



NEW ZEALAND
GOVERNMENT PROCUREMENT

Planning Construction Procurement

A guide to health and safety and employment standards at work



**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
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About this guide

Purpose

The purpose of this guide is to encourage New Zealand public sector agencies ('agencies'), during all stages of construction procurement, to:

- commit to government's goal of reducing the rate of fatalities and serious injuries in the workplace by at least 25 percent by 2020
- contribute to this goal by taking a lead role in workplace safety
- create a culture where everyone is responsible for improving workplace safety, and where success requires government, business and workers to work collaboratively to drive solutions, and
- ensure employment standards exist at a worksite, providing a foundation for a culture that supports health and safety and workplace productivity, as well as meeting legal obligations.

The guide is for agencies responsible for delivering government funded construction projects. In particular it is targeted at the governance and management team.

Related documentation

This document supplements the MBIE *Guide to Mastering Procurement*, which provides guidance around the eight stage procurement lifecycle.

This guide, *Planning Construction Procurement – A guide to health and safety and employment standards at work*, 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.



See the guide *Planning Construction Procurement – An overview to the guides*, for details of the current suite of guides, how they relate to the eight stage procurement lifecycle and links to relevant government policy.

How this guide was developed

MBIE developed this guide, *Planning Construction Procurement – A guide to health and safety and employment standards at work*, in consultation with agency and industry users. It is published on the website www.procurement.govt.nz

Contents

About this guide	4
1. Getting Started	6
Relevant government policy	6 -
Background	7 -
Principles	7 -
Health and safety obligations	7 -
Obligations and approach to employment standards	8 -
Targeting risk.....	9 -
2. Workplace Safety and Employment Standards in Practice	10
Plan Phase	10 -
Source Phase	12 -
Manage Phase	14 -
Operations Phase	15 -
3. References	16

1. Getting Started

Relevant government policy

This guidance sets out government's expectations for agencies to improve health and safety, and ensure employment standards are met, in the construction sector. To ensure that your project is a safe work place where employment standards are met, and is aligned with good practice, please refer to:

- Good Governance Practice Guideline for Managing Health and Safety Risks
- Principal's guide to health & safety in the workplace
- Working Safer. A blueprint for health & safety at work
- Health and safety and employment references in the Government Model RFx templates
- Check-list for Meeting Employment Standards Requirements
- New South Wales Work Health and Safety Consultation, co-operation and co-ordination Code of Practice, and
- Health and Safety at Work Act 2015.

See [Section 3 References](#) in this guide, for a list of the relevant resources.

Note that the core references listed in *Planning Construction Procurement – An overview to the guides* also apply, but are less relevant to the topic of health, safety and employment standards.

Background

In 2012, the Government established an independent taskforce on workplace health and safety. Its objective was to advise on how to reduce the rate of fatalities and serious injuries in the workplace by at least 25% by 2020.

A workplace that approaches health and safety and employment standards as good practice contributes to building a healthy, well-functioning labour market that can help grow the New Zealand economy.

This guide explains how agencies can take a lead role to improve workplace safety and ensure employment standards are met, for the benefit of all workplaces with a focus on procurement.

Principles



- Ensure health and safety and employment standards are part of the DNA and focus of every project.
- Take a lead role in improving workplace safety.
- Set expectations.
- Ensure importance of workplace safety is reflected in the criteria to select consultants and contractors.
- Collaborate across the entire supply chain, including worker input.
- Manage risks smarter.
- Stay engaged from early in the planning phase to project completion.

Health and safety obligations

A fundamental part of the Health & Safety at Work Act 2015 ('the Act') is that duties and risks are allocated to the party best placed to manage them. While collaboration and collective action underpins this approach, it requires strong leadership, and clarity about the role of a person conducting a business or undertaking (**PCBU**). See <http://www.legislation.govt.nz/act/public/2015/0070/latest/DLM5976660.html>

The PCBU is a new concept under the Act. It replaces a wide range of different concepts that operated under the Health and Safety in Employment Act, e.g. employers, principals, and the self-employed. The PCBU concept focuses on the work that is being carried out to identify the principal duty-holder in any particular case. It recognises that a business or undertaking has an influence over the health and safety of workers, even where those workers may not be its direct employees.

