

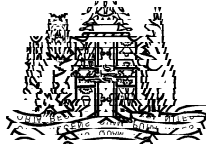


New South Wales
Government

Implementation Guidelines **NSW Government Procurement**

Implementation

1999



Implementation Guidelines

for the

NSW Government Procurement

Code of Practice and
Code of Tendering

October 1999

This document was prepared by the Department of Public Works and Services for the State Contracts Control Board.



@ 1999 Department of Public Works and Services

This work is copyright. Apart from any use as permitted under the Copyright Act 1968, no part may be reproduced without written permission from the Department of Public Works and Services. Requests and enquiries concerning reproduction and rights should be addressed to:

Director
Policy Services Division
Department of Public Works and Services
Level 23, McKell Building
2-24 Rawson Place
SYDNEY NSW 2000

Phone (02) 9372 9150
Fax (02) 9372 8851
Email sccb@dpws.nsw.gov.au
Website www.dpws.nsw.gov.au

DPWS Report No 99029

ISBN 0 7347 4060 3

Cover printed on 100% oxygen-bleached (totally chlorine free) paper. Paper for the inside pages is 70% recycled and Australian-made.

Printed using vegetable-based mineral-oil-free inks.

Contents

1	Introduction	3
<hr/>		
2	Objectives	4
<hr/>		
3	Definitions	5
<hr/>		
4	Implementation	8
	4.1 Scope and Implementation	8
	4.2 Standard advertisement and conditions of tender	9
<hr/>		
5	Roles	13
	5.1 Government agencies	13
	5.2 Service providers: contractors, suppliers, subcontractors, consultants, agents and employers	17
	5.3 Employer and industry organisations	18
	5.4 Unions	18
<hr/>		
6	Ethical principles	19
	6.1 Prohibited practices	19
<hr/>		
7	Continuous improvement and best practice	20
	7.1 Commitment, reward and recognition	20
	7.2 Ecologically sustainable development	20
	7.3 Tendering and contract management	22
	7.4 Promoting culturally appropriate services	22
	7.5 Security of Payment	23

8	Workplace practices	24
	8.1 Employee and industrial relations	24
	8.2 Liability of Principal Contractor to pay employees of others	25
	8.3 Equal employment opportunity (EEO)	25
	8.4 Training and skills formation	26
	8.5 Aboriginal employment business skills, and the economic conditions of Aboriginal communities	26
	8.6 Occupational health, safety and rehabilitation (OHS&R)	27

9	Compliance	29
	9.1 New South Wales Government policy	29
	9.2 Monitoring compliance with the Codes	29
	9.3 Occurrence of a breach of the Codes	31
	9.4 Breaches by a government agency and agency employees	34
	9.5 Role of industry organisations	35

10	Further information and assistance	36
-----------	---	-----------

11	Appendices	42
	A Statutory declaration for reporting breach of Code of Practice or Code of Tendering for NSW Government Procurement or both	43

Introduction

The NSW Government will only do business with those members of industry who display a commitment to the principles in *the Code of Practice for NSW Government Procurement* and the attendant *Code of Tendering for NSW Government Procurement*. The Codes apply to procurement by all NSW Government agencies and those doing business with and for government.

State Owned Corporations should give consideration to incorporating the standards of behaviour of the Code of Practice into their statements of corporate intent.

These Implementation Guidelines expand on key aspects of the Codes and should be read in conjunction with both Codes.

The Codes underpin the policy framework given in the *Policy Statement for NSW Government Procurement* and all business relationships by establishing:

- the standards of probity, ethics and integrity expected from all parties in the supply chain
- fair opportunity for prospective service providers to compete for government business
- commitment to continuous improvement by all participants in the supply chain, and
- accountability and consistency across all NSW Government agencies in their procurement practices.

These Codes provide the framework for issue-specific codes, such as the *Code of Practice on Employment and Outworker Obligations for Textile Clothing and Footwear Suppliers* and Codes for the construction industry.

Any subsequent codes of practice or guidelines issued relating to specific areas of NSW Government procurement will be consistent with the principles established under the *Code of Practice for NSW Government Procurement*.

To the extent that any subsequent code of practice or guidelines issued relating to specific areas of New South Wales Government procurement is inconsistent, the *Code of Practice for NSW Government Procurement* shall prevail, unless the contrary is stated in the subsequent code of practice or guidelines.

Any enquiries about the *Code of Practice* and *Code of Tendering for NSW Government Procurement* should be referred to the client government agency, the Department of Public Works and Services, or the State Contracts Control Board (SCCB) at the address provided in Section 10. Section 10 also provides a list of further contacts and telephone numbers.

October 1999

Objectives

The objectives of the *Code of Practice* and *Code of Tendering for NSW Government Procurement* are outlined in Section 2 of the Code of Practice.

The Codes are supported by sanctions that may be applied, when the need arises, via the Government's right as a client to choose with whom it does business. The compliance provisions of the Codes are outlined in Section 8 of the *Code of Practice* and are expanded on in Section 9 of these Guidelines.

These implementation guidelines detail key aspects of the *Code of Practice* and *Code of Tendering for NSW Government Procurement*.

The NSW Government will publish a *NSW Government Procurement Manual* containing whole-of-government policy and best practice guidelines for use by both service providers and government agencies. The guidelines will cover key implementation aspects of the NSW Government procurement policy, such as: procurement plans, industry impact statements, workforce development and environmental management.

The Codes, these Guidelines and the Manual will facilitate a cooperative approach to the way government agencies and industry do business.

Definitions

Affirmative Action

Policies intended to redress discriminatory practices in employment. These policies commonly redress discrimination and victimisation based on age, disability, gender, marital status, sexual preference, and racial or ethnic origin; and provide for equal opportunity in employment.

Client

Party receiving tenders.

Contract

Agreement for the supply of goods or performance of services.

Contractor

Person, corporation, or service provider who contracts to supply or arrange the supply of goods or performance of services.

Employee

Person whose employment is governed by a contract of service, or a person deemed to be an employee under the *Industrial Relations Act (NSW)* as amended.

Employer

Person, corporation, enterprise or organisation that employs a person or persons under a contract of service or a person deemed to be an employer under the *Industrial Relations Act (NSW)* as amended.

