



Syndicated Procurement

What it is, how to establish and manage it, and where to go for assistance and sign-off

Acknowledgement and thanks – development of this Guide

This guide is part of a Government initiative to help agencies better engage with government and support good procurement practice. It has been developed under the New Zealand Government Procurement Reform Programme after consultation and discussion with the following stakeholders:

- Procurement Reform Group
- Special thanks to Joseph Corby and Stephen Moore, Commercial Support Group, Defence Shared Services



Who is this guide for?

This guide is recommended reading for anyone interested in exploring syndicated procurement as a means to achieve better value for money procurement

- Agency managers, within lead agencies, responsible for the management of existing syndicated procurement
- Anyone else with a brief to identify and/or implement initiatives which deliver improved value for money
- Senior procurement professionals
- Agency managers with purchasing or contract management responsibilities

This guide is a useful reference for anyone considering syndicated procurement, regardless of the type of contract you opt for: CUP or Cluster (see page 4 for more on this)



IMPORTANT - all Syndicated contracts with a CUP clause are subject to a 3-Stage endorsement and approval process

Due to the complexities and implications of CUP contracts, Cabinet has tasked the Procurement Reform Group (PRG) with endorsing all CUP contracts, with final approval of CUP Contracts resting with the Ministry of Economic Development's Government Procurement Solutions (GPS) group.

See pages 6 & 14 for more information

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Introduction

What is syndicated procurement?

Syndicated procurement typically involves a group of agencies aggregating their respective requirements (needs) and collectively going to market for common services and pricing.

It may also involve an agency or agencies anticipating collaboration and including a Common Use Provision (CUP) clause within the resulting contract, to allow other agencies to join the contract later.

The benefits of syndicated procurement

The potential benefits to agencies of effective syndicated procurement can be significant.

This collaborative procurement often leads to a more favourable contract (price, benefits, and features) being negotiated due to the aggregation of common procurement requirements.

Productivity gains also result from reduced procurement effort that comes from agencies collaborating on new arrangements or joining existing ones, at a later stage. For example, an agency that would otherwise need to go through a full tender process, avoids this activity by joining an existing syndicated (with CUP clause) arrangement for the same goods or services.

Syndicated procurement also has wider potential benefits:

- A more strategic approach to procurement across government
- Reduced tendering costs & process efficiencies for suppliers

The challenges of syndicated procurement

Syndicated procurement brings with it some unique challenges. When considering a potential syndication the following aspects need to be addressed to ensure the benefits of syndication are equitable and realised:

- A participating Agency's needs may have specific differences that are not catered for through aggregation
- The needs of a major Agency may supersede those of smaller Agencies
- The lead Agency may not have the time, resources or capability to lead the initiative, communicate effectively or manage the resulting supplier/agency relationships
- A supply market distortion or reduction in competition may occur as a result of a syndicated approach, if not managed correctly



Is Syndicated procurement compulsory? Unlike the All-of-Government contracts, agencies can choose to establish or join syndicated contracts.

Some of the benefits of syndicated procurement

- Improved pricing or contract - 'leverage' through increased volume
- Improved service through development of technical expertise by 'Subject Matter Experts'
- Economies of scale - reduced tendering costs & process efficiencies for agencies & suppliers

Who's who?

- **Procurement Reform Group (PRG)**
A team of senior procurement experts from across government, who review and endorse syndicated contracts with CUP clauses
- **Government Procurement Solutions (GPS)**
The unit within the Ministry of Economic Development who give final approval for all syndicated contracts with CUP clauses.

The two types of syndicated procurement

There are two types of syndicated procurement: the CUP Contract and the Cluster Contract.

CUP Contract

An agency or group of agencies establish a syndicated contract - which includes a common use provision (CUP) clause. (Additional agencies can subsequently join)

An agency or group of agencies approaches the market and runs one tender process in accordance with government procurement policies. If a group of agencies is involved, their collective requirements will be aggregated.

A CUP clause is inserted in the tender and contract documents to enable additional agencies to join the contract in the future, subject to agreement of the Lead Agency and the contracted supplier. An example of a CUP clause is in the Appendix on page 28.

The CUP enables eligible agencies to join the contract at any time during the life of the contract for the remaining balance of the contract term.

Joining agencies do not have to participate in the up-front tender and selection process to access the benefits of the syndicated arrangement. However, they will be bound by the terms and conditions that have been put in place and may have little input into contract/relationship management.



CUP contracts require PRG endorsement and GPS approval prior to going to market – refer page 14

Cluster Contract

A group of agencies establish a syndicated contract – which does not include a CUP clause. (For use by initial group only)

A group of agencies collaborate, aggregate their requirements and approach the market collectively. The group selects a supplier or suppliers to service all of the agencies within this specific group only.

In this case the group of agencies chooses not to include a CUP clause and therefore does not need to obtain GPS approval and go through a PRG review process.

Note: Additional agencies cannot join a Cluster Contract after it has been put in place.

What is the difference between 'All of Government (AoG)' contracts and 'Syndicated' procurement?

- **AoG contracts** - are mandatory contracts co-ordinated and established through the Government Procurement Reform Programme after approval by Cabinet.
- **Syndicated procurement** - typically involves fewer agencies, is initiated at an agency-level and involvement by agencies is voluntary.

All Syndicated contracts with a CUP clause are subject to a 3-Stage endorsement and approval process