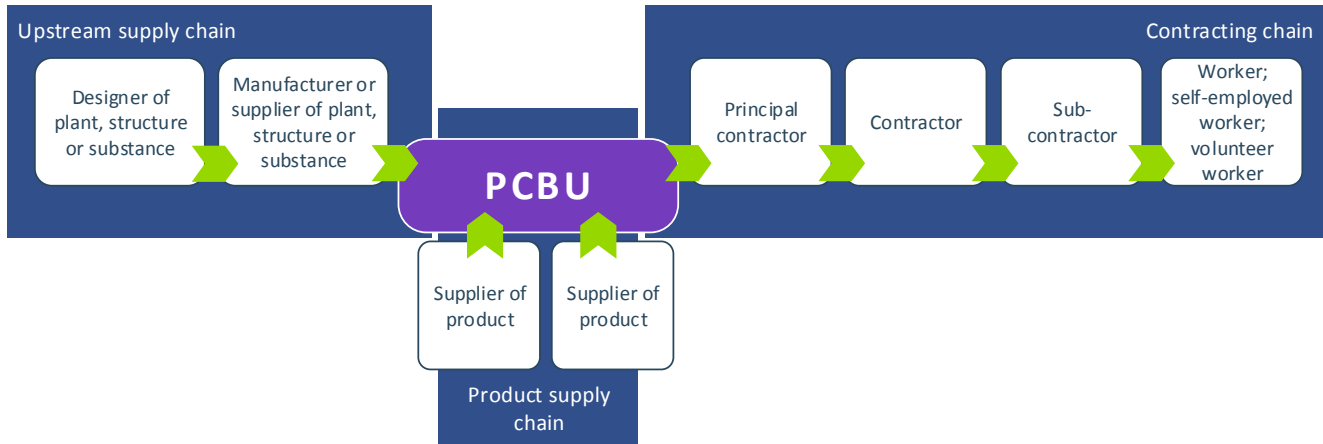
The Act creates a new personal duty of due diligence for officers. The Act defines an **officer** as including any person who is able to exercise significant influence over the management of the business or undertaking. This definition specifically excludes a person who merely advises or makes recommendations to an officer. In the public sector context, the officer is usually the Chief Executive and Senior Leadership Team of the agency responsible for delivering a project. For agencies with Boards, the obligation will also apply to the people on those Boards.

The Act requires officers to actively and routinely engage in health and safety to make sure key risks are identified and effectively managed within the business. In a procurement context, this is likely to mean asking questions about how risk has been assessed and will be managed, and how overlapping duties are being coordinated, managed and implemented.

Obligations for PCBUs in supply chains

It's important to be clear what is meant here by the supply chain, as this means different things to different stakeholders. The Act also makes it clear that PCBUs need to work together to meet their duties to ensure that the work does not pose risks to people's health and safety throughout the supply chain.

The diagram below outlines the elements of supply and contracting chains.



These points briefly outline the health and safety legislative requirements for these different chains under the Act:

- Contracting chain**
 The PCBU in the centre (the purchasing PCBU) has a duty under the Act to ensure the health and safety of all the workers that carry out the PCBU's work, all the way down the contracting chain (to the right). These workers don't need to be on-site for the PCBU to have a duty towards them. The other businesses in the chain are also PCBUs in their own right, and have a duty to all of the workers in their work.
- Upstream supply chain**
 The designers, suppliers, manufacturers, importers, installers of plant, substances or structures have a duty to ensure that what they design, supply, etc., to the purchasing PCBU creates no risk to the health and safety of people who use or work with that plant, substance or structure. The purchasing PCBU has a duty to the workers in the upstream supply chain (to the left) only to the extent that the PCBU seeks to direct the work of those workers, for example by requiring installation to be undertaken in a particular manner. The PCBU does have to ensure the health and safety of its own workers when making purchasing decisions.

Obligations and approach to employment standards

The legal requirements that apply to employment at worksites include the following:

- All employees are provided with equal opportunities.
- Independent contractors or employees are accurately designated.
- Migrant workers have lawful immigration authority to work.
- All employees have employment agreements.
- Employees are paid at least the minimum wage.
- Holidays are provided, and workers have appropriate breaks.
- Accurate employment records are kept and can be made available when required.

Compared to health and safety obligations, employment standards are largely the duty of the employer, rather than the agency that procures the work. However, agencies have an opportunity to take a leadership role in ensuring that the entire labour supply chain for their construction projects meets employment standards. This means ensuring that employment standards are met by both the primary construction supplier and those they sub-contract to, and so on down the chain.

Ensuring that employment standards are met throughout the labour supply chain builds a foundation for a more productive workplace. This benefits both employers and employees, and can help ensure timely delivery of projects. Agencies have a leadership role in ensuring fair competition between employers, and fair treatment of employees in New Zealand’s workplaces – essentially creating ‘fair workplaces’.

