



NEW ZEALAND
GOVERNMENT PROCUREMENT

Government Model Templates

Guidance relating to the Health and Safety at Work Act 2015



**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
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Introduction

Health and Safety at Work Act 2015

The Health and Safety at Work Act 2015 (the **Act**) comes into force on 4 April 2016. The Act presents an opportunity for agencies to review health and safety practices and behaviours and management of risks that could cause illness, injury or even death. In the procurement context, the Act imposes duties on participants throughout the supply chain to proactively manage supply contracts to ensure workers and other persons are not put at risk from work carried out under those contracts.

The following information is intended to help agencies plan to manage health and safety risks as part of their procurement activities, with particular reference to their use of the Government Model Templates. As with any procurement process, planning is key before putting pen to paper!

What agencies should be focusing on

To meet the requirements of the Act, agencies will need to consider health and safety throughout the procurement lifecycle, which means planning through to the end of the service provision or the end of the useful life and disposal of the procured goods.

Understanding and analysing health and safety risks in your procurement directly informs what you will include in your tender documents, how you will evaluate responses, what you will document in any resulting contract(s), and how you will manage the resulting contract(s).

Some key considerations during the procurement lifecycle are:

Plan	<ul style="list-style-type: none"> Identify risks in the supply chain and the relevant market, sector or industry Identify risks relating to the actual services or goods to be delivered, in terms of both physical environments and the work to be undertaken Identify how the health and safety risks identified are eliminated or best minimised, who is best placed to manage, mitigate or eliminate those risks and when in the procurement lifecycle Consider whether health and safety should form part of evaluation criteria for the procurement and whether a health and safety or technical expert should be on the evaluation panel Document health and safety appropriately in your procurement plan
Source	<p>Depending on the risks identified and in accordance with your plan</p> <ul style="list-style-type: none"> Ask relevant questions in tender documents and as part of due diligence (as relevant) to help understand the supplier’s perception of health and safety risk in the procurement, what it considers are its roles and responsibilities, what are its health and safety practices, and how it will manage health and safety risks and incidents relevant to the procurement Ask for information and evidence to be able to evaluate and verify a supplier’s response Complete due diligence at an appropriate point in the procurement process to provide up-to-date assurance of the supplier’s health and safety capability, practices and track record Consider including relevant requirements in the resulting contract (if using a Government Model Contract, see below)
Manage	<p>Depending on the risks identified and in accordance with your plan</p> <ul style="list-style-type: none"> Complete a contract management plan which includes relevant health and safety actions Undertake appropriate strategic relationship (including contract) management of the supplier to manage the health and safety risks of the procurement

Government Model Contracts

Position on health and safety

We have established a standard contractual position to supplement the current terms and conditions in the Government Model Contract templates, which reflects the 'low risk/low value' procurements the templates are intended to be used for. For information on 'low risk/low value', see our guides.

Contract for Goods and Contract for Services

What rights/obligations already exist in the templates?

- A Supplier is required to comply with law in supplying Goods or Services; this covers compliance with all applicable aspects of the Act.
- A Supplier is required to comply with the Buyer's codes of conduct and other policies, procedures and requirements at the Buyer's premises and as notified to the Supplier or attached to the Contract; this covers compliance with health and safety policies and procedures of the Buyer, if notified or attached
- The Parties must notify each other of any actual or anticipated issue which could significantly impact the delivery of the Goods or Services; this covers significant health and safety issues relevant to the Contract.

Optional clause

We have provided an optional clause for the Government Model Contracts as follows:

The Supplier will:

- consult, cooperate and coordinate with the Buyer to the extent required by the Buyer to ensure that the Buyer and the Seller will each comply with their respective obligations under the Health and Safety at Work Act 2015 as they relate to the Contract*
- perform its, and ensure that its Personnel perform their, obligations under the Contract in compliance with its and their obligations under the Health and Safety at Work Act 2015*
- comply with all reasonable directions of the Buyer relating to health, safety, and security*
- report any health and safety incident, injury or near miss, or any notice issued under the Health and Safety at Work Act 2015, to the Buyer to the extent that it relates to, or affects, the Contract.*

Other templates

No change will be made to the Xtra Lite template. If there are specific health and safety risks to be managed, we suggest this is the wrong contract form to be used. There is no difference in the position taken under the different forms (Forms 1 and 2 for Crown and non-Crown). Refer to the above position.

How to bring your health and safety policies into the Contracts

Under the Government Model Contracts:

- You can make your health and safety policy part of the Contract by referencing it in Schedule 1 and either attaching a copy or setting out your web address where it can be accessed.
- For work to be undertaken at your premises, you must notify the Supplier of relevant health and safety policies and procedures by telling the Supplier what they are and providing a copy of them or providing an internet link where they can be accessed.

Government Model Tender Documents

Position on health and safety

Your procurement activities must be based on good planning which, among other things, requires you to identify risks and how and when to manage those risks. You must consider what is appropriate for the circumstances of each procurement.

Pre-conditions

What is the health and safety baseline that any Respondent must meet before their proposal is considered? The inclusion and content of the pre-condition will be circumstance-specific and based on your health and safety risk assessment of the procurement activity.

Weighted criteria

Should health and safety be an evaluation criterion (or part of a criterion), and should it be weighted? You should be careful with this approach to the extent that it could bring about unintended consequences. See our guides to help you determine your criteria and associated weightings.