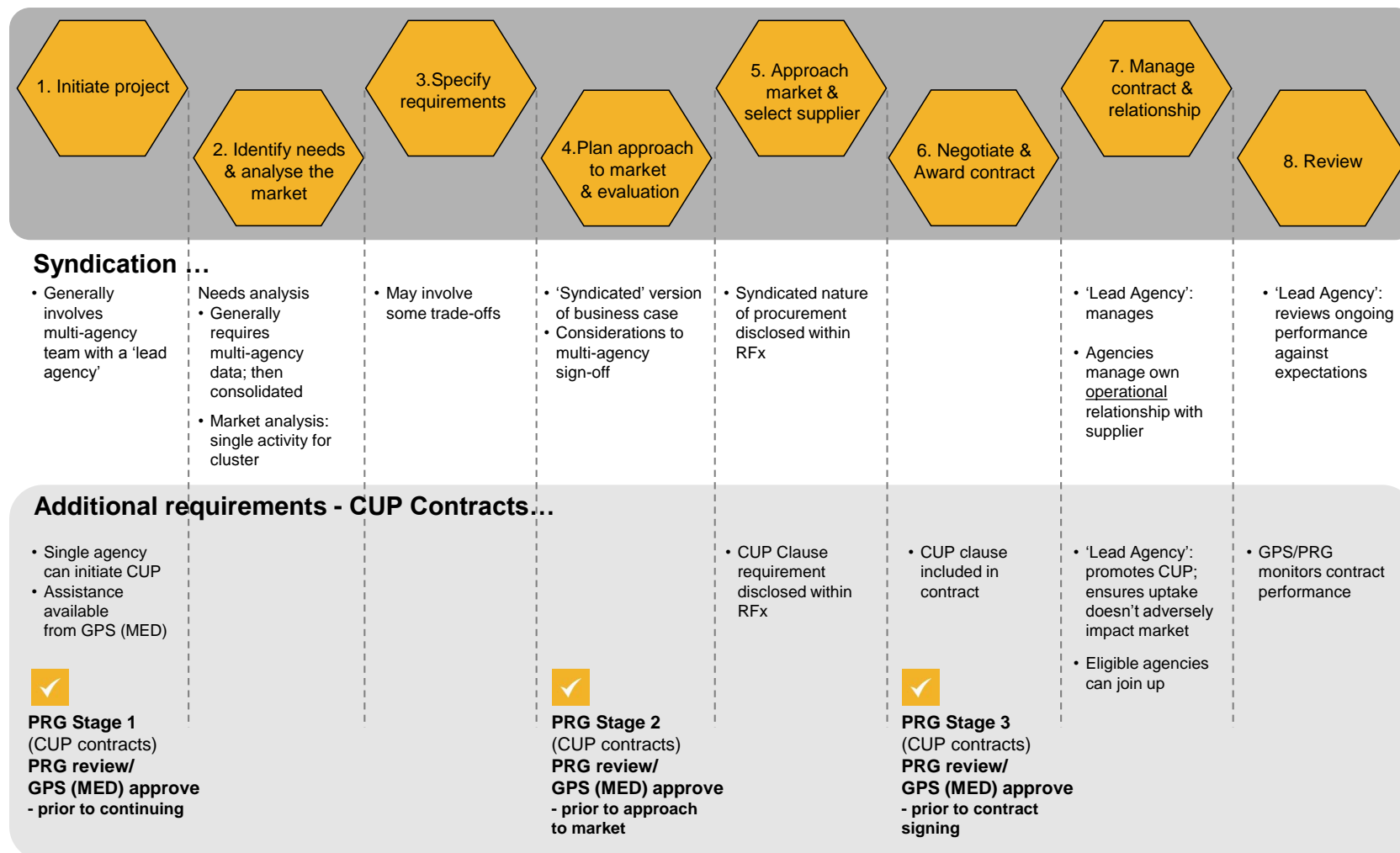
Due to the complexities and implications of CUP contracts, Cabinet has tasked the Procurement Reform Group (PRG) with endorsing all CUP contracts, with final approval of CUP Contracts resting with the Ministry of Economic Development's Government Procurement Solutions (GPS) group.

While PRG's mandate includes an element of 'guardianship' (endorsing CUP contracts), their major focus is actually on contributing technical expertise and advice to agencies as their procurement strategies, procurement documentation and contract/supplier relationship plans progressively come to fruition.

PRG is ultimately about guiding good ideas into good CUP contracts and – yes - calling 'time out' when the idea is flawed or the analysis is incomplete (see page 14 for more information).

Overview - what's different about managing syndicated procurement?

The following graphic overviews the key differences associated with syndicated procurement, as compared to single-agency procurement.



Establishing syndicated procurement – things to consider

Thinking about establishing a CUP Contract?

Key points to be aware of:

- All new CUP Contracts need to go through a Cabinet mandated approval process (see Page 15)
- Assistance with planning & implementing CUP Contracts is available via the Ministry of Economic Development's GPS team
- Agencies can only join endorsed CUP Contracts – check with GPS
- Only eligible agencies can join a CUP Contract – see Page 21 for details

This section provides guidance on establishing syndicated contracts, and focuses on those aspects unique to this type of procurement.

Before you start

Before you head down the path of establishing a new syndicated contract check the following:

- Are there existing syndicated contracts or All-of-Government contracts for the same product or service
- Are other agencies likely to be planning for the same type of procurement? A check of the Annual Procurement Plans will identify other agencies that could collaborate with you
- Engage GPS team early (e-mail procurement@med.govt.nz) if you think your contract might include a CUP
- Agencies leading existing syndicated contracts (Cluster or CUP) are also a good source of advice and lessons learned.

The role of Lead Agency

Syndicated procurement requires one agency to take the role of 'Lead Agency'. With this role comes the overall responsibility to achieve successful procurement outcomes on behalf of other agencies.

The role of the Lead Agency is to ensure that the:

- End-to-end procurement process is adopted, is structured and truly collaborative (cross-functional), no shortcuts are taken while complying with all relevant government policies, rules guidelines and standards
- Outcomes meet all clearly defined business needs, are in the best interests of the participants, and in particular, their own agency
- Approach to supply market is well planned, suppliers are properly briefed and approach reflects state of market and Agency needs
- Master agreement is clear, comprehensive and legally sound; it manages risk, includes robust conditions and the right KPIs.
- Agreement has a single point of contact for agencies with clear leadership point of contacts identified both in lead Agency and supplier(s)
- Contract Management Plan clearly communicates the responsibilities and commitments of the Lead Agency and that participating agencies are clear about their collective role in

Tips – setting up a successful multi-agency team

“Coming together is a beginning. Keeping together is progress. Working together is success.”

Henry Ford

Successful multi-agency contracts require:

- A clear purpose and goals linked to clearly identified business needs
- Good stakeholder involvement throughout the process
- Clear structures and processes (e.g. sign-offs);
- Sufficient time and resources
- Genuine inclusion and effective representation of the agencies;
- And people with a natural ability to collaborate with clear dispute resolution processes

ensuring the anticipated benefits are achieved. A robust communication plan is in place

- Performance, relationship and contract with the supplier(s) are managed in a structured manner
- Participating agencies are appropriately informed/consulted on: contract variations, reviews, price changes, decisions on options to extend the contract, and completing the arrangement.
- Additional activities – if CUP Contract
- Selected Supplier(s) has sufficient capacity and capability to enable other agencies to join the contract (if CUP)
- Prompt notification to GPS of amendments, changes or contract expiry (CUP Contracts only)

Selecting the Lead Agency?

Any agency within the State sector can take the role of “Lead Agency” to form a syndicated agreement.

There are a number of ways that lead agencies are ‘selected’. Often it’s simply by default, for example, through being the agency that initiated the idea or the one with the largest spend. Other reasons could include the agency having the best available procurement or leadership capability or the best capacity to resource the project.



What benefits accrue to the Lead Agency of a syndicated arrangement?

As well as the potential to leverage economies of scale, to achieve more favourable pricing and contract terms and conditions, leading a syndicated arrangement provides an opportunity to:

- show procurement leadership
- build or demonstrate procurement capability
- gain experience in collaboration and cross-agency co-ordination
- influence or condition the market for future benefit, and
- support syndicated procurement by reciprocating benefits derived from joining contracts established by other Lead Agencies.

