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New South Wales
TREASURY

NSW GOVERNMENT PROCUREMENT POLICY

Office of Financial Management

Policy & Guidelines Paper

PREFACE

This Policy and Guidelines Paper outlines a simplified Procurement Policy and associated implementation processes for NSW Government agencies. Treasury Circular TC04/07 has been issued in conjunction with this Paper, conveying the Government's endorsement of the policy and its status as a Treasurer's Direction.

Fundamentally, existing procurement policies remain valid. Reform has focussed on the issue of an overarching policy statement, condensing previously separate procurement related codes into a single Code of Practice for Procurement as well as simplifying and strengthening procedures. The objective is to assist agencies to make appropriate and informed procurement decisions that ensure best value for money and support the efficient and effective delivery of government services. The Policy emphasises agency accountability for outcomes, and greater upfront planning and stronger linkage with the State Budget process prior to allocation of capital funding.

Key elements include:

- A ten step online guide to the procurement process to assist agencies' implementation of the Procurement Policy. The guide is tailored for each of three main categories of procurement:
 - o Construction
 - o Goods and Services
 - o Information and Communications Technology
- An Agency Accreditation Scheme for capital works procurement whereby Treasury determines the level of external assistance that agencies require with this procurement
- A Gateway Review process for complex and innovative procurements to independently assess that appropriate discipline has been applied at key stages of the procurement cycle.
- Enhanced monitoring of major capital works by NSW Treasury.

The Procurement Policy applies from 1 July 2004 on a whole-of-government basis to all government departments, statutory authorities, trusts and other government entities. State Owned Corporations under the *State Owned Corporations Act* are exempt although they are encouraged to adopt aspects of the Policy that are consistent with their corporate intent.

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Secretary
NSW Treasury
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NSW GOVERNMENT PROCUREMENT POLICY STATEMENT

1 INTRODUCTION

1.1 Policy Objective

The fundamental objective of the Procurement Policy is to ensure that government procurement activities achieve best value for money in supporting the delivery of government services.

Key principles underpinning the Policy are:

- value for money, being the benefits achieved compared to whole-of-life costs;
- efficiency and effectiveness;
- probity and equity; and
- effective competition.

1.2 Applicable Strategies

Strategies underpinning the Procurement Policy are aimed at achieving efficient resource allocation and clear agency accountability through:

- a whole-of-government approach;
- ethical and sound procurement practice;
- effective procurement capacity and competence;
- appropriate support of the Government's economic, environmental and social objectives; and
- monitoring of, and improvement in, agency performance.

Key elements of the Policy introduce:

- mandatory business case Gateway Reviews for complex and innovative procurements;
- an Agency Accreditation Scheme for capital works procurement; and
- greater monitoring of major capital works by NSW Treasury.

1.3 Application of the Policy

The NSW Government Procurement Policy is implemented as a Treasurer's Direction under Section 9 (1) of the *Public Finance and Audit Act*.¹

The Policy applies on a whole-of-government basis to all government departments, statutory authorities, trusts and other government entities. State Owned Corporations under the *State Owned Corporations Act* are exempt although they are encouraged to adopt aspects of the Policy that are consistent with their corporate intent.

The Procurement Policy, including Agency Accreditation Scheme and mandatory Gateway Reviews, is effective from 1 July 2004.

¹ In that regard Treasury Circular TC04/07 has issued in conjunction with this Policy and Guidelines Paper.

2 POLICY FRAMEWORK

The Procurement Policy is an overarching framework for all government procurement, and is consistent with the Government's total asset management, infrastructure, planning and delivery framework. The Policy links with the State Budget process to deliver better budgetary outcomes through agencies' Results and Services Plan and savings targets.

The NSW Government Procurement Policy should be read in conjunction with the Premier's Department's *Strategic Management Framework*, which is designed to assist agencies navigate their way through the range of key planning, budgeting and reporting requirements.

Attachment 1 to this Policy and Guidelines Paper provides a diagrammatic representation of the whole-of-government procurement framework, outlining the application of the Procurement Policy to the three main types of procurement:

- Construction
- Goods and Services
- Information and Communications Technology (ICT)

Attachment 2 outlines the implementation process and outcomes for the ten stages of procurement. The process is designed to ensure that agencies are able to justify funding requirements and outcomes, and apply the right discipline to government procurement. The process map is available online at the Treasury website (www.treasury.nsw.gov.au).

2.1 Legal Framework

Public Sector Employment and Management Act 2002

Chapter 7 - Goods and Services - covers the establishment of the State Contracts Control Board (SCCB), the provision for regulations for the acquisition and disposal of goods or services for the Public Service, and the referral of complaints to the Board regarding competitive neutrality in tendering. The Public Service is represented by those agencies listed in Schedule 1 of the Act. The role of the SCCB is set out in the *Public Sector Management (Goods and Services) Regulation 2000* and requires that competition to supply goods and services is maximised, that probity is maintained in tendering and that the tender selected should be the most advantageous to the Public Service.

Public Finance and Audit Act 1983

Under the Act, agencies are required to be accountable and to use monies efficiently and effectively.

2.2 NSW Government Code of Practice for Procurement

This single Code of Practice covers all types of government procurement and outlines the philosophy, obligations and standards of behaviour applicable to all parties in the supply chain during the procurement process. (Refer *Attachment 3*)

2.3 Agency Accreditation Scheme

Treasury accredits an agency on its capability and capacity to undertake capital works procurement. Agencies not accredited need to use approved external experts and an approved procurement system to assist them in their procurement activities. (Refer *Attachment 4*)

2.4 Gateway Reviews

A mandatory independent Gateway Review is required at the business case stage for all high risk procurements or all other procurements valued at \$10 million (\$5 million for ICT) or more. Reviews at other gates and on lesser value projects are recommended. (Refer *Attachment 5*)

2.5 Australia And New Zealand Government Procurement Agreement

NSW is a signatory to the Agreement which seeks to maximise opportunities for Australian and New Zealand suppliers and reduce the costs of doing business for both government and industry.