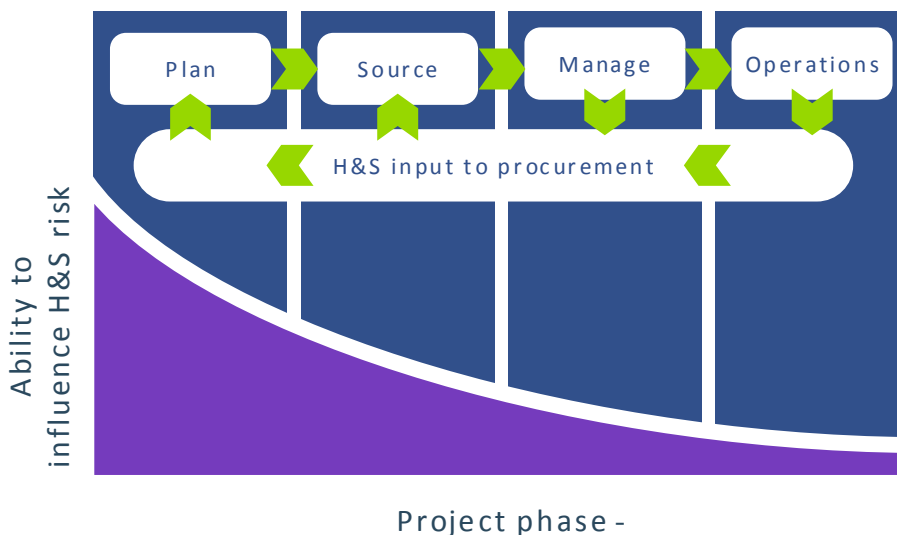
Agencies should also consider labour and employment conditions in foreign jurisdictions where products for their projects are sourced from.

Targeting risk

Risk management is a key input to improving workplace safety. This means identifying what could go wrong, and taking action to eliminate that risk.

The ability of agencies to influence risk is greatest in the early phases of a project, as shown in the diagram below. This can be even more effective when obtaining input to design, choice of materials, and buildability (of both construction and maintenance) from the construction contractor and the facilities operator.

While some delivery models enable earlier access to the contractor and operator (like Alliance, Public-Private Partnerships, and Early Contractor Involvement), input can be obtained in the traditional (client-led design) model by individuals and ex-contractors who provide this type of advice.



DEFINITIONS

PCBU means a person conducting a business or undertaking.

An **officer** means a person who makes decisions that affect the whole or substantial parts of the business of the PCBU.

2. Workplace Safety and Employment Standards in Practice

Plan Phase

The commitment of senior management to taking a lead role in workplace safety and employment standards should be established at the initiation of any project. The influence they have on setting targets, and by staying engaged throughout the delivery, impact on the safety and productivity of the workplace.

Agencies should encourage 'safe design', by considering how construction and work on site can be carried out safely. This should be applied across the full life cycle of the project, including maintenance of the completed facility.



GOVERNANCE

- Commit to take the lead role in health and safety and employment standards.
- Provide a framework for how agencies can lead, plan, review and improve workplace safety and employment standards.
- Create strong, effective lines of reporting and communication.
- Establish a collaborative culture that seeks to achieve 'best for project' results.

Factors to consider

Governance	<ul style="list-style-type: none"> • Ensure workplace safety and employment standards are high on the agenda right from the initiation of the project. It needs to be part of the culture of the organisation. • Be clear on the commitment required of the agency. • Leaders must be informed. They need knowledge of the project and the risks. • Lines of communication and reporting need to be comprehensive across the entire supply chain. • Worker participation must be a key requirement. Workers need to know that their views are important and that their messages are getting through to the board. • Embed the principle of achieving zero harm as a fundamental part of the project culture.
Manage risks	<ul style="list-style-type: none"> • What major risks to safety does this project create? • What are the risks to employment standards? • Consider interface risks that may arise as a result of the project. • How can initial planning influence these risks? • When considering options, include safety and employment arrangements as key criteria to be evaluated. • Following consideration of risks to worker safety, set the weighting for the health and safety criteria. High risk projects may require a higher weighting to be applied.