How much collaboration?

The extent of collaboration between participating agencies will vary depending on the circumstances and complexity of the project and the parties involved. At one end of the spectrum, agencies may require significant participation, while at the other extreme, they may give the Lead Agency the mandate to coordinate and manage the process with limited consultation with the wider group.

Stage One: Project initiation

When agencies are considering initiating a syndicated contract there are a number of key questions that should always be reviewed as part of this initial analysis - to ensure that the rationale for establishing a syndicated contract is sound and potential market effects have been carefully considered.

The key aspects to consider include:

The fundamentals

- What's wrong with the status quo
- What problems do you want to solve, or what opportunities do you want to make the most of?

Does the proposed contract show 'early signs' of delivering the usual benefits of syndication?

- Potential for achieving economies of scale? (Is this through up-scaling production/logistics or limited to reduced transaction costs?)
- Will it create sufficient purchasing power to influence the market, for example, deliver improved pricing or service? Is this power just through leverage of volumes or leverage of brainpower or thinking through a different way to achieve needs resulting in a deterministic influence on the way the market works?
- Is the potential value/volume of the opportunity attractive enough to potential suppliers to create or develop a market to meet emerging or future needs?
- Are there gains to be made by achieving greater consistency in pricing or standardisation of specifications across agencies?
- Does the arrangement provide opportunities for advancing government priorities (e.g. help encourage the production and supply of innovative or environmentally friendly products and services, encouraging smaller New Zealand based companies to win Government work, building domestic expertise?)

Does it involve any obvious downsides?

- Will this new arrangement diminish the value of existing endorsed syndicated contracts with CUP clauses? Is this new one sufficiently different versus just joining an existing?
- Is there the potential to distort the market? (e.g. by reducing competition or creating an environment conducive to collusive behaviour)
- Will the arrangement raise barriers for new suppliers or exclude a range of suppliers (e.g. for capacity or geographical reasons)
- Could it adversely impact current and future SME participation in the market

- Is it possible that the arrangement will stifle innovation or reduce opportunities for piloting innovative solutions?
- Will syndication create an over-dependency on the source of supply?

Fit – is syndication the right option?

- What level of purchasing power do we and other agencies have in our own right?
- How common are the requirements across agencies?
- How difficult will it be to specify the requirements to ensure the core needs of participants are met?
- Is the proposed contracting model appropriate?

What is the agency's capability and capacity to lead the initiative?

Does the agency have both the capability and the capacity to lead the arrangement:

- Do we understand the role and responsibilities of a lead agency?
- Is there the level of internal commitment to, and support for, the proposed arrangement?
- Are we good at negotiating favourable outcomes ?
- What's our reputation and relative attractiveness and standing in the market?
- Are we good at leading large, complex and/or cross-agency projects; and
- Are we able to assemble and run an experienced and expert team – to develop the strategy, gain internal sign-off and support, to run the process for approaching the market, and manage the contract and relationships?

Cluster Contract or CUP Contract?

- At this early stage you need to decide whether the contract will involve a CUP clause. This significantly impacts both the process your project will go through and the access your project will have to GPS resources and expertise.



CUP Contract? Any PRG review of a proposed syndicated contract (CUP clause only) will always look to ensure all of the above points have been fully considered. See section *CUP Contracts: the three-step approval process*; Page 14.

Stage Two: Before you go to market

With a few exceptions, the activities during this stage of the process aren't too dissimilar to what you would typically be doing for any other significant procurement activity.

The key exceptions, in contrast to single-agency procurement planning, are that the business needs analysis will be aggregated from multiple agencies (if a group) and the market analysis will require a greater focus, given the potential magnitude of a group's combined product/service demand.

Key considerations

- If a group of agencies is involved at the start of your project then the business needs analysis will involve individual agencies scoping their individual requirements before the project consolidates them into the agreed requirements for the project. An important phase here is to ensure internal business buy-in to ensure real needs have been properly reflected.
- Your market analysis will typically be more comprehensive, particularly in terms of assessing the supplier behaviour and market impacts associated with the aggregated buying power of a group of agencies. It is likely to involve physically walking supply chains and meeting suppliers to better understand their capabilities and constraints.

Your market analysis must also consider any potential adverse impacts on the current structure of suppliers within the market, in particular any impact on SME suppliers.

- Allow enough time for the group of agencies to review, amend and sign-off on any planning. This may take several iterations.
- All draft RFX documents and associated GETS/Media advertising will need to include reference to the syndicated nature of the procurement (Cluster and/or CUP).

Stage Three: Going to market through to award of contract

At this stage the Lead Agency's focus should be on ensuring the syndicated nature of the procurement is correctly communicated and that the group is organised in a way that balances the needs for effective representation and efficient evaluation and sign-off.

Key considerations

Evaluation Panel – balancing representation versus the size of the panel

Depending on the size of your agency-group (if more than one agency) you may need to limit agency representation on the panel simply to ensure the size of panel doesn't become unwieldy. Try this:

- Tip – if you've decided that the project warrants a panel of four – one panel member could be from the lead agency, the next from the next largest agency, with the remaining panel selected from an average sized and small agency.

Negotiations & sign-off – ensuring the 'group' doesn't slow things down

Negotiations are a key step in any major procurement process as these can serve to clarify, enhance services to better meet needs, or to prevent a supplier changing their offer/introducing cost-adds

Similar to the previous point, a group of agencies can have associated challenges:

- Keeping the numbers around the negotiation table to an optimal size
- Ensuring the group of agencies can expeditiously sign things off
- Maintaining robust probity standards across organisations

It is critical early on in the process that the group of agencies discuss, agree and document who will be involved in the negotiations, how these will be run, and how agency input and signoff to the process will take place.



Tools & Templates?

Go to www.procurement.govt.nz

CUP Contracts: the three-step approval process

All syndicated procurement involving a CUP Contract must be reviewed by PRG for approval by GPS.

While the Cabinet mandate to GPS and PRG includes an element of 'guardianship' (endorsing CUP contracts), their major focus is actually on contributing technical expertise and advice to agencies as their procurement strategies, documentation and contract/supplier relationship plans progressively come to fruition.

This three-step approval process - reflecting key points in the procurement lifecycle - happens at project commencement, prior to going to market, and prior to signing the final CUP Contract with the supplier.

Before you start

Agencies interested in leading the establishment of a CUP Contract should engage GPS as early as possible:

- to test your ideas from an end-to-end procurement process perspective not just contracting and tendering
- for information on current arrangements and how well they are working or not
- for market information although you will need to do your own market analysis
- for an introduction to other agencies that may be willing to join, or are also considering a similar tender
- to gain an all-of-government perspective on agency contracts
- for sign-off to proceed with the project

GPS is also available, on request, to provide mentoring of the individual within the lead agency responsible for managing the project.

