

Building and construction

Code of Practice 2000

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1 Introduction

1.1 A cooperative and integrated approach

To ensure its continued contribution to economic growth the Queensland Government is committed to the development and long-term viability of the building and construction industry in Queensland. This commitment embraces a wide range of initiatives dealing with such issues as licensing, dispute resolution, security of payment, tendering and selection processes, cooperative industrial relations, work health and safety, and skill development.

Improved performance in the building and construction industry has a marked influence on the wellbeing of the Queensland economy. To sustain this performance in an increasingly globalised market, the industry must strive for continuous improvement, integration, value for money and international competitiveness. These outcomes will create economic and social benefits, particularly in terms of increased economic activity and employment, and a skilled and adaptable workforce.

The Queensland Code of Practice for the Building and Construction Industry (the Code) is a key element of the Government's industry-development strategy. This Code outlines specific principles and standards of behaviour that underpin best practice while promoting positive change in the industry. In particular, the Code promotes a shift in industry culture away from the prevailing adversarial approach to a more cooperative model.

1.2 Key priorities

As a major client of the building and construction industry, the Queensland Government will provide leadership in effecting major improvements in the way business is conducted. The Queensland Government's key priorities in this regard are:

- a viable and growing industry
- the achievement of world's best practice and international competitiveness by Queensland industry
- the establishment of cooperative, long-term relationships between Government and the industry
- quality and value-for-money outcomes that will continue to improve public and private infrastructure for Queenslanders.

The introduction of the Code expresses a commitment by the Queensland Government to deal only with organisations and personnel whose standards of behaviour conform to the principles of the Code.

1.3 Objectives

The Objectives of the Code are to:

- define ethics and standards of behaviour expected of all parties
- encourage best practice and improve the performance of all parties in the industry in Queensland
- promote a cooperative (non-adversarial) approach by all parties in their dealings with one another to achieve the key priorities
- outline expectations of performance for industrial relations
- outline expectations for work health and safety and environmental management
- outline the standards the Queensland Government requires as a client
- maximise opportunities for local industry participation as an aspect of value for money

- encourage high standards within the building and construction industry by seeking from those involved in the industry a commitment to comply with the spirit and intent of all laws, regulations, codes of practice and contracts relating to the industry
- encourage professional development and industry training
- support the principles of sustainable development
- encourage innovation and the use of technology.

1.4 Application

The Code of Practice and any implementation guidelines, which expand on key aspects and objectives of the Code, must be observed by all parties involved in building and engineering contracts, maintenance contracts and consultants' commissions with any Government agency. They also prescribe what Government agencies must observe in their dealings with the industry.

Projects involving private sector participation in the provision of public infrastructure, including Build/Own/Operate (BOO) will be subject to the Code when expressly provided for.

Parties seeking Government building and construction work are required to adhere to the Code in all their operations. All parties involved in local government and non-government building and construction work are encouraged to adopt this Code on a voluntary basis.

This Code applies to all procurement processes relating to all building and construction contracts and consultant commissions for which tenders are invited. The Code does not apply retrospectively.

The application of the provisions of the Code is, at all times, subject to the provisions of any legislation and relevant individual contracts.

1.5 Monitoring

A consultative committee consisting of Government, industry associations and unions will:

- monitor and encourage compliance by all parties with the Code
- review processes to ensure the key priorities and objectives are achieved.

2 Relationships and responsibilities

Successful working relationships are built upon the essential qualities of trust, cooperation, equity and honesty. These qualities should be reflected in all links in the contractual chain.

Parties shall make a positive commitment to develop relationships that are founded on common goals and shared benefits rather than conflict.

Government agencies will seek to work with service providers who can work cooperatively and are willing to develop business relationships designed to deliver optimum benefits to all parties.

