



# Best practice principles: Quality, safe workplaces

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**Best practice principles: Quality, safe workplaces**

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# Best practice principles: Quality, safe workplaces

## Introduction

The Queensland Government is committed to maximising benefits for Queenslanders by using procurement to support local jobs and businesses and drive economic, environmental and social outcomes. This includes ensuring quality, safe workplaces through application of the best practice principles for people engaged on major state government projects.

Ensuring quality, safe workplaces through the highest possible standards of workplace health and safety, engaging appropriate numbers of trainees and apprentices, and best practice industrial relations supports delivery of projects on time and on budget.

## Purpose

The purpose of this guide is to help agencies, contractors and subcontractors apply the best practice principles to applicable major projects.

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### Agencies, contractors, subcontractors and major project

For a definition of 'agencies', 'contractors', 'subcontractors' and 'major project', please refer to the 'Definitions' section of this guide.

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## Best practice principles

According to the Queensland Procurement Policy (QPP), the best practice principles are:

1. Best practice workplace health and safety (WHS) systems and standards.
2. Best practice commitment to apprentices and trainees.
3. Best practice industrial relations.

For certain best practice principles projects, when applying the 'Best practice industrial relations' principle, Best Practice Industry Conditions (BPICs) may also need to be applied.

## BPICs

### Objectives

In summary, the BPICs:

- outline the Queensland Government's expectation for best practice employment conditions for workers performing work on-site on best practice principles projects
- require contractors to demonstrate a best endeavours process for subcontractors; the extent to which this is demonstrated will be assessed by agencies through the tender process
- help to ensure that the objectives of the best practice principles are achieved, particularly in relation to best practice industrial relations, to minimise disruption and resulting time and cost implications to major projects.

### Application

When applying the 'Best practice industrial relations' principle to:

- **a best practice principles project in the Building Construction and Maintenance (BCM) procurement category**, agencies must develop BPICs which reflect current economic conditions in consultation with the Department of Energy and Public Works (DEPW), and seek Executive Government approval of the BPICs prior to incorporation into the tender document.

- **a transport civil construction best practice principles project in the Transport Infrastructure and Services (TIS) procurement category**, agencies must consult the Department of Transport and Main Roads (DTMR) about use of the Transport BPICs.
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### **Best practice principles projects that are not subject to the BPICs**

At this stage, BPICs do not need to be applied to best practice principles projects in the following circumstances:

- non-transport civil construction best practice principles projects in the TIS procurement category
- best practice principles projects in other procurement categories – i.e. Medical Goods and Services, Social Services, General Goods and Services and other non-specified categories.

For these best practice principles projects, agencies may refer to **Appendix 1** and **Appendix 2** in applying the 'Best practice industrial relations' principle to relevant procurement activities.

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### **Application to contractors and subcontractors**

For a best practice principles project, agencies will assess contractor offers against the best practice principles and require contractors to deliver on best practice principles commitments made in their offers. Contractors will be required to undertake to assess subcontractor offers against the best practice principles and require them to deliver on best practice principles commitments made in their offers, in line with contract conditions as agreed with the agency.

Where BPICs are relevant to a best practice principles project, they must form a mandatory evaluation criterion in the tender. This means that contractors are required to respond about whether the terms and conditions of their own employees who will work on the project are at least equivalent to the relevant BPICs (i.e. either BCM or TIS category-specific BPICs) as part of the tender process, with tender commitments made with respect to the BPICs to form part of the contract. Contractors are also required to address how they will use their best endeavours to engage subcontractors who will commit to providing terms and conditions of employment for their employees who will perform work on the project, which will be at least equivalent to the BPICs.

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### **Best endeavours**

For further information on what best endeavours entails, please refer to the 'Definitions' section of this guide.

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Agencies will consider strategies proposed by the contractor for reaching agreement with subcontractors about implementation of the BPICs during the evaluation of contracts under the project.

Some agencies already require the contractor to apply the QPP as if it were a government agency, when awarding contracts within the project. To remove any doubt, agencies using this approach must also include contractual provisions which require the application of the best practice principles.

For further information on applying the BPICs, please refer to the 'How to apply the best practice principles' section of this guide.

## Scope

The best practice principles must be applied by all agencies subject to the Queensland Procurement Policy (QPP)<sup>1</sup> to a major project that:

- is valued at \$100 million or more, and
- falls under any procurement category, except information and communication technology (ICT)<sup>2</sup>.

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### Dollar (\$) value

All references to a dollar value in this guide refer to the Australian dollar (AUD) and are exclusive of GST.

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## Declared projects

Note that the best practice principles must also be applied if projects are declared as being subject to the best practice principles. Projects that are below \$100 million and/or which are in the ICT procurement category may be declared.

The best practice principles can be applied to existing projects where procurement of subcontracting is still to occur.

For the purposes of this guide, declared projects refers to projects that have been declared as being subject to the best practice principles through a declaration process. For further information, please refer to the 'Declaration process' section of this guide.

## Best practice principles project

Application of the best practice principles is on a project basis and is based on the total value of all contracts for goods and services making up the project.

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### Goods and services

The term 'goods and services' as set out in the QPP includes all property (except for real property) and all types of services including building and construction services, and infrastructure.

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This means if the total value of all contracts for goods and services making up the project is \$100 million or more, and if the project falls under a procurement category that is not ICT, that project will be automatically subject to the best practice principles, unless otherwise exempted (refer 'Declaration process' section of this guide).

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<sup>1</sup> All budget sector agencies, government-owned corporations, statutory bodies and special purpose vehicles as defined in the QPP.

<sup>2</sup> Unless an ICT project is declared as having to apply the best practice principles. For further information, please refer to the 'Declaration process' section of this guide.

## Applying the best practice principles to contracts

If a project is subject to the best practice principles, this means the best practice principles must be applied to any contract that meets all of the following three requirements:

### Requirement 1

Contract is for a contractor or subcontractor to provide 'goods and services' on-site except for those contractors or subcontractors that provide services exclusively of the following kinds:

- architectural, design, surveying or quantity surveying services relating to construction work
- building, engineering, interior or exterior decoration or landscape advisory services relating to construction work
- soil testing services relating to construction work
- off-site prefabrication of made-to-order components to form part of any building, structure or works, unless that work is performed on an auxiliary or holding site that is separate from the primary construction site or sites
- transportation or supply of goods to be used for building work, directly to building sites (including any resources platform) where that work is being or may be performed.