Step One: Approval for project to proceed

Approval must be sought early on in the process to ensure that the rationale for establishing the CUP provision is sound and that potential market effects have been carefully considered, to:

- protect the value of existing CUP Contracts, and
- provide assurance that the approach to market is well planned to maximise the benefits for all participants.

At this stage GPS will also discuss what level of assistance it may be able to provide to the Lead Agency.

CUP Contracts must be approved by GPS prior to going to market

- An agency that negotiates a favourable deal, within a normal contract process, cannot simply insert a CUP clause in their contract, for the benefit of other agencies.
- Agencies must seek endorsement from PRG (& sign-off from GPS) to approach the market if a CUP Clause is included.
- All GETS advertisements and RFX documents must clearly state that a CUP clause will be included in any subsequent contract, subject to endorsement.

What to include in your brief business case

The review process is initiated by the applicant (the potential lead agency or group of agencies) submitting a formal request for review of their initial thinking by PRG (via GPS). This involves putting together a brief high-level business case.

As a minimum, your submission should include the following details:

- Lead Agency Name
- Project Manager Name and Contact Details
- Project Sponsor Name, where applicable
- Product / Service Category
- Description of the procurement and its scope and the needs the procurement activity is intended to meet
- The rationale for establishing the syndicated contract (including benefits, alternatives and risks)
- Proposed timeframe for the procurement including key milestones
- Perceived market reaction to the initiative
- Brief overview of why your agency has capacity/capability to lead the project

What happens next?

If the initial business case is strong enough (rationale and supporting information) it will go through the PRG review process. Where further work is required, GPS will work with the Lead Agency to assist them bring it up to the level required.

Where PRG is satisfied that the proposal is sound, and the agency has the capability and capacity to successfully lead the project, GPS approval to proceed will generally be given. This may be conditional, for example, on the agency securing additional resources to boost its internal capability/capacity.

GPS/PRG will continue working with the agency throughout the process and provide mentorship and assistance where possible, including provision of standard documentation, guides and where needed, training.

If the case for establishing a CUP contract simply doesn't stack up the lead agency will be advised that a CUP Contract cannot proceed.

The agency still has the option to continue the procurement process to meet its own needs or those of a group of agencies, where appropriate as a syndicated contract.

Step Two: Approval to go to market

This review-point takes place before the Lead Agency goes to market and involves PRG reviewing finalised planning documents (e.g. procurement plan, category analysis) and the proposed RFx documentation.

Who do we contact and how much time does this approval process take?

GPS is the point of contact for all submissions to PRG and works closely with the PRG to ensure a seamless process for Agencies.

PRG meets monthly and will turn around decisions – for GPS approval - within 10 working days of your submission being presented to them.

Check with GPS regarding the due-dates for your submissions.

What the PRG evaluation considers

At this stage PRG is looking for assurance that the procurement strategy and market analysis is well thought through and reflects the value and risk associated with the procurement category. They will also be looking for a fair, open and competitive process, that complies with the Government policy and standards, and that the RFX documentation is correctly structured, including appropriate CUP references.

The evaluation considers the following:

- the extent and quality of planning
- evidence that the planning and RFX documents have been reviewed and signed off at an appropriate level
- level of engagement and consultation with and support from potential participants
- the Lead Agency's breadth and depth of market knowledge (on both the demand and supply side) and extent of market analysis undertaken, in particular:
 - Business needs
 - Nature of current market
 - Fit with business needs both now and into the future
 - Gaps between business needs and market, including options for closing gaps
 - Risk appraisal together with risk mitigation plans
 - Preferred procurement strategy
- how well requirements have been scoped (i.e. what is inside and outside scope and why)
- the clarity of specifications and whether they will enable the core needs of participants to be met
- the quality and appropriateness of evaluation criteria
- the key KPIs that will ensure that the gap between today and the planned outcome will be measured and managed
- the robustness of communication, contract and relationship management plans

What happens next?

Where PRG is satisfied that the approach to market is well planned, PRG will endorse the approach and GPS will generally give approval for the Lead Agency to approach the market with the CUP contract. Note approval may be subject to certain conditions (e.g. improving RFX documents/evaluation criteria or revising timeframes).

Alternatively, where PRG does not endorse the project to proceed, GPS will advise the agency to remove all reference to the CUP Contract from RFX documents. The agency is then free to choose to

continue the procurement process as a Cluster Contract or as an individual agency contract.

Step Three: Approval to sign CUP Contract

This final review point takes place after completion of contract negotiations but prior to the contract being signed.

The Lead Agency submits a copy of the proposed award document and the CUP contract (Master Agreement) to PRG for review and endorsement prior to GPS approving the contract.

The award document should focus on benefits delivered and ongoing performance, contract and relationship management. PRG will need to be satisfied that the contract has undergone legal review and has been signed off at an appropriate level. This evaluation of the contract is aimed at providing assurance that:

- the deal that has been negotiated is capable of achieving expected benefits;
- the contract is well structured, includes appropriate provisions for agency participation, and is legally sound; and
- that the document is not subjecting the supplier to inappropriate legal requirements.

While PRG may seek legal advice, where appropriate, and recommend changes to the contract, responsibility for ensuring that the contract is legally sound rests with the Lead Agency.

What happens next?

PRG will advise their endorsement within 10 business days of receiving the contract and any supporting information. PRG will forward their endorsement to GPS for final approval. Any endorsement provided by PRG may include some caveats e.g. a final deadline for signing up to the endorsed CUP contract, based on a certain period before the contract expires.

The endorsed CUP Contract is then listed on the website www.procurement.govt.nz and promoted by GPS. In extreme cases PRG may not endorse the CUP Contract. In such a situation GPS would request that the CUP Clauses be removed from the contract before it is signed.

The Lead Agency is free to continue negotiations with the supplier on their own agency's (or the group's) behalf.

RFX & launch communications must reference CUP

CUP clauses cannot retrospectively be added after the RFX has been launched. Reference to the CUP clause must be present in the launch communications (e.g. GETS) and the RFX documents.

Managing a syndicated contract (Cluster or CUP)

The Lead Agency manages the syndicated contract

The Lead Agency is responsible for contract management of the syndicated contract, including:

- developing a contract and relationship management plan including performance measures
- market benchmarking where appropriate
- KPI monitoring and co-ordination
- reviews and re-negotiations, including appropriate involvement of other participating agencies
- subsequent roll out of price variations to participating agencies during the term of the contract
- deciding whether to exercise provisions for extending the contract for any additional terms provided for in the contract (with PRG endorsement, if CUP)
- reviewing the effect of additional agencies joining (if CUP Contract)
- management of contract variations

Developing a Contract Management Plan

It is a requirement that the Lead Agency develops a contract management plan detailing the level of contract management and how participating agencies will be engaged in this process over the life of the contract.



