



New South Wales Government

# Code of Practice for Procurement

Current issue dated 18 January 2005:  
applies to procurements for which tenders close  
on or after 1 February 2005

# NSW GOVERNMENT CODE OF PRACTICE FOR PROCUREMENT

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**NOTE:**

**This Code of Practice for Procurement may be revised periodically.**

**First issue dated 1 July 2004:**

**applies to procurements for which tenders closed up to and including 31 January 2005.**

**Current issue dated 18 January 2005:**

**applies to procurements for which tenders close on or after 1 February 2005.**

# NSW GOVERNMENT CODE OF PRACTICE FOR PROCUREMENT

## 1. INTRODUCTION

This *Code of Practice for Procurement* outlines how the New South Wales Government will conduct its procurement activities when interacting with the private sector.

The Code sets the framework for all business relationships by:

- Establishing the standards of behaviour expected from government agencies (as clients), tenderers, service providers, employer and industry associations and unions
- Requiring a strong commitment to continuous improvement and best practice performance by all participants in the supply chain.

The Government will use its right as a major client to do business only with service providers who display a commitment to and consistent application of the standards of behaviour outlined in the Code.

This Code replaces the following Codes relating to government procurement, namely:

- Code of Practice – NSW Government Procurement (1999)
- Code of Tendering – NSW Government Procurement (1999)
- Code of Practice for the Construction Industry (July 1996)
- Code of Tendering for the Construction Industry (July 1996)
- Code of Practice on Employment and Outwork Obligations – Textile Clothing and Footwear Suppliers (February 1998).

The Code applies to all procurements for which tenders are invited or negotiations commenced on or after 1 July 2004. Where a revision to the Code has been introduced, the date of the revision is noted in the Code's Log of Revisions. The above replaced Codes continue to apply to procurements for which tenders were invited or negotiations commenced prior to 1 July 2004.

The New South Wales Government Procurement Policy framework is an essential reference to give proper effect to this Code. The Policy incorporates all relevant policies, guidelines and procedures which underpin the practice requirements of this Code.

In particular, the following pre-existing Implementation Guidelines for earlier Codes of Practice expand on key aspects of this Code and should be read together with this Code:

- Implementation Guidelines – NSW Government Procurement (1999)
- Implementation Guidelines – for the Construction Industry (July 1996)
- Implementation Guidelines on Employment and Outwork Obligations – Textile Clothing and Footwear Suppliers (1998).

References in these Implementation Guidelines to previous Codes should be read as references to the current Code, although section numbers are not consistent.

## 2. OBJECTIVE

The NSW Government wants its procurement activities to achieve best value for money in the expenditure of public funds while being fair, ethical and transparent.

In achieving this objective, the Government:

- has set the responsibilities and standards of behaviour expected of the parties undertaking procurement activities as outlined in this Code of Practice;
- will award contracts to those service providers that meet the requirements outlined in the Code; and
- calls on other industry stakeholders, such as employer associations, industry associations and unions, to support and uphold this Code of Practice.

## 3. CODE RESPONSIBILITIES

<b>Clients, tenderers and service providers:</b>	are required to comply with the Code.
<b>Agencies:</b>	are required to implement the Code and monitor and report on Code compliance.
<b>Employer associations, industry associations and unions:</b>	are expected to: <ul style="list-style-type: none"><li>- support the Government in implementing the Code;</li><li>- encourage their members to comply with the Code; and</li><li>- develop and use rules to deal with breaches of the Code.</li></ul>
<b>Construction Agency Coordination Committee (CACC):</b>	is responsible for advising the Government on proposals for government-wide sanctions for Code breaches relating to construction procurement.
<b>State Contracts Control Board (SCCB):</b>	is responsible for advising the Government on proposals for government-wide sanctions for Code breaches relating to non-construction related goods and services procurement, including information and communications technology procurement.