### Requirement 2

Contract exceeds the minimum value threshold of \$20,000.

Contracts valued below the minimum value threshold will not be subject to the best practice principles.

An alternative minimum value threshold, including no threshold, may be approved on a project-by-project basis as part of the Ministerial approval process for best practice principles and local benefits test weightings.

For further information on the Ministerial approval process for best practice principles and local benefits test weightings, please refer to the 'Evaluation criteria – weightings (Ministerial approval process)' section of this guide.

### Requirement 3

Contract is established as part of taking the project to completion.

The best practice principles do not apply to ongoing contracts established for the purposes of providing ongoing goods or services following the completion of a project (e.g. the best practice principles would apply to the design and construction phase for a building or transport civil construction project but would not apply to ongoing facilities management, operation and maintenance contracts).

## Projects and programs

Programs (refer to 'Definitions' section of this guide for definition of 'program') are not automatically subject to the best practice principles even if all projects in the program collectively exceed \$100 million. A program may be subject to the best practice principles however if declared through the declaration process.

If a program is declared as being subject to the best practice principles, this means that the best practice principles must be applied to all projects covered by the program.

## Declaration process

Projects that are below \$100 million and/or which are in the ICT procurement category are not subject to the best practice principles by default. However, the best practice principles must be applied to these projects if they are declared as being subject to the best practice principles through a declaration process.

In addition, a best practice principles project can be exempted from being subject to the best practice principles if it is declared as such through a declaration process.

In considering whether to declare a project or program as subject to, or exempt from, the best practice principles, the responsible Minister may consider factors which include, but are not limited to:

- local or regional economic conditions
- local or regional labour market conditions
- stakeholder advice, for example, Industry Reference Groups, industry or union representatives
- matters related to economic, environmental and/or social targets, commitments or policies of the government.

The declaration process itself requires:

- consultation between the responsible Minister and the Minister for Energy, Renewables and Hydrogen and Minister for Public Works and Procurement; and
- approval from the Premier and Minister for Trade.

The declaration process may occur by correspondence between the responsible Minister, the Minister for Energy, Renewables and Hydrogen and Minister for Public Works and Procurement, and the Premier and Minister for Trade. In all instances records must be kept in relation to the declaration process in line with agency record-keeping protocols and the *Public Records Act 2002*.

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### Declaration process and project timeframes

Agencies should build in timing contingencies for the declaration process to occur as part of project and procurement planning.

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### Declaration process - Industry Reference Group advice

An Industry Reference Group for a category may, in reviewing the forward procurement pipeline, consider government objectives, how they align to upcoming procurement and provide its views on possible declared projects.

Each category council chair is responsible for the timing and approach for engagement with the respective Industry Reference Group.

## Relationship between the best practice principles and other legislation

This guide does not require, encourage or promote conduct that would constitute a contravention of the *Fair Work Act 2009* (Cth), the *Building Construction Industry (Improving Productivity) Act 2016* (Cth) or the *Code for the Tendering and Performance of Building Work 2016* (Building Code 2016) (Cth).

The best practice principles are not to be implemented in a way that breaches this or any other legislation.

## When is a project subject to the best practice principles?

A summary of the main steps in the application of the best practice principles is at **Appendix 3**.

### 1. Is this a project?

While the best practice principles are to be applied on a project basis, a program may be declared as subject to the best practice principles using the declaration process.

For further information on the applicability of the best practice principles to projects, please refer to the 'Best practice principles project' section of this guide.

## 2. Does the QPP apply to the project?

The best practice principles apply to projects which are subject to the QPP.

## 3. Which procurement category does the project fall under?

The best practice principles apply to a project that falls under the following procurement categories:

- BCM
- TIS
- Medical Goods and Services (Med)
- Social Services (SS)
- General Goods and Services (GGS)
- Other non-specified categories.

If a project falls under the ICT procurement category, it will not be subject to the best practice principles regardless of its value. However, the project will be subject to the best practice principles if declared through a declaration process.

## 4. Is the project's total value \$100 million or more?

Project value means:

- estimated capital cost of \$100 million or more, or
- the net present value of financial commitments entered into by the State of Queensland for goods and services (as defined in the QPP) in relation to the project where this is estimated to be \$100 million or more.

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### **Where non-Queensland Government funding is involved**

Check funding agreements as there may be conditions attached to the payment of funds from other sources of funding.

For example, Australian Government funding agreements can require agencies to comply with the requirements imposed on funding entities under the Building Code 2016. There are express requirements for Expressions of Interest (EOIs) and tenders in Part 5 of the Building Code.

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## 5. Is the project a declared project?

Projects that are below \$100 million and/or which are in the ICT procurement category are not subject to the best practice principles by default. However, the best practice principles must be applied to these projects if they are declared as being subject to the best practice principles through a declaration process.

In addition, a major project of \$100 million or more can be exempt from being subject to the best practice principles if it is exempted through a declaration process.

For further information on the declaration process, the potential for programs to be declared and the role of Industry Reference Groups in this process, please refer to the 'Declaration process' section of this guide.

## Common-use supply arrangements

Some agencies may establish panels or other supply arrangements for goods or services. The establishment of 'common-use supply arrangements' (as defined in the QPP) are not within scope of the best practice principles, unless declared.

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### Example

The Department of Energy and Public Works undertakes a strategic sourcing exercise and establishes an arrangement under deed for employee services. It is estimated that the value of contracts drawn from the SOA over the life of the arrangement may exceed \$100 million. There is no guaranteed sum of financial consideration under the arrangement for any individual supplier. The establishment of the arrangement is not subject to the best practice principles, unless a declaration is made.

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However, in purchasing from a supplier that is listed on a common-use supply arrangement to supply a best practice principles project, the best practice principles must be applied if any purchase contracts meet all of the three requirements outlined under the 'Applying the best practice principles to contracts' section of this guide.

In practice, this means for purchases that are subject to the best practice principles, the best practice principles must be applied:

- to the quotation process via use of appropriate mandatory and/or weighted evaluation criteria
- to the contract via incorporation of best practice principles contract clauses (which reflect best practice principles commitments made in the quotation stage) in the contract details document.