2.6 Industry Preference Schemes

The schemes consist of an Australia and New Zealand (ANZ) price preference margin and a Country Industries Preference Scheme (CIPS) to assist NSW industry. The ANZ price preference margin adds a 20% price loading to the imported content of non ANZ goods in tender evaluations. The margin does not apply to services. CIPS is applied to support approved manufacturing industries in country NSW by adding margins of 2.5% or 5% only to the prices of other NSW suppliers.

2.7 Tendering Complaints

Tendering complaints for all government procurement are directed to the Chairperson of the State Contracts Control Board.

3 ROLES AND RESPONSIBILITIES

Under the NSW Government Procurement Policy, NSW Treasury is responsible for:

- policy initiatives for policy development; and
- maintaining and monitoring the Procurement Policy, and in particular increased monitoring of major capital works projects. (Refer *Attachment 6*)

To achieve the benefits of the reform, NSW Treasury works closely with the Department of Infrastructure, Planning and Natural Resources, and the Department of Commerce.

The Department of Commerce is responsible for:

- through the SCCB, carrying out procurement on behalf of the Public Service under the Public Sector Management (Goods and Services) Regulation;
- providing procurement advice to NSW Treasury and agencies in planning and managing the procurement of capital works, property, goods, services, and information and communications technology;
- maintaining the web based guidance material on behalf of NSW Treasury; and
- supporting NSW Treasury in implementing the Agency Accreditation Scheme, including the provision of a default procurement delivery system and the Gateway Review process (involving facilitation of agency reviews and maintenance of the Gateway system).

Agencies are accountable for the efficiency and effectiveness of their procurement and implementation of the NSW Government Procurement Policy. Implementation of the Procurement Policy will require agencies to particularly focus on the upfront preparation of procurement proposals.

FURTHER INFORMATION

Procurement Policy Advice

Further information on procurement policy issues may be obtained from Treasury by contacting:

Stephen Chong, Principal Advisor on (02) 9228 4417 (email stephen.chong@mail.treasury.nsw.gov.au), or Phil Armessen on (02) 9228 5427 (email phil.armessen@mail.treasury.nsw.gov.au).

