INDUSTRY CAPABILITY NETWORK New Zealand

Understanding Public Sector Procurement Processes
A Supplier's Guide to the Procurement of ICT Goods and Services

PLANNING

Booklet 2

CONTENTS

PREFACE

This booklet series has been developed by the Industry Capability Network (ICN) to assist suppliers of information and communications technology (ICT) services in the public sector.

It is intended to provide a practical understanding of the policies, rules and processes that agencies follow when undertaking the procurement of ICT goods and services. By understanding these policies, rules and processes, suppliers are able to communicate with agencies in a more informed manner and are better positioned to respond to an agency's requirements.

Whilst every effort has been made to ensure these booklets reflect current best practice, readers should refer to the Ministry of Economic Development web site *www.med.govt.nz* for current government procurement policy and rules.

These booklets have been developed in parallel with the training material taught to public sector procurement practitioners as part of the Ministry of Economic Development's procurement training programme.

Structure of the Booklets

- Booklet 1 provides an introduction to the framework governing public sector procurement and the procurement life cycle model.
- Booklets 2 to 6 detail the activities and processes that occur within each of the five phases of the procurement life cycle model:
  - Planning
  - Requesting and Receiving Offers
  - Evaluation of Offers
  - Contract Award
  - Contract Management

Procurement Life Cycle Model

This diagram shows the five phases of the procurement life cycle model.

