



Model Tender and Contract Documentation

Implementation Guidelines to the New South
Wales Code of Practice for Procurement: Building
and Construction

May 2013

Contents

- 1. Introduction 1
 - 1.1 Purpose of this document1
 - 1.2 For Client Agencies1
 - 1.3 For contractors1
- 2. Advertisement of tenders etc for any works value 2
- 3. Minor works, and very small contracts (\$25 000 or less) 3
- 4. Condition for participation in tenders etc for works valued over \$25 000 4
- 5. Tender clause for works valued over \$25 000 5
- 6. Compliance schedule for works valued over \$25 000..... 8
- 7. Contract clauses for works valued over \$25 000 12

How to use this document:

Enclosed in these grey boxes are instructions on the application of the model clauses.

These are model clauses, developed to assist agencies and principal contractors to comply with the requirements of the NSW Guidelines. Agencies should adapt the model clauses to suit the procurement method and agreement terms as required. It is the obligation of agencies to ensure that the clauses ultimately used provide sufficient legal certainty and enforceability, having regard to the particular procurement process. Agencies should remove any outdated IR related clauses from standard template documentation.

In addition to incorporation of these or similar clauses, agencies should ensure that the process and contract terms in their entirety reflect the requirements of the model clauses, including for example, allowing for termination for breach, and ensuring compliance with the contractor's obligations under the Workplace Relations Management Plan. Agencies should also ensure that the contractor statement of compliance incorporates the statement in relation to compliance with the NSW Guidelines, and update NSW Government requirements (for example, GC21 Contract information schedule). An updated version of GC21 will be issued to assist agencies in this process.

The term 'procurement process' refers to a tender or other process for the procurement of building and construction work. These clauses and notes may be updated from time to time to ensure continuous improvement and to reflect changes in policy and practice.

This document should be read in conjunction with the New South Wales Code of Practice for Procurement (NSW Code) and the Implementation Guidelines to the New South Wales Code of Practice for Procurement: Building and Construction, July 2013 (NSW Guidelines).

The NSW Code and NSW Guidelines can be downloaded from www.industrialrelations.nsw.gov.au.

1. Introduction

1.1 Purpose of this document

This document is designed to assist NSW government departments, public sector bodies and contractors to comply with the NSW Code of Practice for Procurement: (**NSW Code**) and the Implementation Guidelines to the New South Wales Code of Practice for the Building and Construction Industry (**NSW Guidelines**).

The definition of “building and construction work” is contained within the NSW Guidelines.

The NSW Code and NSW Guidelines apply to all public building and construction work that is the subject of an expression of interest or request for tender on or after 1 July 2013 and that is undertaken by or on behalf of a NSW Government department or public sector agency (as defined in the *Public Sector Employment and Management Act 2002*) and a State Owned Corporation (as defined in the *State Owned Corporations Act 1989*) (a **Client Agency**).

Any queries in relation to the NSW Code and NSW Guidelines can be submitted to the Construction Compliance Unit (**CCU**) in NSW Industrial Relations.

Please contact the NSW Construction Compliance Unit mailbox:
ccu@industrialrelations.nsw.gov.au

1.2 For Client Agencies

The Implementation Guidelines to the NSW Code of Practice for Procurement: Building and Construction is government policy and therefore agencies must act in a manner that is not inconsistent with the NSW Code and NSW Guidelines on public building and construction projects.

It is the responsibility of each Client Agency to consider and document the extent to which compliance with the NSW Code and NSW Guidelines is required on a project by project basis.

Client Agencies are responsible for ensuring all expressions of interest, tenders, etc. and contractual documentation clearly set out the requirements of the NSW Code and NSW Guidelines and include relevant model clauses. These model clauses refer to tenders but should be adapted to the procurement process used.

1.3 For contractors

To the extent required by the NSW Government, all contractors undertaking public building and construction work on behalf of a Client Agency must ensure compliance with the NSW Code and NSW Guidelines. This includes, but is not limited to, ensuring all expressions of interest, tender and contractual documents which they instigate ensure compliance with the NSW Code and NSW Guidelines.

The relevant model clauses contained in this document should be included in contractors' procurement and contract documentation.

2. Advertisement of tenders etc for any works value

Advertisements or requests for tenders, expressions of interests, minor works contracts or purchase orders, to which the NSW Code and NSW Guidelines apply must, irrespective of the value of the works, include a statement that makes clear the NSW Code and NSW Guidelines must be complied with and will apply to the work and the parties performing the work.