Equal Employment Opportunity

Equal Employment Opportunity (EEO) means that everyone should have fair and equitable access to jobs, employment conditions, training and promotional opportunities. It does not assume that everyone has the same abilities but aims to ensure that everyone has a fair chance to demonstrate their abilities, to use them, improve them, and benefit from them.

Employer association

Association or organisation of employers which is registered or taken to be registered under the *Workplace Relations Act (Commonwealth)* or *Industrial Relations Act (NSW)* as amended.

Implementation Guidelines

Fairness

This means being objective, reasonable and even-handed. Being fair does not mean satisfying everyone. It can be unfortunate, but not unfair, that people may be adversely affected by decisions.

Government agency or government agencies

New South Wales Government departments or declared authorities within the meaning of the *Public Sector Management Act (NSW) 1988*; State-owned corporations within the meaning of the *State Owned Corporations Act (NSW) 1989* as amended; or entities established by a separate Act of the New South Wales Parliament, and whether or not that corporation or entity is expressed to represent the Crown.

Industry association

Organisation representing the professional, trade or commercial interests of its members.

Monitoring

Process of regularly collecting information to review performance against specified criteria.

Principal

Government agency that contracts for the supply of goods and services, including the State Contracts Control Board (or its delegate).

Probity

Integrity; uprightness; honesty.

Procurement

Process involving all activities following the decision that a good or service is required. It involves the acquisition and disposal of goods and services.

Purchasing

Actual buying process, whether placing or transmitting an order orally, in hard copy, electronically via Electronic Document Interchange (EDI) or Electronic Commerce (EC), or buying across the counter.

Service providers

Includes contractors, suppliers, subcontractors, consultants, agents, and employers who provide goods or services to a client.

Tenders

Prices, bids, quotations or proposals lodged in response to an invitation or request.

Tenderers

Parties submitting tenders.

Union

Organisation of employees, also referred to as a 'trade union' which is registered under the *Workplace Relations Act (Commonwealth)* or the *Industrial Relations Act (NSW)* as amended. By extension this term also includes the Labor Council of New South Wales, the State's peak body for employees.

Value for money

It is determined by considering all factors relevant to a particular purpose. It includes the cost of the goods and services, whole of life costs, innovation and value adding components such as meeting the Government's economic, social development and environmental policy objectives.

Value for money does not automatically mean the 'lowest price'. It is important to be clear about how value for money will be determined in any particular set of circumstances before assessing tenders.

Implementation

Scope and Implementation

4.1

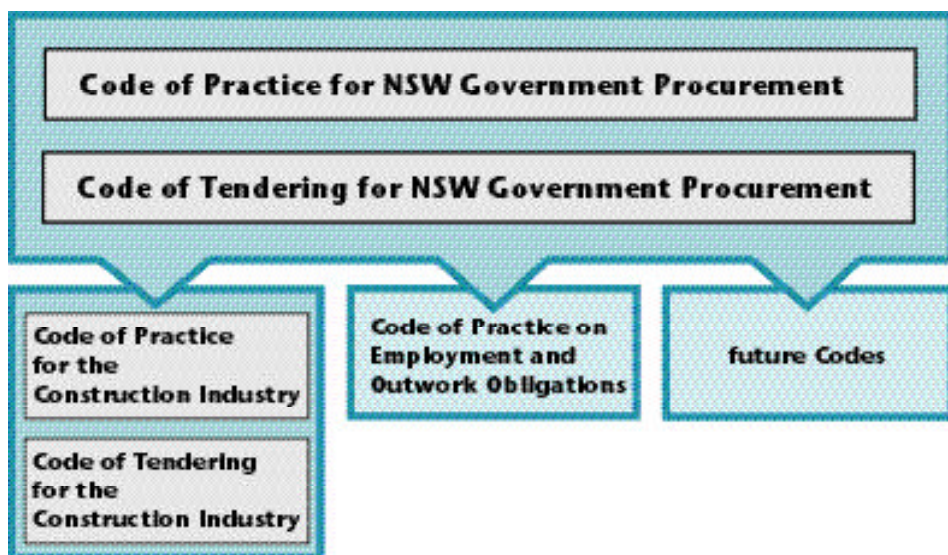
The *Code of Practice* and the *Code of Tendering for NSW Government Procurement* cover all aspects of procurement, including the procurement of:

- consumables (goods)
- service contracts
- consultancies and professional services*
- construction, maintenance, and material supply contracts*
- service facilities contracts
- capital equipment, and
- property and leasing arrangements.†

* activities relating to the construction industry are dealt with specifically in the *New South Wales Government Code of Practice* and *Code of Tendering for the Construction Industry* and accompanying *Implementation Guidelines* to those Codes.

† includes all property transactions (for example purchasing, infrastructure developments, etc)

The *Code of Practice on Employment and Outwork Obligations for Textile Clothing and Footwear Suppliers* is to be applied in conjunction with this Code for textile, clothing and footwear contracts.



Service providers, including contractors, suppliers, subcontractors, consultants, agents, and employers who provide goods or services to a client are required to adopt all aspects of the *Code of Practice* and *Code of Tendering for NSW Government Procurement*, and must comply with the NSW Government's procurement policies, practices and tendering requirements.

Government agencies, their employees or agents will be required to implement the Codes as part of their normal responsibilities to government.

Standard advertisement and conditions of tender

4.2

Compliance with the *Code of Practice* and *Code of Tendering for NSW Government Procurement* is a condition of all government contracts.

To demonstrate ability to comply with the Codes, each tenderer must state in its tender response that it has:

- read and understood the *Code of Practice* and *Code of Tendering for NSW Government Procurement*; and
- complied with the Codes in preparing and submitting the tender.

In addition, successful tenderers will be expected to:

- maintain compliance with the Codes under the contract awarded; and
- provide evidence of compliance, when requested, with aspects of the Codes as notified by the Principal during the course of any contract awarded.

The above is in addition to other information tenderers may be required to provide to demonstrate compliance with issue specific codes. For example, tenderers for textile, clothing and footwear contracts are required to provide a statutory declaration with their tender to satisfy the requirements of the *Code of Practice on Employment and Outwork Obligations for Textile Clothing and Footwear Suppliers*.