2.1 Responsibilities

All parties to the Code are required to:

- comply with the Code and take action to address Code issues
- adopt and promote a cooperative (non-adversarial) approach and communicate honestly in all relationships and business dealings in all combinations and at all levels

- promote and strive to achieve the key priorities and objectives
- improve skills and capabilities in procurement, financial planning, management and business efficiency
- maintain confidentiality, particularly in connection with commercial issues
- operate within the law and comply with all relevant legislation, regulations and Government policy regarding employment and training, work health and safety, and environmental management
- comply with the Queensland Government building and construction training policy
- comply and promote compliance with the provisions of applicable awards and/or enterprise or project agreements, dispute settlement procedures, all orders, formal directions and decisions of any court of competent jurisdiction, and all other legislative obligations relating to employment
- establish internal mechanisms to ensure compliance and deal with transgressions of the Code.

3 Tendering ethics

The Australian Standard Code of Tendering (AS 4120-1994¹) constitutes a statement of ethics that underpins best-practice tendering procedures and obligates all parties who adopt it to refuse to condone unethical behaviour by others in the industry. All parties operating at all levels on Queensland Government building and construction projects are to adopt ethical principles consistent with The Australian Standard Code of Tendering. Inherent in the adoption of this standard is a commitment to deal only with industry parties whose standards of performance and behaviour conform to those expected by this Standard. Parties tendering will demonstrate a history of compliance with Queensland law and this Code.

3.1 Ethical principles

The Australian Standard Code of Tendering is based on the following principles:

- tendering at all levels in the construction industry shall be conducted honestly and in a manner that is fair to all parties involved
- parties shall comply with all legislative obligations, including those required by trade practices and consumer affairs legislation
- the principal shall have regard to the costs of tendering and the number of tenderers, recognising that the cost of tendering is a significant industry overhead
- tenderers shall only tender where they intend to carry out the work
- the principal shall call for tenders only after the principal has arranged funding for the project and has made a firm commitment to proceed with the project
- the conditions of tendering shall be the same for each tenderer
- parties shall not engage in practices such as collusion on tenders, inflation of prices to compensate unsuccessful tenderers, secret commissions or any other such improper arrangements
- the principal and tenderers shall be prepared to attest to their probity, if necessary by statutory declaration and other reasonable means
- tender documents shall specify the principal's requirements as clearly and precisely as possible and when documents are altered, sufficient time shall be allowed for all tenderers to review and revise their tenders
- the principal shall specify what information in the tender documents is required to be treated by tenderers as confidential. However, it is acceptable to have public openings of tenders and disclosure of tender prices

¹ Australian Standard Code of Tendering – AS 4120-1994, Standards Australia, 1994.

- any party with a conflict of interest shall immediately disclose that conflict of interest.

3.2 Collusive practices

Collusive tendering practices are illegal and inconsistent with the establishment and maintenance of the ethical business practices that underlie good working relationships. Parties will ensure that collusive practices do not occur.

For the purpose of the principles outlined above, collusive practices include but are not limited to:

- any agreement between tenderers as to who should be the successful tenderer
- any meetings of tenderers to discuss tenders before the submission of the tenders if the client is not present
- exchange of information between tenderers for the payment of money or the securing of reward or benefit for unsuccessful tenderers by the successful tenderer
- agreements between tenderers to fix prices or conditions of contract - that is, any collaboration between tenderers on prices or conditions to be included in contracts or commissions without the consent of the client
- any assistance to any tenderer to submit a cover tender - that is, a tender submitted as genuine yet has been deliberately priced in order not to win the contract or commission
- any agreement between tenderers before submissions of tenders to fix the rate of payment of employer or industry association fees, where the payment of such fees is conditional on the tenderer being awarded the contract or commission.

Collusive activity and anti-competitive behaviour are minimised by client practices which emphasise the principle of value for money in procurement and the tendering and selection process.

4 Continuous improvement and best practice

4.1 Commitment

Those seeking to do business with the Queensland Government and those working on Government projects must demonstrate a commitment to the key priorities and objectives of the Code. This is essential if the industry is to maintain and enhance its influential position in the Queensland economy. In the context of a building and construction industry enterprise, best practice embraces superior:

- business relationships and practices
- organisational systems and standards
- workforce-management policies and practices
- time, cost and quality outcomes.

Commitment to continuous improvement and best practice will be tested and measured using criteria that reflect these qualities. Such criteria have been incorporated into the Queensland Government's prequalification systems.