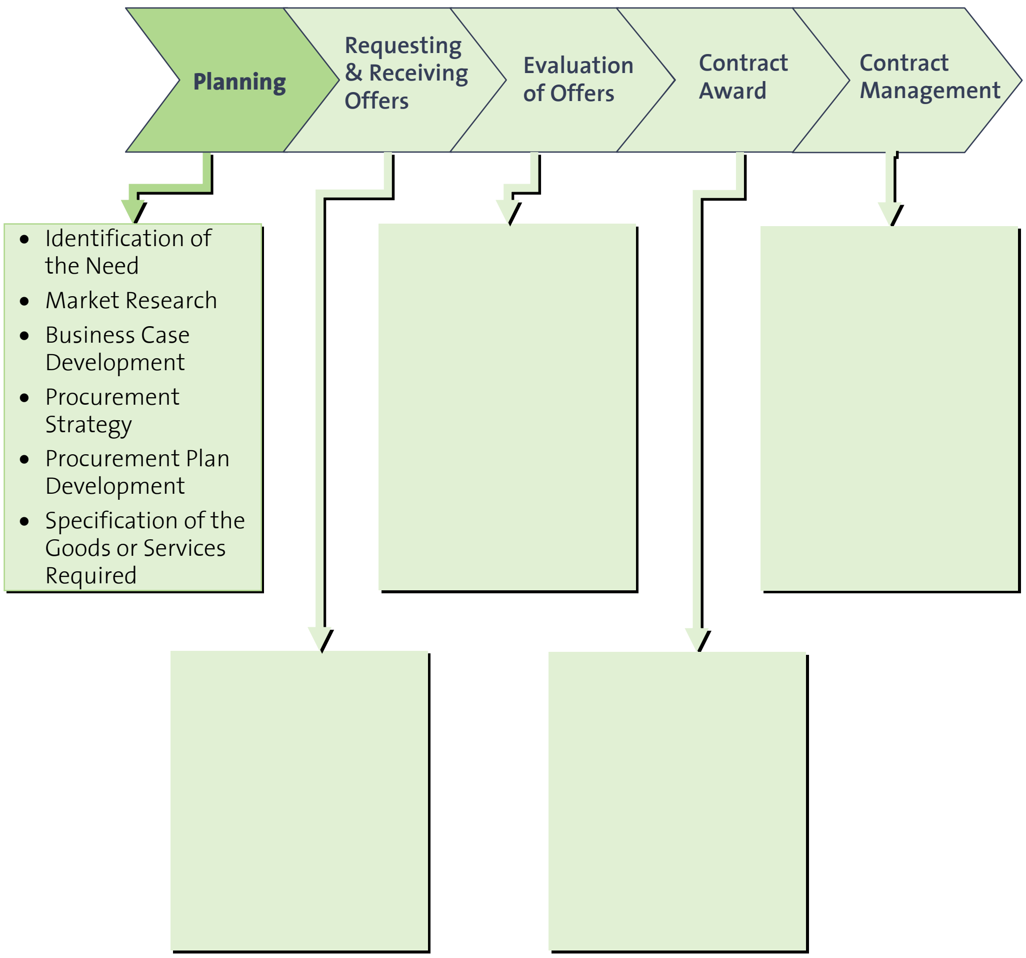
INTRODUCTION

The planning phase is one of the most important phases in the procurement life cycle. It is during this phase that the agency carries out its research, thinking and ***planning*** – the outcome of which establishes the process for the procurement.

This phase is also very important from the supplier's perspective. During the planning phase the agency looks to understand the market in terms of potential suppliers and solutions. During this period suppliers can engage in open dialogue with the agency as they look to build that market understanding and formulate their requirements. The agency may not openly advise the market of its procurement needs during this phase, so suppliers will need to continue to gather their "market intelligence" through normal channels.

PLANNING ACTIVITIES

This diagram shows the activities and processes in the planning phase of the procurement life cycle model.



Elements of the Planning Phase

The elements that make up the planning phase include:

- Identification of the need
- Market research
- Business case development
- Procurement strategy
- Specification of the goods or services required
- Procurement plan development

Government Electronic Tenders Service (GETS)

Government departments are required to publish annual procurement plans on the *Government Electronic Tenders Service (GETS)* for all planned procurements over $100,000 (excluding GST). These plans are required to be updated at least six monthly. The plans provide detail of each department's planned procurements, including selective procurements. The plans are not required to include details of public health, welfare or educational services' procurements, however some agencies may still include these procurements at their discretion.

IDENTIFICATION OF THE NEED

The identification of the need involves the broad identification of what is required. As part of this process, the agency will identify stakeholders, may carry out some stakeholder analysis or surveys, and undertake spend and demand analysis. Following this activity the agency will have some preliminary views on the required services and solutions.

MARKET RESEARCH

Where the agency undertaking the procurement does not have comprehensive knowledge of the market, it will undertake an appropriate level of market research to ensure a good business case is prepared and the decision on the selected procurement methodology is made in an informed manner. The various procurement methodologies that may be used are further discussed in *Booklet 3*, Requesting and Receiving Offers.

This market research is often conducted at an informal level and involves sourcing information from the Industry Capability Network *(www.icn.govt.nz)*, suppliers, other agencies of the same goods or services, specialist market analysts, professional organisations etc.

Request for Information (RFI)

However, in some cases the agency is looking for a more detailed understanding of the supplier market and the range of solutions and technologies that might be available. In these cases it may issue a formal Request for Information (RFI). Note the RFI is a request for information only, and is not a procurement method. An example of an RFI is at *Appendix 1.*

Example: Contract Management System.

A government agency has a requirement for a contract management system. There are a large number of commercial products available in the market, ranging from systems fully integrated with ERP solutions to stand-alone, shrink-wrap systems. As part of scoping its requirements and developing a business case, the agency is interested in:

- the type of functionality built into these products
- at an indicative level, the range of costs for the various solutions (e.g. from fully integrated with ERP to stand alone)

Rather than spend many hours researching web sites and talking to suppliers, the agency may issue an RFI on *GETS* seeking specific information from suppliers.

BUSINESS CASE DEVELOPMENT

For most high-value, complex or strategic procurements, the agency will prepare a business case as part of the project approval process.

From a procurement perspective, the Office of the Auditor-General's (OAG's) Procurement – A Statement of Good Practice identifies a range of questions that are considered as part of the business case development. See *Preparing a Business Case* in part 2 of the OAG's *Procurement – A Statement of Good Practice*.