As the advertisement documents are often the first point of contact between a party and a Client Agency or principal contractor in respect of a project, it is important that the obligation to comply with the NSW Guidelines is clear and is linked to the project from the outset of a party's involvement.

(Specific procurement documentation must outline the nature of the obligations imposed by the NSW Code and NSW Guidelines. See model procurement and contract clauses in this document.)

Words to the following effect are suggested:

The NSW Government's Code of Practice for the Building and Construction Industry (**NSW Code**) and the NSW Government's Implementation Guidelines to the NSW Code of Practice for the Building and Construction Industry (**NSW Guidelines**) apply to this project. Compliance with the NSW Code and NSW Guidelines is a pre-requisite to submitting any response to a procurement process (expression of interest or tender response) and to any successful applications being awarded.

Copies of the NSW Code and NSW Guidelines are available at www.industrialrelations.nsw.gov.au.

3. Minor works, and very small contracts (\$25 000 or less)

For minor works, and for very small contracts (where the value of the tendered works or purchase order is \$25 000 or less), as an alternative to using the long-form 'condition for participation in tender etc.', tender clause or contract clauses in this document, Client Agencies **may** use, and any other party **must** use, the following clauses:

Condition of participation clause in tender or purchase order/Tender clause

The NSW Government's Code of Practice for the Building and Construction Industry (**NSW Code**) and the NSW Government's Implementation Guidelines to the NSW Code of Practice for the Building and Construction Industry (**NSW Guidelines**) apply to this [*tender/purchase order/project*]. By [*submitting a tender/accepting a purchase order*] the tenderer warrants it is not precluded from entering a contract and accepting the works (if successful) and agrees that it will be taken to have read and understood, and that it will comply with, the NSW Code and NSW Guidelines.

Contract clause/Purchase order

The NSW Government's Code of Practice for the Building and Construction Industry (**NSW Code**) and the NSW Government's Implementation Guidelines to the NSW Code of Practice for the Building and Construction Industry (**NSW Guidelines**) apply to the [*works/purchase order*]. By accepting [*this purchase order/to perform the works*], the contractor warrants it is not precluded from entering the contract and accepting the works and agrees that it will be taken to have read and understood, and that it will comply with, the NSW Code and NSW Guidelines.

4. Condition for participation in tenders etc for works valued over \$25 000

For minor works, and for very small value contracts, Client Agencies may choose to use either this long form condition of participation in tender clause, or the short form condition of participation clause in Section 3 above.

For works valued over \$25 000, tender documentation should state that the NSW Code and NSW Guidelines apply to the project and highlight the implications flowing from submitting a tender (whether successful or not). Words to the following effect are suggested:

The NSW Government's Code of Practice for the Building and Construction Industry (**NSW Code**) and the NSW Government's Implementation Guidelines to the NSW Code of Practice for the Building and Construction Industry (**NSW Guidelines**) apply to the tendered works. By submitting a tender, the tenderer acknowledges its understanding and agreement that:

- compliance with the NSW Code and NSW Guidelines is an essential condition to being considered for the tender;
- by submitting an expression of interest or tender response, the tenderer agrees to comply with the NSW Code and NSW Guidelines on all future projects, including privately funded projects, to which the NSW Guidelines apply, whether or not successful in this tender; and
- any party which is precluded from performing works to which the NSW Code and NSW Guidelines apply is excluded from consideration for the tender.

5. Tender clause for works valued over \$25 000

For minor works, and for very small value contracts, Client Agencies may choose to use either this long form procurement process/tender clause or the short form clause in Section 3 above.

The request for tender documents should highlight that compliance with the NSW Code and NSW Guidelines is a mandatory pre-requisite to submitting an expression of interest or tender response. Accordingly, tender documents must require agreement by prospective tenderers to comply with the NSW Code and NSW Guidelines including its compliance and enforcement mechanisms.

For tenders where the value of the works is over \$25 000 (subject to minor amendments of style, not affecting matters of substance), the following text is suggested:

X NSW Code and NSW Guidelines

- X.1 The New South Wales Government's Code of Practice for the Building and Construction Industry (**NSW Code**) and the New South Wales Government's Implementation Guidelines to the New South Wales Code of Practice for the Building and Construction Industry (**NSW Guidelines**) apply to the project the subject of this procurement process.
- X.2 Terms used in this section 1 of this procurement process (under the heading **NSW Code and Implementation Guidelines**) have the same meaning as is attributed to them in the NSW Guidelines (as published by the NSW Treasury in July 2013).