#### 4. STANDARDS OF BEHAVIOUR

All parties will behave in accordance with the following standards at all times:

<b>Honesty and fairness:</b>	Parties will conduct all procurement and business relationships with honesty and fairness.
<b>Accountability and transparency:</b>	The process for awarding contracts on government projects will be open, clear and defensible.
<b>No conflict of interest:</b>	A party with a potential conflict of interest will declare and address that interest as soon as the conflict is known to that party.
<b>Rule of law:</b>	Parties shall comply with all legal obligations.
<b>No anti-competitive practices:</b>	Parties shall not engage in practices that are anti-competitive.
<b>No improper advantage:</b>	Parties shall not engage in practices that aim to give a party an improper advantage over another.
<b>Intention to proceed:</b>	Parties shall not seek or submit tenders without a firm intention and capacity to proceed with a contract.
<b>Co-operation:</b>	Parties will maintain business relationships based on open and effective communication, respect and trust, and adopt a non-adversarial approach to dispute resolution.

## 5. PRACTICE REQUIREMENTS

All parties shall adhere to the requirements of this section.

### 5.1 Best Practice

Procurement processes should be structured to minimise costs for all parties, consistent with the standards of behaviour required by this Code.

Commitment to continuous improvement and best practice performance is expected of all those involved in government procurement. Areas where this commitment may be demonstrated include, but are not limited to:

- Client focus, service quality and value for money outcomes;
- Ethical business practices;
- Management of procurement risk;
- Tendering and contract management;
- Co-operative relationships;
- Non-adversarial dispute resolution;
- Planning and management of human, physical and financial resources;
- Environmental management;
- Occupational health and safety management, and workplace injury management;
- Workplace practices;
- Industrial relations;
- Training management;
- Aboriginal participation;
- Supply chain management;
- Payment practices, including reflective practices down the contract chain; and
- Innovation in design, service provision, processes and use of technology.

A service provider who contracts with the client agency is accountable to the client agency for the standards of performance, behaviour and ethical conduct of all service providers down the contract chain.

Details of specific practice requirements are provided at Appendix A.

The NSW Government Procurement Policy framework provides guidance for agencies and service providers in implementing best practice in these areas. This framework is available on the NSW Treasury website [www.treasury.nsw.gov.au](http://www.treasury.nsw.gov.au).

## 5.2 Tendering Requirements

Clients will not knowingly accept tenders from or award contracts to tenderers who:

- are subject to exclusion from tendering as a result of a breach of this Code;
- are bankrupt;
- are subject to a winding up order;
- are corporate entities with persons involved directly or indirectly in the management of the entity who are disqualified under corporations law; or
- demonstrate an inability to meet the requirements of the Code.

Clients may choose not to accept tenders from or award contracts to tenderers who have an administrator appointed.

### *Tender Methods and Process*

Clients should select a tender method and process that suits the procurement, its level of risk, is timely, avoids creating unnecessary costs for tenderers, and safeguards the security and confidentiality of all tenders.

Conditions of tendering shall be the same for each tenderer on any particular tender process. Standard conditions that give effect to this Code and which should be included in all documents requesting tenders are provided at Appendix B. All requirements, including the criteria for tender evaluation, shall be clearly stated in conditions of tendering.

### *Evaluation Criteria*

In addition to prices tendered, evaluation criteria shall contain the critical factors to be used in the evaluation of tenders. These factors typically include, but are not limited to:

- whole-of-life costs, including costs of disposal;
- ability to meet Code requirements;
- innovation offered;
- delivery times offered;
- quality offered;
- previous performance of tenderer;
- experience of tenderer and personnel proposed;
- capability of tenderer, including technical, management, human resource, organisational and financial capability and capacity;
- tenderer's occupational health and safety management practices and performance;
- tenderer's workplace and industrial relations management practices and performance;
- tenderer's environmental management practices and performance;
- tenderer's community relations practices and performance;
- value adding components such as economic, social and environmental development initiatives, if appropriate and relevant to the procurement; and
- conformity of tender with requirements.

The evaluation criteria should be consistent with the proposed contract requirements and aim to identify the tenderer offering the best value for money. Ideally, the weighting of the evaluation criteria should be determined prior to calling of tenders but shall be not later than close of tenders.

### ***Submission of Tenders***

It is the tenderer's responsibility to submit a tender in accordance with the conditions of tendering and in a legible and uncorrupted form, particularly in the case of electronic tendering.