Agencies should consider incorporating conditions to existing and new common-use supply arrangements to make suppliers aware that, if the supplier is appointed to an arrangement, there is a possibility that customers may apply the best practice principles to purchase contracts.

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### What about sole supplier situations?

There may be situations where the work package or contract to be issued, is for goods and services where there is a sole supplier situation – for example, specialist goods or services or where an agency has no discretion in terms of the supplier used. In such circumstances, agencies should still seek a contractual commitment from the contractor to comply with the best practice principles.

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## Key next steps

Where the best practice principles apply to a project, agencies must include the project in the Queensland Government Forward Procurement Pipeline to support agency planning and increase project visibility and preparedness amongst potential contractors and subcontractors.

## How to apply the best practice principles

### Procurement planning

#### Procurement strategy development

Once a project is determined to be subject to the best practice principles (please refer to the 'When is a project subject to the best practice principles?' section of this guide), agencies should plan for any procurements that need to be undertaken for the project.

Generally, this entails developing an appropriate procurement strategy having regard to:

- the nature, complexity, risk and value of the procurement activity
- the procurement category, including any applicable category strategies
- relevant policy requirements of the QPP that should be pursued.

It also involves understanding business needs, the supply market (e.g. regional vs urban), and developing a fit-for-purpose market and evaluation approach.

Key best practice principles considerations when developing a procurement strategy for procurements that are part of a best practice principles project, for each procurement category, have been outlined in **Table 1** below.

**Table 1:** Key best practice principles considerations when developing a procurement strategy for procurement that is part of a best practice principles project, for each procurement category

Procurement category	Key considerations
<ul style="list-style-type: none"> <li>• BCM</li> <li>• TIS</li> <li>• Med</li> <li>• SS</li> <li>• GGS</li> <li>• ICT (only if declared)</li> <li>• Other</li> </ul>	<ul style="list-style-type: none"> <li>• The best practice principles must be applied via evaluation criteria and contract clauses to any contract that meets all of the three requirements outlined under the 'Applying the best practice principles to contracts' section of this guide.</li> </ul>
<b>BCM only</b>	<ul style="list-style-type: none"> <li>• Agency must use the Queensland Government Prequalification (PQC) System to engage contractors and subcontractors for the best practice principles project.</li> <li>• Agency must develop BPICs which reflect current economic conditions in consultation with DEPW and seek Executive Government approval of the BPICs prior to incorporation into the tender document – refer to 'BPICs – development' and 'BPICs – Executive Government approval' sections below for further information.</li> </ul>
<b>TIS only</b>	<ul style="list-style-type: none"> <li>• Agency must use any applicable prequalification system (e.g. National Prequalification System for Civil (Road and Bridge) Construction Contracts) to engage contractors consistent with the principles of the PQC System for the best practice principles project.</li> <li>• For transport civil construction best practice principles projects, agency must consult DTMR about use of the Transport BPICs.</li> </ul>

#### BPICs – development

BPICs should be developed with reference to the following key considerations in **Table 2** below.

**Table 2:** Developing BPICs – key considerations for contractors, subcontractors and agencies

Stakeholder	Key considerations
<b>Contractors</b>	<ul style="list-style-type: none"> <li>• Required to respond to the relevant BPICs (i.e. either BCM or TIS category-specific BPICs) as part of the tender process.</li> <li>• Tender commitments with regards to BPICs to form part of the contract.</li> <li>• Required to undertake a process in relation to the relevant BPICs with subcontractors and demonstrate how they have used their best endeavours to engage subcontractors who will commit to providing terms and conditions of employment for their employees who will perform work on the project, which will be at least equivalent to the BPICs.</li> <li>• Ensure subcontractors demonstrate how BPICs will be addressed in tender submission to contractor.</li> <li>• Provide information in the tender submission on how subcontractor(s) have considered and applied the Queensland Government's expectations for best practice employment conditions for works as outlined by the relevant BPICs.</li> </ul>
<b>Agencies</b>	<ul style="list-style-type: none"> <li>• Will not be involved in the best endeavours process undertaken by the contractor.</li> <li>• Will assess the contractor's tender response against pre-determined tender weightings in terms of: <ul style="list-style-type: none"> <li>○ the extent to which the contractor has demonstrated terms and conditions of employment for its own employees which are at least equivalent to the relevant BPICs</li> <li>○ the contractor's best endeavours process with subcontractors.</li> </ul> </li> </ul>

### BPICs – Executive Government approval

There are different Executive Government approval requirements when applying the relevant BPICs to a tender. This will depend on whether the best practice principles project falls under either the BCM or TIS procurement categories.

For a best practice principles project in the BCM procurement category, please contact DEPW for further information.

For a best practice principles project in the TIS procurement category that relates to transport civil construction, please contact DTMR for further information.

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#### Important note

Adequate time should be allocated in the procurement planning process to obtain Executive Government approvals in time for the tender to go to market.

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## Tender development

In developing the tender, agencies must develop evaluation criteria and request contractor responses against each criterion. The evaluation criteria should be developed in conjunction with the tender specifications and conditions, and evaluation approach.

In developing tender requirements and contract conditions, agencies should include clauses to:<sup>3</sup>

- apply any applicable QPP requirement (e.g. best practice principles (including BPICs where applicable))
- authorise the evaluation panel to obtain historical information as part of assessing tender responses against all evaluation criteria (e.g. in terms of the best practice principles, requesting tenderers to provide an authority to the evaluation panel and/or written undertakings to identify historical performance)
- enable audit and compliance activities to occur (including requiring subcontractors to provide relevant information (through deeds poll or other contractual mechanisms))
- include contractual mechanisms to incentivise compliance with tender commitments related to the best practice principles. These may include measures such as liquidated damages or other commercial implications for non-compliance
- require contractors to bind subcontractors to the requirements outlined in the dot points above.

#### Important note

In applying the best practice principles (including BPICs where applicable), it is strongly recommended that agencies develop tender evaluation criteria and contract conditions in consultation with specialist industrial relations, work health and safety, legal and other relevant advisors.

### Evaluation criteria - development

In developing the evaluation criteria, agencies should consider not only the objective of the procurement, but the nature and capability of contractors to respond to the criteria.

For all procurement categories, each of the three best practice principles must be incorporated into the tender as evaluation criteria. Where applicable, this includes a mandatory evaluation criterion that requires demonstration of how the terms and conditions of employment of a contractor's own employees are at least equivalent with the BPICs and demonstration of the best endeavours process that it has or will undertake with subcontractors.