At a generic level, the business case will normally:

- identify the outputs and outcomes to which the project contributes
- identify the objectives of the proposed procurement
- assess the costs, benefits and risks involved
- examine whether this initiative is feasible
- identify the preferred strategy and method for the procurement
- identify and assess options
- show that the preferred option will met the procurement objectives

PROCUREMENT STRATEGY

For lower-value, less complex procurements, a business case may not be required; however, as part of the planning process the agency will still develop a procurement strategy.

Many of the questions identified in *Preparing a Business Case* in part 2 of the OAG's *Procurement – A Statement of Good Practice* are considered as part of the development of the procurement strategy. These include consideration of:

- any legal obligations (obligations to existing suppliers, obligations to consult etc)
- strategic issues (e.g. consistency with government policies and the agency's strategic direction)
- risk issues
- funding issues
- syndicated procurement options

The agency will also consider the supply market when developing its procurement strategy. At a high level, this consideration is based on a requirement to ensure the existence of a supply market, both now and in the future, through which the agency can acquire, at good value for money, the goods and services it requires.

At a more detailed level, this supply market consideration involves looking at the following factors:

- the type of acquisition – is it of a long-term nature or a one-off arrangement requiring no ongoing relationship with the supplier?
- the business and process needs of the category
- the supply positioning of the category
- the nature and composition of the supply market in which the agency will be dealing (size, number of players, etc)
- the agency's strength in the marketplace
- the supply continuity risk
- any prime-vendor arrangements with existing suppliers

Two tools that agencies will use when considering some of these factors are Portfolio Analysis and Supplier Positioning.

Portfolio Analysis

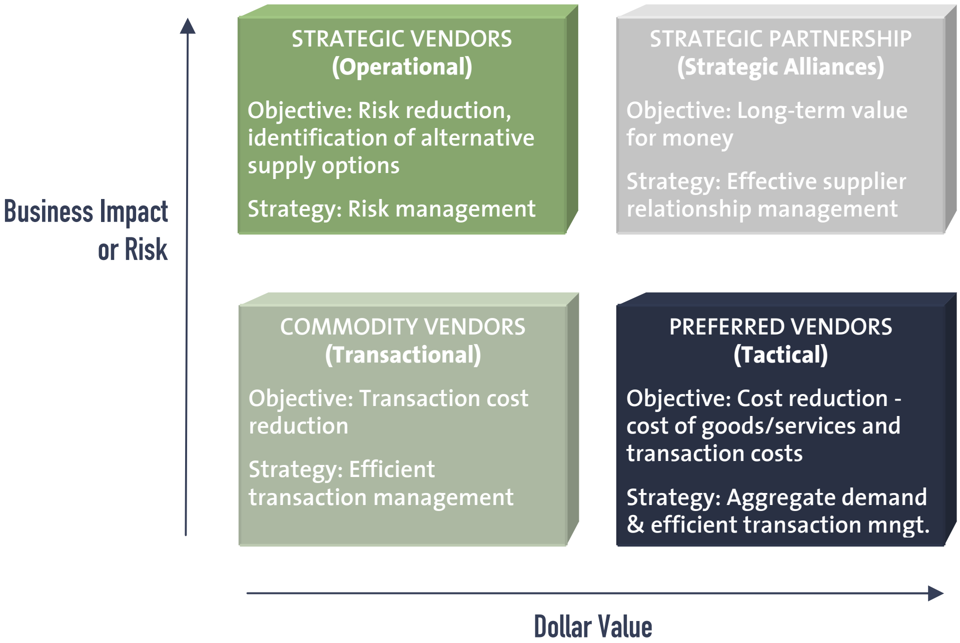
Using this tool the agency examines the category and the planned procurement in terms of the spend volume and the business impact or risk for its business. This assessment is used to help develop the objectives and strategy for the procurement.