Primary obligation

- X.3 By submitting a response to this procurement process, the respondent acknowledges and agrees that it:
- (a) is aware that the NSW Code and NSW Guidelines apply to the project;
 - (b) is taken to have read and understood the NSW Code and NSW Guidelines and the obligations they impose;
 - (c) will comply with the NSW Code and NSW Guidelines on this project, which includes, but is not limited to giving access to authorised personnel to inspect any work, material, or machinery, inspect and copy any record relevant to the project, and interview any person;
 - (d) will agree, if successful in this procurement process, to contractual terms that give effect to the NSW Code and NSW Guidelines and mechanisms to ensure their compliance and enforcement; and
 - (e) will comply with, and ensure all of its related entities (as defined in the NSW Guidelines) comply with, the NSW Code and NSW Guidelines in respect of any of their building and construction work (including any subsequent privately funded work), on and from the date of submitting a response to this procurement process.

Cost, efficiency, productivity and workplace safety

- X.4 The respondent agrees that it must include in its response:

- (a) for projects where the NSW Government or public sector body contribution is \$10million or more or is at least \$5million and represents at least 50 percent of the total construction project value, a Workplace Relations Management Plan and any other documents and information necessary to meet the requirements of section 6.1 of the NSW Guidelines;
- (b) a Work Health Safety Management Plan or Site Specific Safety Management Plan and any other documents and information necessary to meet the requirements of section 9 of the NSW Guidelines; and
- (c) the Schedule of Compliance that is attached to this procurement process, properly executed by or on behalf of the respondent.

- X.5 The respondent acknowledges that by submitting this response it agrees to the Client Agency and the CCU taking any steps to investigate claims, statements and assertions made by the respondent in any of the documents referred to above in X.4 before any contract is awarded. The respondent acknowledges and agrees to co-operate with the Client Agency and the CCU in respect of the investigation of compliance with the NSW Guidelines and further agrees that that compliance is a mandatory requirement of the procurement process. The respondent will allow authorised personnel to:
- (a) access premises and sites controlled by the respondent or its related entities;
 - (b) inspect and copy relevant records and documents;
 - (c) inspect any work, material, machinery, appliance article or facility; and
 - (d) interview any person;

as is necessary to investigate the claims, statements and assertions made by the respondent in the response or to demonstrate the respondent's current or, where relevant, past compliance with the NSW Code and NSW Guidelines during the procurement process.

Disclosure of information

- X.6 Notwithstanding any other provision of the procurement process, the respondent agrees and consents to the disclosure of information concerning the respondent's, and the respondent's related entities', compliance with the NSW Code and NSW Guidelines, including the disclosure of details of past and present compliance to the NSW Code and NSW Guidelines, the National Code of Practice for the Construction Industry, and the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry as varied from time to time, including whether or not sanctions have been imposed on a respondent or any of its related entities by the Commonwealth or any State or any government agency. This consent is given to the State of New South Wales, including its agencies (including the Client Agency), Ministers and the CCU (and its authorised personnel) for purposes including monitoring and investigating compliance and ensuring, facilitating and promoting compliance with the NSW Code and NSW Guidelines.

Subcontractors etc

- X.7 Where the respondent proposes to subcontract the works, the respondent agrees that it will ensure, through contract, that each subcontractor or consultant agrees to:

- (a) the contractual promises in clauses X.3 (Primary obligation) and 1.6 (Disclosure of information) in respect of the relevant subcontractor or consultant;
- (b) comply with the applicable plans and policies on the project referred to in clause X.4 (Cost, efficiency, productivity and workplace safety); and
- (c) where a subcontractor or consultant is nominated in procurement process documents, that the nominated party co-operates with authorised personnel during the procurement process for the purposes outlined in clause X.5.

6. Compliance schedule for works valued over \$25 000

The Compliance Schedule is to be attached to tender documents (except in respect of minor works, and for very small value contracts) and must be completed and returned by a respondent with any expression of interest or tender response.