Key considerations when developing evaluation criteria for procurements that are part of a best practice principles project for each procurement category have been outlined in **Table 3** below.

**Table 3:** Key considerations when developing evaluation criteria for procurements that are part of a best practice principles project, for each procurement category

Procurement category	Key considerations
BCM, TIS, Med, SS, GGS, ICT and other	<ul style="list-style-type: none"> <li>• Each of the three best practice principles must be incorporated into the tender as evaluation criteria.</li> <li>• Other QPP policy requirements (e.g. local benefits test, Ethical Supplier Threshold, non-price criteria) and project-specific (e.g. experience, methodology, price) should be included as evaluation criteria where applicable.</li> <li>• To assist tenderers to respond to each evaluation criteria, evaluation questions and/or relevant examples should be provided in the tender relative to the project concerned. For example, agencies may refer to <b>Appendix 1</b> in formulating</li> </ul>

<sup>3</sup> Note this list is not exhaustive.

Procurement category	Key considerations
	<p>evaluation questions or providing examples of best practice against each of the best practice principles.</p> <ul style="list-style-type: none"> <li>• Where a prequalification system is used as part of the procurement strategy, care needs to be taken to ensure that the evaluation criteria: <ul style="list-style-type: none"> <li>○ reflect the BPP and BPICs for applicable projects</li> <li>○ do not result in tenderers being unnecessarily asked to provide the same level of detailed information provided at the prequalification stage</li> <li>○ enables validation of information provided by tenderers at the prequalification stage (e.g. validation of best practice principles-related information if the Queensland Government PQC System is used for a BCM procurement).</li> </ul> </li> <li>• Ensure that the evaluation criteria in the tender are reflected in the associated evaluation plan.</li> </ul>
<b>BCM and TIS only</b>	<ul style="list-style-type: none"> <li>• Where BPICs apply to the best practice principles project, they must be incorporated into the tender as a mandatory evaluation criterion for the contractor's own employment terms.</li> <li>• Tender conditions must confirm that although the BPICs may be in the form of an enterprise agreement, it is not mandatory for contractors to have an enterprise agreement or a certain kind of enterprise agreement.</li> </ul>

In parallel with developing evaluation criteria, agencies should also determine and incorporate key performance indicators and a performance measurement approach, to ensure ongoing contract compliance and performance.

### Evaluation criteria – weightings (general)

Agencies must propose, and seek relevant approvals for, weightings for each evaluation criterion, including the best practice principles and local benefits test.

Relevant approvals include those required from the responsible Minister as described under the 'Evaluation criteria – weightings (Ministerial approval process)' section of this guide, as well as approvals from an agency delegate for weightings assigned to other evaluation criteria.

In proposing weightings, agencies should have regard to all aspects of the evaluation and arrive at an overall combination of weightings across all evaluation criteria that will ensure a value for money outcome as described in the QPP. This means taking a considered approach to ensure that the best practice principles and local benefits test are weighted appropriately against other evaluation criteria (e.g. social, environmental, experience/capability, cost).

### Evaluation criteria – weightings (best practice principles)

A weighting of up to 20 per cent can be applied for the best practice principles. Within this range, agencies should note that proposed weightings for the best practice principles will differ from project to project.

Examples of some considerations in proposing weightings for the best practice principles include:<sup>4</sup>

- project objective, characteristics/circumstances, complexity, stage and location
- market capability and capacity

<sup>4</sup> These are examples only and not a definitive nor exhaustive list.

- relative risks associated with the project concerning workplace health and safety, and industrial relations
- impact on project timeframes and budget
- weightings proposed for other evaluation criteria
- prevailing economic conditions
- value for money, including government targets, commitments and policy requirements
- weightings for the best practice principles (and other evaluation criteria) used in previous projects of a similar nature.

The proposed weightings must be aligned to the project circumstances and characteristics. For example, a project with a high work health and safety risk profile should include higher emphasis on that principle; similarly, if the industry concerned has a record of poor industrial relations performance, a higher emphasis on that principle would be expected.

### Evaluation criteria – weightings (best practice principles and relationship to the local benefits test)

Under the QPP agencies are required to conduct a local benefits test for all significant procurement where a weighting of up to 30 per cent may be applied. Refer to the [Local benefits test guide](#) for more help with applying the test and to view worked examples.

As previously mentioned, a weighting of up to 20 per cent can be applied for the best practice principles.

**A total, maximum combined weighting of up to 40 per cent can be applied for the local benefits test and best practice principles where both are applied in a tender process.**

This means that, in determining weightings<sup>5</sup> for a combined situation where both the local benefits test and best practice principles are applied, that:

- the combined total weighting for the local benefits test and best practice principles cannot exceed 40 per cent
- where the weighting for the best practice principles exceeds 10 per cent, the weighting given to the local benefits test cannot be weighted at the maximum 30 per cent so as to not exceed the maximum combined weighting of 40 per cent (e.g. if the best practice principles are weighted at 20 per cent, then maximum local benefits test weighting available would be 20 per cent).

In recognition that aspects of the local benefits test are also covered by the best practice principles, care needs to be taken to ensure that the application of the local benefits test and the best practice principles do not result in tenderers being asked to respond against the same or highly similar criteria for both the local benefits test and best practice principles.

Refer to **Appendix 4** for worked examples.

### Evaluation criteria – weightings (Industry Reference Group advice)

Advice from relevant members of the Industry Reference Group must be sought by agencies to inform proposed weightings for the best practice principles and local benefits test. To facilitate this advice, agencies should consider providing the following information to relevant members:<sup>6</sup>

- project objective, characteristics/circumstances, complexity, stage and location
- proposed weightings for the best practice principles and local benefits test

<sup>5</sup> Note this does not apply to sub-weightings for the local benefits test and the best practice principles. That is, sub-weightings for the local benefits test and the best practice principles may total to 100 per cent respectively.

<sup>6</sup> These are examples only and not a definitive nor exhaustive list.

- workplace health and safety profile of local industry
- industrial relations profile of local industry
- local labour market conditions (including apprentices and trainees)
- weightings for the best practice principles and local benefits test used in previous projects of a similar nature
- applicable regional profiles which provide an outlook of industry activity in each region, as well as key indicators relating to workforce and apprentices (e.g. Construction Skills Queensland Regional Profiles).