Set framework	<ul style="list-style-type: none"> • Establish health and safety policy. • Ensure clarity around the labour models for the work. • Set targets that improve worker safety. • Ensure short term financial benefits are not prioritised at the expense of health and safety and employment standards.
Concept design	<ul style="list-style-type: none"> • Ensure health and safety is high on the agenda for the design team. • Encourage consideration of design and construction approaches that will support minimisation of workplace safety risks and achieve a best for project outcome.
Flexibility for change during design and construction	Ensure the commercial arrangements selected to deliver the project are able to respond to change where workplace safety is concerned.
Early market engagement	Obtain early input from construction contractors and operators to improve workplace safety, and ensure employment standards are met. This may influence the selection of delivery models. However, early input from the industry can be obtained, even with traditional (client-led design) models.
Design and construction complexity	<ul style="list-style-type: none"> • Is the project pushing the boundaries of construction buildability? • Promote 'safe design'. Can the design be altered to enable safer construction? • Does the project need specialised or custom-built plant or equipment? • Does the project require immigrant labour? If so, have the added complexities been considered that this brings, e.g. pastoral care, language issues for health and safety?
Operation and maintenance complexities	<ul style="list-style-type: none"> • Consider how to access all parts of the project for routine maintenance. • As with construction, can the design be altered to enable safer maintenance? • Does maintenance need specialised equipment?
Other constraints	Are there other constraints specific to this project that impact on workplace safety or employment standards?

Source Phase

Agencies' key role in the Source Phase is to ensure workplace safety and employment standard targets are set, and clearly communicated to suppliers. Tenderers must be able to demonstrate their ability to meet these targets if they are to be considered for government construction contracts.



SETTING THE SCENE

- Ensure health and safety and adherence to employment standards are key considerations for contractor selection.
- Obtain early input from construction contractors and operators to improve workplace safety and ensure employment standards are met.
- Establish a collaborative culture that seeks to achieve 'best for project' results.

Factors to consider

<p>Approach to the market</p>	<ul style="list-style-type: none"> • Signal to the industry that health and safety and employment standards are a high priority to the Government. • Be explicit that workplace safety and employment standards will be considered as part of your procurement activity. • Encourage industry to go beyond minimum standards. Seek information on approaches to managing health and safety as part of the tender evaluation criteria, so that its acts as a key differentiator. Be clear about its relative importance to other evaluation criteria. • Reward approaches that minimise health and safety risks through evaluation. • Set high level expectations and targets. • Success depends on government, contractors and workers collaborating to drive solutions. • Emphasise the lead role of the agency, and the expectation of strong worker participation throughout project delivery and operations. • Ensure the contract is clear on the workplace safety and employment standards obligations allocated to the contractor. • PCBUs who share duties must consult, co-operate and co-ordinate activities to make sure that the duty is met. Refer to the Australian code of practice at http://www.workcover.nsw.gov.au/data/assets/pdf_file/0010/15202/whs-consultation-cooperation-coordination-code-of-practice-3568.pdf
<p>Contractor requirements</p>	<ul style="list-style-type: none"> • Does the contractor have a comprehensive H&S system? Provide evidence. • How does the contractor engage with their workers and other contractors they may contract to, around employment standards? • Does the contractor have employment agreements for all their employees, as well as wage, time, and holiday records? • How does the contractor manage risk? • Does the contractor have demonstrated project leadership capability? What input does the contractor's management provide? Give examples. • Provide evidence of compliance accreditation, such as NZS 4801 (which measures health and safety systems). • Obtain response to the questions listed in the health and safety and employment references in the Government Model RfX templates: <ul style="list-style-type: none"> ○ Government Model RfX Templates ○ GM-RfX Response Form OPTIONAL EXTRAS

Manage Risks	<ul style="list-style-type: none"> • Conduct joint risk management with preferred tenderer. Look for opportunities to improve workplace safety. • Set standards up front to deal with known critical risks, such as asbestos, working at heights, working around mobile plant, etc.
Design and construction complexity	<ul style="list-style-type: none"> • Review the design and buildability of the facilities for workplace safety. • Be prepared to act on feedback, in particular if it means redesign, or specialist equipment to enable construction or operation to take place in a safe manner.
Other constraints	Work with the contractor to identify any constraints specific to this project that impact on workplace safety.
Opportunities	Seek ideas to deal with constraints .

Manage Phase

The Manage Phase is when construction occurs, and when health and safety must be the focus of all parties involved. It relies on strong leadership from the agencies and the work done in the earlier phases (Plan and Source). In particular it requires a collaborative approach, and a culture where feedback from all parties involved in delivering the project is actively sought and acted on.



COLLECTIVE ACTION

- Take a lead role through the construction and transition to operations.
- Ensure health, safety and employment standards are at the front of mind of all parties in the supply chain.
- Communicate expectations.
- Be clear on what should be reported on.
- Take action on information received.
- Build collaborative culture that seeks to achieve 'best for project' results.