The purpose of this Compliance Schedule is to highlight important aspects and obligations imposed on parties by the NSW Code and NSW Guidelines. This Compliance Schedule is not a complete statement of obligations arising under the NSW Code and NSW Guidelines and does not replace them. Fulfilling the requirements in this Compliance Schedule does not automatically mean a party has complied with the NSW Code and NSW Guidelines, whereas a failure to fulfil a requirement in this Compliance Schedule is, prima facie, considered to be acting inconsistently with the NSW Code and NSW Guidelines.

This Compliance Schedule can also be used by contractors to highlight important aspects of the NSW Code and NSW Guidelines to subcontractors and consultants that a contractor may engage.

Tender/EOI:	[insert tender reference/project reference]
Respondent:	[insert full legal name, including Australian Business Number (ABN) and, where applicable, Australian Company Number (ACN) of tenderer]
Respondent's authorised representative:	[insert full name and title of the natural person completing this Compliance Schedule on behalf of the tenderer]

1. Compliance schedule

Primary acknowledgments and undertakings

- 1.1 By completing this Compliance Schedule and submitting an expression of interest or tender response, the respondent:
 - (a) acknowledges that the NSW Government's Code of Practice for the Building and Construction Industry (**NSW Code**) and the NSW Government's Implementation Guidelines to the NSW Code of Practice for the Building and Construction Industry (**NSW Guidelines**) apply to the project the subject of this tender;
 - (b) undertakes that it, and its related entities, comply with the NSW Code and NSW Guidelines on:
 - (i) the project the subject of this tender;

- (ii) any privately and publicly funded building and construction work to which the NSW Guidelines apply, on and from the date of submitting this expression of interest or response (if not already required to comply on such privately and publicly funded projects);
- (c) confirms that it and its related entities have complied with:
 - (i) the NSW Code and NSW Guidelines on all its other projects to which the NSW Guidelines apply or have applied; and
 - (ii) all applicable legislation, court and tribunal orders, directions and decisions, and industrial instruments;
- (d) confirm that, where it and its related entities are, or have been, required to comply with the National Code of Practice for the Construction Industry (**National Code**) and the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry as amended from time to time including the Building Code 2013 (**National Guidelines**), they have done so; and
- (e) confirms that neither it, nor any of its related entities, are subject to a sanction or other circumstance that would preclude the respondent from submitting an expression of interest or tender response, or, if successful, being awarded a contract.

Sanctions for non-compliance

- 1.2 The NSW Treasury, through the Construction Compliance Unit (**CCU**), has responsibility for enforcing, and ensuring compliance with, the NSW Code and NSW Guidelines.
- 1.3 The respondent acknowledges that where it, or a related entity, fails to comply with the NSW Code or NSW Guidelines, a sanction may be imposed on the tenderer or its related entity or both. The sanctions that can be imposed include, but are not limited to, one or more of the following:
 - (a) a formal warning that a further breach will lead to severe sanctions;
 - (b) referral of a complaint to the relevant industry organisation for assessment against its own professional code of conduct and appropriate action;
 - (c) reduction in tendering opportunities at either agency or government-wide level, for example, by exclusion of the breaching party from tendering for government work above a certain value, or for a specified period;
 - (d) reporting the breach to an appropriate statutory body; and
 - (e) publicising the breach and identity of the party.

Disclosure of information

- 1.4 The respondent agrees and gives its consent (or reaffirms its consent), and confirms that its related entities agree and give their consent (or reaffirm their consent), to the disclosure of information concerning the respondent's, and the respondent's related entities', compliance with the NSW Code, NSW Guidelines (and Victorian counterparts), National Code and National Guidelines, including disclosure of details of past conduct relating to the NSW Code and NSW Guidelines and whether or not sanctions have been imposed on a respondent or its related entities.
- 1.5 The respondent confirms that it has obtained, or will obtain, the consent of each subcontractor or consultant it proposes to use on the project, or that it will use if successful in the tender, to the disclosure of information concerning the subcontractor's and consultant's compliance with the NSW Code, NSW

Guidelines (and Victorian counterparts), National Code and National Guidelines including disclosure of details of past conduct relating to the NSW Code and NSW Guidelines and whether or not sanctions have been imposed on the subcontractor or consultant or its related entities.

