by Functional Leaders
 - MBIE (property) or DIA (ICT)
- Can be mandatory but currently none are - IaaS no longer mandatory after Cloud First Policy refresh
- Suppliers can use to supply services to government (eg use IaaS to host a SaaS product to sell to govt)
- Form is typically Lead Agency Agreement and Participating Agency Agreement
- Have administration fee, typically invoiced by DIA to agency based on billing information shared with DIA by suppliers.



Marketplace

Marketplace

- DIA's strategic direction is Marketplace
 - other Common Capability Contracts are generally being left to expire and are replaced by Marketplace (eg ITMS)
- Marketplace largely run by DIA but has some MBIE categories (eg construction consultancy services)
- Marketplace is:
 - a Common Capability Contract for contracts that DIA administers
 - an All of Government Contract for contracts that MBIE administers
- Services divided into four “channels”
 - consultancy and professional services
 - managed services
 - public cloud services (SaaS)
 - enterprise software
- Lots of suppliers, standing invitation to join some channels


Marketplace terms

- “General Terms” apply only between DIA/MBIE and suppliers
- “Channel Terms” apply between agencies and suppliers
- Different channels have different terms
 - consulting / professional / managed services have common set of terms
 - reasonably typical ‘master agreement’ terms
 - SoWs for each job
 - “extra terms” that apply to managed services
 - SaaS has two options
 - supplier’s standard terms, with a very basic overlay of government terms (eg no indemnities, governing law is New Zealand)
 - use “pre-existing agreement” – other Collaborative Contract or Framework Agreement.

Marketplace terms

- Construction consultancy services has own terms
- Enterprise software has two options:
 - reasonably typical 'master agreement' terms for enterprise software
 - use “pre-existing agreement” – other Collaborative Contract or Framework Agreement.





Framework Agreements

Framework Agreements

- Managed by DIA (called “DIA agreements” on MBIE’s procurement website)
- Software / cloud services agreements with some of government’s biggest suppliers – currently six
- No status under procurement rules – DIA has not run a procurement process so agencies are responsible for running a primary procurement, if required, or applying exemptions under rules
- No bespoke product or requirements have been procured – for purchase of suppliers’ standard products
- Structure is typically:
 - government terms at ‘master agreement’ level
 - supplier’s standard terms at the product level
- Some offer more flexibility than Collaborative Contracts for agency / supplier to amend terms
- Typically don’t cover professional services in detail, so terms may need negotiation

How to sign-up

- Generally must enter into agreement with MBIE or DIA first
 - this gets your agency the ability to see the agreements
 - one primary purpose is confidentiality – agreements include suppliers' confidential information (eg prices)
- Marketplace terms are publicly available, but still need to enter into agreement to join Marketplace to get access to pricing and supplier-specific terms
- Generally get agreement via MBIE or DIA, not suppliers.

Contracting with supplier

- Once agency has decided to enter into agreement with supplier, then execute required documents to create contract with supplier
- There are a lot of different forms, so first step is working out what terms apply between agency and supplier and what needs to be executed
- General idea is that agreements can be entered into without negotiation of the terms
- May still need to negotiate:
 - any agency-specific requirements (eg any legislative requirements unique to your agency)
 - the services to be provided (eg any implementation SoWs)
- Different agreements treat negotiated changes very differently
 - some do not permit any negotiation without consent from the lead agency
 - some allow agency and supplier to make changes.

Tips for reviewing

- Work out structure and what terms apply – many agreements aren't simple
- Don't assume supplier understands agreement or is right – they are used to using their own terms and may not be familiar with the particular agreement
- Work out your options under the agreement – the supplier may not have proposed the most favourable way to contract for you
- Understand whether you can make negotiated changes.



Tips for reviewing

- Review documents against original templates
 - suppliers often create first draft of SoW, for example, and present it with some items deleted (eg LDs)
- Know what you are buying - are you buying:
 - a highly bespoke service, where you may expect more favourable terms (eg AoG or Common Capability)?
 - a 'standard' product supplied 'as is' to many customers, where terms may be less favourable (eg Framework Agreements, some Marketplace channels)?
- Contracting for all the services you need
 - buying a "solution" that involves more than one contract can be difficult – may need to use multiple contracts with little to unify them
 - some contracts enable a wide range of services, while others are highly prescriptive – often driven by original procurement process.



Questions?

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