

19 June 2009

Mr Donald Christie
President New Zealand Open Source Society
c/- Catalyst IT Limited
PO Box 11-053
WELLINGTON



Dear Mr Christie

Request for Information concerning G2009

Thank you for your email of Friday, 5 June 2009. I have been asked to respond to you on the State Services Commissioner's behalf.

- 1 You have asked the Commissioner to confirm *“that government agencies are required to tender for software procurement so that our member companies and others have the opportunity to tender open source products and services.”*

Procurement of goods and services by individual departments is subject to the Government's procurement policy framework, administered by the Ministry of Economic Development. That framework includes the Mandatory Rules for Procurement by Departments (the Rules). Each Public Service department (plus New Zealand Police and New Zealand Defence Force) must comply with Rules; other public sector agencies are encouraged to comply with the Rules.

The Rules require that departmental procurements be guided by the following principles:

- value for money;
- open and effective competition;
- full and fair opportunity for domestic suppliers;
- improving business capabilities;
- recognition of New Zealand's international trade obligations and interests; and
- sustainably produced goods and services wherever possible, having regard to economic, environmental and social impacts over their life cycle.

Where the value of a contract for goods or services is above the relevant threshold specified in the Rules, an open tender process is required. The Rules also provide certain exclusions and exceptions to the open tender requirement. Each department or agency is responsible for its application of the Rules.

- 2 You have asked the State Services Commissioner (the Commissioner) to confirm that *“each agency will be required to tender for its software procurement and to comply with all other aspects of the rules.”*

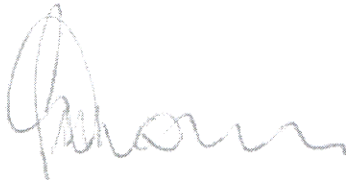
As noted above, each Public Service department (plus New Zealand Police and New Zealand Defence Force) must comply the Government's procurement policy framework, including the Rules. Other public sector agencies are encouraged to comply with the Rules. The Rules do not necessarily require that each department or agency currently utilising Microsoft products must tender for software procurement. Each department or agency needs to make its own decision as to what the Rules require or exempt, by reference to its individual circumstances.

- 3 In relation to a statement that "*SSC will now provide support for agencies following the cessation of the negotiations,*" you have asked that the Commissioner "advise all agencies accordingly" and provide you with a copy of that advice.

The Commissioner has run a series of workshops to provide this support to agencies. A copy of the Power Point slides given to agencies is attached. One slide has been withheld in reliance on section 9(2)(b)(ii) of the Official Information Act on the ground that to make it available would be likely unreasonably to prejudice the position of the person who supplied or who is the subject of the information. I have considered whether the reason for withholding the slide is outweighed by the public interest in release and do not believe that it is.

I advise you of your right under section 29(3) of the Official Information Act to make a complaint to an Ombudsman seeking an investigation and review of my decision to withhold the information.

Yours sincerely



Peter Brown
Deputy Commissioner and Acting Government CIO