

Compliance with the *Implementation Guidelines to the New South Wales Code of Practice for Procurement: Building and Construction (the Guidelines)*

Role of Client agencies

Client agencies are NSW government departments, state owned corporations and other NSW public sector bodies. These agencies must apply the Guidelines to all publicly funded building and construction work that is the subject of an expression of interest (EOI), request for tender or other procurement process by the NSW Government, on or after 1 July 2013.

Publicly funded building and construction work is work undertaken by a principal contractor entering into a contract with a client agency. It is the responsibility of the client agency to ensure that an EOI or request for tender satisfies the requirements of the Guidelines. The Construction Compliance Unit (CCU) is available to assist client agencies with compliance.

Expression of Interest/Tender stage

The Guidelines commenced operation on 1 July 2013, in accordance with a Memorandum issued by the Premier of NSW on 23 May 2013, with effect from that date. Client agencies calling for tender or expression of interest for NSW publicly funded building and construction work must ensure:

- compliance with the Guidelines is included as an integral component of all contract management procedures
- all expressions of interest, tender and contractual documents clearly set out the requirements specified in the Guidelines.

All relevant contractual documents must incorporate the requirement for the principal contractor, consultant and/or related entities (as applicable) to comply with all aspects of the NSW Code of Practice for Procurement and the Guidelines.

Client agencies should use the *Model Tender and Contract Documentation* (which is available on the NSW Industrial Relations website) for:

- advertisements
- requests for expressions of interest and tenders
- construction contracts.

Client agencies should ensure that tenders for NSW publicly funded building and construction work include:

- a signed compliance schedule
- a Workplace Relations Management Plan (WRMP), where the NSW Government department or public sector body contribution (directly or indirectly) to a project is \$10 million or more or is at least \$5 million and represents at least 50% of the total construction project value
- a Work Health Safety Management Plan (WHSMP) or Site Specific Safety Management Plan (SSSMP).

Client agencies (advised by the CCU) must assess tenderers' compliance with the Guidelines during the tender process.

Evaluation stage

At the tender evaluation stage, client agencies must provide the CCU with:

- the WRMP of shortlisted tenderers for review (if applicable)
- confirmation of the tenderers who have submitted compliance schedules
- the WHSMP or SSSMP (as applicable) of shortlisted tenderers.

During the tender stage, the client agency should consult with the CCU to ensure that the shortlisted tenderers are compliant with the Guidelines, particularly with respect to the WRMP.

Project stage

On site compliance during the construction phase is monitored by the CCU. The contract documentation includes a requirement for the principal contractor to comply with the Guidelines, and permits the CCU to:

- inspect any work, material, machinery, appliance, article or facility
- inspect and copy any record relevant to the project
- interview any person
- access sites and documents
- monitor and investigate compliance.

Ongoing

Client agencies are required to keep the CCU informed of upcoming tenders for all NSW government funded building and construction projects. This information can be sent by email to ccu@industrialrelations.nsw.gov.au. Client agencies should seek assistance as required and as new projects arise.

For further information

Phone: 131 628
CCU mailbox: ccu@industrialrelations.nsw.gov.au
Website: www.industrialrelations.nsw.gov.au

The client agency and the CCU

The CCU will:

- assist agencies with any queries about implementing the Guidelines, including providing advice during tender and contract processes
- monitor NSW government tenders
- expect agencies to call for information/assistance as new projects arise
- require ongoing tender information for all NSW government funded building and construction projects
- ensure receipt of compliance schedules and assess the WRMPs of all shortlisted tenderers during expression of interest and tender evaluation.

Breaches and sanctions

The Treasurer and Minister for Industrial Relations has overall responsibility for the industrial relations aspects of the NSW Code and the implementation of the Guidelines.

Client agencies are primarily responsible for ensuring the application of, and compliance with the NSW Guidelines. The Government has made adherence to these Guidelines a key measure of agency performance, and Chief Executive Officers are responsible for ensuring their agency's performance.

The CCU is responsible for monitoring compliance with these Guidelines and receiving and investigating reports of alleged breaches. Where the outcome of an investigation reveals serious or repeated breaches of the Guidelines, the CCU will report the outcome to the client agency and to the Treasurer and Minister for Industrial Relations.

Sanctions may be imposed for proven breaches.

The information provided in this fact sheet is of a general nature. Parties should seek legal advice in relation to their specific circumstances. The NSW Government and its employees do not accept liability for action taken in reliance on this document, and disclaim all liability from any error or omission.

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