An advertisement for the calling tenders and a notification for inclusion in all documents requesting tenders, other than those tenders relating to the construction industry are indicated in Section 2.3 of the *Code of Practice for NSW Government Procurement*.

Implementation Guidelines

Where the tenderer is based outside New South Wales, the tenderer must state that it has:

- read and understood the *Code of Practice* and *Code of Tendering for NSW Government Procurement*; and
- complied with the *Code of Tendering for NSW Government Procurement* in preparing and submitting the tender.

In addition, successful tenderers will be expected to:

- act in accordance with all the requirements of the equivalent to the *Code of Practice* in that place or, where no equivalent of the Code exists in that place, comply with the Code to the extent possible under the laws of that place;
- maintain compliance with the *Code of Tendering for NSW Government Procurement* under the contract awarded; and
- provide evidence of compliance, when requested, with aspects of the Codes as notified by the Principal during the course of any contract awarded.

Model tender clauses

The following model tender clauses have been prepared for inclusion into tender documentation.

For tenderers based in NSW:

I, _____ (insert full name and position) on behalf of _____ (insert organisation name) have read and understood the *Code of Practice* and *Code of Tendering for NSW Government Procurement* and _____ (insert organisation name) have complied with the Codes in preparing and submitting the tender.

If _____ (insert organisation name) is successful, we will maintain compliance with the Codes under the contract awarded. We understand that we will be required to provide evidence of compliance, when requested, during the course of any contract awarded.

For tenderers based outside NSW:

I, _____ (insert full name and position) on behalf of _____ (insert organisation name) have read and understood the *Code of Practice* and *Code of Tendering for NSW Government Procurement*. _____ (insert organisation name) has complied with the *Code of Tendering* in preparing and submitting the tender.

If _____ (insert organisation name) is successful and is awarded a contract, we will act in accordance with all the requirements of the equivalent to the *Code of Practice* in that place or, where no equivalent of the Code exists in that place, we will comply with the Code to the extent possible under the laws of that place. We will also maintain compliance with the *Code of Tendering*.

We understand that we will be required to provide evidence of compliance to the Codes, when requested, during the course of any contract awarded.

Clothing and footwear tenders must in addition include the Standard Conditions of Tender outlined in Section 8 in the *Code of Practice on Employment and Outwork Obligations for Textile Clothing and Footwear Suppliers*.

Roles

These *Implementation Guidelines* expand on Section 4 of the *Code of Practice for NSW Government Procurement* and should be referenced by all parties in fulfilling their roles, responsibilities and obligations under that Code and the *Code of Tendering for NSW Government Procurement*.

Government agencies

5.1

Government agencies as clients

Government agencies, their employees and agents are responsible for implementation of the *Code of Practice* and the *Code of Tendering for NSW Government Procurement*, and will monitor compliance with the Codes as outlined in Section 8 of the *Code of Practice* and Section 9 of these Guidelines.

The community is entitled to expect that NSW Government agencies will conduct their business activities with efficiency, economy, fairness, impartiality and integrity.

The NSW Government is committed to the highest standards of probity in public administration. The Independent Commission Against Corruption (ICAC) was established to deter corruption in public administration through investigation, corruption prevention and education.

Government agencies have a responsibility to develop and promote to employees, agents and service providers, a climate of ethical awareness, conduct and decision making. These standards should reflect the organisational values and ethics that underpin an agency's corporate plans and would address as a minimum the following areas:

Conflict of interest

Conflict of interest, at either a personal or agency level, can arise where there is reasonable expectation of direct or indirect benefit or loss for an individual employee with a particular personal interest that could be influenced, in favour of that interest, in the performance of their duties. The benefit or loss may be financial or non-financial. Conflicts of interest that lead to partial decision making may constitute corrupt conduct.

Some related interests that may give rise to a conflict of interest include:

- financial interests in a matter the agency deals with or having friends or relatives with such an interest that the employee is aware of
- personal beliefs or attitudes that influence the impartiality of advice given

- personal relationships with the people the agency is dealing with or investigating that go beyond the level of a professional working relationship
- secondary employment that compromises the integrity of the employee and the agency, and
- party political activities or making adverse political comments that relate to the agency's work.

There is a reasonable community expectation that where such conflict occurs, it will be declared, assessed and resolved in favour of the public interest.

Individual employees therefore have an obligation to report possible or actual conflict or incompatibility between their public duties and their personal or private lives. In the event of conflict, or potential conflict, individual employees must disclose it as soon as possible and agencies need to respond appropriately.

The objective of disclosing interests that are or could be in conflict with official duties is to ensure prompt consideration, comprehensive assessment and, where necessary, the implementation of alternative working arrangements or other action, as determined by the agency concerned.

Agencies should ensure that employees, agents and service providers understand what may constitute a conflict of interest or perceived conflict of interest and how to ensure that their practices do not encourage its occurrence.

Acceptance of gifts or benefits

Agencies should ensure that employees, agents and service providers are aware of the agency's requirements in this area and the importance of public perception of influence. An agency's employees or agents should not accept a gift or benefit, nor should they be offered such inducements by service providers, that is intended to, or is likely to cause them to act or to be perceived by others to be acting in a partial manner in the course of their duties.

Discrimination and harassment

Agencies must ensure that the workplace is free from all forms of harassment and discrimination and that is extended to all dealings with the public.

Fairness and equity

All aspects of procurement should be conducted with fairness and equity.

Protecting confidential information

Agencies must ensure employees and their agents are aware of the agency's requirements to not disclose or use any confidential information. This does not include the authorised release of confidential information eg. authorised by legislation or the service provider.

Reporting corrupt conduct and maladministration

Agencies must ensure that employees and their agents have information about an agency's internal reporting procedures and mechanisms, and reporting to independent bodies such as the ICAC and the Ombudsman.