Due diligence

Due diligence is an effective tool for identifying and potentially managing health and safety risks during the sourcing phase of your procurement process.

- It allows you to check whether the health and safety information submitted is accurate especially where there is an intervening period between the tender and the contract award.
- You have the ability to complete robust checks based on evidence you have received.

Information and evidence

Remember to plan:

- What information and evidence do you need to satisfy yourself that the risk is/will be identified and eliminated or minimised?
- When do you want the information and evidence to be submitted and when will you be assessing it?
- How to structure your tender process to ensure you can make informed decisions, at the right time, without placing undue burden on respondents and evaluators/assessors.
- Who is best placed and has the technical knowledge to assess the information and evidence and whether they will comprise part of the evaluation panel or act as an advisor to the panel?

Request for Proposal (RFP) and Request for Quote (RFQ)

Guidance text for users will be included as follows in Section 3: Our Evaluation Approach.

- Under Section 3.2 Pre-conditions, users will be prompted to consider health and safety as a pre-condition. The [proposed] text states:
“[Describe any pre-conditions which relate to the health and safety position of the Respondent. Health and safety pre-conditions may include, but are not limited to, the Respondent confirming it has established health and safety documentation and processes which meet the requirements of the Health and Safety at Work Act 2015.]”

- Under Section 3.6 Evaluation process and due diligence and Section 3.7 Optional evaluation process and due diligence, users will be prompted to think about due diligence relating to health and safety. The proposed text states:

“complete relevant health and safety checks including, but not limited to, assessing the robustness of the Respondent’s health and safety documentation and processes against industry standards.”

The Request for Quote (RFQ) Lite and the RFQ Lite Response Form

No changes will be made to these templates. While the templates can be used if there is health and safety risk in your procurement, we suggest you consider whether an alternative template would be more appropriate if there are specific health and safety risks to be managed through the tender phase.

RFP and RFQ Response Form

Under Section 2 Pre-conditions, the following guidance text for users will be included which links to the RFP and RFP templates:

- “[Describe any pre-conditions which relate to the health and safety position of the Respondent. Health and safety pre-conditions may include, but are not limited to, the Respondent confirming it has established health and safety documentation and processes which meet the requirements of the Health and Safety at Work Act 2015.]”

Possible questions for your RFP and RFQ

We are not revising the currently available questions which you can include and use in the Response Form for your RFP and RFQ. Only ask health and safety questions which are relevant to your procurement. Also see evidence above.

The following is currently available:

- [Response Form Optional Extras](#) provides suggested short and long form for health and safety questions. The health and safety questions which are relevant to your procurement may be a subset of the questions available.
- [Check-list for Procurers to Meet Employment Standards Requirements](#) may be of assistance given that employment standards are intrinsically linked to achieving good health and safety outcomes.

You can use any of these questions as pre-conditions (remember a pre-condition should be a closed question) or as weighted criterion. Remember to consider the risks you have identified and the evidence you need to confirm a Respondent’s answers and to ask for that evidence as required.

Other supporting guidance for making health and safety improvements in your procurements

Guide	Link	Description
Planning Construction Procurement – A guide to health and safety and employment standards at work (NZGP, November 2015)	http://employment.govt.nz/er/publications/docs/procurement-questions-for-minimum-employment-standards.pdf	This guide is part of a series developed by the New Zealand Ministry of Business, Innovation and Employment (MBIE) to support agencies in using good practice when planning construction procurement.
Health and Safety Guide: Good Governance for Directors (WorkSafe, March 2016)	http://www.business.govt.nz/worksafe/information-guidance/all-guidance-items/hswa-good-practice-guides/health-and-safety-guide-good-governance-for-directors/directors-guidelines-on-their-responsibilities	The guide provides advice to directors on how to meet their health and safety obligations and provides a framework for how directors can lead, plan, review and improve health and safety and assists directors to identify whether their health and safety management systems are effective in minimising risk.
Principal's Guide to Contracting to meet the Health and Safety in Employment (MBIE, May 2010)	http://www.business.govt.nz/worksafe/information-guidance/all-guidance-items/a-principals-guide-to-contracting-to-meet-the-health-and-safety-in-employment-act-1992-1/guide-contracting.pdf	While a bit outdated, the guide provides a good basis for the key principals and matters to consider when contracting.
Guidance on Occupational Health and Safety in Government Procurement (SafeWork, Australia, 2006)	http://www.safeworkaustralia.gov.au/sites/swa/about/publications/pages/gm2006ohsingovernmentprocurement	The new legislation is based on the Australian regime and these guides provide a good base for thinking about Health and Safety in Procurement and include some template that may be useful to some agencies.
Work Health and Safety Consultation, co-operation and co-ordination (SafeWork, December 2011)	http://www.workcover.nsw.gov.au/data/assets/pdf_file/0010/15202/whs-consultation-cooperation-coordination-code-of-practice-3568.pdf	Senior leaders and managers of all involved PCBUs must promote and foster open lines of communication and consultation both at organisational level and with workers. This can be achieved by ensuring effective consultation processes built into the organisation through its systems, structures, policies, procedures and practices. This document provides a useful checklist.
Legislation	http://www.legislation.govt.nz/act/public/2015/0070/latest/DLM5976660.html	