Incentives may be provided for enterprises that demonstrate superior performance including, for example, more opportunities for work and longer-term relationships. In their dealings with industry, Government agencies are expected to encourage the attainment of best practice by all parties.

4.2 Project planning and contract documentation

Building and construction is an inherently complex undertaking. Poor project planning and poor or inconsistent contract documentation can lead to cost overrun, quality issues and disputes. All parties have a responsibility to ensure that effective project planning is carried out and that an appropriate level of expertise and resourcing is applied to the process.

The stated objectives of the Queensland Government's State Purchasing Policy are to advance Government priorities, achieve value for money and ensure probity and accountability for outcomes.

The Local Industry Policy outlines the Queensland Government's commitment to supporting local industry and to ensuring that local industry is provided with full, fair and reasonable opportunity to tender for work on major projects in Queensland.

All Government agencies are to apply the principles and processes outlined in these policies during their project planning and in their contract documentation.

Additionally, all parties should adopt a proactive approach to project planning by:

- applying strategic management principles
- clearly defining project scopes
- developing clear risk-identification and management strategies, including industrial relations
- identifying planning and resource issues early, including human, physical, work health and safety, rehabilitation, environmental and financial concerns
- establishing and maintaining well-defined lines of communication
- clearly defining roles and responsibilities
- deploying staff to tasks who have appropriate technical qualifications, skills and experience
- preparing contingency plans
- seeking approval to subcontract or sub-subcontract core works.

4.3 Cooperative contracting

All parties are expected to adopt a cooperative approach to contracting and contract administration. Parties involved in contracts are to:

- cooperate and maintain communication and relationships with other parties in the administration of contracts so they may fulfil their contractual obligations and mitigate potential cost and time overruns
- maintain confidentiality
- appoint personnel with appropriate levels of skill, competence and authority to administer contracts
- respond promptly to reasonable requests for advice and information
- cooperate to minimise problems, claims or disputes
- adopt a non-adversarial approach to dispute resolution to the extent that legal recourse is reserved as a last resort.

4.4 Management and administration of contracts

All parties must devote an appropriate level of skill and competence to the management and administration of contracts. This incorporates:

- technical skills and experience
- financial skills
- knowledge of the applicable procurement and contract system

- commercial expertise
- identification and allocation of risk.

4.5 Innovation and the use of technology in construction

The Queensland Government is committed to promoting a culture of innovation in the building and construction industry and as a client, is keen to deal with service providers who are prepared to provide innovative solutions to complex problems. Innovation requires parties to re-examine the ways things are done and to find new and better ways of achieving superior results. This means the achievement of continuous improvement in all aspects of an enterprise, such as:

- design and construction processes
- business practices
- financial management
- project management
- workforce management
- the use of technology.

In the future, trends in technology, particularly information technology (IT), may be the greatest driver of change in the building and construction industry. Electronic tendering and documentation, data communication, virtual design, shared project data and databases, construction automation, and energy management will have a significant impact on industry practices. Those parties that are slow to react to these trends will have difficulty in remaining competitive.

The Queensland Government will help facilitate this change by developing policy and practices concerning the use of IT in the industry and by integrating them into its own business processes and interfaces when and where it is feasible and appropriate. All parties are encouraged to respond by addressing technology changes and enhancing the use of IT in their own operations.

4.6 Environmental management

The increasing rate of change that human activity imposes on local and global environments is becoming a major source of concern to communities and governments alike.

'Valuing the environment' is one of the Queensland Government's whole-of-government priorities. It encompasses protecting the environment for current and future generations and the responsible and sustainable development of Queensland's natural and primary resources.

All parties shall work towards incorporating best-practice environmental management into the culture of their organisation. In this way, environmental practices that are above and beyond mere compliance with regulatory requirements will become integrated with day-to-day work practices.

All parties are to comply with all relevant legislation, associated regulations and environmental protection policies concerned with environmental protection.