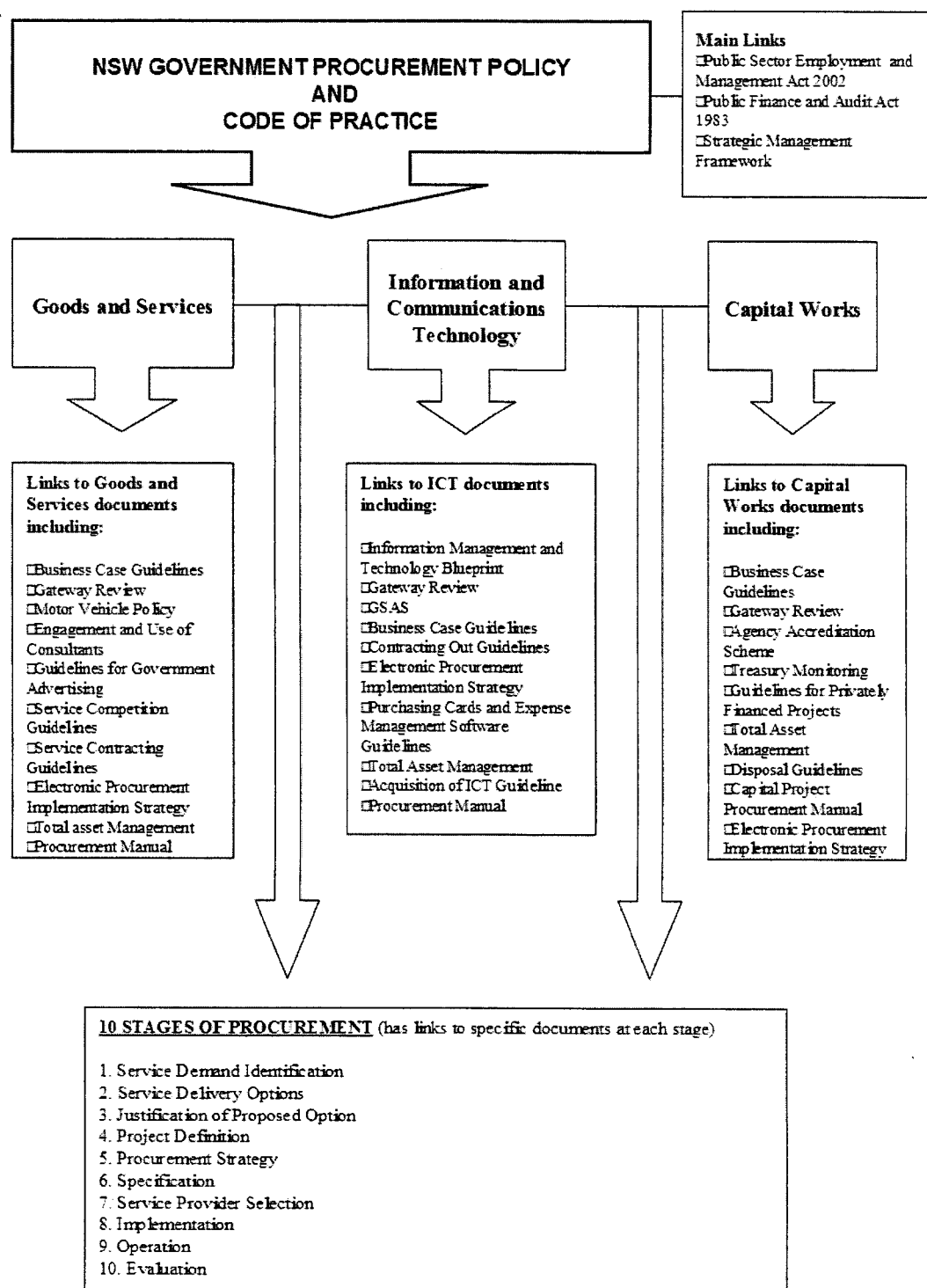
Procurement Implementation Advice

The Department of Commerce, Government Procurement Services helpdesk, on (02) 9372 8600, is available to assist with enquiries on procurement implementation.

Treasury Website

All procurement policy documentation and implementation guidelines, including assistance with the ten step procurement process is available on the Treasury website www.treasury.nsw.gov.au.

WHOLE OF GOVERNMENT PROCUREMENT FRAMEWORK



PROCUREMENT PROCESS – TEN STAGES

The process involves ten stages and enables agencies to justify funding requirements and outcomes and apply the right discipline to government procurement.

Guidance with the ten stages is available on the Treasury website. Information is provided at each stage on government requirements, with links to relevant procedures and guidelines separately identified for each of the three procurement categories:

- ☐ construction procurement;
- ☐ goods and services procurement; and
- ☐ information and communications technology procurement.

Stage	Purpose	Typical Deliverables	Outcome
1. Service Demand Identification	Identify if there is a genuine service delivery need	Service outcomes strategy Comparison of service need with Government Policy and Corporate Direction Input into Service Delivery Strategy	Demonstrated and quantified service requirement
2. Service Delivery Options	Develop service delivery options for meeting the identified need	Service delivery options study Stakeholder analysis Preliminary risks identified	Service delivery options identified
3. Justification of Proposed Option	Evaluate delivery options and determine a preferred option that meets the service requirement	Project Strategy Report Preliminary financial and economic appraisal Inclusion in Asset Strategy (ie Capital Investment Strategic Plan)	Decision to proceed with a selected delivery option
4. Project Definition	Define project options for using procurement to deliver service need Obtain funding approval to implement preferred project option	Project Appraisal Report Feasibility Analysis Economic/Financial Appraisal Risk Assessment Value Management Study Benefits Realisation Register Stakeholder Analysis Business Case Gateway Business Case Review	Authority to proceed with the acquisition and commence more detailed planning
5. Procurement Strategy	Develop a detailed and approved project procurement plan to ensure a viable acquisition outcome can be achieved	Project Procurement Plan (including an approved procurement and contracting strategy) Project Brief Risk Management Plan Benefits Management Plan Procurement Strategy Report	A strategy for seeking tenders from the market and managing the project

Stage	Purpose	Typical Deliverables	Outcome
6. Specification	Produce tender documentation that clearly specifies what is required and how potential service providers are to respond	Completed and approved tender documents Completed and approved tender evaluation plan Pre-tender estimate	Authority to invite tenders and commence the contract formation process
7. Service provider selection	To solicit offers from the market using approved sourcing methods Select an acceptable and capable service provider/s that provide best value for money.	Offers received from tenderers Record of tender documents issued, including addenda Record of tenders received Identification of capable service providers Evaluation and recommendation report Post-tender review report Approval to contract with recommended tenderer A contract and contract documents Notification to unsuccessful tenderers Contract details published	A concluded tender process and a contracted service provider
8. Implementation	Ensure service provider delivers the asset, goods or services in accordance with its contractual obligations	Completed and verified asset, goods or services Acceptance test reports Contract payments Performance reports Progress reports Asset management information Material variations report	Successful completion of the contract and provision of the deliverables
9. Operation	Manage the use/operation of the asset, good or service, including any ongoing operational and maintenance contracts	Operation plans Maintenance plans	Service need is met Level of service is maintained
10. Evaluation	Review the outcomes of the project, ensure any learnings are disseminated to stakeholders and determine future actions	Contract evaluation report Ideas/proposals to improve future procurements Post Completion and/or Post Implementation review Benefits Realisation Report	Comparison of the service outcomes achieved as opposed to the outcomes sought Learnings to support future actions

**NSW GOVERNMENT CODE OF PRACTICE
FOR PROCUREMENT**

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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), 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 the standards of behaviour outlined in the Code.

This Code replaces a range of Codes and Guidelines relating to government procurement, namely

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

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.

The Code applies to all procurements for which tenders are invited or negotiations commenced on or after 1 July 2004. The earlier Codes continue to apply to procurements for which tenders were invited or negotiations commenced prior to 1 July 2004.

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

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

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

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.

5.2 Tendering Requirements

Clients may choose not to accept tenders from or award contracts to tenderers who:

- ☐ have breached this Code and are subject to an applicable sanction;
- ☐ are bankrupt;
- ☐ are subject to a winding up order;
- ☐ have had an administrator appointed; or
- ☐ are corporate entities with persons involved directly or indirectly in the management of the entity who are disqualified under corporations law.