Lead Agency is responsible for overall coordination of the master agreement and relationship but is not responsible for managing the contractual relationship between the supplier and each participating agency on local issues unless an issue needs elevation and referral

Who is responsible for undertaking contract reviews?

The Lead Agency is responsible for reviews and negotiations relating to the Master Agreement.

Participating agencies have a responsibility for ensuring that they review their individual agreements with the supplier. Participating agencies should also consider whether the contract continues to meet their needs and provide value for money for their agency in advance of Lead Agency decisions on exercising options for extending the contract for additional terms, where these are provided for under the contract.



GPS support to Lead agencies - GPS will coordinate and provide oversight for all CUP Contracts.

Issues that arise – any syndicated procurement

What if an agency is unsatisfied with the Lead Agency's performance?

As with any relationship, if a participating agency is unhappy with the performance of the Lead Agency – talk to them about it.

If your issues can't be resolved directly with the Lead Agency, seek advice from GPS.

What can participating agencies do if they are not satisfied with the supplier's performance?

Discuss the matter with the supplier in the first instance. If attempts to resolve the situation are unsuccessful, raise the matter with the Lead Agency – who is ultimately responsible for contract performance.

Issues that arise – CUP Contracts

Where a CUP contract review results in pricing or other changes, do these apply to all participants?

Yes. However, the Lead Agency is responsible for ensuring participants are made aware of approaching contract reviews and review outcomes. A Lead Agency may involve all or some participating Agencies in such review.

No action is required from participating agencies, unless they disagree with the Lead Agency's decision. In such instances, participating agencies should advise the Lead Agency as early as possible of their intention to continue or exit from the contract and must advise the supplier in accordance with the timeframes and provisions under the CUP Contract.

The Lead Agency is responsible for ensuring participants are advised of the outcome of CUP Contract reviews and variations.

What if the endorsement of a CUP Contract is revoked?

Agencies participating in a CUP Contract that subsequently has its endorsement revoked may continue to use the contract for the remaining life of the contract.

Participating agencies should, however, carefully consider their options in light of the reasons for revocation.

What if a CUP Contract is superseded by an All of Government contract?

No new agency that is eligible to participate in AoG contracts is able to join the syndicated contract and agencies participating in the

syndicated contract are required to transition to the AoG contract at the first commercial opportunity.

Ending a CUP Contract

The group of agencies participating in the CUP Contract can go back to market together using the cluster model of syndicated procurement (obtaining new approvals from PRG), join another endorsed CUP Contract, or approach the market independently.

Can the Lead Agency terminate the CUP Contract?

The Lead Agency can terminate its contract with the supplier. However, the CUP Contract can continue where there are other participating agencies who want to continue.

When agencies join a CUP Contract they sign an addendum to the CUP Contract. This Addendum effectively establishes an independent contractual relationship with the supplier.

Therefore, in the unlikely event that the Lead Agency terminates its contract with the supplier, other participating agencies can continue to use the CUP Contract for the balance of the term originally agreed in the CUP Contract.

Participating agencies should, however, carefully consider their options in light of the Lead Agency's reasons for terminating the contract.

Can a participating agency terminate a CUP Contract?

A participating agency can terminate their individual contractual relationship with the supplier, in accordance with provisions set out in the CUP Contract. This does not terminate the CUP Contract or affect the contractual relationship between the supplier and other participating agencies.

Participating agencies intending to terminate their contractual relationship with the supplier should advise the Lead Agency accordingly.

Can a CUP Contract be "rolled over"?

Where the CUP Contract allows for a right of extension it can be extended for the period stated. If there is no right of extension it cannot be extended.

Whose decision is it to roll over the CUP Contract?

The Lead Agency decides whether or not the CUP Contract should be extended (following consultation with PRG).

Can a participating agency make use of a right of extension where the Lead Agency decides not to extend the contract?

Yes. Participating agencies that want to continue using the CUP Contract must advise the supplier of their intention to do so in accordance with the timeframes and provisions of the CUP Contract.

How to join an existing CUP contract

What contracts are currently in place?

A list of all current CUP contracts is available at – www.procurement.govt.nz

Can anyone join an existing contract?

Before anyone can join an existing CUP contract, both the supplier and Lead Agency must agree that the agency can join the contract.

State sector agencies

Except for School Boards of Trustees, State sector agencies are automatically eligible to join CUP Contracts.

Refer to Appendix C (Page 35) for an overview of the organisations within the State sector. The State Services Commission website (www.ssc.govt.nz) also publishes the current complete list of State sector agencies.

Local Government, School Boards of Trustees, and Agencies associated with a Ministerial Portfolio

Although not automatically eligible, Local Government (e.g. regional councils and territorial authorities), School Boards of Trustees, and Agencies Associated with a Ministerial Portfolio may apply to join a Syndicated CUP Contract. Eligibility to join will be determined at the sole discretion of GPS.

Subsidiaries and other agencies

Subsidiaries and other agencies may be considered for eligibility on a case-by-case basis by the Lead Agency and supplier, with final approval by GPS if the agency can demonstrate that:

1. it is wholly owned by, or its membership wholly consists of, a state sector agency, regional council, or territorial authority; and
2. the agency is not, and is not able to be, in competition with private sector organisations.

When can an agency join up?

An agency may join a CUP Contract if:

- the contract has been previously endorsed by Procurement Reform Group (PRG) or the Syndicated Contracts Review Board (since replaced by PRG)
- the agency is eligible to join
- the CUP Contract is able to meet the agency's needs
- the agency has satisfied itself that the contract offers best value for money for their agency, which necessitates a level of market awareness and adequate research, and

AoG contracts may preclude agencies joining current CUP Contracts

The establishment of All-of-Government contracts, may preclude agencies joining some existing syndicated contracts - where new AOG contracts will supercede syndicated contracts. Check with GPS.

Can agencies joining a CUP Contract change terms and conditions of the contract?

No. Agencies joining a CUP Contract are not permitted to re-negotiate any of the core requirements of the Master Agreement (the original CUP Contract). They can negotiate only minor additions or alterations and service levels to suit their agency's specific needs.

Do the open tendering requirements of the Mandatory Rules for Procurement preclude agencies from joining CUP Contracts?

No. The Rules allow agencies to join endorsed CUP Contracts (refer to footnote 8 of the Rules).

- subject to agreement from the supplier and Lead Agency. (There is no contractual obligation for a supplier to agree to other agencies joining an existing CUP Contract.)

Agencies interested in joining a CUP Contract should check the contract term, since they can join only for the remaining life of the contract.



Are government agencies required to use syndicated procurement arrangements? No. Agency participation in syndicated procurement is voluntary.

How does an agency join up?

Once an agency decides to join an endorsed CUP Contract, both the supplier and the agency sign an addendum to the original CUP Contract.