State Contracts Control Board (SCCB)

The NSW State Contracts Control Board (SCCB) is made up of the following NSW Government's major policy and procurement agencies:

- Department of Public Works and Services (chair)
- Premier's Department
- Cabinet Office
- NSW Treasury
- Department of State and Regional Development
- Department of Health
- Department of Education and Training
- Department of Local Government
- NSW Police Service, and
- Sydney Water Corporation

Responsibilities include:

- advice to the Minister for Public Works and Services on procurement practices and initiatives
- advice on whole-of-government procurement plans and performance against targets
- arrangement for the supply and disposal of goods and services for the NSW Public Service, and development of associated procedures

- investigation and resolution of grievances arising in the course of government procurement
- review of complaints by service providers who feel unnecessarily precluded from tendering or penalised by contract terms or specification
- act as a complaints body for competitive neutrality complaints on tendering matters in line with National Competition Policy obligations
- monitoring the implementation of the *Code of Practice* and *Code of Tendering for NSW Government Procurement*, *Code of Practice on Employment and Outwork Obligations for Textile Clothing and Footwear Suppliers* and issue-specific codes developed from time to time, to ensure these Codes are consistently and effectively applied across government, and
- liaison with agencies and industry on government procurement practices.

Construction Policy Steering Committee (CPSC)

The NSW Construction Policy Steering Committee (CPSC) is made up of the following NSW Government's major policy and construction agencies:

- Department of Public Works and Services (chair)
- Cabinet Office
- Department of Housing
- Department of Industrial Relations
- The Olympic Coordination Authority
- Pacific Power
- Rail Access Corporation
- Rail Services Australia
- Roads and Traffic Authority
- State Rail Authority of New South Wales
- Sydney Water Corporation, and
- NSW Treasury

The CPSC is responsible for the co-ordination of the NSW Government integrated development program for the construction industry and the development of consistent construction, consultant and contractual policies to be implemented by government agencies.

The CPSC monitors the implementation of the *Code of Practice* and *Code of Tendering for the Construction Industry*, and issue-specific codes developed from time to time, to ensure these Codes are consistently and effectively applied across government.

Department of Public Works and Services (DPWS)

Responsibilities include:

- advice to the Minister for Public Works and Services on whole-of-government procurement policy, practices, reforms and performance
- advice to the Minister for Public Works and Services for the Budget Committee regarding goods and services expenditure, opportunities and trends
- advice and support to the State Contracts Control Board in exercising its functions including the development of guidelines and other initiatives
- co-ordination, on behalf of the State Contracts Control Board, of government procurement policy, including the *Australia and New Zealand Government Procurement Agreement*
- advice and support to the Construction Policy Steering Committee in exercising its functions including the development of guidelines and other initiatives; and
- advice and assistance to government agencies including:
 - procurement planning
 - contracting strategies
 - contract management
 - risk management
 - developing proposals for strategic long-term contracts.

Service providers: contractors, suppliers, subcontractors, consultants, agents and employers 5.2

Responsibilities include compliance with the requirements of the *Code of Practice for NSW Government Procurement* and *Code of Tendering for NSW Government Procurement*, including:

- the ethical principles
- workplace practices
- continuous improvement and best practice
- provision of quality products and services at the most competitive price consistent with value for money, and
- provision of good client service.

Employer and industry organisations **5.3**

Employer and industry associations are to promote and comply with the requirements outlined in Sections 4 and 8 of the *Code of Practice* and these *Implementation Guidelines*.

Unions **5.4**

Unions are to observe the requirements outlined in Sections 4 and 8 of the *Code of Practice* and these *Implementation Guidelines*.

Ethical principles

The highest ethical standards are required by all participants at all levels of the contract or supply chain. That is, by clients, their agents, and service providers. These ethical principles are fully detailed in Section 5 of the *Code of Practice* and Section 4 in the *Code of Tendering*.

Clients should ensure that their employees, agents and service providers are aware of the ethical standards appropriate for dealings with the agency and by the agency as outlined in Section 5 of the *Code of Practice* and these *Implementation Guidelines*.

The *Code of Tendering for NSW Government Procurement* has been framed with the expectation that it would be embraced as a statement of ethics that underpin best practice tendering procedures, not only by those to whom it is directed but also by employer and industry associations, and industry generally.

By embracing the ethical principles in the Codes, significant benefits will be realised by the government, their agencies, service providers and the community at large.

Prohibited practices

6.1

It must be emphasised that collusive tendering practices are prohibited.

These practices are inconsistent with the establishment and maintenance of the ethical practices that must underlie good working relationships between any client and any service providers seeking to do business with it, and between service providers.

These practices have both direct and indirect adverse impacts on the cost of procurement. This includes:

- **direct costs**
through the inclusion of allowances for unsuccessful tenders in tender prices and special fees payable to employer and industry associations
- **indirect costs**
through reduced effectiveness of the competitive tendering process.

Clients need to ensure to the maximum extent possible that the anti-competitive behaviour and collusive practices referred to in Section 6 of the *Code of Tendering for NSW Government Procurement* do not occur.

Continuous improvement and best practice

Commitment, reward and recognition 7.1

Organisations with a focus on continuous improvement and best practice will have a workplace culture and output that is characterised by value, quality, innovation and competitiveness.

Section 6 of the *Code of Practice for NSW Government Procurement* outlines the commitment to best practice required, as well as the initiatives and practices which all parties are required to address in a positive manner. These initiatives and their adoption can be a feature of organisational development objectives and performance targets.

Continuous improvement in service delivery, information management and systems, supply chain management and relationships will be encouraged and incentives provided to those who can demonstrate superior performance. The incentives include more opportunities to do business and longer term relationships.

Government agencies are expected, in their dealings with industry, to encourage the attainment of best practice by all participants.

Ecologically sustainable development 7.2

Ecologically sustainable development (ESD) has been defined in Australia as using, conserving and enhancing the community's natural resources so that ecological processes, on which life depends are maintained, and the total quality of life now and in the future, are improved.

The NSW Government is committed to achieving ESD through government agency practices and procurement activities.

Service providers will be encouraged to have in place, sound environmental practices above and beyond mere compliance with regulatory requirements. This may include the development and implementation of a systematic approach to environmental management to ensure that environmental planning and management become an integral part of organisational culture and day to day work practices. In this way, service providers can be recognised for their environmental performance and contribution to ESD.