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 may include, but are not limited to:

- ☐ whole-of-life costs, including costs of disposal;
- ☐ 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 tenders that do not fully meet the prescriptive conditions of tendering but provide better value for money. Clients should specify the conditions under which alternative tenders will be considered. 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* 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

Agency	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.
Bid shopping	The practice of trading off one tenderer's prices against another's in order to obtain lower prices.
Client	Party calling for tenders and / or awarding a contract.
Construction	All organised activities concerned with demolition, building, landscaping, maintenance, civil engineering, process engineering, mining and heavy engineering.
Construction Agency Coordination Committee	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.
Employee	Person whose employment is governed by a contract of service, or a person deemed to be an employee under Australian or NSW industrial law.
Employer	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.
Employer association	Organisation representing the interests of employers that is registered under Australian or NSW industrial law.
Fair	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.
Industry association	Organisation representing the professional, trade or commercial interests of its members in an industry.
Infrastructure	Fixed assets that support economic and social development in a fundamental way.

Intellectual property	<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>
Monitor	Regularly collect information to review performance against specified criteria.
Party	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.
Procurement	<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>
Service provider	Includes contractors, subcontractors, suppliers and consultants that contract to provide goods or services.
State Contracts Control Board	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.
Tender	Includes a price, bid, offer, quotation, consultant proposal or expression of interest lodged in response to an invitation or request for tender.
Tenderer	Entity submitting a tender.
Union	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.
Value for money	The benefits, compared to whole-of-life costs.

Appendix A

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* of the Capital Project Procurement Manual describe the management practices required of all parties on NSW Government construction projects.

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* of the Capital Project Procurement Manual describe the management practices required of all parties on NSW Government construction projects.

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

Obligations Relating to Employment

Principal contractors are accountable for compliance by their service providers with their legal obligations regarding their employees working on construction projects.

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* of the Capital Project Procurement Manual 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:
 - o improved occupational health and safety and workplace injury management practices;
 - o better training and skill development strategies; and
 - o 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, after arbitration.

Site allowances are awards made by the Industrial Relations Commission under the *Industrial Relations Act (NSW)* to provide compensation to affected employees engaged at a particular work site, if they encounter conditions that are so far removed from the type of conditions ordinarily experienced on construction sites as to warrant extra compensation.

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.

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* of the Capital Project Procurement Manual 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* of the Capital Project Procurement Manual 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 employment and management of employees including outworkers; and
- ☐ take all reasonable 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 such a statutory declaration is lodged with the tender.

Appendix B

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. 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**

Construction Agency Coordination Committee (CACC)	<p>All inquiries to the CACC Executive Officer</p> <p>By telephone (02) 9372 8910</p> <p>Facsimile (02) 9372 8844</p> <p>By email: info@construction.nsw.gov.au</p> <p>By mail to:</p> <p>CACC Executive Officer NSW Department of Commerce Office of Government Procurement Level 23, McKell Building 2-24 Rawson Place, SYDNEY 2000</p>
State Contracts Control Board (SCCB)	<p>All inquiries to the SCCB Executive Officer</p> <p>By telephone (02) 9372 8910</p> <p>Facsimile (02) 9372 8844</p> <p>By email sccb@commerce.nsw.gov.au</p> <p>By mail to:</p> <p>SCCB Executive Officer NSW Department of Commerce Office of Government Procurement Level 23, McKell Building 2-24 Rawson Place, SYDNEY 2000</p>

Appendix D

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	

AGENCY ACCREDITATION SCHEME²

PURPOSE

The purpose of the Agency Accreditation Scheme is to manage risks and reduce cost overruns in the procurement of capital works assets by establishing effective and efficient capital asset procurement practices in all government agencies.

SCHEME OUTLINE

- ☐ The Agency Accreditation Scheme is based on the premise that an agency should procure capital works assets using systems and resources commensurate with its capabilities.
- ☐ The scheme involves consideration of two independent factors:
 - o the agency's procurement capabilities, and
 - o the level of risk in the project or program being procured.
- ☐ An agency will be required to obtain external support if the level of risk is high in relation to its assessed capabilities, which should be consistent with its core service delivery functions.

PROCUREMENT CAPABILITIES

- ☐ The scheme applies to the planning and delivery phases of capital works procurement:
 - o The planning phase, which essentially involves preparation of the business case and the project approval process, commences after an agency has determined a need for a capital works asset following a strategic assessment, using Total Asset Management.
 - o The delivery phase is the process of dealing with service providers delivering the asset. This includes documenting requirements, selecting and managing service providers.
- ☐ The capabilities required to manage the inherent risks in each procurement phase can be described in terms of systems and competencies (knowledge, skills and abilities) to perform the required tasks.

PROCUREMENT RISK

- ☐ The risk level of a proposed capital asset acquisition is assessed using a tool based on the Risk Profile Assessment developed for the Gateway Review process.
- ☐ The tool generates a score that indicates whether procurement involves a high, medium or low level of risk. The indicative project budget will be a significant factor in this assessment.
- ☐ Agencies will be required to conduct a Risk Profile Assessment at the commencement of the planning phase for every capital works project or program valued at \$1M or above.
- ☐ The Risk Profile Assessment generated by the tool is to be included with the routine economic appraisal submitted to Treasury in support of the bid for capital funding.

² This Scheme takes effect on 1 July 2004 and supersedes the Project/Procurement Risk Management policy as outlined in Treasurer's memorandum TM91/7. Agencies should contact the Government Procurement Services Unit of the Department of Commerce on transition matters regarding construction projects which were subject to TM91/7. Projects which are part way through their planning phase will not need to comply with the accreditation process for planning, but will need to do so for the delivery phase.