- 1.6 The consent (or reaffirmation of consent) by the respondent, its related entities and any proposed or subsequent subcontractors, is given to the State of New South Wales, its agencies, Ministers and the CCU (and its authorised personnel) for purposes including:
- (a) the exercise of their statutory or portfolio responsibilities;
 - (b) investigating and checking, claims and assertions made by the respondent in any documents provided as part of its expression of interest or tender response (including, but not limited to, any Workplace Relations Management Plans or Health and Safety Management Plans);
 - (c) monitoring, investigating and enforcing the NSW Code and NSW Guidelines; and
 - (d) ensuring, facilitating and promoting compliance with the NSW Code and NSW Guidelines.
- 1.7 The respondent acknowledges that this consent is not limited to this tender, or this project, as parties are expected to comply with the NSW Code and NSW Guidelines on future projects to which they apply.

Positive obligations

- 1.8 Without limiting the obligations and requirements in the NSW Guidelines, the respondent acknowledges and undertakes to comply with its positive obligations under the NSW Code and NSW Guidelines, including to:
- (a) comply with any Workplace Relations Management Plan and Health and Safety Management Plan;
 - (b) allow NSW Government authorised personnel to:
 - (i) access the project site and other premises;
 - (ii) monitor and investigate compliance with the NSW Code and NSW Guidelines;
 - (iii) inspect any work, material, machinery, appliance, article, or facility;
 - (iv) inspect and copy any record relevant to the project; and
 - (v) interview any person;as is necessary to demonstrate compliance with the NSW Code and NSW Guidelines;
 - (c) notify the CCU (or nominee) and the Client Agency of any alleged breaches of the NSW Code and NSW Guidelines and of voluntary remedial action taken, within 24 hours of becoming aware of the alleged breach;
 - (d) (for principal contractors only) report any grievance or dispute relating to workplace relations or OHS&R matters that may impact on project costs, related contracts or timelines to the CCU (or nominee) and the Client Agency within 24 hours of becoming aware of the grievance or dispute and to provide regular updates on the grievance or dispute;
 - (e) report any threatened or actual industrial action that may impact the project, project costs, related contracts or timelines to the CCU (or nominee) and the Client Agency within 24 hours and provide regular

updates about the steps being taken to resolve the threatened or actual industrial action;

- (f) take all steps reasonably available to prevent, or resolve, industrial action which adversely affects, or has the potential to adversely affect, the delivery of the project or other related contracts on time and within budget; and
- (g) take all reasonably available steps to prevent, or bring to an end, unprotected industrial action occurring on, or affecting the project, including by pursuing legal action where possible. Any such legal action must be conducted (and where appropriate, concluded) in a manner consistent with the guiding principles and objectives of the NSW Guidelines, namely supporting outcomes of compliance with the law, productivity in delivering the project on time and within budget, maintaining a high standard of safety and protecting freedom of association.

1.9 Without limiting the obligations and requirements of the NSW Code and NSW Guidelines, the respondent acknowledges its obligation to ensure, through contract, that subcontractors and consultants similarly do, or allow for, each of these applicable positive obligations.

Privately funded work

1.10 The respondent acknowledges and agrees that in respect of its privately funded building and construction work (to which the NSW Guidelines apply) it, and its related entities, will:

- (a) comply with the NSW Code and NSW Guidelines;
- (b) maintain adequate records of compliance with the NSW Code and NSW Guidelines (including by contractors);
- (c) allow NSW Government authorised personnel to:
 - (i) access the sites and premises;
 - (ii) monitor and investigate compliance with the NSW Code and NSW Guidelines;
 - (iii) inspect any work, material, machinery, appliance, article, or facility;
 - (iv) inspect and copy any record relevant to the project; and
 - (v) interview any person;as is necessary to demonstrate compliance with the NSW Code and NSW Guidelines; and
- (d) ensure contractors and consultants similarly do, or allow, for each of these obligations.

Declaration by respondent and authorised representative

1.11 By signing this declaration on behalf of the respondent, the authorised representative declares that they have full authority to execute it and have obtained any necessary consents and approvals to do so.

Signature of authorised representative:

Name of authorised representative:

[print full name of authorised representative]

Date:/...../20.....

7. Contract clauses for works valued over \$25 000

For minor works, and for very small value contracts, Client Agencies may choose to use either this long form contract clause or the short form contract clause in Section 3 above.

For works valued over \$25 000, contracts between the State of New South Wales, through the Client Agency, and the principal contractor or a contractor, must include the following clauses. Similarly, contracts between a principal contractor and subcontractors, consultants or other parties, must include the clauses set out below.