Late tenders should not be considered, except when the client is satisfied that the integrity and competitiveness of the tendering process has not been compromised.

### ***Confidentiality***

Clients shall not disclose tender information received from tenderers that is intellectual property, proprietary, commercial-in-confidence or otherwise confidential.

### ***Evaluation of Tenders***

Evaluation of tenders shall be based on the conditions of tendering and evaluation criteria therein.

Tenders should be evaluated by people with the necessary skills and knowledge, and who are free of any conflict of interest that might undermine the fairness of the process. Any tender that does not adequately comply with the conditions of tendering may be passed over.

Tenderers may be encouraged to offer alternative, better value for money tenders. Clients should specify the conditions under which alternative tenders will be considered. These conditions shall not remove the obligation to comply with the Code of Practice for Procurement. Where a tenderer offers an alternative, a tender for that alternative should not be sought from other tenderers. Clients should not breach confidentiality by using information contained in alternative tenders as the basis for calling subsequent tenders.

### ***Clarification of Tenders***

If information received in a tender is open to interpretation or is not clear, then clarification should be requested from the tenderer where this is material to identifying the successful tender. The clarification procedure shall be managed in such a way so as not to give the tenderer an unfair advantage over other tenderers by allowing the tenderer to revise or enhance its original tender.

Tenderers shall not use clarification requests by the client as an opportunity to gain an advantage over other tenderers by revising or enhancing their tender.

### ***Tender Negotiation***

If after a competitive tendering process none of the tenders are acceptable either due to the level of non-conformance or because they do not represent sufficient value for money, negotiations may be conducted with the tenderer that submitted the most acceptable tender based on the evaluation criteria.

The purpose of the negotiations shall be made clear to all participants prior to the commencement of negotiations. The aim is to achieve a tender that is mutually acceptable.

Clients should exhaust negotiations with the tenderer that submitted the most acceptable tender before negotiating with the next most acceptable tenderer, unless time constraints or the closeness of the tenders dictate otherwise.

### ***Prohibition of 'Bid Shopping'***

Clients shall not use tender negotiations as an opportunity to trade-off one tenderer's prices against other tenderers' prices in order to obtain lower prices. This practice, known as 'bid shopping', is prohibited.

### ***Outcomes of Tenders called by Agencies***

Agencies shall make information on the successful tender publicly available. Information relating to unsuccessful tenders will remain confidential, unless otherwise specified in the conditions of tendering, agreed by the tenderer or required by the law.

Premier's Memorandum 2000-11 *Disclosure of Information on Government Contracts with the Private Sector* (available at [www.premiers.nsw.gov.au](http://www.premiers.nsw.gov.au)) advises agencies of the minimum information that should be disclosed and gives guidance on what should remain confidential.

### ***Debriefings***

If a client does not accept any of the tenders submitted, the tenderers shall be advised of the reasons. If fresh tenders are to be called, clients may add other tenderers to an original list of invited tenderers.

Clients should advise tenderers they have been unsuccessful and be available to debrief them on request. Debriefings should explain how their tender performed against the evaluation criteria, rather than against the successful tender, with the objective of assisting them to improve future tenders.

## **6. COMPLIANCE**

### **6.1 Reporting Code Breaches**

Alleged Code breaches shall be notified by the reporting entity to the client agency as well as to the entity allegedly in breach. A form suitable for reporting breaches is at Appendix D. The client agency is to assess the nature and extent of the alleged breach.

The preliminary determination of the agency is to be issued to both the entity alleging the breach and the entity allegedly in breach, allowing both entities to comment before a final determination is issued.

If the alleged breach is against the client agency and the matter cannot be resolved at the agency level, the allegation may be referred to either the CACC or SCCB as appropriate for advice or independent investigation. The CACC is responsible for dealing with breaches associated with construction related procurement, while the SCCB covers other procurement. Contact details are at Appendix C.

### **6.2 Dealing with Code Breaches**

#### ***Government Agencies***

If a Code breach is substantiated against an agency and is attributable to the agency's policies, practices or procedures, then that agency will take corrective action in relation to such policies, practices or procedures.

If the breach is the result of the activities of an individual, in contravention of the agency's policies, code of conduct, practices or procedures, then that agency will take appropriate disciplinary action in accordance with that agency's practices.