ACCREDITATION

- ☐ Each agency will be assessed for accreditation for each of the two identified procurement phases. An agency may be accredited to undertake planning without support, but be required to obtain support for the delivery phase.
- ☐ An agency will be accredited for a particular procurement phase if it is considered to have all the capabilities necessary to carry out that phase without external support at any level of procurement risk.
- ☐ Remaining agencies will not be accredited on the basis they do not have the capabilities required to manage that phase without external support, except for the planning phase for low risk projects valued at less than \$50 million (for which accreditation is not required).
- ☐ A non accredited agency can however obtain "partial" accreditation for a phase of a specific project or program assessed at low or medium risk. To do so, it must demonstrate that it has the competencies necessary to successfully manage that phase of the capital works asset acquisition.

The table below articulates these requirements for accredited and non-accredited agencies.

Project Risk	Agency Accreditation Status - Planning and/or Delivery Phases			
	Accredited:- Projects of all values	Non-Accredited:- Projects valued >\$50M	Non-Accredited:- Projects valued <\$50M	Partial Accredited:- Projects valued <\$50M
H	Can undertake without external support using own procurement system	Require external support. Must use approved procurement system for delivery phase	Require external support. Must use approved procurement system for delivery phase	N/A - Require external support and must use approved procurement system for delivery phase
M	Can undertake without external support using own procurement system	Require external support. Must use approved procurement system for delivery phase	Require external support. Must use approved procurement system for delivery phase	Can undertake without external support but must use approved procurement system for delivery phase
L	Can undertake without external support using own procurement system	Require external support. Must use approved procurement system for delivery phase	Can undertake planning without external support. Delivery requires external support and use of approved procurement delivery system	Can undertake without external support but must use approved procurement system for delivery phase (partial accreditation not required for planning phase)

EXTERNAL SUPPORT

- ☐ The external support that agencies will be required to obtain may include:
 - o using the approved procurement system for the delivery phase that is developed and maintained by the Department of Commerce
 - o engaging approved external advisers with relevant competencies to assist in managing the procurement. Such expert advisers must use the approved Department of Commerce procurement system, unless they are accredited agencies in which case they may use their own system.

- The approved procurement delivery system generally consists of guidelines and procedures for the selection of procurement strategies, contract risk allocation, supplier selection (including prequalification), tendering and formal dispute resolution. The approved systems will provide support for agencies to engage expert advisers. The Department of Commerce will supply the approved procurement delivery system for non government external experts.
- The support that agencies will be required to obtain for each relevant phase of a capital asset acquisition is outlined in the above table and summarised below:
 - o a fully accredited agency will be authorised to carry out procurement at any assessed risk level without the support of external resources. It will need to maintain effective procurement systems;
 - o an agency which is not accredited must use the approved procurement delivery system and the support of external advisers for capital works projects and programs of any risk level, except for planning phase for low risk projects valued below \$50 million;
 - o a "partially" accredited agency will be authorised to carry out a capital asset acquisition assessed at low or medium risk without the support of external resources, but must use approved procurement delivery system. For projects or programs assessed as high risk, the agency must engage approved external expert advisers.

THE RULES

- NSW Treasury will:
 - o accredit agencies, including partial accreditation, and will review accreditation status of agencies after 12 months operation of the scheme. Treasury may seek assistance from representatives of the Department of Commerce and other expert agencies;
 - o review and revise an agency's accreditation on the basis of an agency's procurement management performance or changes to its capability. For example loss or gain of in-house expert personnel may result in adjustment to the accreditation status;
 - o review and verify project Risk Profile Assessments.
- Agencies will:
 - o have ultimate responsibility for the efficiency and effectiveness of their procurement and for implementing the Government's Procurement Policy;
 - o undertake project Risk Profile Assessment and provide the results together with the routine submissions to Treasury under the enhanced monitoring arrangements;
 - o be able to request Treasury to approve "partial" accreditation for a particular procurement. To gain "partial" accreditation, an agency will need to provide evidence it has competencies commensurate with the proposed additional activities;
 - o advise Treasury of significant changes in their procurement capabilities, for example through movement of key procurement personnel. (Not applicable to non accredited agencies).

SCHEME COVERAGE

- The scheme will:
 - o apply to capital works procurement projects and programs above a value of \$1M;
 - o apply on a whole-of-government basis to all government departments, statutory authorities, trusts and other government entities;
 - o not apply to State Owned Corporations subject to the *State Owned Corporations Act*.

GATEWAY REVIEW PROCESS

PURPOSE

The purpose of the Gateway Review process is to independently assess whether an appropriate level of discipline is applied across the procurement cycle. The process addresses the lack of initial preparation evident in managing major asset procurements which in turn leads to significant time and budget overruns.

GATEWAY REVIEW OUTLINE

- The Gateway Review consists of a series of structured Reviews that examine procurements at six key decision points (or gates) in the procurement cycle. These gates are Strategic, Business Case, Procurement Strategy, Tender Review, Pre Commissioning and Post Implementation.
- Initially there is a review of the risk of the procurement. The Risk Profile Assessment is used to determine risk rating and thereby the level of independence required of Reviewers.
- Three categories of risk have been identified (high, medium and low). Typically:
 - o High-risk procurements will be reviewed by a small team of Reviewers independent of the procurement and the proponent organisation.
 - o Medium risk procurements will be reviewed by a small team of Reviewers independent of the procurement and at least one person independent of the proponent organisation.
 - o Low risk procurements will be reviewed by a small team of Reviewers independent of the procurement, but may be from within the proponent organisation.
- The Project Sponsor initiates a Review, receives the findings and determines what action, if any is required to address the recommendations. The Project Sponsor is the senior manager responsible for the procurement, with the authority to make decisions affecting its progress.
- Reviewers are generally senior government employees selected for their relevant expertise in the particular stage of procurement being reviewed. From time to time expertise may be sourced from outside the government sector where appropriate.
- The Review process is facilitated by the Department of Commerce. Facilitation includes providing training and support to Reviewers, the Project Sponsor, the Project Team and other stakeholders. It also includes assistance with documentation of the Review report and Review logistics.
- Reviews are held over one to two days following a half-day planning session undertaken a week prior to the Review. The Review runs as a series of interviews with key stakeholders including Project Team members, technical consultants, planners, senior managers and client representatives.
- At each Review the project is assessed against seven Key Success Factors– affordability, service delivery, governance, sustainability, risk management, stakeholder management and change management. The underlying rationale for the Business Case is revisited at each gate.

