

Code of Practice

for the South
Australian
Construction
Industry

Implementation

Guidelines

Part One

Implementation
Procedures

September 2008



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INTRODUCTION

The *Code of Practice for the South Australian Construction Industry* is a statement of the principles that the industry wants to apply to a range of procedures from project conception and initiation, through tendering and construction, to project completion.

The Code was initiated by the private sector of the State's construction industry as part of the ongoing process of industry development. It is a tool to assist the industry to be nationally competitive by strengthening the best practices that already exist and by introducing new best practices. The Code supports the introduction of asset management policies by the Government of South Australia through the Department for Transport, Energy and Infrastructure (DTEI) and the achievement of these delivery standards by the private sector.

These principles are to be applied through these *Implementation Guidelines*. The *Implementation Guidelines* are in two parts.

Part one contains the procedures that Government of South Australia agencies and the private sector will follow to implement the Code. Part two contains the schedules that nominate industry best practice and the mechanisms to introduce them into Government of South Australia procurement.

These schedules will be amended as appropriate to ensure that the practices continue to reflect current industry best practice.

BACKGROUND

The industry has determined that a code identifying best practices and providing incentives for their introduction is a necessary tool.

As with the Code these *Implementation Guidelines* are mandatory on all Government of South Australia funded and managed construction projects. Other industry participants who wish to implement the Code as it may apply to their own projects, operations and/or membership are not required to adopt these guidelines and procedures, but they are encouraged to do so in the interests of increasing consistency in practices across the construction industry in South Australia.

DEFINITIONS

AFFECTED AGENCY

The South Australian Government agency managing or responsible for the project on which a reported or alleged breach occurred.

APPROPRIATE BODY

A body established to implement and or enforce legislation, regulations, recognised agreements or other Government policies (for example, the Industrial Relations Commission and WorkCover).

APPROPRIATE MINISTER

The Appropriate Minister is the Minister with overall responsibility for implementation of the Code and that Minister at any point in time with the portfolio responsibility for construction industry policy, unless otherwise nominated by the Premier. At the time of publication of the Code and these Guidelines the Appropriate Minister is the Minister for Infrastructure.

BEST PRACTICE

Best practice is a term that describes a practice or procedure that has been formally recognised as the best way - or one of the best ways - to achieve a specific outcome. Best practice includes compliance with legislation and regulation applicable to both the construction industry specifically and the community in general.

Firms or individuals that successfully introduce and adhere to best practice in their operations may make significant efficiency and productivity gains and are often better able to compete internationally.

CONSTRUCTION INDUSTRY FORUM (CIF)

The Construction Industry Forum (CIF) was formed in 1997 to provide industry input on operational issues and to provide a communication channel linking the industry at all levels and across all sectors and the Government of South Australia. The CIF comprises representatives from key industry sectors and acts as a reference group for the development and implementation of best practice initiatives. Its role focuses on addressing current operational issues and it provides an industry perspective on the development of the industry.

CONSTRUCTION INDUSTRY TRAINING BOARD

The Construction Industry Training Board (CITB) administers funds collected through the Construction Industry Training Fund. The CITB's aims are to:

- plan, coordinate and facilitate systematic and structured training in the South Australian construction industry
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- improve career path development for those employed in the South Australian construction industry
 - improve the efficiency of the construction process operating in South Australia
 - improve the national and international competitiveness of the South Australian construction industry
 - promote and market the improvements made.

CONSULTANT

A consultant is defined in the Australian Standard AS 4121 (1994) Code of Ethics and Procedures for the Selection of Consultants as any party submitting proposals.

Consultants can be further defined as an independent professional person performing work under a contract and not for any purpose a partner, joint venturer, servant, agent or employee of the principal. In general, a consultant is anyone commissioned to advise on specialised aspects of a construction project, including project and contract managers. The term includes representatives of the group referred to as 'the professions' eg: architects, engineers, quantity surveyors, designers, surveyors and others. In this context the term does not refer to management consultants.