How the Model Works

This impact or risk, ranging between low and high, is marked on the "Y" axis below. The agency then considers the overall cost of the procurement compared with its total ICT spend and marks the cost on the "X" axis, Dollar Value.

The lower left point where the "Y" and "X" axis join is the low point for both Business Impact or Risk and Dollar Value and the high points are at the top and right of each axis.

The agency then marks on the four-box model below the point where the Business Impact or Risk intersects with the Dollar Value, and accordingly, in which quadrant the procurement falls.



Transactional Quadrant

If both the Business Impact or Risk and the Dollar Value are low, the procurement will be treated as Transactional. Procurements in this quadrant are generally relatively simple, with the primary objective being to keep purchase and transaction costs as low as practical.

A typical procurement in this area might be standard ICT hardware and accessories such as monitors, keyboards and personal digital assistants (PDAs), where the goods are available from a large number of suppliers, are easy to specify and are price sensitive.

Tactical Quadrant

If the Business Impact or Risk is low and the Dollar Value is high, the procurement will be treated as Tactical. Tactical procurements generally have a similar cost-focused objective, in terms of both the cost of the goods/services and transaction costs. A typical procurement in this area might be the renewal of a software licensing agreement where the licensing fees are paid to a reseller and the agency has the opportunity to increase the value for money by seeking competitive offers from a number of resellers. In mid- to large-sized agencies, standard desktop PC purchase is also likely to fall in this quadrant. Aggregation of requirements is a usual strategy for procurements in this quadrant, where this aggregation is used to increase the attractiveness of the supply opportunity to suppliers, thus increasing the competitiveness of the pricing.

Operational Quadrant

If the Business Impact or Risk is high and the Dollar Value is low, the procurement will be treated as Operational. The key difference between an Operational and Transactional procurement is that any failure of the arrangement may lead to major issues for the buyer agency. Accordingly there is a significant focus on how to manage this risk in the procurement strategy. This may include splitting supply to ensure an alternative supply market exists, the use of tightly defined price review processes in the contract, or requiring software code to be held in escrow. A typical procurement in this quadrant might be the sourcing of a bespoke software solution, where a limited number of suppliers have the ability to develop and deliver the solution, and once a decision to proceed with one supplier is made it will be difficult to change suppliers again in the medium term.

Strategic Alliance Quadrant

If both the Business Impact or Risk and the Dollar Value are high, the procurement will be treated as a Strategic Alliance. Procurements in this quadrant will have a significant focus on ensuring the successful supplier has the ability, availability and resources required to work with the agency as a strategic partner. A typical procurement in this quadrant might be the provision of a large, expensive infrastructure requirement or the development of a multi-million-dollar middleware project.