4.7 Security of payment

At all levels throughout the contract chain, all parties are entitled to receive payments due to them under the contract. All parties are to comply with all relevant legislation concerning

security of payment and to strive for best practice in this regard. In the context of best practice, this means a:

- responsibility on claimants for accurate and timely preparation, documentation and submission of claims
- responsibility on parties to consider, process, pay and finalise claims in a reasonable and timely manner
- requirement on parties to a claim to address, negotiate and settle any dispute in a reasonable, timely and cooperative way
- requirement by contractors, subcontractors, consultants and suppliers and employers to fulfil applicable industrial awards and/or certified agreements or legislative requirements regarding their employees
- responsibility to advise the client that wages and entitlements are owed to employees
- responsibility to seek approval to subcontract or sub-subcontract core works.

5 Workforce management

Workforce management will ensure work health and safety, industrial relations, training and skill development are integrated with the organisational procedures, practices and performance standards of the organisation. Effective workforce management at all levels of the construction industry is a key contributor to achieving the key priorities and objectives. The Queensland Government is committed to continuous improvement by ensuring service providers achieve an effective workforce-management focus at the enterprise and project levels, and in the industry generally.

Workforce management requires service providers to:

- create and maintain a safe working environment
- integrate training and skill development into project management
- support cooperative and productive industrial relations, including compliance with awards and/or agreements and legislation.

These objectives center on industry participants adopting a broad-based agenda to improve productivity through:

- effective communication
- teamwork
- high standards in work health and safety
- training and skill development
- effective workplace practices
- promotion of access, equity and equal employment opportunity
- continuous improvement and best practice.

5.1 Training and skill development

Industry wide flexible, accessible and innovative approaches to skill development will enable the building and construction industry to react positively to the changing demands of the workplace, and provide opportunities for the workforce to obtain nationally recognised qualifications.

By integrating training and skill development into management processes and project management, enterprises can positively react to changing knowledge and skill requirements. Compliance with policies such as the Queensland Government Building and Construction Training Policy on Government projects is a major step in the training process. Service

providers are expected to implement a systematic and rigorous approach to training and skill development.

Training and skill development on construction projects will be based on:

- compliance with the Government's relevant training, skill development and equal employment opportunity policies for the construction industry
- training for the next generation of construction employees
- commitment to skilling workers to support technological changes
- equal employment strategies in non-traditional areas
- commitment to training, which leads to nationally recognised qualifications.

5.2 Work health and safety

The Queensland Government attaches a very high priority to the improvement of work health and safety for participants in the building and construction industry. It is imperative that work health and safety management is integral to the culture of the industry.

Service providers are required to implement comprehensive management systems, ensuring a safe working environment, in compliance with existing work health and safety legislation.

Overall control of the management of work health and safety on government projects and sites, is the responsibility of the principal contractor as defined in the *Work Health and Safety Act 2011*. Principal contractors, in meeting their duties under this Act, will:

- take all practical steps to ensure their service providers and workers engaged in work subject to the contract comply with all relevant legislation
- maintain a documented work health and safety management plan for each project
- obtain a copy of the safe work method statement (SWMS) before high risk construction work commences and ensure compliance with SWMS
- meet performance standards in nominated core areas
- implement a monitoring and self-assessment regime
- ensure on-site work health and safety provisions are met.

5.2.1 Work health and safety management systems

Service providers are required to ensure that quality work health and safety management systems are implemented and maintained to ensure a high standard of performance. Implementation of a managed and systematic approach to work health and safety will lead to definition of roles, duties and responsibilities for all parties involved on the project and will drive continuous improvement of individual and industry performance.

5.2.2 Workers' compensation insurance

The *Workers' Compensation and Rehabilitation Act 2003* provides benefits for workers who are injured in their employment and protection for employers. Service providers are to ensure all applicable requirements of this legislation are met, including the payment of any premiums or charges levied in respect of all workers and the provision of rehabilitation for injured workers.

No party shall require or compel any party, either directly or indirectly, to pay workers' compensation benefits above the statutory obligation to do so under the *Workers' Compensation and Rehabilitation Act 2003* and/or registered industrial agreements.