#### ***Non-Government Party***

If a Code breach is substantiated against a non-government party, the relevant client agency may require that party to show cause why sanctions should not be applied and, subject to the response, may apply sanctions to that party.

Where the non-government party is a member of an employer association, industry association or union, the breach may also be referred to that association or union for action under its rules or code of conduct.

#### ***Representatives of Employer and Industry Associations***

Where an association's representative is found to have breached the Code or acted to incite a breach of the Code, the circumstances of the breach or action will be referred to the association for action under the association's rules or code of conduct.

#### ***Union officials***

Where a union official is found to have breached the Code or acted to incite a breach of the Code, the circumstances of the breach or action will be referred to the relevant union and the Labor Council of New South Wales for action under the relevant union rules or code of conduct.

### **6.3 Sanctions**

Breaches of the Code by a non-government party may result in sanctions being applied to that party, in addition to any contractual or legal remedies that may be pursued.

#### ***Commercial Sanctions***

Commercial sanctions for breaches of the Code are based on the Government's right to choose with whom it does business. The sanctions applied will depend on the nature and seriousness of the breach and on the degree of commitment shown by the party in breach to its obligations under the Code.

The range of sanctions available to be imposed on parties includes:

- formal warnings - that continued non-compliance will lead to more severe sanctions;
- partial exclusion from tendering - that is, a reduction in tendering opportunities; and
- preclusion from tendering for any work in the supply chain, for a specified period.

Sanctions may be restricted to tender opportunities associated with a single agency for lesser breaches, or in more severe cases may be applied for all government contracts (see government-wide sanctions).

#### ***Government-wide Sanctions***

Proposals for government-wide sanctions shall be made by an agency to either the SCCB or CACC as appropriate. The SCCB or CACC will investigate the proposal and advise the Government if a government-wide sanction should be applied.

If the SCCB or CACC becomes aware of a tenderer or service provider who repeatedly breaches the Code, the SCCB or CACC may independently investigate and proceed with the option of advising the Government if a government-wide sanction should be applied.

## 7. DEFINITIONS

<b>Agency</b>	New South Wales Government Department or Declared Authority within the meaning of the <i>Public Sector Employment and Management Act 2002</i> NSW, or an entity established by a separate Act of the New South Wales Parliament, whether or not that entity is expressed to represent the Crown, except for State-owned Corporations within the meaning of the <i>State Owned Corporations Act 1989</i> NSW.
<b>Bid shopping</b>	The practice of trading off one tenderer's prices against another's in order to obtain lower prices.
<b>Client</b>	Party calling for tenders and / or awarding a contract.
<b>Construction</b>	All organised activities concerned with demolition, building, landscaping, maintenance, civil engineering, process engineering, mining and heavy engineering.
<b>Construction Agency Coordination Committee</b>	The CACC consists of representatives of key agencies involved in construction procurement and assists the Government in the development of consistent and effective construction procurement practices, and in promoting the application of these practices by agencies.
<b>Employee</b>	Person whose employment is governed by a contract of service, or a person deemed to be an employee under Australian or NSW industrial law.
<b>Employer</b>	Entity that employs a person or persons under a contract of service or a person deemed to be an employer under Australian or NSW industrial law.
<b>Employer association</b>	Organisation representing the interests of employers that is registered under Australian or NSW industrial law.
<b>Fair</b>	Being unbiased, reasonable and even-handed. Being fair does not mean satisfying everyone or not reasonably pursuing one's legitimate interests. A fair decision may still adversely affect parties.
<b>Industry association</b>	Organisation representing the professional, trade or commercial interests of its members in an industry.
<b>Infrastructure</b>	Fixed assets that support economic and social development in a fundamental way.