The addendum establishes a contractual relationship between the individual participating agency and the supplier. The participating agency, not the Lead Agency, is responsible for managing their own contractual relationship with the supplier.

Things to check out

Check that the arrangement is an 'endorsed' contract

Agencies can only join endorsed CUP Contracts. Details of all endorsed CUP Contracts are listed on the Ministry of Economic Development's (MED) Procurement website (www.procurement.govt.nz).

Agencies should check this website or seek confirmation from MED's Government Procurement Solutions (GPS) to satisfy themselves that a contract has been endorsed. Contact GPS – procurement@med.govt.nz

Check that the contract provided by the supplier matches the Master Agreement

Always check with the Lead Agency that the supplier has presented you with the proper contract document.

Suppliers are not permitted to offer (and endorsement does not extend to situations where) core terms and conditions that are different from those contained in the Lead Agency's original CUP Contract.

Agencies wishing to confirm that their copy of the contract complies should contact the Lead Agency.



What if the CUP Contract is not endorsed?

Agencies must not join the contract and should alert GPS, in confidence if preferred, as soon as possible if an unendorsed contract is being promoted in the market.

CUP Contracts - the role of PRG – terms of reference

Background

These Terms of Reference are designed to provide government agencies and Procurement Reform Group (PRG) members with all the information they require to understand the roles and responsibilities of the PRG in relation to All of Government and Syndicated Contracts

The Procurement Reform Group (PRG) was established in 2011. PRG has taken over the Cabinet mandated functions that were previously performed by the Cost Savings Technical Advisory Group (CSTAG) and the Syndicated Contract Review Board.

Roles and Responsibilities

The **specific tasks of the PRG are outlined at Appendix 1** to these Terms of Reference.

The general roles and responsibilities are as follows:

- Act as a sounding board to the procurement reform implementation team, in particular the all of government contracts team (Workstream 1 of the reform programme).
- Contribute technical expertise and advice to the development, implementation and management of 'all of government' procurement strategies and contracts and syndicated procurement activities.
- Review and advise on syndicated procurement strategies and documentation presented by government agencies to ensure robustness of strategy and consistency with the standards and expectations of cross government procurement initiatives.
- Promote the benefits of procurement reform and assist with the mentoring of the procurement profession in New Zealand Government.
- Provide stakeholder perspectives

The **Ministry of Economic Development (Government Procurement Solutions)** is responsible for the establishment, membership approval and provision of administrative and secretariat support to PRG. GPS have final approval on all syndicated and All of Government contracts endorsed by PRG.

Membership of PRG

The Chair of PRG - is appointed by the Manager of the Government Procurement Solutions group. The Chair is normally appointed for a 12 month term.

Membership of the PRG - is co-ordinated by GPS in consultation with the Chair of PRG and may be rotated every 12 months.

Potential members are required to complete a nomination form and forward it to the Manager, All of Government Contracts for

consideration. Members will typically have the following qualities and experience:

- Recognised for their technical procurement leadership and change management expertise
- An established and recognised competence in strategic procurement
- Experience in leading, managing and implementing complex procurement projects
- Good listening, analytical, mentoring and coaching skills

Membership of PRG is to be for an initial period of 12 months and then members are required to be confirmed as members by GPS, in consultation with the PRG Chair, based on member performance, availability, attendance and upcoming programme of work.

From time to time supplementary PRG members may be added for a fixed period of time to provide specialist advice for a particular programme of work.

How does PRG operate?

It's important to note that PRG members are selected primarily for their individual capabilities and experience. The group's value comes from leveraging this combined expertise/experience in reviewing and approving individual projects and contracts.

To support this:

- PRG meets monthly to review and endorse syndicated contracts that are under development.
- PRG must have a quorum of at least five members (including the Chair) before endorsement of syndicated CUP contracts is provided.
- PRG may split into sub committees, to enable concurrent activity and apply the right expertise, however all decisions come back to the full group for endorsement.
- Urgent advice, input and approvals can be accommodated, where it's absolutely critical, between meetings.
- Substitution and replacement of absent members is subject to approval of GPS in consultation with the Chair of PRG.



Are PRG members paid?

The PRG is not a statutory board for the purposes of the Fees and Travelling Allowance Act 1951. While members are not remunerated, MED may, at its discretion, reimburse expenses incurred by members or their organisations, where this is agreed in advance.

Probity

While members play a role in liaising between the procurement reform team and related initiatives and networks, they also need to be able to offer free and frank advice, while maintaining discretion about that advice in wider circles.

Given the nature of the information that PRG deals with, the group applies strict practices around managing conflicts of interest and maintaining confidentiality.

All PRG members are required to complete *Conflict of Interest and Confidentially Agreements* and regularly review their individual position, in terms of conflicts of interest, ahead of each PRG meeting.

It is expected that any actual or perceived conflicts of interest will be immediately raised with the Chair for review and appropriate management.

Appendix A – PRG: detailed roles & responsibilities



NOTE – the following roles and responsibilities cover PRG’s wider function and therefore cover areas outside of syndicated procurement

The Procurement Reform Group is responsible for:

All of Government Contracts:

1. Contribute technical expertise and advice to the development of the following documentation for all of government contracts:
 - a. Initial Category Analysis document
 - b. Category Review and procurement strategy documents
 - c. Draft RFX documents
 - d. Evaluation Plan (including weightings)
 - e. Contract Award documents,
 - f. Category strategy documents
 - g. Contract renewal award documents (in relation to contractual ‘rights of renewal’)
2. Oversight of the contract management of awarded All of Government and including but not limited to:
 - a. Review of regular high level quarterly implementation plans, contract reporting and relationship management activities
 - b. Review and endorsement of annual business plans and significant contract variations

Note: PRG may seek to use external specialist resource (with approval of GPS) where technical or specialist capability within the PRG membership is either unavailable or conflicted.

Syndicated Contracts:

3. Review, advise and approve syndicated procurement strategies and documentation presented by government agencies to ensure robustness of strategy and consistency with the standards and expectations of cross government procurement initiatives, including but not limited to:
 - a. Review high level business case.
 - b. Review and endorse Category Analysis/Procurement Strategy for contract being considered for syndication.
 - c. Review and endorse RFX documentation and Evaluation Methodology
 - d. Review and endorse contract award documentation and Contract/Relationship Management Approach/Plan
 - e. Review and endorse contract
 - f. Review and endorse contract renewal recommendations resulting from any renewal clause contained within approved contracts.
4. Oversight of the contract management of awarded syndicated contracts, including but not limited to:
 - a. Review of regular high level contract reporting

- b. Review and endorsement of annual business plans and significant contract variations

The Chair of PRG is responsible for:

5. Chairing PRG meetings and managing the agenda of PRG in consultation with GPS. In particular the PRG Chair is responsible for:
 - a. Ensuring that the PRG meetings are conducted in a professional manner in line with the promulgated agenda
 - b. Ensuring accurate minutes are taken of PRG meetings and that accuracy of minutes are confirmed by participants
 - c. Ensuring that all PRG members are provided with opportunity to express their views and opinions
 - d. Liaison with GPS regarding current and potential membership of PRG

The Government Procurement Solutions group (MED) will maintain oversight of the PRG and is responsible for:

6. Ensuring that PRG operates within the Government procurement policy framework and is aligned with the objectives of the Government Procurement Reform Programme.
7. Approving PRG endorsed contract documentation and collateral
8. Providing Secretariat support to PRG
9. Providing advice and guidance (potentially through mentorship) to Agencies considering becoming a lead agency for a syndicated contract
10. Acting as an appeals body for syndicated contracts and as such holds the ultimate decision making authority
11. Publishing details of All of Government Contracts and endorsed syndicated contracts on www.procurement.govt.nz and managing external communications in relation to All of Government contracts and syndicated contracts.