- ☐ All information tabled in the Review is confidential with documentation provided by the Project Team on behalf of the Project Sponsor. It is not intended that documentation be produced especially for the Review. Nor is it expected that Reviewers read in detail all documentation associated with the project. Rather, Reviewers will need to read sufficiently to gain an overview, with enough detail to make an informed judgment.
- ☐ The Review report is produced in draft form on the day of the Review and the final report is provided to the Project Sponsor for appropriate action. Action will range from fine-tuning project details to a decision to take a major change in direction.

BENEFITS

The potential benefits include:

- ☐ More accurate project scoping and estimates
- ☐ Reduced time and cost overruns
- ☐ Improved alignment of service delivery with available funds
- ☐ Improved procurement discipline
- ☐ Better risk management
- ☐ Reinforcing agency responsibility and accountability for decisions

GATEWAY RISK PROFILE ASSESSMENT TOOL

The Gateway Review Process is applied based on an assessment of a procurement's potential risk profile. This assessment goes beyond simple financial thresholds to consider issues such as:

- ☐ impact the procurement will have on the agency's service delivery
- ☐ level of integration the project requires with other initiatives
- ☐ amount of experience an agency has with similar procurements
- ☐ level of expertise available in the marketplace
- ☐ degree of innovation involved in the procurement solution
- ☐ complexity of the procurement method

Gateway can then be targeted at complex and risky procurements that would benefit from increased scrutiny.

An online tool has been developed to assist agencies to complete the assessment quickly and easily. The tool calculates an indicative risk score based on the options selected.

APPLICATION

- ☐ The process applies to all procurement, including built infrastructure, information and communications technology (ICT), services and capital equipment.
- ☐ Reviews will be mandatory at the Business Case Gate for all high risk procurements and other procurements valued at \$10 million or more (\$5 million for ICT).
- ☐ Agencies are encouraged to apply the other five Gateway Reviews to their procurements. The decision to complete one of these gates should be based on the risk profile of the procurement and the Project Sponsor's understanding of how the procurement is progressing. For these gates it is recommended that agencies have:
 - o a small team of people independent of the project and proponent organisation review high risk projects;

- o a small team of people independent of the project and a least one person independent of the proponent organisation review medium risk projects;
- o agencies review their processes to ensure they are aligned with Gateway for low risk procurements.
- ☐ Business Case Gateway Reviews will be linked to the Budget process by agencies submitting a copy of their review to Treasury with any bid for capital funding.

THE RULES

Treasury will support the process by:

- ☐ Making suitable officers available as Gateway Reviewers.
- ☐ Funding the Department of Commerce in its facilitation, system development and maintenance role.

Agencies will:

- ☐ Undertake the Risk Profile Assessment for all procurements and include them with their routine submissions to Treasury as required.
- ☐ Ensure appropriate Project Sponsors are appointed.
- ☐ Undertake Business Case Reviews as a minimum, on all high risk procurements and other procurements valued at \$10 million or over (\$5 million for ICT).
- ☐ Take responsibility for Review findings.
- ☐ Make suitable officers available as Gateway Reviewers.
- ☐ Link Gateway Reviews at the Business Case stage with the budget process as required.

Department of Commerce will:

- ☐ Maintain, develop and promulgate information about the Gateway Review Process.
- ☐ Maintain the database of Reviewers for the mandatory Business Case Review.
- ☐ Manage Reviewer training and support agencies in Reviewer selection.
- ☐ Facilitate Reviews.
- ☐ Refine the Review methodology to account for lessons learned.

COVERAGE

The mandatory Business Case Review:

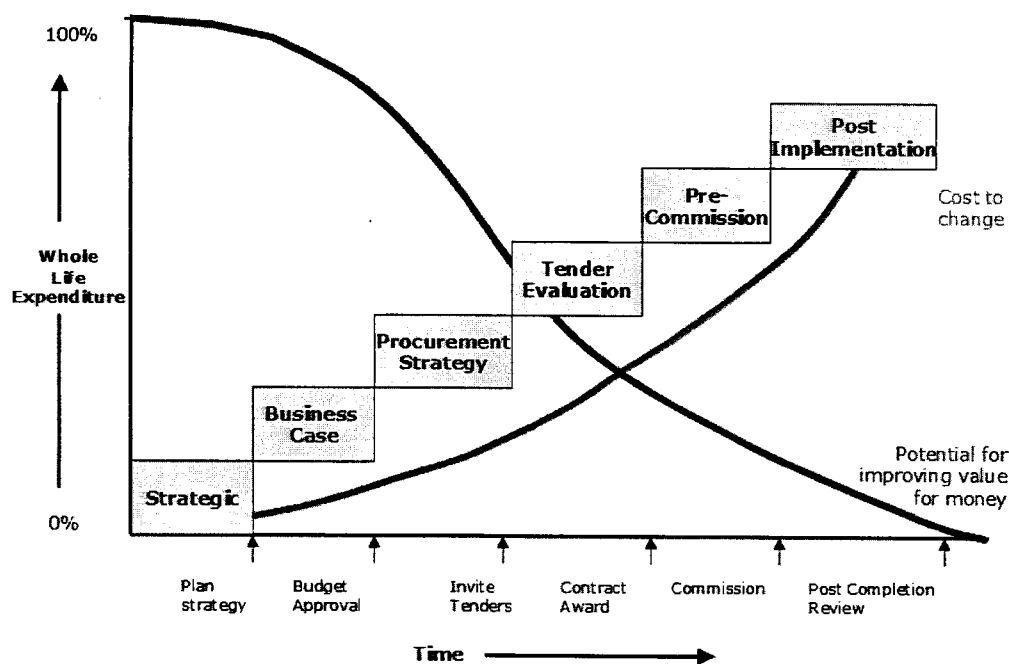
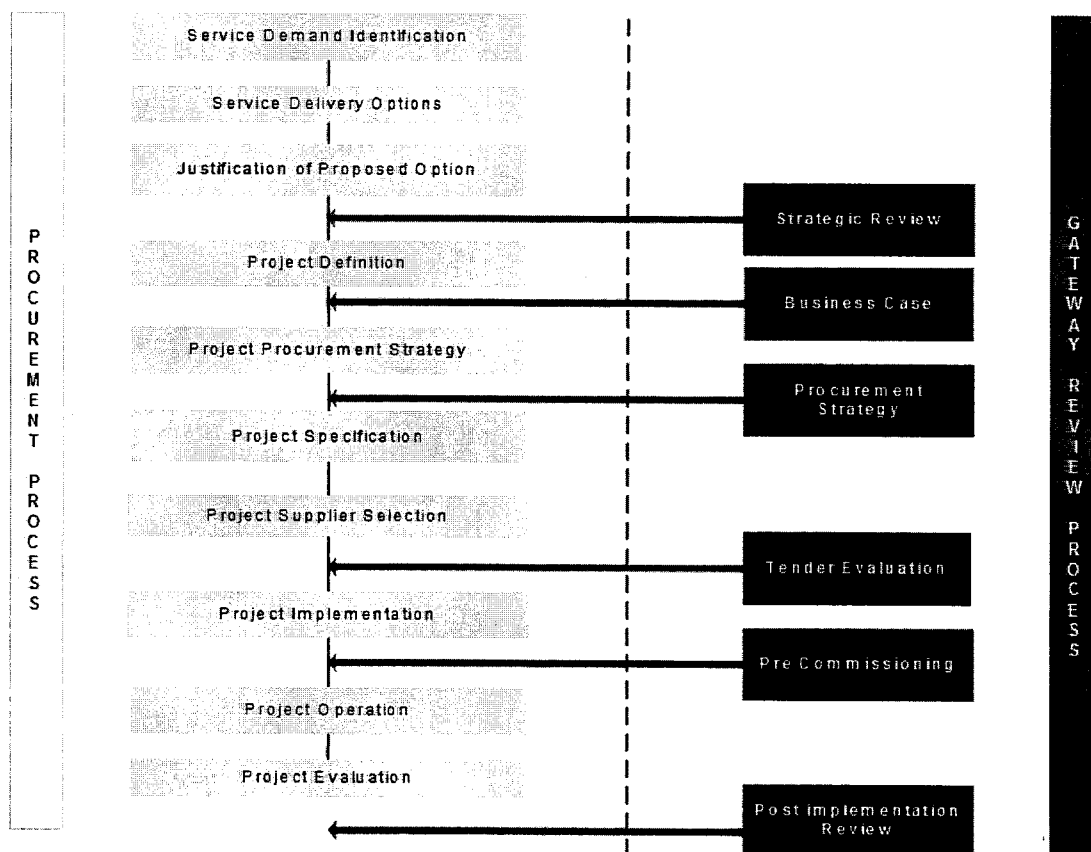
- ☐ Applies on a whole-of-government basis to all government departments, statutory authorities, trusts and other government entities.
- ☐ Does not apply to State Owned Corporations subject to the *State Owned Corporations Act*.

IMPLEMENTATION

- ☐ The Gateway Review process commences 1 July 2004.

THE SIX GATES

The six gates in the procurement process are indicated below.



COMPREHENSIVE TREASURY APPRAISAL/MONITORING³

Treasury's role in assessing and monitoring major capital works projects (those valued at \$1 million or more) is dependent on the size and risk of the project, the risk being assessed using the Gateway Risk Profile Assessment tool.

A strong emphasis is placed on the quality of the business case supporting any funding/investment decision and service delivery objectives of the agency concerned.

Agencies need to demonstrate clearly that:

- ☐ the project supports its service delivery objectives;
- ☐ the initial business case that triggers any funding is sound; and
- ☐ the project, as it is delivered, either remains consistent with the original business case or properly informed decisions are made in terms of the project's future if this is not the case.