Supplier Positioning

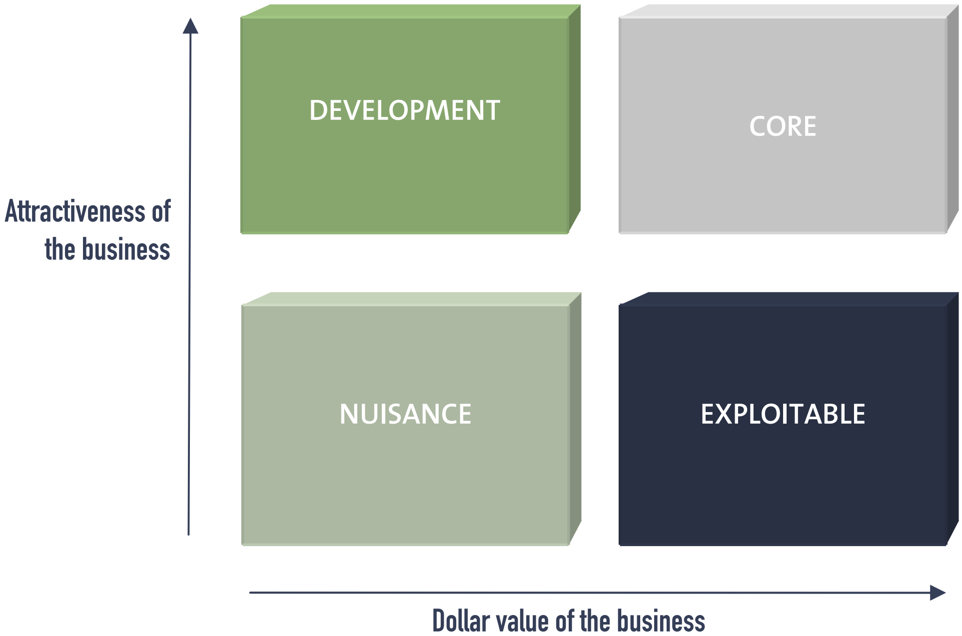
The next model that agencies use is called Supplier Positioning. This is a model where the agency examines its “attractiveness” to the supplier. Through this exercise the agency considers how it might structure its requirements (e.g. bundling or unbundling services) or what procurement strategy it might use that makes it “more attractive” to do business with, thereby increasing the value for money it can expect to achieve from the procurement.

In this model the supplier’s view of the “attractiveness” of the agency’s requirement (in non-dollar terms) is on the “Y” axis and the supplier’s view of the relative dollar value of the agency’s procurement requirement is on the “X” axis.

Agencys’ assessments of non-dollar attractiveness will be based on such factors as:

- how easy am I to deal with – in terms of both the initial procurement process and the ongoing contract management?
- do I require a lot of management time by the supplier?
- are my requirements clear?
- how much risk is involved in delivering my requirements?
- are there suppliers that would consider my volume requirements within their target market?
- do I pay my invoices promptly?
- am I a desirable reference site?

For a specific procurement the agency asks itself, whilst looking from the supplier’s point of view, just how attractive its procurement requirement (in non-dollar terms) is to the supplier. A mark between low and high will be marked on the “Y” axis. Next the agency asks itself, looking from the supplier’s point of view, what is the relative dollar value of the business to that supplier. A mark between low and high will be marked on the "X" axis. The agency will plot on the four-box model below the point where the Non-price Attractiveness of the Business intersects with the Dollar Value of the Business, and accordingly, in which quadrant the procurement falls.



Nuisance

If the non-price attractiveness and the relative dollar value of the agency's procurement are both low, suppliers may well view the agency as a "Nuisance". If this is the case, the agency considers that suppliers may not pay too much attention to its requirements and might not offer particularly competitive or tailored solutions. In such a situation the agency considers how it either moves itself from this quadrant or improves the value for money it receives. It may do this through using existing syndicated contracts

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Exploitable

If in the supplier's eyes the agency's non-price attractiveness is low yet the dollar value of the agency's requirement is positioned towards the right-hand end of the "X" axis, the supplier may view the agency as Exploitable.

A monopoly supply situation is an example of where a agency may consider itself in the Exploitable quadrant. In such a situation the agency will consider how it either moves itself from this quadrant or minimises the degree to which it is able to be exploited. Options it will use include open book negotiations, unbundling services to allow other suppliers to bid, or utilising specialist negotiators. Procurement methods such as utilising existing syndicated contracts are also used to move the procurement out of the Exploitable quadrant.

Development

In the Development quadrant suppliers view the agency's requirements as high in non-price attractiveness but low on the dollar value scale. There may be several reasons for this, including:

- the desirability of the agency as a reference site
- the opportunity to establish a track record with the agency
- the opportunity to gain more business (for example following a pilot)

Agencies managing procurements in this quadrant expect, and are looking for, very good value-for-money solutions.

Core

If suppliers view the agency as high in non-price attractiveness and high in dollar value, the agency may consider itself Core to the supplier's business.