Consultants may be referred to as Professional Service Contractors.

CONSTRUCTION PROJECTS

This term includes any project undertaken by the construction industry as defined in the Code of Practice. It includes any project involving those services associated with the activities of the construction sectors encompassing buildings, associated engineering services and civil engineering.

DEPARTMENT FOR TRANSPORT, ENERGY AND INFRASTRUCTURE (DTEI)

The Department for Transport, Energy and Infrastructure (DTEI), is the South Australian Government's public construction authority responsible for the provision of a central agency and whole of Government policy development function on building asset management, construction procurement, risk management and construction industry issues.

APPLICATION AND SCOPE

The Code and these *Implementation Guidelines* must be observed by all parties engaged on construction industry projects that are managed or fully or partly funded by the South Australian Government.

It applies to clients, Consultants, principals and their agents, contractors, sub-contractors, suppliers, professional organisations and other associations.

The Code includes, but is not limited to, the following areas of industry activity.

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- Contract administration
 - Consultant selection and ethics
 - Tendering processes
 - Security of payments
 - Occupational Health & Safety
 - Environmental Management
 - Intra-industry relationships
 - Skills development and training
 - Best practice.

SCHEDULES

Schedules that detail best practice form part of these guidelines. Industry participants who comply with the schedules will be deemed to be complying with the Code.

Those who comply with the Code will have a significantly greater chance of gaining

prequalification required to tender for Government of South Australia construction projects.

These schedules will be amended as appropriate to ensure that they reflect current industry best practice.

OPERATIONS

COMPLIANCE AND ENFORCEMENT

Adoption of the Code will be supported in two ways - primarily through positive encouragement but also through sanctions applied against breaches.

Industry participants who adopt the Code will be given greater access to Government of South Australia funded and managed projects. In order to achieve this DTEI, in consultation with Government agencies and industry, has established Consultant and contractor registers for use by the South Australian public sector. Industry participants considered for inclusion on these registers by DTEI are assessed on criteria as part of the pre-qualification system.

On Government of South Australia projects, a failure to comply with the Code will be considered in the pre-qualification process and may lead to the removal, suspension or downgrading of an industry participant on such a register. This may restrict an industry participant's ability to tender for State construction projects.

The Code will also be enforced through contract conditions on State construction projects and through mechanisms established for specific purposes under other legislation or regulations.

Government of South Australia tender documents, including minor works over a prescribed limit, will contain a condition of tender that advises tenderers that by submitting a tender they will be deemed to have agreed to comply with the Code. A breach of the Code may be considered a breach of the contract through the mechanism of the conditions of tendering. This condition may include the following or similar phrases.

All tenderers must comply with the 'Code of Practice for the South Australian Construction Industry'. Lodgement of a tender will be evidence of the tenderer's agreement to comply with the Code for the duration of any resulting contract that may be awarded. If any tenderer fails to comply, the failure will be taken into account by the Government of South Australia and its agencies when considering this or any subsequent tender by the tenderer and may result in such tender being passed over and or a change in the status of the tenderer on any Government of South Australia register of consultants or contractors.

Sanctions will vary according to the assessed severity of a breach. Sanctions may be applied to any contracting party, i.e. clients; developers; contractors; sub-contractors; specialist contractors; Consultants; sub-Consultants; industry, employee and employer associations and individuals. Sanctions available include the reassessment of the status of an industry participant on any Government of South Australia register of contractors and Consultants which may compromise the ability of that industry participant to continue to bid for Government of South Australia work.

The Appropriate Minister will receive recommendations from the Affected Agency or from DTEI with respect to a finding that a breach has been proved or not proved, and with respect to sanctions and appeals. The Appropriate Minister may accept or reject any recommendation made by the Affected Agency or by DTEI . If a

recommendation is accepted any sanction will apply automatically. If a recommendation is rejected the Appropriate Minister may:

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- refer the allegation or the report or any aspect of the investigation to DTEI for review
 - dismiss any breach, unproven or proven, completely.