Implementation Guidelines

A systematic approach to environmental management will ensure that the organisation's environmental issues are identified and managed and include:

- explicit management commitment and environmental policy
- acceptance by the organisation that its activities, products or service have an impact on the environment
- development and implementation of planning processes and procedures that assist in identifying possible environmental impacts and measures to mitigate or minimise these impacts
- establishing organisational responsibility, systems and procedures to review the implementation process, and
- establishing management processes for the review of these systems and procedures which support the organisation's commitment and environmental policy and which leads to continually improving performance.

It is essential that roles, duties and responsibilities are clearly defined, documented and communicated to people in an organisation so that everyone knows what they have to do, why, when and in what circumstances.

Government agencies will identify environmental performance outcomes for selected procurement activities. For these activities, agencies will use service providers with an environmental outcomes focus and commitment to continually improving their environmental performance and service delivery. Superior performance in contracts awarded will be rewarded with more opportunities to do business.

Advice concerning environmental legislation, planning, assessment and management can be obtained from the Environmental Protection Authority, at the address given in Section 10 of these Guidelines.

Tendering and contract management **7.3**

The level of expertise which is applied to procurement planning, tendering and contract management can have a significant and lasting impact on the cost efficient delivery of services.

Effective procurement by both government agencies and industry, therefore, requires:

- effective management
- appropriate skills and resourcing.

With the adoption of value adding procurement strategies and other initiatives to support industry sectors of strategic significance to the State, for example by way of service contracting or through strategic alliances, it is even more important that appropriate levels of professional and commercial expertise are applied to the development, selection and implementation of the procurement package.

Promoting culturally-appropriate services **7.4**

The NSW Government recognises and values the cultural diversity of the people of New South Wales and aims to provide all individuals with the opportunity to participate, access and make use of all programs and community services supported by government. To promote culturally appropriate services, government agencies:

- should ensure information about NSW Government business opportunities is accessible to ethnic businesses
- are responsible for ensuring that service providers deliver culturally appropriate services, particularly where this involves services to the public.

Service providers must specify a budget for interpreter and translation services in tenders for contracts involving services to the public.

Specific advice on these requirements can be obtained from the Ethnic Affairs Commission, at the address given in Section 10 of these Guidelines.

Security of payment

7.5

To ensure that all parties receive payments due to them, the highest ethical standards must be observed throughout the contract or supply chain. This commitment extends to security of payments and ensuring that all parties throughout the contract chain, including employees, receive all payments due to them.

Security of payment, in the context of best practice, means a:

- responsibility on claimants for accurate and timely preparation, documentation and submission of claims
- responsibility on each party to consider, process, pay and finalise claims in a reasonable and timely manner
- prohibiting the practice of 'pay-if-paid', and 'paid-when-paid'
- requirement on each party to a claim to address, negotiate and settle any dispute in a reasonable, timely and cooperative way, and
- requirement of contractors, subcontractors, consultants, suppliers, employers and their agents to fulfil applicable industrial awards and/or enterprise or workplace agreements or legislative requirements regarding their employees.

Workplace practices

Employee and industrial relations

8.1

Employers have certain obligations to their workers which are regarded as acceptable standards of behaviour in all employment relationships.

An employer has in the main, an obligation to pay his or her workers what is legally due and payable to them, including benefits, reimburse them for any work related expenses, ensure a safe and healthy working environment and remit all taxes that are due.

In that connection, section 7.1 of the *Code of Practice* requires service providers, employers and their employees to comply with the provisions of all applicable employment legislation, industrial awards and approved agreements whether federal or state that cover the relationship established between them.

Service providers and employers should also ensure compliance with all other relevant laws governing employment conditions such as: training and skill development, annual holidays, long service leave, occupational health and safety, workers compensation, rehabilitation and injury management, discrimination, legal age of employment, superannuation and taxation.

Arrangements or practices designed to avoid obligations under relevant awards, agreements or legislation are not permitted.

Any instances where the employment obligations have not been met are to be dealt with by government agencies in accordance with Section 8 of the *Code of Practice* and Section 9 of these Guidelines.

Specific advice concerning awards and other legal obligations of employment can be obtained from the agencies referred to in Section 10 of these Guidelines. Specific advice on taxation obligations should be obtained from the Australian Taxation Office.

Liability of Principal Contractor to pay employees of others **8.2**

‘Principal contractor’ under the *Industrial Relations Act (NSW)* as amended means a person who has entered into a contract for the carrying out of work by another person, the subcontractor. The *Industrial Relations Act (NSW)* as amended makes a principal contractor liable for the wages of a subcontractor’s employees unless the principal contractor receives a written statement from the subcontractor stating that all wages due and other amounts payable to employees under legislation, award or enterprise agreement for the period concerned have been paid.

Any person or organisation asked to provide a statement as a condition of getting a progress payment, should be satisfied that the statement is accurate.

A person who makes a false or misleading statement may be liable to prosecution under the *Oaths Act (NSW)* as amended.

Equal employment opportunity (EEO) **8.3**

Section 7.2 of the *Code of Practice* requires, as a minimum, compliance with legal obligations and government policies concerning equal employment opportunity, discrimination in employment and affirmative action.

Creating a workplace where everyone is treated equally and fairly, and which actively draws on the talents of everyone in the workforce, is not only a legal requirement, it makes good business sense.

Government agencies will encourage equality of employment opportunity and affirmative action and culturally appropriate services in all areas of procurement activity.

Service providers will be required to indicate, in identified tenders, the measures they intend to implement, to improve workforce diversity, if awarded the contract. Service providers’ commitment to outcomes and performance will be monitored by government agencies and linked to opportunities for future business.

Specific advice concerning equal employment opportunity, ethnic affairs and other workplace matters can be obtained from the agencies listed in Section 10 of these Guidelines.

Training and skills formation 8.4

Improving industry competitiveness through management, workforce development and workforce diversity are a key component of the New South Wales Government Procurement strategies as indicated in Section 7.3 of the *Code of Practice*.

Service providers will be encouraged to integrate training and skills formation into enterprise development. Such integration will lead to workplace and productivity improvements for enterprises, including:

- lower production costs
- reduced waste and time lost
- improved productivity
- better quality products and services
- a more skilled, flexible and adaptive workforce
- improved motivation, morale and commitment
- improved standards in occupational health, safety and rehabilitation performance
- improved planning, business, financial, management and workplace practices, and
- continuous improvement and competitiveness of individual enterprises.