As with the Development quadrant, agencies managing procurements in this quadrant expect, and are looking for, very competitive, good-value-for-money solutions.

SPECIFICATION OF THE GOODS OR SERVICES REQUIRED

Agencies endeavour to draft their specifications in a clear, concise and logical manner. The *Mandatory Rules for Procurement by Departments*, which cover procurements over $100,000 by government departments, ministries, the New Zealand Police and the New Zealand Defence Force, states:

1. Departments must not prepare, adopt or apply any technical specification with the purpose or effect of creating unnecessary obstacles to international trade or domestic supply

2. Technical specifications prescribed by a department must, where appropriate:
   a. be specified in terms of performance and functional requirements, rather than design or descriptive characteristics
   b. be based on international standards, where applicable, or otherwise on national technical regulations, recognised national standards, or building codes

3. Departments must not prescribe technical specifications that require or refer to a particular trademark or trade name, patent, design or type, specific origin or producer or supplier, unless there is no sufficiently precise or intelligible way of describing the procurement requirements and provided that, in such cases, words such as "or equivalent" are included in the tender documentation

4. Departments must not seek or accept advice to be used in the preparation or adoption of any technical specification for a particular procurement from a person that may have an interest in that procurement, if to do so would prejudice fair competition.

Development of the Specification

The high-level considerations around the structure and content of the specification are reasonably straightforward. However, in practice it can be a lot harder to get the specification right – particularly in application development projects.

One particular risk agencies have identified in application development projects involves the development of the specification by an independent party with "no skin in the game" in terms of the successful development of the application.

There are several approaches agencies may use to ensure a good specification is developed:

- If using an independent third-party consultant to develop the specification, incorporate a payment milestone linked to the quality of the specification. This milestone is generally phased in a similar manner to a civil construction project retention payment, where the quality of the specification is measured at the completion of the application development, and payment made accordingly. This provides for an objective evaluation of the specification quality, as well as incentivising the specification developer to focus on the project outcome – not just the output from the specification development phase

- Include a consultation phase in the project after the specification development phase has been completed and before the application development phase is tendered. During this consultation phase the agency and prospective application developers can engage in an informal review and quality assurance process to ensure the adequacy of the specification

- Select a procurement strategy where the selected application developer is responsible for the specification development as well. As with the first bullet point, this approach ensures that the focus during the specification application phase is on the project outcome – not just the specification

PROCUREMENT PLAN

The development of the procurement plan is generally the last activity in the planning phase. This document brings together the previous analysis and requirements into a plan for the procurement.

The content and size of the procurement plan will vary depending on the dollar value and project complexity; however, as a general rule it will include the following:

- the project scope, including:
  - the purpose of the project
  - the objectives
  - the intended outcomes or products (the deliverables)
  - the boundaries of the project (what is out and what is in)
  - the benefits (quantified if possible)
- the procurement method
- the evaluation process if a competitive procurement
- responsibilities, including those of approval authorities and other stakeholders
- the risks
- a timeline and key milestones
- resources (e.g. project manager, evaluation team members, tender manager)
- the budget (including the budget for conducting the procurement e.g. external QA, probity audit, legal advice, project management)

Buyer-Side Ethical Considerations Relating to the Planning Phase

It is important that all public sector entities ensure their employees, and any contractors or agents acting on their behalf, observe ethical standards, principles and behaviour throughout the procurement process. This means acting, and being seen to act, in a fair, open and unbiased manner when involved in any aspect of the procurement of goods or services.