These clauses establish the respective parties' agreement to comply with, and fulfil all their obligations under, the NSW Government's Code of Practice for the Building and Construction Industry (**NSW Code**) and the NSW Government's Implementation Guidelines to the NSW Code of Practice for the Building and Construction Industry (**NSW Guidelines**).

The following clauses can be amended depending on the parties to the contract and how they are defined (that is, whether the contract is between a Client Agency and principal contractor, or principal contractor and subcontractor etc). Subject to these amendments, and other minor amendments of style not affecting matters of substance, the following clauses are required to be included in all contracts.

X. NSW Code and NSW Guidelines

- X.1 In addition to terms defined in this document, terms used in this clause X have the same meaning as is attributed to them in the New South Wales Government's Implementation Guidelines to the NSW Code of Practice for the Building and Construction Industry (NSW Guidelines) (as published by the NSW Treasury July 2013). The NSW Code and NSW Guidelines are available at www.industrialrelations.nsw.gov.au.

Primary Obligation

- X.2 The contractor must at all times comply with, and meet any obligations imposed by, the NSW Government's Code of Practice for the Building and Construction Industry (NSW Code) and NSW Guidelines.
- X.3 The contractor must notify the CCU and the Client Agency of any possible non-compliance with the NSW Code and NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- X.4 Where the contractor engages a subcontractor or consultant, the contractor must ensure that that contract imposes on the subcontractor or consultant equivalent obligations to those in this section 2 (under the heading NSW Code and NSW Guidelines), including that the subcontractor or consultant must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.
- X.5 The contractor must not appoint or engage another party in relation to the project where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or NSW Guidelines.

Access and information

- X.6 The contractor must maintain adequate records of compliance with the NSW Code and NSW Guidelines by it, its subcontractors, consultants and related entities.
- X.7 The contractor must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:
- (a) enter and have access to sites and premises controlled by the contractor, including but not limited to the project site;
 - (b) inspect any work, material, machinery, appliance, article or facility;
 - (c) access information and documents;
 - (d) inspect and copy any record relevant to the project;
 - (e) have access to personnel; and
 - (f) interview any person;
- as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Code and NSW Guidelines, by the contractor, its subcontractors, consultants, and related entities.
- X.8 The contractor, and its related entities, must agree to, and comply with, a request from authorised personnel (including personnel of the CCU) for the production of specified documents by a certain date, whether in person, by post or electronic means.

Sanctions

- X.9 The contractor warrants that at the time of entering into this contract, neither it, nor any of its related entities, are subject to a sanction in connection with the NSW Code or NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Code and NSW Guidelines apply.
- X.10 If the contractor does not comply with, or fails to meet any obligation imposed by, the NSW Code or NSW Guidelines, a sanction may be imposed against it in connection with the NSW Code or NSW Guidelines.
- X.11 Where a sanction is imposed:
- (a) it is without prejudice to any rights that would otherwise accrue to the parties; and
 - (b) the State of NSW (through its agencies, Ministers and the CCU) is entitled to:
 - (i) record and disclose details of non-compliance with the NSW Code or NSW Guidelines and the sanction; and
 - (ii) take them into account in the evaluation of future procurement processes and responses that may be submitted by the contractor, or its related entities, in respect of work to which the NSW Code and NSW Guidelines apply.

Compliance

- X.12 The contractor bears the cost of ensuring its compliance with the NSW Code and NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Guidelines. The contractor is not entitled to make a claim for reimbursement or an extension of time from the Client Agency or the State of NSW for such costs.

- X.13 Compliance with the NSW Code and NSW Guidelines does not relieve the contractor from responsibility to perform the works and any other obligation under the contract, or from liability for any defect in the works or from any other legal liability, whether or not arising from its compliance with the NSW Code and NSW Guidelines.
- X.13 Where a change in the contract or works is proposed, and that change may, or may be likely to, affect compliance with the NSW Code and NSW Guidelines, the contractor must immediately notify the Client Agency (or nominee) of the change, or likely change and specify:
- (a) the circumstances of the proposed change;
 - (a) the extent to which compliance with the NSW Code and NSW Guidelines will be, or is likely to be, affected by the change; and
 - (b) what steps the contractor proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a Workplace Relations Management Plan or Work Health and Safety Management Plan);and
- the Client Agency will direct the contractor as to the course it must adopt within 10 Business Days of receiving notice.

