

SPECIFICATION OF PROPRIETARY LIGHTING COLUMN PRODUCTS

There is a continuing problem with proprietary lighting column products being specified in the project documentation for Waka Kotahi NZ Transport Agency projects. This note is to clarify the situation. It is based on a “legal opinion” conversation with the Waka Kotahi NZ Transport Agency Senior Legal Counsel.

Section 25 of the LTMA applies. This requires “fair competition”, emphasised by:

- Waka Kotahi Procurement Policy,
- Ministry of Economic Development,
- Office of the Auditor General, and
- Section 27 of the Commerce Act.

In summary it is quite possible that the use of brand names is a lessening of competition (whether “substantially” or not) and it is not something in which Waka Kotahi should be seen to be engaged. It is a risk in that it leaves Waka Kotahi open to complaints from the supply chain, to Commerce Commission, in the press (“reputational risk”), etc., and is something that dilutes issues of fairness to all parties.

Therefore, the safest approach, where Waka Kotahi has a performance-based specification (i.e. M26), is to use a generic product description. For example - “a lighting column compliant with Waka Kotahi Specification M26”. This description covers currently available proprietary lighting column products currently listed in the appendix of the M26 specification.

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