Service providers will be required to indicate, in identified contracts, the training and skill formation strategies they intend to implement, if awarded the contract. Service providers' commitment to outcomes and performance will be monitored by government agencies and linked to opportunities for future business.

Aboriginal employment business skills, 8.5 and the economic conditions of Aboriginal communities

It is recognised that increased participation by aboriginal people in the government procurement process can lead to improved economic and social conditions in Aboriginal communities.

As indicated in Section 7.4 of the *Code of Practice*, service providers will be required to indicate, in identified contracts, (ie. those contracts in locations where there are significant Aboriginal populations and limited opportunities for Aboriginal people) measures they will implement to give effect to the Government's objectives. The performance of service providers in those contracts will be linked to opportunities for future business by government agencies.

Occupational health, safety and rehabilitation (OHS&R)

8.6

Section 7.5 of the *Code of Practice* requires, as a minimum, compliance with all occupational health, safety, workers' compensation, injury management and rehabilitation obligations.

The *Occupational Health and Safety Act (NSW)* as amended places a general duty of care on employers to:

- provide and maintain safe systems of work
- make arrangements for ensuring the safe use, handling, storage of equipment and substances, and
- provide necessary information, instruction, training and supervision.

The *Workplace Injury Management and Workers Compensation Act (NSW)* as amended establishes a system for the management of work-related injuries of employees in NSW. The Act requires amongst other things that every employer:

- take out and maintain a workers' compensation insurance policy covering all of their workers
- notify the insurer of significant injuries within 48 hours
- send injured workers' compensation claims to the insurer within seven days
- comply with the injury management plan developed by the insurer, and
- assist injured workers to return to work safely at the earliest time following a workplace injury.

A principal contractor is liable for workers' compensation insurance if a subcontractor does not have insurance.

The Acts require employees to:

- take reasonable care for the health and safety of persons at their place of work, and those who may be affected by their acts or omissions at work
- cooperate with any requirement imposed in the interests of health, safety and welfare by the employer or any other person who is authorised to do so under the Act(s)
- tell their employer of any injury as soon as possible
- attend medical and rehabilitation assessments
- provide accurate information about any aspect of their workers' compensation claim, and
- be actively involved in their return to work plan.

Service providers are required to have a planned and systematic approach to OHS&R management.

It is essential that an OHS&R management system or plan is fully documented and clearly communicated to people in an enterprise. It should cover the way everyone is expected to work safely, the way that the enterprise will ensure its workers and service providers work safely and the way they intend to improve their practices over time. This will also entail defining roles, duties and responsibilities so that everyone knows what they have to do, when and in what circumstances.

In identified contracts, service providers will be required to commit to implementing systems and plans appropriate to their focus, size, capacity and the contract awarded to improve their OHS&R management performance. Agencies will link service providers' performance with opportunities for future business.

Specific advice concerning occupational health safety and workers' compensation injury management obligations and risk management can be obtained from WorkCover New South Wales at the address given in Section 10 of these Guidelines.

Compliance

New South Wales Government policy

9.1

The NSW Government is committed to the implementation of the *Code of Practice* and *Code of Tendering for NSW Government Procurement*.

Breaches of the Codes, by any party, as may be evidenced through non-compliance may result in sanctions as outlined in Section 8 of the *Code of Practice*.

Where a breach involves a law or statute, the matter will be referred to the relevant enforcement agency under the appropriate law or statute. Such action will be in addition to any action or sanction under the *Code of Practice* and these Guidelines.

In considering and implementing sanctions, individual agencies must use the procedures outlined in the *Code of Practice* and these Guidelines.

Where the breach relates specifically to either the *Code of Practice on Employment and Outwork Obligations* or to the *Code of Practice and Code of Tendering for the Construction Industry*, the procedures outlined in those Codes will apply.

Monitoring compliance with the Codes

9.2

Government agencies as clients

Section 8.6 of the *Code of Practice* outlines the responsibilities of government agencies as clients to monitor the application of the Codes, and the process they will follow:

- if notified by any party or organisation of the occurrence of a breach of the Code(s) by its service provider(s), and
- in arriving at a decision on the application of sanctions.

Review process for lack of commitment to the Codes or related performance

If a government agency concludes from its monitoring initiatives and performance evaluation, that a contractor has shown a lack of commitment to the requirements of the Codes and the obligations agreed to between the agency and the contractor, it will initiate a review as soon as possible.

This review must be completed within a reasonable time. The review procedure is as follows:

- 1 Agencies shall provide a copy of the performance evaluation report to the relevant contractor before meeting with the contractor to review it.
- 2 The contractor must be given the opportunity to comment on the contents of the report.
- 3 Any matters raised during any meeting to discuss a contractor's lack of commitment or performance will be minuted.
- 4 The report may be adjusted at the discretion of the agency, taking into account the contractor's comments.
- 5 If a contractor's commitment or performance is still considered unsatisfactory after completion of steps 1 to 4, the contractor will be advised of the decision and of any sanction to be imposed.
- 6 The contractor must be given the option of seeking a review by senior agency management, who must be independent and removed from the contract concerned.
- 7 The outcome of the agency's review and action taken is to be documented and maintained with other agency's records concerning the performance of the contractor.

Occurrence of a breach of the Codes

9.3

Any alleged breach of the Codes must be notified by the party or organisation making the allegation to the government agency which is the client. The agency process to be followed and the timeframes for assessing and dealing with breaches are outlined in Section 8.6 of the *Code of Practice*.

A statutory declaration for use by the party or organisation making an allegation is included at Appendix A.

Application of sanctions by agencies

In the first instance, it will be the government agency which is the client that will assess the nature and extent of the alleged breach, and decide whether or not a sanction should be applied. The type of sanctions that may be imposed will depend on the nature and severity of the breach as indicated in Section 8.2 to 8.4 of the *Code of Practice*.

The procedure adopted in the assessment of an alleged breach should reflect those outlined in the section '*Assessment of a proposed government-wide sanction by the SCCB*'.

Agency reporting to SCCB

As a general rule, minor breaches need not be reported to the SCCB. However, repeated or more serious breaches require careful consideration and must be reported to the SCCB to enable the Board to facilitate overall implementation of the Codes.