In practical terms this means:

- no one from the buyer agency engaged in a procurement project should be accepting any gift, hospitality or other incentives from any suppliers or potential suppliers. This applies from the time planning for the procurement commences to the signing of the contract
- any personnel involved in any procurement activity are required to declare any personal interest that may affect, or could be perceived to affect, their impartiality in any aspect of their work
- the specifications, procurement strategy and procurement method are not developed to disadvantage deliberately any potential supplier
- information obtained through the course of a procurement project is not used for personal gain
- information is always communicated accurately, impartially and in a manner not designed to mislead

Risks

Generic risks identified by agencies relating to the planning phase of the procurement life cycle include:

- poorly developed specifications, which may result in:
  - the goods or services not meeting the agency's needs
  - cost escalation and schedule delays
- not following the *Mandatory Rules for Procurement by Departments,* which may result in:
  - the selection of a procurement strategy not permitted under the Mandatory Rules e.g. use of a selective procurement method for a non-exempt procurement over $100,000
  - the selection of an inefficient or sub-optimal procurement strategy based on an incorrect perception of what is required under the Mandatory Rules
- insufficient understanding of the market and/or consideration of where the procurement sits in the agency's portfolio, which may result in the selection of a procurement strategy that does not deliver the best value-for-money solution
- an insufficiently scoped procurement plan, which may result in:
  - an evaluation process that does not select the best value-for-money solution
  - project slippage
  - unforeseen and unmanaged risks

Annual Procurement Plans

As part of the new procurement rules approved by Cabinet in April 2006, departments must publish on *GETS*, by 1 July each year, a rolling Annual Procurement Plan (APP), which is to be updated at least six monthly.

The APP is required to contain a short strategic procurement outlook for the department supported by details of any planned procurement, including the estimated date of the publication of a notice of intended procurement on *GETS*.

Ensure that you review the APPs for any agency that you are targeting or with which you have an existing relationship.

Use the agency planning phase to build an understanding of the agency – not just details of the procurement. This includes building an understanding of the culture, the agency's objectives for the procurement, where the procurement sits in its portfolio (see *Portfolio Analysis*), how it contributes to the achievement of the agency's outputs and outcomes, the type of relationship the agency is seeking – transactional, strategic partnership or somewhere in between, etc. It is important to have this understanding and to reflect it in your response to any Requests for Offer.

APPENDIX 1: EXAMPLE

REQUEST FOR INFORMATION (RFI) FOR [INSERT RFI TOPIC]

[Agency] is seeking information on [xxxx] as set out in the attached Statement of Requirement.

Please note that the documents attached to this RFI are confidential and are covered by copyright, but may be copied to the extent necessary to prepare a response to this RFI. The information contained in your response will be treated similarly (subject to [agency's] obligations under the Official Information Act 1982).

[I am] [XXX is] the [agency] contact person for this RFI. If you have any questions relating to it, please contact [me] [XXX] by phone ..... fax ... or email .....

Yours sincerely

[Title]

Attachments:
Part A: Commercial Advice
Part B: Statement of Requirement

PART A – COMMERCIAL ADVICE

1. Status Of RFI

1.1 The primary purpose of this RFI is to seek general information on …

1.2 In the normal course of events the RFI will enable [Agency] to develop a formal Request for Offers (either an EOI, RFP or RFT), and which will be advertised on the Government Electronic Tenders Service (GETS – *www.gets.govt.nz*). Following consideration of the responses to this RFI, [Agency] will, at its discretion, decide whether or not to issue a Request for Offers.

2. Response Closing Date, Etc

2.1 The completed response is to be enclosed in a sealed envelope marked "Information for [Name of RFI]" and is to reach:

[Title of person managing the RFI]
[Agency]
[Address]
New Zealand

by NOON on the closing date of [Date].

2.1 Your response must include
- 2.1.1. Company name
- 2.1.2 Supplier contact detail
- 2.1.3 Any other specific information required

2.2 Responses are to be in the English language, are to be submitted in duplicate and are to be signed by your duly authorised representative.

2.3 Any questions of clarification should be directed to the [Agency] contact person.

2.4 The issue of and response to this RFI is not to be construed as representing or creating any binding obligation on [Agency] to enter into any legal commitment whatever or being any commitment by [Agency] to purchase any or a particular quantity of equipment/services.

PART B – STATEMENT OF REQUIREMENT