<b>Intellectual property</b>	<p>Inventions, original designs, and practical applications of good ideas protected by law through copyright, patents, registered designs, circuit layout rights and trademarks.</p> <p>Also includes trade secrets, proprietary know-how and other confidential information protected against unlawful disclosure by law and through additional contractual obligations, such as confidentiality agreements, contracts and conditions of tendering.</p>
<b>Monitor</b>	Regularly collect information to review performance against specified criteria.
<b>Party</b>	Client, tenderer or service provider. An entity's role in a procurement will determine whether it is a client, tenderer or service provider for that procurement.
<b>Procurement</b>	<p>All activities involved in acquiring goods or services either outright or by lease (including disposal and lease termination).</p> <p>Includes acquiring consumables, capital equipment, real property, infrastructure, and services under consultancies, professional services, facilities management and construction.</p>
<b>Service provider</b>	Includes contractors, subcontractors, suppliers and consultants that contract to provide goods or services.
<b>State Contracts Control Board</b>	The SCCB is established under the <i>Public Sector Employment and Management Act 2002</i> . Its membership includes representatives from the central, budget and non-budget agencies. It assists the Government in the development of consistent and effective non-construction related procurement practices, and promoting the application of these practices by agencies.
<b>Tender</b>	Includes a price, bid, offer, quotation, consultant proposal or expression of interest lodged in response to an invitation or request for tender.
<b>Tenderer</b>	Entity submitting a tender.
<b>Union</b>	Organisation of employees also referred to as a 'trade union', which is registered under Australian or NSW industrial law. This term also includes the Labor Council of New South Wales.
<b>Value for money</b>	The benefits, compared to whole-of-life costs.

### NSW GOVERNMENT CODE OF PRACTICE FOR PROCUREMENT

#### DETAILS OF SPECIFIC PRACTICE REQUIREMENTS

##### ENVIRONMENTAL MANAGEMENT

The Government expects government agencies and all other parties to identify the potential environmental opportunities, risks and impacts of their activities and to adopt measures to:

- realise those opportunities, manage those risks, and enhance and protect the environment;
- encourage recycling and re-use of materials and minimise waste; and
- support effective use of scarce resources - including energy, water and materials.

Service providers shall have a demonstrated commitment to, acceptable performance with, and systematic approach to, environmental management.

On construction projects, all service providers are required to develop and implement an appropriate site specific environmental management plan. Tenderers and service providers for major contracts are required to have a corporate Environmental Management System accredited by a government agency.

The *Environmental Management Systems Guidelines* in the Capital Project Procurement Manual (available at [www.construction.nsw.gov.au/CPPM/guidelines.html](http://www.construction.nsw.gov.au/CPPM/guidelines.html)) describe the management practices required of all parties on NSW Government construction projects.

For other procurement, refer to the *Environmental Management Guidelines* in the NSW Government Procurement Manual (available in the Government Procurement publications at [www.commerce.nsw.gov.au](http://www.commerce.nsw.gov.au)).

##### OCCUPATIONAL HEALTH AND SAFETY MANAGEMENT AND WORKPLACE INJURY MANAGEMENT

###### Occupational Health and Safety Management

The Government attaches a high priority to the continuous improvement of occupational health and safety management and workplace injury management in procurement for all construction and other industry participants.

Service providers shall have a demonstrated commitment to, acceptable performance with, and systematic approach to, occupational health and safety management and workplace injury management.

The *OHS&R Management Systems Guidelines* in the Capital Project Procurement Manual (available at [www.construction.nsw.gov.au/CPPM/guidelines.html](http://www.construction.nsw.gov.au/CPPM/guidelines.html)) describe the management practices required of all parties on NSW Government construction projects.

For other procurement, refer to the *Occupational Health Safety and Rehabilitation Guidelines* in the NSW Government Procurement Manual (available in the Government Procurement publications at [www.commerce.nsw.gov.au](http://www.commerce.nsw.gov.au)).

## **Occupational Health and Safety Compliance**

Service providers and their employees must comply with their occupational health and safety obligations under the *Occupational Health and Safety Act (NSW)*, the *Workplace Injury Management and Workers Compensation Act (NSW)* and Regulations, workers compensation insurance premium requirements, relevant OHS industry codes of practice, and safety and dispute settlement procedures in applicable industrial awards and approved agreements.

## **Dispute Resolution**

Where a dispute about occupational health and safety matters cannot be resolved at the workplace, determinations by WorkCover New South Wales inspectors made under the *Occupational Health and Safety Act (NSW)* and OHS Regulation 2001 must be accepted by all parties.