Proposing government-wide sanctions

When a government agency as a client seeks the imposition of government-wide sanctions for a breach of the *Code of Practice* or *Code of Tendering for NSW Government Procurement* or both codes, the agency must register the complaint with the SCCB, under the signature of the agency's Chief Executive Officer. The referral is to be fully documented, and include:

- details of the circumstances and extent of the breach or breaches
- a copy of the written information or advice given to the affected party by the government agency specifying the alleged breach
- the response of the affected party, and
- a proposal as to an appropriate sanction in terms of both degree and duration.

In addition, if the SCCB becomes aware of a service provider who repeatedly breaches the Codes, then the matter can be referred (independent of an agency recommendation) to the appropriate subcommittee of the SCCB for consideration of a sanction, using the procedure outlined below.

Assessment of a proposed government-wide sanction by SCCB

Proposals for government-wide sanctions will be investigated by a SCCB sub-committee specifically established for that purpose. The investigation as to whether or not a government-wide sanction should be applied is to be completed and a recommendation prepared in ten working days following referral of the documentation outlined above to the sub-committee.

Representations

The State Contracts Control Board (SCCB) must provide a copy of the sub-committee's recommendation to the party alleged to have breached the *Code of Practice* or *Code of Tendering for NSW Government Procurement* or both Codes prior to its consideration by the SCCB, and allow the party ten working days (from the provision of the recommendation) to make written representations in respect of it.

The copy of the recommendation must be accompanied by details of how and where the response is to be lodged.

If no representations are received within ten working days, the recommendation will be automatically considered by the SCCB.

Assessment of representations

If representations which seek a review of the recommendation to apply a government-wide sanction are received, the SCCB will consider these by arranging for a review by an independent individual, of high community standing and expertise. This person will be proposed by the SCCB and agreed to by the party alleged to have breached the Code(s).

If agreement is not reached, the SCCB will appoint an independent person for a review. Such a person may be nominated by a recognised Alternative Dispute Resolution organisation.

The independent reviewer shall report on the following matters:

- whether, in fact, there was non-compliance with the Code and the extent of the non-compliance, and
- whether the requirements of procedural fairness were observed.

The review will not include an assessment of the sanction proposed. The review will be completed within ten working days of appointment of the independent reviewer.

Final decision and advice

A final decision regarding the application of a government-wide sanction will be made by the State Contracts Control Board (SCCB). The agency alleging the breach will be excluded from participation in the decision-making process of the SCCB.

If the SCCB disagrees with the sanctions proposed by the agency, the Chief Executive Officer of that agency will be advised of the reasons for the disagreement and the sanction or action considered appropriate from a government-wide perspective.

When a government-wide sanction is applied, the affected party and the government agency will be advised in writing by the SCCB of the following:

- the form of sanction to be applied
- the time-span of the sanction
- steps which should be taken by the affected party to restore their standing within government; including, but not restricted to, those actions by the party which will clearly demonstrate that offending practices have been discontinued and that adequate policies, procedures and standards have been implemented to prevent a recurrence of a similar breach, and
- specification of the earliest review date, and particulars of the body and procedures for carrying out such reviews.

Breaches by a government agency and agency employees **9.4**

Section 8.7 of the *Code of Practice* outlines a number of avenues which are available to private sector individuals wishing to raise issues associated with the performance of government agencies and the procedures which have been established to ensure consistency.

To assist in these procedures, the following tiered reporting structure at lower levels has been established. In general all issues should firstly be dealt with at lower levels.

Level 1

Reporting direct to the agency's Chief Executive Officer (CEO)

The option of resolving any non-compliance should be fully pursued with the agency concerned. The Government has made adherence to the *Codes of Practice* and the *Code of Tendering for NSW Government Procurement* a key determinant of agency performance.

CEOs are responsible for ensuring their agency's performance is wholly consistent with the government's requirements.

Level 2

Reporting to the Minister responsible for the agency

If a reported breach cannot be resolved within an agency, the matter should be referred to the Minister responsible for that agency.

Role of industry organisations

9.5

Employer and industry associations and unions

Section 8.9 of the *Code of Practice* includes a role for employer and industry associations and unions to ensure compliance by their members.

Confirmed breaches will be referred to the relevant organisation for action under its rules or code of practice or conduct. Such action will be in addition to any action or sanction taken under the Codes.

Further information and assistance

All these contact details are based on information available at the time of publication.

Language assistance

If you need an interpreter, call the Telephone Interpreter Service (TIS) on 131450. They can call other services for you.

For advice about

- *Code of Practice for NSW Government Procurement*
- *Code of Tendering for NSW Government Procurement, and*
- *Code of Practice on Employment and Outwork Obligations for Textile, Clothing and Footwear Suppliers*

contact

Department of Public Works and Services

Policy Services Division
Level 23, McKell Building
2-24 Rawson Place
Sydney NSW 2000

phone (02) 9372 9150
fax (02) 9372 8851

State Contracts Control Board (SCCB)

The Chairperson
Level 23, McKell Building
2-24 Rawson Place
Sydney NSW 2000

phone (02) 9372 8910
fax (02) 9372 8922

email sccb@dpws.nsw.gov.au
website www.dpws.nsw.gov.au

For advice about

- *NSW Code of Practice for the Construction Industry*, and
- *NSW Code of Tendering for the Construction Industry*

contact

Construction Policy Steering Committee (CPSC)

Level 23, McKell Building
2–24 Rawson Place
Sydney NSW 2000

phone (02) 9372 8852

fax (02) 9372 8851

email cpsc@dpws.nsw.gov.au

website www.cpsc.nsw.gov.au

**For advice on workplace and
environmental requirements contact**

NSW Department of Industrial Relations (DIR)

Head Office
Level 2,3,4
1 Oxford Street
Darlinghurst NSW 2010

phone (02) 9243 8888

fax (02) 9243 8874

website www.dir.nsw.gov.au

NSW Award and Industrial Relations Act (NSW) (DIR)

phone (02) 131 628

fax (02) 9243 8962

Womens Equity Bureau (DIR)

phone (02) 9243 8786

fax (02) 9243 8787

Workplace Change (NSW)

phone (02) 9243 8895
fax (02) 9243 8896

DIR Metropolitan and Regional Centres

phone (02) 132 005

Workers Compensation Resolution Service (DIR)

phone (02) 9243 8800

Country and Outer Metropolitan
phone 1300 368 018

WorkCover New South Wales

400 Kent Street
Sydney NSW 2000
phone (02) 9370 5000

Information Centre
phone (02) 131 050

website www.workcover.nsw.gov.au

Anti-Discrimination Board (ADB)