Appendix B – Example CUP clause

CLAUSE TO INCLUDE IN RFx DOCUMENT

Syndicated Procurement - Common Use Provision

- 1. It is intended that the contract/s awarded will include a Common Use Provision clause subject to endorsement by the Procurement Reform Group and final approval by the Ministry of Economic Development.*
- 2. At any stage during the life of any contract/s resulting from this RFx, and subject to the agreement of [name of the Lead Agency] and the successful supplier, any eligible Government Agency can become a party to the contract under the same terms and conditions as [name of Lead Agency] for the remaining life of the contract.*
- 3. [Name of Lead Agency] has no liability or responsibility whatsoever for any relationship formed between the Supplier and any subsequent Government Agency that may choose to utilise the contract's Common Use Provision.*
- 4. Definition of eligible agencies
All organisations within the State sector are deemed to be eligible agencies. This includes all agencies listed in the most current edition of the State Services Commission's publication - 'A guide to New Zealand's Central government agencies'. Some agencies (for example Local Government) require specific approval, to participate, from the Ministry of Economic Development.*

CLAUSE TO INCLUDE IN CONTRACT

Example Common Use Provision clause

- 1. At any stage during the life of this Agreement, with the consent of SUPPLIER, any New Zealand Government Agency may utilise the provisions of this Agreement for the balance of its term by signing the Addendum as specified in the Example Schedule.*
- 2. No guarantee is given that any Government Agency will participate during the life of this Agreement.*
- 3. Definition of eligible agencies
All organisations within the State sector are deemed to be eligible agencies. This includes all agencies listed in the most current edition of the State Services Commission's publication - 'A guide to New Zealand's Central government agencies'. Some agencies (for example Local Government) require specific approval, to participate, from the Ministry of Economic Development.*
- 4. How an agency moves from eligible to participating
'Appendix 'X' - Schedule regarding Syndicated Procurement' outlines the process for adding participating agencies.*

Appendix C – Example Schedule re Syndicated Procurement

EXAMPLE SCHEDULE - SYNDICATED PROCUREMENT

1 Becoming a Participating Agency

- 1.1 *In accordance with clause 'X' of this Agreement, LEAD AGENCY and SUPPLIER agree that this Agreement may be utilised as a Syndicated Procurement Contract through the procedure set out in this Schedule.*
- 1.2 *Any Government Agency may become a Participating Agency under this Agreement by obtaining the written consent of SUPPLIER.*
- 1.3 *Where SUPPLIER gives its written consent under clause 1.2 above, the Government Agency will become a Participating Agency under this Agreement (the Master Agreement) with effect from the date such consent was given, by signing the Addendum as specified in Annex A to this Schedule.*
- 1.4 *By becoming a Participating Agency pursuant to the Master Agreement, each Government Agency enters into an agreement with SUPPLIER on the same terms and conditions as contained herein, as if the Government Agency were party to the Master Agreement instead of LEAD AGENCY.*

2 Effect of Becoming a Participating Agency

- 2.1 *Each Participating Agency agrees to be bound by the provisions of the Master Agreement with SUPPLIER as if it were party to the Master Agreement instead of LEAD AGENCY, and SUPPLIER agrees to be bound by all the provisions of the Master Agreement as if the Participating Agency were the other party to the Master Agreement instead of LEAD AGENCY, once the Addendum in Annex 'X' to this Schedule has been signed.*
- 2.2 *The obligations of each Participating Agency under the Master Agreement are owed to SUPPLIER both severally and separately (not jointly).*
- 2.3 *The obligations of SUPPLIER under the Master Agreement are owed to each Participating Agency both severally and separately (not jointly).*
- 2.4 *No Participating Agency will be liable to SUPPLIER for the obligations of another Participating Agency.*

3 Process for Joining the Agreement

- 3.1 *With the consent of LEAD AGENCY, a separate Addendum to the Master Agreement will be established and duly authorised to bind each individual Participating Agency to the terms and conditions of the Master Agreement, for the life remaining under that agreement.*
- 3.2 *If any term in this Master Agreement conflicts with a term in a Participating Agency's Addendum, the term in the Addendum will prevail.*

- 3.3 *LEAD AGENCY and SUPPLIER consent to details of the terms and conditions (including pricing) and any service level agreement of this Master Agreement to be disclosed to any requesting Government Agency for the purposes of option evaluation.*

4 Account Management

- 4.1 *SUPPLIER shall appoint an account manager to manage the relationship with each of the Participating Agencies, subject to approval of the Lead Agency.*
- 4.2 *SUPPLIER agrees to meet with each of the Participating Agencies for yearly reviews, to monitor performance.*

5 Variations

- 5.1 *Any amendment to, or variation of, the Master Agreement will be in writing and signed by the appropriate authority of both SUPPLIER and LEAD AGENCY.*
- 5.2 *Any changes to this Master Agreement, including the Schedules, will be deemed to apply to all Participating Agencies.*

6 Liability

- 6.1 *Each Participating Agency will be separately liable for the payment of any debts that Participating Agency has incurred.*
- 6.2 *Neither LEAD AGENCY or Participating Agencies will be liable for any debts or liabilities of any other party to the Master Agreement.*

7 Dispute Resolution

- 7.1 *When a dispute is between a Participating Agency and SUPPLIER, LEAD AGENCY is willing, if requested, to mediate in order to assist a mutually agreeable resolution.*

8 Termination

- 8.1 *Upon any subsequent withdrawal under the terms of this Master Agreement by any Participating Agency, the Master Agreement will continue for the remaining Participating Agencies under the existing terms and conditions and relevant service level agreement.*
- 8.2 *Should LEAD AGENCY terminate this Master Agreement for any reason and in accordance with Cancellation of Agreement clause of the Master Agreement, Participating Agencies may continue using the Master Agreement. However LEAD AGENCY will no longer administrate the Master Agreement terms and conditions or any service level agreement and the remaining Participating Agency will be required to appoint a new Lead Agency.*