No payment shall be made to employees for time spent engaged in industrial action (as defined in either the *Workplace Relations Act (Commonwealth)* or the *Industrial Relations Act (NSW)*), unless payment is authorised or ordered by either the Australian or NSW Industrial Relations Commissions.

## **WORKPLACE PRACTICES AND INDUSTRIAL RELATIONS**

### **Obligations Relating to Employment**

Principal contractors, as defined in s127 of the *Industrial Relations Act (NSW)*, are accountable for compliance by their service providers with their obligations regarding all employment related laws.

All service providers, their employees and their unions must also comply with their workplace obligations, including the provisions of all applicable industrial awards and approved agreements.

Arrangements or practices designed to avoid workplace obligations under relevant laws, industrial awards and approved agreements are not permitted.

### **Industrial Relations Management**

The Government is committed to an improved industrial relations planning and management culture and better employee and employer relationships in the construction industry and other industries.

Service providers are required to develop and maintain a pro-active and responsible approach to the management of industrial relations at the enterprise level and on projects.

The *Industrial Relations Management Guidelines* in the Capital Project Procurement Manual (available at [www.construction.nsw.gov.au/CPPM/guidelines.html](http://www.construction.nsw.gov.au/CPPM/guidelines.html)) describe what is required of tenderers, and the management practices to be implemented by service providers on construction projects.

## Enterprise Agreements

Enterprise agreements are important elements in achieving continuous improvement and best practice. Enterprise agreements should ideally:

- reflect the needs of the enterprise, including the scope of the enterprise's operations and projects;
- improve remuneration and working conditions, based on quality of work and productivity; and
- give effect to measures to increase productivity, which may encompass:
  - improved occupational health and safety and workplace injury management practices;
  - better training and skill development strategies; and
  - cooperative, flexible workplace arrangements, relationships and practices.

## Project Agreements

Project agreements incorporating site-wide payments, conditions or benefits may be negotiated where the strategy has first been authorised by the relevant agency. Generally, project agreements will only be appropriate for major construction projects as defined by the agency.

Typically, major projects will have some or all of the following features: an extended construction period, high cost, several identifiable contract packages within an overall project, and special industrial relations, skill development and occupational health and safety requirements.

If a tenderer foreshadows a project agreement and the tenderer is awarded the contract, a business case in support of that strategy must be submitted by the successful tenderer and only proceed if approved by the agency involved. This process should be completed before site works begin.

Payments, conditions or benefits in a project agreement must be related to improved productivity measured in time and/or cost saving performance. This performance may be achieved as a reduction of the period of construction or a reduction in the construction cost or both, to the benefit of the agency.

The agency here means the government agency responsible for the project, irrespective of whether there is a construction contract between the agency and a service provider. For example, in a privately financed project there may not be a construction contract with the relevant government agency but the agency will still retain the right, in consultation with the relevant service provider under the privately financed project contract, to authorise the negotiation of a project agreement.

The integrity of existing individual enterprise agreements shall be maintained with any project agreement. Therefore project agreements should not override the approved enterprise or workplace agreements. While there may be a provision in a relevant enterprise or workplace agreement that enables the signatories to that agreement to include these provisions in a project agreement, there shall be no double payment or allowance of conditions or benefits.

The signatories to a project agreement may not use any term in the project agreement as a precedent on any other project or for any other purpose. To take effect, a project agreement must be approved under either the *Workplace Relations Act (Commonwealth)* or the *Industrial Relations Act (NSW)*.

## **Site Allowances**

Site allowances shall not be paid unless awarded by an industrial tribunal.

## **Dispute Resolution**

Service providers are required to make every effort to resolve grievances or disputes with their employees and applicable unions at the enterprise level, in accordance with legal obligations and the procedures outlined in applicable industrial awards or approved agreements.

Where resolution is not possible at a particular enterprise level, the graduated steps, involving higher levels of authority, in the dispute settlement procedures contained in applicable industrial awards or approved agreements are to be complied with. This includes referral of the grievance or industrial dispute to the appropriate industrial tribunal for settlement.