This advice should then be included in the later departmental brief provided to the responsible Minister as part of the approval process described in the 'Evaluation criteria – weightings (Ministerial approval process)' section of this guide.

### Evaluation criteria – weightings (Ministerial approval process)

Approval must be sought from the responsible Minister for the weighting to be assigned to the best practice principles and local benefits test, prior to a tender's release.

Content to be included in the departmental brief to be submitted to the responsible Minister will depend on the requirements for the specific project, individual agency and responsible Minister. However, at a minimum, the brief should include:

- advice from the relevant Industry Reference Group regarding the proposed weightings for the best practice principles and local benefits test
- proposed weightings and rationale for the best practice principles and local benefits test to be applied to the contractor
- the strategy for applying the best practice principles to subcontractors, including proposed weightings and rationale, and
- applicable conditions to give effect to government commitments, targets or policies.

Noting that a requirement for a contract to be subject to the best practice principles is for its value to exceed the minimum value threshold of \$20,000, the brief may also include an alternative minimum value threshold below which contracts will not be subject to the best practice principles.

In terms of the strategy for applying the best practice principles to subcontractors, the weighting to be applied by the contractor when selecting subcontractors will vary depending on the nature of the procurement model (e.g. managing contractor compared to design and construct), and the particular trade package or service procured. This could include one of the three options outlined in **Table 4**<sup>7</sup> below:

**Table 4:** Options for applying the best practice principles when contractor is selecting subcontractors

Option no.	Description
<b>Option 1</b>	<p>Seeking one approval from the responsible Minister that includes:</p> <ul style="list-style-type: none"> <li>• weightings for the best practice principles when selecting the contractor; and</li> <li>• approval for the contractor, in applying the best practice principles to subcontracts, to choose the most appropriate weightings as applicable to the trade package or good or service procured through subcontracts.</li> </ul>

<sup>7</sup> This table of options is not definitive nor exhaustive.

Option no.	Description
<b>Option 2</b>	Seeking one approval from the responsible Minister that includes: <ul style="list-style-type: none"> <li>• weightings for the best practice principles when selecting the contractor; and</li> <li>• approval for weighting ranges to be applied when selecting subcontracts (may be broken down into trade package or good or services).</li> </ul>
<b>Option 3</b>	Seeking two approvals from the responsible Minister at different points in the procurement process. This involves seeking: <ul style="list-style-type: none"> <li>• an initial approval for weightings for the best practice principles when selecting the contractor; and</li> <li>• a subsequent approval for weightings for the best practice principles when the contractor is selecting subcontractors.</li> </ul>

The above options will provide the necessary flexibility where contracts are progressively tendered during the life of a project, ensures the best practice principles are a core component of the procurement process and allows the expertise available in the market to identify ways to maximise benefits and outcomes consistent with the *Buy Queensland* approach.

### Ministerial approval process for weightings and project timeframes

Agencies are recommended to allocate adequate time to seek Ministerial approval for the weighting to be assigned to the best practice principles and local benefits test as part of project and procurement planning.

Once the responsible Minister approves the weightings for the best practice principles and local benefits test, the responsible Minister should advise the Minister for Energy, Renewables and Hydrogen and Minister for Public Works and Procurement of these approved weightings, to inform weightings to be assigned for future best practice principles projects.

### Evaluation plan

Agencies must prepare a formal evaluation plan documenting the evaluation approach and establish an evaluation panel(s) consisting of government officers with the requisite experience and knowledge. Where necessary, specialist advisors (e.g. industrial relations, work health and safety, legal) may be engaged in a non-voting capacity to advise the panel.

Agencies may leverage the expertise of the evaluation panel in developing the evaluation criteria and weightings. Evaluation panels must carefully consider how the best practice principles will be assessed, including the relationship to the local benefits test.

This plan should define the evaluation criteria and approved weightings inclusive of those assigned to the best practice principles and the local benefits test. This is in addition to matters pertaining to the evaluation of the tender (e.g. tender evaluation timeframes, evaluation panel composition, delegate approvals).

The evaluation plan and other related documents (e.g. tender document, probity plan) must be approved by the agency delegate prior to a tender's release.

Refer to the [Evaluating offers guide](#) for more help with developing an evaluation plan.

## Going to market

Once agencies secure relevant approvals for the tender document, evaluation plan and other related documents, the tender may be released to the market.

Agencies should manage tenderer enquiries in accordance with their respective probity and confidentiality framework, and the current requirements under the QPP.

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### Updating existing processes to apply the best practice principles

Agencies may already be seeking tender responses against a number of the elements of the best practice principles as part of current non-price criteria assessments.

Adjustments to existing processes will need to be undertaken to ensure all best practice principles are addressed and weighted.

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## Evaluation

Tenderers must respond against each of the three best practice principles.

Once the tender has closed, the evaluation panel must score responses against each of the best practice principles (along with all other evaluation criteria) as part of the evaluation process in line with the approach detailed in the evaluation plan. This should include consideration of:

- where applicable, the contractor's commitment to offering terms and conditions of employment to its own employees which are at least equivalent to the BPICs and the best endeavours process undertaken and outcome
- strategies proposed by the contractor for evaluating subcontractor offers against the best practice principles.

As noted in the 'Procurement planning' section of this guide, consider whether you should engage independent expertise or seek technical reports in areas like workplace health and safety or industrial relations.

Panels should look for indicators of best practice. **Appendix 2** provides example indicators of best practice that panels may wish to draw on.

## Due diligence

Separate due diligence should be undertaken as part of evaluation. Agencies must check an online database managed by the Executive Officer, Queensland Government Procurement (QGP) Compliance Branch, as to whether a supplier is the subject of penalties or a sanction. Further information is available in the [Guidelines: Ethical Supplier Mandate](#).

Consider also reviewing third party sources to check the regulatory history and workplace health and safety or industrial relations records of contractors or subcontractors.

For example, check litigation outcomes for prosecutions by the Fair Work Ombudsman under the *Fair Work Act 2009* at [www.fairwork.gov.au/about-us/our-role/enforcing-the-legislation/litigation](http://www.fairwork.gov.au/about-us/our-role/enforcing-the-legislation/litigation). Similarly, Workplace Health and Safety Queensland publishes information for prosecutions and enforceable undertakings in Queensland at [www.worksafe.qld.gov.au/laws-and-compliance/prosecutions](http://www.worksafe.qld.gov.au/laws-and-compliance/prosecutions).