MONI TORI NG

The Code, as an industry document, will be overseen and monitored by the CIF.

DTEI , on behalf of the Appropriate Minister, will monitor the implementation of the Code on Government of South Australia projects and will, in conjunction with the CIF, advise the Appropriate Minister and the Government on any need to expand the application of the Code on a mandatory basis to private sector projects.

I NVESTI GATI ON

Minor breaches need not be reported or investigated unless required under separate legislation, regulation or agreements.

All parties should attempt to reconcile disputes arising from breaches of the Code through dispute resolution procedures before referral for investigation and possible sanctions. If all parties to a reported or alleged breach agree, the question of a breach may be referred to an appropriate civil or criminal court before being referred to the Affected Agency or to DTEI for consideration.

Allegations or reports of breaches will be received by the Affected Agency or the Chief Executive of DTEI from any party to a contract, tender or proposal, or from any party with a relationship to a usual process within the construction industry. This will

include individuals; corporate and other business entities; industry associations; and employer and employee associations.

BREACHES BY GOVERNMENT OF SOUTH AUSTRALIA AGENCIES

If a Government of South Australia agency is reported to be in breach of the Code or these Guidelines the report of the breach shall be made to the Chief Executive of DTEI.

Other circumstances in which the issue may at the discretion of the Affected Agency or agencies be referred to the Chief Executive of DTEI include those where the alleged or reported breach is considered to be serious and those that involve more than one Government of South Australia agency as the Affected Agency or agencies.

Where appropriate, DTEI's role in the investigation process will include:

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- receiving reports and allegations of breaches from any party to a contract or from any organisation with regard to those alleged or reported breaches that are required to be, or may be referred to, the Chief Executive of DTEI
 - receiving recommendations for Government wide sanctions
 - receiving appeals from any party to a reported or alleged breach
 - maintaining a register and monitoring the progress and outcomes of the investigation of alleged or reported breaches and appeals
 - notifying the party alleged or reported to be in breach that a report or allegation of a breach has been received for investigation by DTEI
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- referring, wherever possible and appropriate, alleged or reported breaches to the appropriate investigating body, statutory authority, civil or criminal court, or other empowered body for processing
 - establishing panels to:
 - investigate each alleged or reported breach, if there is no other appropriate body to which it should be referred,
 - make recommendations to the Appropriate Minister, for consideration, that each breach has been found to be proved or not proved,
 - make recommendations to the Appropriate Minister, for consideration, that a sanction be applied
 - monitoring of the implementation and effect of any sanction
 - advising parties to a breach of progress and outcomes.

BREACHES BY OTHER PARTIES

If the party that is reported, or alleged, to be in breach of the Code or these *Implementation Guidelines* is not a Government of South Australia agency the report of that breach or alleged breach shall be made to the Chief Executive of the affected Government of South Australia agency.

Referral of the investigation to the Chief Executive of DTEI may occur where the alleged or reported breach is considered to be serious, or if it involves more than one Government of South Australia agency as the Affected Agency or agencies.

The Affected Agency will determine if a breach has occurred and the appropriate sanction in line with the processes set out in these *Implementation Guidelines*. On receipt of a report of a breach or an alleged breach the Affected Agency's role in the investigation process will include:

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- receiving reports and allegations of breaches from any party to a contract or from any organisation
 - maintaining a register of reports and allegations
 - monitoring the progress and outcomes of the investigation of alleged or reported breaches reported to it
 - notifying the party alleged or reported to be in breach that a report or allegation of a breach has been received
 - referring, wherever possible and appropriate, alleged or reported breaches to the appropriate investigating body, statutory authority, civil or criminal court, or other appropriate body (such as DTEI), for processing
 - investigating alleged or reported breaches if there is no other appropriate body to which it should be referred
 - making recommendations to the Appropriate Minister for determination that each breach has been found to be proved or not proved
 - making recommendations to the Appropriate Minister for determination that a sanction be applied
 - monitoring of the implementation and effect of any sanction
 - advising parties to a breach of progress and outcomes
 - advising DTEI in order that any contractor and consultant registers may be amended and updated as appropriate.