Factors to consider

Lead role	<ul style="list-style-type: none"> • Take the lead role in driving health, safety and employment standards. • Success depends on government, contractors and workers collaborating to drive solutions.
Communicate expectations	<ul style="list-style-type: none"> • Communicate expectations to all parties in the supply chain including workers. • Provide agency representation on site safety management team. (This would include the agency, contractor, project manager and workers.) • This team would be responsible for risk management, monitoring, reporting and ensuring actions are carried out.
Manage risks	<ul style="list-style-type: none"> • Hold regular joint risk management sessions with contractor. Identify risks, and look for opportunities to improve workplace safety. • Identify any new risks to employment standards. • Ensure mitigation measures that improve safety are in fact carried out. • PCBUs who share duties must consult, co-operate and co-ordinate activities to make sure that the duty is met.
Effective monitoring	<ul style="list-style-type: none"> • Agree with the site safety management team exactly what should be reported and the frequency (generally monthly). • Ensure monitoring covers the entire supply chain, in particular the workers. • Review reports and decide whether any further follow up action is necessary. • Be prepared to act on feedback, in particular if it means redesign, or specialist equipment to enable construction or operation to take place in a safe manner. • Seek independent expert advice, if considered necessary.
Review	<ul style="list-style-type: none"> • Carry out an annual formal review of performance, against the expectations set. • Audit the management system, the safety record, and employment systems. • Ensure recommendations for improvement are acted on.
Opportunities	<p>Create a culture where:</p> <ul style="list-style-type: none"> • everyone is responsible for improving workplace safety and promoting employment standards, and • success requires government, business and workers to work collaboratively to drive solutions.

Operations Phase

The Operations Phase follows construction, when the facilities are handed over to the agency. The health and safety risks are different – the facilities are occupied, access is difficult for any further construction works (i.e. rectifying defects), and new organisations (to those who carried out construction) are involved.

Detailed planning, effective communication and strong leadership from the agencies are required to safely carry out work in this phase. Success largely depends on the extent that operations and maintenance were considered in the earlier phases, particularly by the designers.

In respect of the agency’s approach to employment standards, the Operations Phase provides the agency with the opportunity to consider how employment standards can be built into ‘business as usual’ operation of the facility.



WORKING AROUND PEOPLE

- Take a lead role through the construction and transition to operations.
- Ensure the operator provides input to planning, design and construction.
- Consider the risks of working while the facility is operational.
- Ensure the health, safety and employment standards set during construction are carried through to the operations.
- Build strong and clear lines of communication.

Factors to consider

Lead role	<ul style="list-style-type: none"> • Take the lead role in driving health, safety and employment standards in the transition from construction to operations. • Build a collaborative environment between the agency, contractors and workers. • Communicate effectively with staff, well in advance of any work being carried out.
Manage risks	<ul style="list-style-type: none"> • Identify risks prior to any maintenance. Ensure detailed work plans deal with those risk items. • Involve the construction team in handing over to maintenance and operational personnel. • PCBU's who share duties must consult, co-operate and co-ordinate activities to make sure that the duty is met.
Effective monitoring	<ul style="list-style-type: none"> • Establish a site safety management team to monitor work across the entire supply chain, in particular the workers. • Be prepared to act on feedback, in particular if it means redesign, or specialist equipment to enable construction or operation to take place in a safe manner.
Review	<ul style="list-style-type: none"> • Carry out a formal annual review of performance against the expectations set. • Audit the management system, the safety record, and employment systems. • Ensure recommendations for improvement are acted on.
Opportunities	<p>Build on the culture created during construction where:</p> <ul style="list-style-type: none"> • everyone is responsible for improving workplace safety and promoting employment standards • success requires government, business and workers to work collaboratively to drive solutions.

3. References

<http://www.business.govt.nz/worksafe/information-guidance/all-guidance-items/directors-guidelines-on-their-responsibilities>

<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>

<http://www.mbie.govt.nz/info-services/employment-skills/workplace-health-and-safety-reform/?searchterm=health%20and%20safety%2A>

<http://employment.govt.nz/er/publications/docs/procurement-questions-for-minimum-employment-standards.pdf>

Health and safety and employment references in the [Government Model RFx Templates](#) and [GM-RFx Response Form OPTIONAL EXTRAS](#)

http://www.workcover.nsw.gov.au/_data/assets/pdf_file/0010/15202/whs-consultation-cooperation-coordination-code-of-practice-3568.pdf

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