Workplace Health and Safety Queensland have facilities to check on WHS performance and engages with clients on WHS issues/best practice (including electrical safety and workers compensation) on significant projects before the tender/contract stage as well as after.

Agencies should also consider checking the Queensland Building and Construction Commission licence register which enables confirmation of licence currency and information about directions to rectify,

disciplinary action take, demerit points, infringement notices issue and whether there has been a disqualification or ban for that licensee.

## Contract formation

**Contracts resulting from tender processes must include provisions requiring the successful tenderer to fulfil the commitments made in the tender, including those related to the best practice principles.**

Therefore, the successful tenderer is responsible for ensuring they meet these obligations.

Contracts must require the contractor to:

- uphold commitments made in relation to each of the three best practice principles, including applicable industrial relations commitments under the contract (e.g. enable audit and compliance activities to occur including requiring subcontractors to provide relevant information through deeds poll or other contractual mechanisms)
- include contract clauses to enable monitoring, reporting and measurement of performance
- include the best practice principles in the subcontract tender documentation, including requiring subcontractors to enter into any applicable deeds poll for audit and compliance activities to occur
- assign weightings based on the strategy approved by the responsible Minister for evaluating subcontractor offers against the best practice principles
- ask subcontractors to demonstrate how they propose to address each of the three best practice principles
- provide subcontractors with examples of best practice for each of the three best practice principles which may vary from project to project
- assess subcontract tenders in line with the approved weightings and record decisions made
- include a provision in any resulting contract with successful subcontractors requiring the subcontractor to fulfil the commitments made in its tender in respect of the best practice principles.

Agencies may wish to refer to **Appendix 5** in developing example clauses to ensure successful tenderers fulfil the commitments made in respect of the best practice principles in the tender. It is a policy requirement of the [Capital Works Management Framework](#) for agencies to use standard contracts developed by DEPW on all government building projects, and DEPW (Contract Services) will ensure the contracts are suitable and available for agencies to use for best practice principles projects.

Agencies should seek legal advice if independent assessors are required as part of monitoring or audit activities.

## Contract award and management

On award of the contract to the successful tenderer, agencies should ensure fulfillment of contracted best practice principles commitments through robust contract management.

For each contract, consider the form in which monitoring takes place by reference to the performance management approach determined in the 'Procurement planning' section of this guide and as agreed with the successful tenderer. For example, monitoring by the contract manager could be a mix of regular reporting regarding contract key performance indicators (e.g. to demonstrate compliance with the best practice principles), audits, site visits, or scheduled meetings.

QGP Compliance Branch conducts proactive audits on best practice principles projects in addition to overseeing agency investigations of complaints. When non-compliance is detected, usual contract management avenues include pursuing contractual (such as liquidated damages) and other remedies

(such as court action) to enforce contractual obligations are required. In addition, this may also include taking any actions under the Ethical Supplier Mandate (if applicable) or Ethical Supplier Threshold.

**As with any contract, all instances of non-compliance with contractual obligations must be documented. Agencies may consider seeking legal advice as necessary prior to activating any provisions related to breach of contract (e.g. breach of best practice principles commitments).**

For more information regarding contract management and the Ethical Supplier Mandate, please refer to the following guidance materials:

- [Contract management framework](#)
- [Ethical Supplier Mandate](#)
- [Guidelines: Ethical Supplier Mandate](#)
- [Guidelines: Ethical Supplier Threshold](#)

## Probity considerations

### Probity overview

The Queensland Government requires procurement to be undertaken with integrity, ensuring probity and accountability for outcomes. Part of this involves ensuring transparency and defensibility of decisions made, and that all parts of the process and application of the principles are appropriately documented.

The effective application of probity and transparency helps protect decision makers and other officials involved in a procurement from claims of unfairness, flawed processes or improper influence. Measures include for example, probity plans, and the engagement of probity auditors.

For more information, please refer to the [Probity and integrity in procurement](#) guide.

### Ensuring probity when applying the best practice principles to procurement

As with all procurement processes, when applying the best practice principles, observe high standards of integrity and probity. This means acting in such a way that there can be no perception of bias, influence or lack of integrity throughout the lifecycle of a procurement – from ensuring transparency of decisions made with respect to the allocation of approved weightings through to ensuring equitable communications and information dissemination amongst tenderers.

Evaluation processes in scoring against the best practice principles are no different to any other tender process. That is, a tenderer who offers a superior response, should be scored accordingly. Tenderers may demonstrate best practice industrial relations in various ways, not limited to offering leading wages. The best practice principles and the BPICs do not require tenderers to have enterprise agreements or enterprise agreements of a certain kind, even if the BPICs are set out in the form of an enterprise agreement.

Agencies should ensure that debriefing processes are proactively offered or made available so that tenderers can receive feedback on their tender. Where a tenderer requests feedback, this may also include that tenderer's response to the best practice principles.

## Compliance

As part of the *Buy Queensland* approach to procurement, the Queensland Government has established the QGP Compliance Branch to monitor and enforce the policy requirements and ensure that supplier

commitments are delivered. For more information about the Compliance Branch, refer to [www.epw.qld.gov.au/about/strategy/buy-qld/compliance-complaints](http://www.epw.qld.gov.au/about/strategy/buy-qld/compliance-complaints).

The *Buy Queensland* approach to procurement includes the Ethical Supplier Mandate which is a mechanism for ensuring the Queensland Government is conducting business with ethical, environmentally and socially responsible suppliers, and for removing unethical behaviour from its supply chain. In relation to agencies and procurement categories covered by the Ethical Supplier Mandate, if, through a complaint or an audit, evidence of supplier non-compliance with contracted best practice principles commitments is found, a referral to the Penalties and Sanctions Committee will be made for consideration of demerit points. An accumulation of 20 demerit points may result in a supplier being barred from tendering for government work for up to 12 months. For more information on demerits, penalties and sanctions, please refer to [www.qld.gov.au/ethicalsupplier](http://www.qld.gov.au/ethicalsupplier).