All parties to a grievance or dispute are required to comply with tribunal decisions, subject to any legal appeal rights. While the dispute resolution procedures are being followed:

- no industrial action is to take place;
- the conditions prior to the dispute must prevail; and
- work is to continue normally.

## **Strike Pay**

No payment shall be made to employees for time spent engaged in industrial action (as defined in either the *Workplace Relations Act (Commonwealth)* or the *Industrial Relations Act (NSW)*), unless payment is authorised or ordered by either the Australian or NSW Industrial Relations Commissions.

## **Membership of Registered Organisations**

Membership of unions or employer associations is encouraged through proper and lawful means. This precludes victimisation, through any mechanism, for membership or non-membership of organisations.

## **Project Impacts**

The service provider must advise the client during the progress of the work, at the earliest opportunity, of any industrial relations or occupational health and safety matter which may have an impact on the progress of work, the contract, costs or other related contracts.

## **SECURITY OF PAYMENT**

To ensure that all parties and employees receive payments due to them, the highest ethical practices must occur throughout the contract chain. This includes:

- responsibility on service providers for accurate and timely preparation, documentation and submission of claims;
- responsibility on each party to consider, process, manage and finalise in a timely manner all claims, payments, retentions and securities due under the contract;
- prohibiting the practices of ‘pay-if-paid’ and ‘pay-when-paid’;
- all parties meeting obligations in applicable awards and/or approved industrial relations agreements and legislation, including those relating to superannuation and redundancy benefits and payments.

On construction projects, parties must also comply with their obligations under the *Building and Construction Industry Security of Payment Act (NSW)* and Regulation. In addition on construction projects, service providers must have contracts in place down the contract chain with subcontractors, consultants and suppliers, that meet the government’s policy for reflective clauses giving effect to security of payment requirements.

## **TRAINING MANAGEMENT**

Service providers shall comply with the Government’s training management requirements and guidelines. Service providers will be encouraged to pursue and implement training and skill development strategies appropriate to the focus, size and capacity of the individual enterprises and to their contracts.

The *Training Management Guidelines* in the Capital Project Procurement Manual (available at [www.construction.nsw.gov.au/CPPM/guidelines.html](http://www.construction.nsw.gov.au/CPPM/guidelines.html)) describe the management practices required of all parties on NSW Government construction projects.

## **ABORIGINAL PARTICIPATION**

Tenderers will be required for selected contracts to indicate measures they intend to implement if awarded the contract, including:

- extending employment opportunities to Aboriginal people;
- enhancing the business skills of Aboriginal people; and
- providing economic benefits to Aboriginal communities

which could lead to improved conditions in Aboriginal communities.

The *Aboriginal Participation in Construction Implementation Guidelines* in the Capital Project Procurement Manual (available at [www.construction.nsw.gov.au/CPPM/guidelines.html](http://www.construction.nsw.gov.au/CPPM/guidelines.html)) describe what is required of all parties on NSW Government construction projects.

## **EMPLOYMENT AND OUTWORK OBLIGATIONS FOR TEXTILE, CLOTHING AND FOOTWEAR SUPPLIERS**

The Government requires suppliers of textile articles, clothing and footwear to:

- comply to the extent applicable, with all relevant laws, awards and other industrial instruments in relation to the contracting out of work and the employment and management of employees including outworkers; and
- take all required steps to ensure that their service providers comply to the extent applicable, with all relevant laws, awards and other industrial instruments in relation to the employment and management of employees including outworkers.

Tenderers for NSW Government clothing, textile and footwear contracts must submit a statutory declaration to this effect. A tender will not be considered unless the required statutory declaration is lodged with the tender. Details to be provided in the statutory declaration shall, as a minimum, include the details specified in the statutory declaration in Appendix A of the *Implementation Guidelines on Employment and Outwork Obligations for Textile Clothing and Footwear Suppliers*.

A service provider who proposes to complete work using subcontract arrangements, including the employment of outworkers by those to whom work is subcontracted, can only do so with the knowledge and consent of the client agency. The subcontract arrangements must be on terms and conditions as favourable as those provided in the applicable Federal or NSW award.