9 Notices

- 9.1 *Participation Agencies will notify the appropriate details within their respective Addendum.*

ANNEX A TO THE EXAMPLE SCHEDULE - SYNDICATED AGREEMENT ADDENDUM

GOVERNMENT AGENCY

AND

SUPPLIER

AGREEMENT REF 123

FOR THE SUPPLY OF ABC PRODUCT

SIGNED for and on behalf of)
INSERT SUPPLIERS NAME)
 by **Insert Signee Name**)
 _____)
 being the *Insert Appointment Title*)
 in the presence of:)

Witness

Signature: _____
 Name: _____
 Occupation: _____
 Address: _____

SIGNED for and on behalf of Lead Agency)
INSERT LEAD AGENCY)
 by **Insert Signee Name**)
 _____)
 being the *Insert Appointment Title*)
 in the presence of:)

Witness

Signature: _____
 Name: _____
 Occupation: _____
 Address: _____

CONDITIONS OF AGREEMENT

1 Background

- 1.1 *LEAD AGENCY and SUPPLIER have entered into the Master Agreement.*
- 1.2 *Pursuant to clause 7 “Syndicated Procurement” of the Master Agreement, SUPPLIER and the Government Agency have agreed that the Government Agency may become a Participating Agency under the Master Agreement, subject to clause 7 of the Master Agreement and this Agreement.*

2 Definitions

- 2.1 *The terms defined in the Master Agreement shall have the same meaning in this Agreement, unless the context otherwise requires and subject to the following further defined terms.*

Master Agreement means an agreement between LEAD AGENCY and SUPPLIER dated Insert Date for the provision of ABC PRODUCT by SUPPLIER.

3 Consent

- 3.1 *SUPPLIER consents to the Government Agency participating under the Master Agreement as a Participating Agency, upon and subject to the terms of clause 7 of the Master Agreement and the terms of this Agreement, with effect from the date of this Agreement.*

4 Amendments to Master Agreement

- 4.1 *The Master Agreement is amended, as between SUPPLIER and the Government Agency in accordance with Schedule One of this Agreement.*

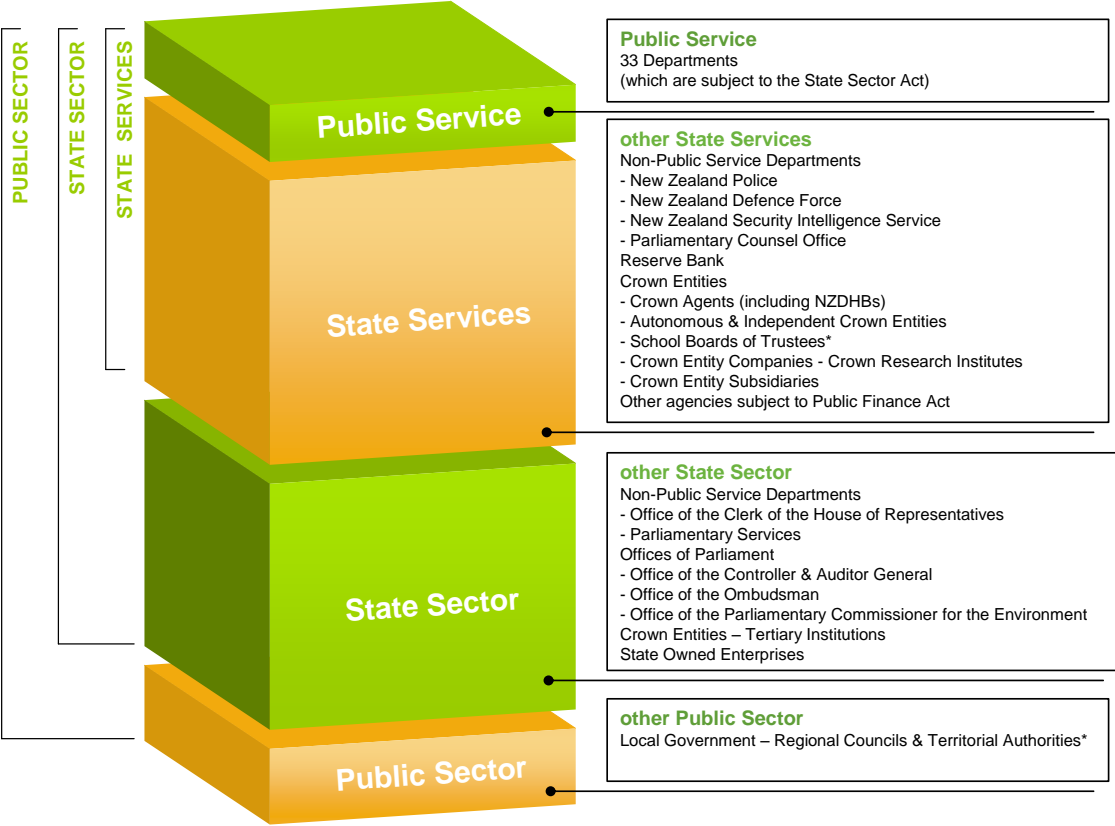
5 Notices

- 5.1 *For the purpose of clause 20 “Notices” of the Master Agreement, the Government Agency’s details are as follows:*

Insert Details

SCHEDULE ONE - AMENDMENTS TO MASTER AGREEMENT

Appendix D – Agencies within the State sector



* Local Government & School Boards of Trustees – don't have automatic eligibility for Syndicated CUP Contracts.

PRG - Syndicated Procurement Cover Note



INSTRUCTIONS: Please attach this cover-note to all submissions to the Procurement Reform Group.

Organisation's Name	[Your agency's name]
Title of Syndicated Contract	[short title contract]
Overview of syndicated opportunity	In a nutshell: What product/service does this relate to; Who will benefit; what outcomes will come from this syndication – what does success look like?:

PRG Stage 1	Seeking approval to initiate project	
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Attachments	Tick	Notes
Brief high level business case		
Category Analysis (if not included in business case)		
Other: (please state)		

PRG Stage 2	Seeking approval to go to tender	
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Multi-stage	Yes No	<i>If multi-stage – is this stage one or two?:</i>
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Attachments	Tick	Notes
Procurement Plan (incl. evaluation plan)		
Contract Management Plan		
RFX – Main document		
RFX - schedules		
GETS Advert text		
Other: (please state)		

PRG Stage 3	Seeking approval to sign contract	
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Attachments	Tick	Notes
Evaluation report - selection of supplier(s)		
Contract (with Legal endorsement)		
Award document		
Other: (please state)		



All submissions must in supplied 7 working days prior to the PRG meeting. The PRG will make best endeavours to turn around its response within 10 business days of reviewing it.

Contact information for enquiries	Name Email Physical address or post office box Telephone
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