5.3 Industrial relations

Key contributors to quality and value for money outcomes in the building and construction industry are an improved workplace and management culture, better employer and employee relationships, and improved industrial relations planning and management. Service providers shall adopt a strategic approach in managing industrial relations and integrate industrial relations into all normal aspects of activity. Service providers are discouraged from subcontracting core works without the principal's approval.

In implementing a strategic approach to industrial relations it is expected service providers will:

- integrate industrial relations with the normal procedures, practices and performance standards of the enterprise and projects
- develop and implement a sound industrial relations management plan that ensures industrial relations issues and risks are identified, assessed and managed.

5.3.1 Awards and legal obligations relating to employment

All parties must comply with the provisions of applicable:

- awards and industrial relations arrangements that have been certified, registered or otherwise approved under the relevant industrial relations legislation
- legislative requirements.

Arrangements or practices designed to avoid awards, registered agreements and/or legislative obligations are not permitted, including inappropriately treating a genuine employee as an independent contractor and inappropriate application of taxation arrangements.

Any information obtained to ensure obligations are being met is to be obtained through proper means, and in a way that respects confidentiality.

5.3.2 Workforce dispute settlement

All parties are required to make every effort to resolve grievances or disputes at the enterprise level in accordance with the procedure outlined in the relevant award or registered agreement. If a dispute cannot be resolved at a particular level, it should be referred to higher levels within an acceptable timeframe. Where, due to the nature of the dispute, a conflict arises between the dispute procedures of the principal contractor and that of subcontractor/s then the principal contractor's procedures shall prevail for the settlement of the dispute. If the matter remains unresolved, the dispute should be referred to the Fair Work Commission for settlement.

All parties to a dispute are required to comply with industrial tribunal decisions, subject to any legal appeal rights, whilst adhering to the following dispute settlement procedures:

- No industrial action is to take place.
- The status quo that existed before the dispute must prevail, and work is to continue normally, without prejudice to any of the parties.

5.3.3 Enterprise agreements

Enterprise agreements are collective agreements made at an enterprise level between employers and employees and provide considerable scope for employers and their employees to improve working conditions and gain a competitive edge by ensuring value for money and quality outcomes. Parties are encouraged to make certified agreements appropriate to their circumstances.

5.3.4 Industrial impacts: reporting to the principal

Disputes or disagreements relating to industrial relations and/or occupational health and safety matters that may impact on the construction program, the contract, other related contracts or project costs must be reported to the principal at the earliest opportunity. To ensure this, an effective and clear reporting structure must be established at an early stage in any project. This will provide the client with the opportunity to:

- provide assistance to service providers where appropriate in resolving disputes or disagreements
- assist with managing their own overall works program more effectively.

Any actual or threatened industrial action must be reported by the Government agency and/or their managing agents to the Government's industrial relations representatives. Individual Government agencies are expected to put in place internally coordinated arrangements that ensure effective communications with these representatives.

5.3.5 Membership of industrial associations

Participation in industrial relations by employees and employers and responsible representation by industrial associations is encouraged.

6 Compliance

The Queensland Government is committed to the implementation of this Code. Breaches of the Code by parties to the Code as may be evidenced through non-compliance or unethical activity, may result in sanctions being invoked.

Where the breach also involves any law or statute, the matter will be referred to the relevant enforcement agency. Monitoring compliance with specific statutory requirements, however, remains the responsibility of the Government agency that administers those requirements. The Queensland Government has made compliance with the Code a key measure of agencies' performance.

6.1 Breaches by Government agencies and agency employees

Proven breaches by a Government agency will be reported to the responsible or portfolio Minister who will consider appropriate changes to that agency's policies practices and/or procedures to ensure future compliance with the Code.

Where it is demonstrated that individuals have acted in contravention of the agency's policies, practices and/or procedures and this Code, disciplinary action may be taken where appropriate.

6.2 Breaches by other parties

The Queensland Government will impose sanctions for proven breaches of the Code which, depending on the nature and severity of non-compliance may involve:

- a formal warning
- referral of a complaint to the relevant industrial association for assessment against its own code of conduct, if applicable, and appropriate action
- reporting the breach to an appropriate statutory body

- partial exclusion from tendering opportunities, that is, a reduction in the number and/or nature of tendering opportunities
- preclusion from tendering for any work for a specified period.