Agencies are required to submit specific information and reports to Treasury at key decision points, dependent on the risk and value of the project as outlined below:

High Risk Projects and All Other Projects valued more than \$50 Million:

- ☐ Project Appraisal Report to demonstrate the Business Case is properly developed prior to going to the Budget Committee of Cabinet or internal funding approval. This will include copies of the project Risk Profile Assessment using the Gateway tool, Mandatory Business Case Gateway Review and Economic Appraisal
- ☐ Procurement Strategy Report and Pre-Tender Estimate to reconfirm the Business Case prior to calling tenders
- ☐ Post Tender Review Report to reconfirm the Business Case prior to contract award
- ☐ Material Variations Report highlighting major changes to scope, cost and time after contract award as they occur

Projects Not High Risk and valued between \$10 Million and \$50 Million:

- ☐ Copy of the project Risk Profile Assessment using the Gateway tool, Mandatory Business Case Gateway Review and Economic Appraisal prior to submission to the Budget Committee or internal funding approval
- ☐ Procurement Strategy Report and Pre-Tender Estimate prior to calling tenders

Projects Not High Risk and valued between \$1 Million and \$10 Million:

- ☐ Summary of Economic Appraisal prior to submission to the Budget Committee

A checklist of material which may be required for the above reports and a flow diagram illustrating the interaction of the agency accreditation scheme, Gateway Reviews and Treasury's monitoring role is available on the Treasury website.

³ These enhanced Treasury monitoring arrangements take effect from 1 July 2004 and apply to construction projects for which funding had not been approved as at that date. However projects already funded that are high risk or valued at \$50 million or more are required to submit the required reports depending on their stage of project delivery. All funded projects valued at less than \$50 million and not high risk may proceed under the earlier Treasury intervention arrangements.



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 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.

The Code is also to be read together with the Implementation Guidelines to the NSW Code of Practice for Procurement: Building and Construction (2013).

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

Clients, tenderers and service providers:	are required to comply with the Code.
Agencies:	are required to implement the Code and monitor and report on Code compliance.
Employer associations, industry associations and unions:	are expected to: <ul style="list-style-type: none">- support the Government in implementing the Code;- encourage their members to comply with the Code; and- develop and use rules to deal with breaches of the Code.
NSW Industrial Relations (Construction Compliance Unit)	is responsible for assisting all parties to comply with the workplace behaviour aspects of the Code and to investigate and report alleged breaches to the Minister for Industrial Relations
Construction Agency Coordination Committee (CACC):	is responsible for advising the Government on proposals for government-wide sanctions for Code breaches relating to construction procurement.
State Contracts Control Board (SCCB):	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:

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

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, and, in relation to tenders in the building and construction industry, compliance with the Implementation Guidelines to the NSW Code of Practice for Procurement: Building and Construction (2013);
- 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) 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

Note: for compliance with the workplace behaviour requirements in the building and construction industry see also section 11 of the Implementation Guidelines to the NSW Code of Practice: Building and Construction (2013)

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

Agency	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.
Bid shopping	The practice of trading off one tenderer's prices against another's in order to obtain lower prices.
Client	Party calling for tenders and / or awarding a contract.
Construction	All organised activities concerned with demolition, building, landscaping, maintenance, civil engineering, process engineering, mining and heavy engineering.
Construction Agency Coordination Committee	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.
Employee	Person whose employment is governed by a contract of service, or a person deemed to be an employee under Australian or NSW industrial law.
Employer	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.
Employer association	Organisation representing the interests of employers that is registered under Australian or NSW industrial law.
Fair	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.
Industry association	Organisation representing the professional, trade or commercial interests of its members in an industry.
Infrastructure	Fixed assets that support economic and social development in a fundamental way.

Intellectual property	<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>
Monitor	Regularly collect information to review performance against specified criteria.
Party	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.
Procurement	<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>
Service provider	Includes contractors, subcontractors, suppliers and consultants that contract to provide goods or services.
State Contracts Control Board	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.
Tender	Includes a price, bid, offer, quotation, consultant proposal or expression of interest lodged in response to an invitation or request for tender.
Tenderer	Entity submitting a tender.
Union	<p>Organisation of employees also referred to as a 'trade union', which is registered under Australian or NSW industrial law.</p> <p>This term also includes the Labor Council of New South Wales.</p>
Value for money	The benefits, compared to whole-of-life costs.

Appendix A

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) 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).

**OCCUPATIONAL HEALTH AND SAFETY MANAGEMENT AND
WORKPLACE INJURY MANAGEMENT**

(Note: for compliance with industrial relations requirements in building and construction see section 11 of the Implementation Guidelines to the NSW Code of Practice for Procurement: Building and Construction (2013))

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) 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).

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

(Note: for compliance with industrial relations requirements in building and construction see section 11 of the *Implementation Guidelines to the NSW Code of Practice: Building and Construction (2013)*)

Obligations Relating to Employment

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.

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) 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) 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.

Appendix B

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. 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.

Appendix C

NSW GOVERNMENT CODE OF PRACTICE FOR PROCUREMENT

CONTACT DETAILS:

CONSTRUCTION AGENCY COORDINATION COMMITTEE
STATE CONTRACTS CONTROL BOARD

Construction Agency Coordination Committee (CACC)	<p>All inquiries to the CACC Executive Officer</p> <p>By telephone (02) 9372 8600</p> <p>Facsimile (02) 9372 8822</p> <p>By email: info@construction.nsw.gov.au</p> <p>By mail to:</p> <p style="padding-left: 40px;">CACC Executive Officer NSW Department of Commerce Office of Government Procurement Level 23, McKell Building 2-24 Rawson Place, SYDNEY 2000</p>
State Contracts Control Board (SCCB)	<p>All inquiries to the SCCB Executive Officer</p> <p>By telephone (02) 9372 8600</p> <p>Facsimile (02) 9372 8822</p> <p>By email sccb@commerce.nsw.gov.au</p> <p>By mail to:</p> <p style="padding-left: 40px;">SCCB Executive Officer NSW Department of Commerce Office of Government Procurement Level 23, McKell Building 2-24 Rawson Place, SYDNEY 2000</p>

Appendix D

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	