Level 4, Australia Council Building
181 Lawson Street
Redfern NSW 2016

phone (02) 9318 5444
toll free 1800 670 812

website www.lawlink.nsw.gov.au/adb

Ethnic Affairs Commission (EAC)

164-174 Liverpool Road
PO Box 1266,
Ashfield NSW 2131

phone (02) 9716 2222

Interpreters and Translators Service
phone (02) 9716 2222

website www.eacnsw.com.au

Implementation Guidelines

Department of Aboriginal Affairs (DAA)

Level 5, 83 Clarence Street
Sydney NSW 2000

phone (02) 9290 8700

website www.daa.nsw.gov.au

Environment Protection Authority (EPA)

59-61 Goulburn Street
Sydney NSW 2000

phone (02) 9795 5000

website www.epa.nsw.gov.au

Department of Workplace Relations & Small Business (Federal)

Level 9, North Wing, 477 Pitt Street,
GPO Box 9879
Sydney NSW 2001

phone (02) 9282 0888

website www.dwrsb.gov.au

Federal Award and Workplace Relations Act

phone (02) 012 820 800

or 1300 363 472

Superannuation Guarantee Helpline

Australian Taxation Office

phone (02) 131 020

website www.ato.gov.au/super

For advice on industry, training and skill development contact

Department of State and Regional Development (DSRD)

225 George Street,
Level 43 Grosvenor Place
PO Box N818
Sydney NSW 2000

phone (02) 9228 3111

website www.business.nsw.gov.au

NSW Industrial Supplies Office (ISO)

Suite 313, Henry Lawson Business Centre,
Birkenhead Point
PO Box 504
Drummoyne NSW 1470

phone (02) 9819 7200

website www.isonsw.com.au

Department of Education and Training

35 Bridge Street
GPO Box 33
Sydney NSW 2000

phone (02) 9561 8000

helpline (02) 132 811

website www.det.nsw.gov.au

TAFE Information Centre

phone (02) 131 601

New Apprenticeship Hotline

phone (02) 1800 639 629

Job Network Employer Line

phone (02) 131 715

Implementation Guidelines

Centrelink

phone (02) 132 850

Department of Fair Trading

1 Fitzwilliam Street
GPO Box 972
Parramatta NSW 2150

phone (02) 9895 0111

website www.fairtrading.nsw.gov.au

For advice on corruption prevention, education and investigation contact

Independent Commission Against Corruption (ICAC)

191 Cleveland Street
Redfern NSW 2016

phone (02) 9318 5999
or 1800 463 909

website www.icac.nsw.gov.au



Appendices

**Statutory declaration for reporting a breach
of the NSW Government Procurement Codes**

Appendix A

Appendix A

Statutory declaration for reporting a breach of the NSW Government Procurement Codes

Statutory Declaration

Oaths Act, 1900 Ninth Schedule

I/We the undersigned (1)	(1) insert full name
	(2) insert business address, phone and facsimile number
Of (2)	
In the State of New South Wales (3)	(3) insert occupation
do hereby solemnly declare and affirm that; (4)	(4) the facts to be stated according to the Declarant's knowledge, belief or information, severally
1 I/we have read the Code of Practice for NSW Government Procurement and the Code of Tendering for NSW Government Procurement, (the Codes)	
2 I/we allege that there has been a breach/breaches of (5)	(5) insert name of Code/s and section/s of the Code/s breached.
3 I/we allege that the breach/breaches of the Code/s involve (6)	(6) insert names of persons and/or organisations involved in the alleged breaches.
and occurred on or about (7)	(7) insert dates of breaches

<p>4 The Code/s have been breached by (8)</p> <hr/> <hr/> <hr/>	<p>(8) Insert names, addresses, business titles and other relevant details.</p>
<p>in the following manner (9)</p> <hr/> <hr/> <hr/>	<p>(9) Insert full details of events and persons involved in the breaches</p>
<p>5 I/we became aware of the breach/es because (10)</p> <hr/> <hr/> <hr/>	<p>(10) Describe the circumstances under which knowledge of the breach/es was gained.</p>
<p>6 I/we have previously complained about the breach/es of the Code/s (11)(12)</p> <p>Date/s</p> <hr/> <p>To whom</p> <hr/> <p>Oral/writing</p> <hr/>	<p>(11) Delete if this is the first report by you of the breach/es</p> <p>(12) Include dates of prior complaints, to whom you made the complaint and state whether made by phone or in writing.</p>
<p>7 I/we attach a copy/ies of my/our previous complaint on the breach/es of the Code now reported in this Statutory Declaration (13)</p>	<p>(13) Delete if prior complaint was not in writing or if a copy of the written complaint is not available.</p>
<p>8 I/we have received the following response to any previous complaint about the breach/es (14)</p> <hr/> <hr/> <hr/>	<p>(14) Provide details of response and attach copy, if in writing, or insert 'nil' as appropriate.</p>

Statutory declaration for reporting a breach (continued)

<p>9 Other individuals and/or organisation affected by the breach/es (15)</p> <hr/> <hr/> <hr/>	<p>(15) Insert names and addresses or insert 'nil' as appropriate.</p>
<p>10 The following actions have been taken to remedy the breach/es, if known (16)</p> <hr/> <hr/> <hr/>	<p>(16) Provide details or insert 'nil' as appropriate.</p>
<p>11 The following actions are required to remedy the breach/es, if known (17)</p> <hr/> <hr/> <hr/>	<p>(17) Insert details.</p>
<p>And I/We make this solemn declaration, as to the matter aforesaid, according to the law in this behalf made, and subject to the punishment by law provided for any wilfully false statement in any such declaration.</p> <p>TAKEN and declared at.....in the) Said State this.....day of) (date) before me/us)</p>	



Implementation Guidelines **NSW** Government Procurement