6.3 Enforcement

Government Agencies as clients will support the application of the Code. As a minimum, in order to facilitate industry accessibility, each agency will:

- establish internal coordination procedures for managing Code matters
- establish and advertise a central point of contact.

In addition, Queensland Treasury (Office of Industrial Relations), Department of Housing and Public Works and the Department of Transport and Main Roads will cooperate in monitoring the Code on a whole-of-government basis.

6.4 Role of industry

In addition to the Queensland Government seeking to ensure compliance with the standards of behaviour defined in the Code, it is expected that the relevant industry parties will contribute to achieving these standards. The circumstances of any breach will be referred to the relevant association for action.

7 Definitions

Award

Legally enforceable determination made by the Commonwealth and/or Queensland Industrial Relations Commissions containing the minimum terms and conditions of employment to be met by an employer.

Best Practice

Continuous improvement of processes, products and services to ensure world-class standards of performance.

Building and Construction Industry

Those activities associated with residential and non-residential building, refurbishment and fitout, landscaping, demolition, civil and other engineering construction, all associated maintenance and related consultancies.

Client

The project, building or facility owner, or their agent.

Code of Practice

A document that outlines and establishes principles and standards of behaviour.

Consultant

A professional acting as an organisation or individual such as an architect, engineer, quantity surveyor, project manager, building scientist or the like, commissioned to advise on or undertake planning, design, supervision or specific technical advisory activities relevant to a project or building.

Contract

An agreement for the supply of goods or the performance of services.

Contractor

An organisation, entity or individual responsible for the performance of the work specified under a contract.

Employee

A national system employee or a person deemed to be an employee under the *Fair Work Act 2009*.

Employer

A national system employer or a person deemed to be an employer under the *Fair Work Act 2009*.

Employer Association

An association whose membership generally consists of employers who operate in the construction or related industries and is registered under the Fair Work Act 2009 (Commonwealth) and/or the Queensland Industrial Relations Act 2016.

Government Agency

- Any department or statutory body as those expressions are defined in the Financial Accountability Act 2009
- Any government owned corporation and its subsidiaries where the shareholding Ministers have given a notification pursuant to section 123 of the Government Owned Corporations Act 1993.

Industry Association

An organisation representing the professional and/or trade or commercial interests of its members.

Party

Includes but is not limited to clients, agents of clients, principals, contractors, subcontractors, suppliers, consultants, employees, unions (including their officials), employees and members, and industry associations while undertaking a representative role.

Principal

The person, entity or organisation responsible for contracting with a contractor or consultant for the carrying out of the work.

Principal Contractor

For a construction workplace (other than a construction workplace for domestic premises) the principal contractor is:

- the person appointed as principal contractor by the owner of the workplace
- if no principal contractor is appointed, the owner of the workplace
- for a construction workplace for domestic premises, the principal contractor is the person in control of the workplace.

Project

An activity or undertaking with a defined objective or objectives, beginning and end.

Service Provider

Includes contractors, subcontractors, consultants, suppliers and agents who are contracted to provide goods and/or services.

Subcontractor

A party that provides goods and/or services to a contractor or to a subcontractor.

Supplier

Any party that provides goods to a contractor or subcontractor.

Tender

Prices, bids, quotations and consultant proposals.

Tenderer

The party submitting a tender.

Union

An organisation of employees working in the construction or related industries that is registered under the Fair Work Act 2009 (Commonwealth) and/or the Queensland Industrial Relations Act 2016.

Value for Money

Value for money does not automatically mean the lowest price and should consider factors including but not limited to:

- contribution to Government objectives
- fitness for purpose and other considerations of quality
- performance
- delivery
- accessories and consumables
- service support
- cost related factors, such as whole of life costs and transaction costs
- disposal
- environmental standards
- industry development
- health and safety of the work force and the public
- risk exposure
- technical and financial issues.