For complaints about the application of the best practice principles by contractors or subcontractors, contact the Compliance Coordination and Referral Unit on 1300 10 50 30 or [QPPCompliance@hpw.qld.gov.au](mailto:QPPCompliance@hpw.qld.gov.au).

For more information on audit requirements, contact the *Buy Queensland* Audit Team on 1300 10 50 30 or [BuyQldaudit@hpw.qld.gov.au](mailto:BuyQldaudit@hpw.qld.gov.au).

For more information about the Ethical Supplier Mandate and Ethical Supplier Threshold, please contact the Ethical Supply Team on 1300 10 50 30 or [EthicalSupply@hpw.qld.gov.au](mailto:EthicalSupply@hpw.qld.gov.au).

## Advice about applying the best practice principles

For advice on construction tender and contract clauses, contact Contract Services, Building Contract Management, Department of Energy and Public Works: [contractservices@hpw.qld.gov.au](mailto:contractservices@hpw.qld.gov.au).

For advice on transport civil construction projects, contact Procurement, Infrastructure Delivery Services, Department of Transport and Main Roads: [infrastructureproc@tmr.qld.gov.au](mailto:infrastructureproc@tmr.qld.gov.au).

For industrial relations advice, contact the Office of Industrial Relations, Department of Education: (07) 3406 9999.

For workplace health and safety advice, contact Workplace Health and Safety Queensland, Office of Industrial Relations, Department of Education: 1300 362 128.

For advice in relation to apprentices and trainees, contact Apprenticeships Info, Department of Employment, Small Business and Training: 1800 210 210.

For general advice, contact Queensland Government Procurement, Department of Energy and Public Works: [betterprocurement@hpw.qld.gov.au](mailto:betterprocurement@hpw.qld.gov.au).

## Definitions

The following definitions apply for the purpose of this guide:

**Agency (or agencies)** refers to a budget sector agency, government-owned corporation, statutory body or special purpose vehicle as defined in the QPP.

**Best endeavours** involves taking all steps necessary to reach agreement with potential subcontractors about implementing the BPICs including the following actions, at a minimum:

- attending and participating in meetings with relevant parties
- disclosing relevant information, other than confidential or commercially sensitive information, in a timely way between relevant parties

- genuinely considering proposals made by another party, and responding both in a timely way and one that gives reasons for any response given
- not engaging in capricious or unfair conduct that undermines the freedom of any party or the process.

**Category council chair** is the respective chairperson of each of the six agency-led category councils. For further information, please refer to the [Procurement governance](#) webpage.

**Contractor** means the person bound to execute the work under the contract, and for the purpose of this guide includes suppliers, and any person/organisation who has been awarded a contract where they will act in a Principal or Managing Contractor role and/or have been directly engaged by the Project Owner/State of Queensland.

**Goods and services** has the definition included in the QPP to ‘include all property (except for real property) and all types of services including building and construction services, and infrastructure.’

**Industry Reference Groups** provide an opportunity for industry, unions and advocates to share their expertise on procurement policy development, emergent trends, sector-wide procurement matters and opportunities for improvement of government procurement activities. For further information, please refer to the [Procurement governance](#) webpage.

**Local** has the definition included in the QPP.

**Major project**, for the purpose of this guide, means a project that meets the requirements outlined under the ‘When is a project subject to the best practice principles?’ section of this guide, and is therefore subject to the best practice principles. Referenced as ‘best practice principles project’ in this guide.

**Principal contractor** has the meaning as defined in section 293 of the [Work Health and Safety Regulation 2011](#).

**Project** means a temporary endeavour undertaken to create a unique product, service or result.

**Program** means a group of related projects managed in a coordinated way to obtain benefits and control not available from managing them individually. Programs may include elements of related work outside of the scope of the discrete projects in the program.

**Project value** means:

- estimated capital cost of \$100 million or more, or
- the net present value of financial commitments entered into by the State of Queensland for goods and services (as defined in the QPP) in relation to the project where this is estimated to be \$100 million or more.

**Responsible Minister** means the Minister(s), including any shareholding Minister(s), who are accountable for the project.

**Subcontractor** means a person/organisation engaged by the **contractor** to perform any part of the work, or supply goods and services within the scope of the project.

**Weightings** includes sub-weightings as appropriate.

## Appendix 1 – Example subject areas related to each best practice principle

**Table 5:** Example subject areas in relation to each best practice principle<sup>8</sup>

Best practice principle	Example subject areas related to best practice
<b>1. Best practice workplace health and safety (WHS) systems and standards</b>	<p>A demonstrated history of and commitment to compliance with work health and safety laws:</p> <ul style="list-style-type: none"> <li>• details about matters such as adverse findings, penalty infringement notices, warnings, infringements penalties, pursuant to the <i>Work Health and Safety Act 2011</i> and <i>Electrical Safety Act 2002</i>, over the past 10 years</li> <li>• history and registration of Workers' Compensation and policy number</li> <li>• processes and procedures governing workforce consultation on WHS matters</li> <li>• the level of knowledge and experience in the use of digital engineering to reduce work, health and safety risks (where relevant for the project)</li> <li>• work health and safety management plans, specifically focused on managing the risk rather than the consequences of the risk</li> <li>• how the organisation will manage site establishment e.g preparatory works including security, site clearance (including comprehensive WH&amp;S site induction for anyone who performs work on the site) amenities; access and egress and on-site labour movement.</li> </ul>
<b>2. Best practice commitment to apprentices and trainees</b>	<p>A demonstrated history of and commitment to training, including the engagement of apprentices and trainees:</p> <ul style="list-style-type: none"> <li>• compliance with the Queensland Government Building and Construction Training Policy</li> <li>• the number of apprentices and trainees to be employed as part of the project</li> <li>• specific training and development plans that will be provided in relation to the work</li> <li>• supporting the delivery of nationally endorsed building and construction competencies</li> <li>• other practices or programs used to improve opportunities for apprentices and trainees, including training and advancement.</li> </ul>
<b>3. Best practice industrial relations</b>	<p>A demonstrated history of and commitment to positive industrial relations:</p> <ul style="list-style-type: none"> <li>• a plan for the industrial relations management for the project</li> <li>• how an organisation adopts/provides best practice industrial relations for employees, contractors and their employees in the workplace. For example:</li> </ul>

<sup>8</sup> These are examples only and not a definitive nor exhaustive list.