The service provider must provide the client agency with a quarterly report of all records and work list returns required to be maintained under the applicable award or industrial legislation in relation to contract work and outwork. The report is to be supported by a statutory declaration including as a minimum the details specified in the statutory declaration in Appendix B of the *Implementation Guidelines on Employment and Outwork Obligations for Textile Clothing and Footwear Suppliers*.

Service providers are to ensure that a copy of this Code is available to all parties in the contract chain, including outworkers. Where a copy of the Code has been made available to a party in the contract chain, acknowledgement of receipt is recommended. The form of a suitable acknowledgement is provided in Appendix C of the *Implementation Guidelines on Employment and Outwork Obligations for Textile Clothing and Footwear Suppliers*.

Any service provider who engages outworkers, whether or not they are engaged as subcontractors or employees, must provide information to them about their employment entitlements as required in the applicable Federal or NSW Award, each time work is given out. Appendix D of the *Implementation Guidelines on Employment and Outwork Obligations for Textile Clothing and Footwear Suppliers* provides a sample statement to be signed by the subcontractor or employee acknowledging receipt of the information and is recommended for use by service providers.

### NSW GOVERNMENT CODE OF PRACTICE FOR PROCUREMENT

#### CONDITIONS OF TENDERING

Conditions of tendering giving effect to the NSW Government Code of Practice for Procurement and for inclusion in all documents requesting tenders, should be similar to the following:

All tenderers must comply with the NSW Government Code of Practice for Procurement that is current at the date two weeks prior to the close of tenders. A copy of the Code is available on the Treasury website [www.treasury.nsw.gov.au](http://www.treasury.nsw.gov.au). The ability of a tenderer to demonstrate compliance with the Code is an essential condition.

Lodgement of a tender will itself be an acknowledgement and representation by the tenderer that it is aware of the requirements of the Code, that the tenderer will comply with the Code and that the tenderer agrees to provide periodic evidence of compliance with the Code and access to all relevant information to demonstrate compliance for the duration of any contract that may be awarded.

If a tenderer has failed to comply with the Code, this failure will be taken into account by the client when considering its tender or any subsequent tender and may result in this or any subsequent tender being passed over without prejudice to any other rights of action or remedies available to the client.

**NSW GOVERNMENT CODE OF PRACTICE FOR PROCUREMENT**

**CONTACT DETAILS:**

**CONSTRUCTION AGENCY COORDINATION COMMITTEE  
STATE CONTRACTS CONTROL BOARD**

<p><b>Construction Agency Coordination Committee (CACC)</b></p>	<p>All inquiries to the CACC Executive Officer By telephone (02) 9372 8600 Facsimile (02) 9372 8822 By email: <a href="mailto:info@construction.nsw.gov.au">info@construction.nsw.gov.au</a> By mail to: CACC Executive Officer NSW Department of Commerce Office of Government Procurement Level 23, McKell Building 2–24 Rawson Place, SYDNEY 2000</p>
<p><b>State Contracts Control Board (SCCB)</b></p>	<p>All inquiries to the SCCB Executive Officer By telephone (02) 9372 8600 Facsimile (02) 9372 8822 By email <a href="mailto:sccb@commerce.nsw.gov.au">sccb@commerce.nsw.gov.au</a> By mail to: SCCB Executive Officer NSW Department of Commerce Office of Government Procurement Level 23, McKell Building 2–24 Rawson Place, SYDNEY 2000</p>

**NSW GOVERNMENT CODE OF PRACTICE FOR PROCUREMENT**

**FORM FOR REPORTING ALLEGED BREACHES OF THE  
NSW GOVERNMENT CODE OF PRACTICE FOR PROCUREMENT**

Name(s)	
Occupation	
Business address	
Your contact details: Phone Facsimile Email	
Section of Code allegedly breached:	
The names of persons and/or organisations involved in the alleged breach:	
Description of events surrounding the alleged breach and the dates on which the breach occurred:	
List and/or attach documents that support your claim:	
If you have taken actions to remedy the breach identified, describe them:	
If you have previously complained about the breach of the Code, the dates of prior complaints and name of person and agency complaint made to: [Please attach copy(ies) of previous complaint(s)]	
Details of response to above or insert 'nil' if no response:	
Signed [including electronic signature]	
Date	