PANELS

The Chief Executive of DTEI will, under the direction of the Appropriate Minister, establish a panel to consider any appeal received by that minister or referred by another government agency.

It is necessary to establish a clear division between the investigatory and appeal roles. DTEI will establish separate panels subject to its supervision, involving Government agencies and the CIF as appropriate, to undertake each of the necessary independent activities.

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- Investigate reported or alleged breaches, assess the impact of any proved breach and recommend sanctions.
 - Hear appeals against the outcomes of investigations and the recommended sanctions.

Each panel will consist of five members chaired by a DTEI nominee, with a quorum of the Chair and two other members. DTEI will provide the secretariat and forward copies of the panel outcomes to the Affected Agency and CIF.

APPEALS

Any party subject to a sanction as the result of an investigation under the Code has the right to appeal against that sanction.

Any appeal must be lodged with the Chief Executive of DTEI within fourteen days after the date that the notification of that sanction is dispatched to all parties.

Any appeal will be considered using the framework detailed above.

SANCTIONS

DTEI or, where appropriate, the individual agency or agencies concerned will investigate any reported or alleged breach and will recommend to the Appropriate Minister the sanction to be applied to each proven breach. Affected agencies shall refer a breach to the Chief Executive of DTEI if a Government wide sanction is recommended, or if there is an appeal against a sanction.

Where some other body has, under legislation, regulation or registered enterprise agreement been established to administer a specific aspect of the Code all breaches of the Code relevant to that aspect will be referred to that body. Such bodies include but are not limited to the Australian Securities Commission, Trade Practices Commission, Industrial Relations Commission and other courts or tribunals.

The sanctions that may be recommended by DTEI or the Affected Agency will depend on the nature of the breach and may be increased for repeat offenders.

Sanctions will take one or more of the following forms:

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- reporting of the breach to an appropriate body for further action
 - referral to an industry association for action under that association's own code of practice, conduct or ethics
 - formal warnings of more severe consequences for future breaches
 - recording of a breach in a register of breaches or non-compliances. (This register will be published so as to be available for inspection by public agencies during the preparation of contractor and consultant registers and will be considered in the assessment of pre-qualification criteria.)
 - referral to Parliament of any breach by a Government agency for consideration by Parliament or by the Public Works Committee if appropriate
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- referral to the Chief Executive of a Government of South Australia agency where a breach involves an employee of that agency with the request that disciplinary action be considered
 - preclusion from entering into contracts with the Government of South Australia or subcontracts where the Government of South Australia is the ultimate client. Preclusion will be for a specified time period and/or for contracts or subcontracts over a specified value.

Sanctions will not apply until fourteen days after the dispatch of the notification of that sanction. This allows time for an appeal to be lodged. Suspension of the sanction during this process is at the discretion of the Chief Executive of DTEI .

REVIEW AND EVALUATION

The Code will be reviewed by the at the end of operation for report and recommendation to the Appropriate Minister. The *Implementation Guidelines* will be reviewed at the same time or immediately following the review of the Code.

If, however, outside of a review period, the industry practitioners or clients believe that the Code is ineffective or in need of revision they may refer their concerns to the CIF for investigation and report to the Appropriate Minister. If the CIF agrees that the Code has not been effective they may suggest changes to either the Code or the *Implementation Guidelines*.

The *Implementation Guidelines* will be reviewed regularly. The Schedules that form Part Two of the Guidelines will be reviewed and amended as appropriate to ensure that they reflect current industry best practice.

RESOURCES

Copies of the Code of Practice for the South Australian Construction Industry and its *Implementation Guidelines* can be downloaded from www.constructionsa.com.au, or contact:

Building Management

Department for Transport, Energy and Infrastructure

GPO Box 967

Adelaide SA 5001

Phone: (08) 8226 5200

Fax: (08) 8226 5588

Email: buildingmanagement@saugov.sa.gov.au



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