Best practice principle	Example subject areas related to best practice
	<ul style="list-style-type: none"> <li>○ administration – how does the organisational structure for the project affect labour productivity, including the identification of staff, reporting lines</li> <li>○ risk assessment – what are the industrial relations risks that the project might face and how will those risks be managed</li> <li>○ subcontractor management - how the organisation will manage subcontractors and their designated employees including how the selection and mobilisation of subcontractors, trade packages, labour hire and apprentices will be carried out</li> <li>○ conditions of employment - how are terms and conditions of employment established</li> <li>○ recruitment of direct labour - how direct labor will be attracted, recruited and retained depending on the size, scope and location of the project, address issues of skills shortages, interstate and off shore sourcing of labour, training and competency assurance</li> <li>○ performance metrics – how is labour performance measured to ensure project is on track</li> <li>○ employee participation - how employee issues are heard, addressed and resolved in accordance with the relevant industrial instrument or policy.</li> <li>● Declarations in relation to the <i>Fair Work Act 2009</i> (in the last 5 years): <ul style="list-style-type: none"> <li>○ convicted of an offence</li> <li>○ the subject of an enforceable undertaking</li> <li>○ issued an infringement notice.</li> </ul> </li> <li>● Commitment to offering terms and conditions of employment of own employees which are at least equivalent to BPICs if applicable</li> </ul>

## Appendix 2 – Example indicators of best practice

**Table 6:** Example indicators in relation to each best practice principle<sup>9</sup>

Best practice principle	Indicators of best practice
<b>1. Best practice workplace health and safety (WHS) systems and standards</b>	<p>Compliance with work health and safety laws such as:</p> <ul style="list-style-type: none"> <li>• if a company recording matters such as adverse findings, penalty infringement notices, warnings, infringements or penalties, pursuant to the <i>Work Health and Safety Act 2011</i> over the past 10 years, confirm matters have been resolved</li> <li>• confirmation of current accreditation through the Work Health and Safety Accreditation Scheme</li> <li>• a health and safety management plan that may include approach to managing health and safety, health and safety policies, details of site management, outline of how safety systems comply with relevant WHS legislation</li> <li>• workers' compensation insurance policy, policy type and policy number</li> <li>• compliance with <i>Electrical Safety Act 2002</i> (Qld).</li> </ul> <p>A documented WHS system that incorporates:</p> <ul style="list-style-type: none"> <li>• appropriate level of insurances are in place</li> <li>• determination of workgroups each with a nominated Health and Safety Representative (HSR)</li> <li>• a nomination, election and notification process for HSRs, with mandatory training provided covering role and responsibilities</li> <li>• involvement of HSRs in pre-start meetings, Toolbox Talks and WHS incident responses and investigations</li> <li>• constitution and procedure for WHS Committee including representation from all levels of the organisation (50:50 between Person Conducting a Business or Undertaking (PCBU) and worker representatives), rotation of key roles (chairperson, secretary etc) on a regular basis, and formal documentation of actions, discussions and information for follow-up</li> <li>• formal grievance process for the resolution of WHS matters, including documented process and tools to track WHS issues raised by workforce (e.g. via HSRs and/or WHS Committee) through to resolution.</li> </ul> <p>Policies and procedures that incorporate (where relevant):</p> <ul style="list-style-type: none"> <li>• awareness and utilisation of digital engineering application/s, digital engineering strategy for transitioning from design to construction, and to reduce work, health and safety risks</li> <li>• strategy for encouraging digital engineering use by subcontractors</li> </ul>

<sup>9</sup> These are examples only and not a definitive nor exhaustive list.

Best practice principle	Indicators of best practice
	<ul style="list-style-type: none"> <li>• the level of training the company provides in the use of digital engineering and</li> <li>• projects previously worked on using digital engineering from design to construction.</li> </ul> <p>Other:</p> <ul style="list-style-type: none"> <li>• arrangements for the assessment, monitoring and review of Safe Work Method Statement (SWMS)</li> <li>• arrangements in place for consultation, cooperation and coordination of activities in relation to compliance with the WHS Act</li> <li>• any site specific WHS rules and the arrangements for ensuring that all persons at the workplace are informed of the rules.</li> </ul>
<p><b>2. Best practice commitment to apprentices and trainees</b></p>	<ul style="list-style-type: none"> <li>• Record of compliance with the Queensland Government Building and Construction Training Policy.</li> <li>• Support for the delivery of nationally endorsed building and construction competencies (eg. policies and procedures to support staff in enrolling in and completing training, position descriptions that require workers to hold relevant qualifications).</li> <li>• Evidence of workplace related training provided to employees.</li> <li>• Number of current apprentice and trainee employees.</li> </ul>
<p><b>3. Best practice industrial relations</b></p>	<ul style="list-style-type: none"> <li>• Administration including the identification of staff, reporting lines and responsibilities, with particular emphasis on roles and responsibilities which affect labour productivity. Where the project intends to rely on external support, such as consultants, solicitors or other organisations, the details of those persons and organisations should be included. Where there is a majority use of subcontractors, the organisational structure should nominate who is responsible for subcontractor management.</li> <li>• Risk - the risk assessment should demonstrate an understanding of the industrial relations environment, lessons from previous projects and project-specific issues. For off-site fabrication or modularisation involved in the delivery strategy, the risk assessment should include industrial relations risk associated with procurement and installation. The risk assessment should explicitly identify issues and barriers that affect the tenderer's ability to achieve proposed outcomes of the tender.</li> <li>• Site establishment and management – in addition to preparatory works and site establishment issues the tenderer should consider workforce growth</li> <li>• Subcontractor management - demonstrate the process by which subcontractors are assessed and selected. Each subcontractor should demonstrate how it manages its industrial relations issues including how subcontractor industrial relations issues, including grievances, are to be managed and reported to the contractor.</li> </ul>

Best practice principle	Indicators of best practice
	<ul style="list-style-type: none"><li>• Conditions of employment – such as agreements between the employer and employee, common law contracts, in the form of offer letters, conditions of employment and the like.</li><li>• Performance measures - How is labour productivity and lost time measured (to ensure project remains on track). Who is responsible for collating the performance metrics, and for their review.</li><li>• Employee participation - approach to relationship management with employees, employee representatives and/or unions including the approach and process for communicating and consulting with the workforce; approach to the use and engagement of labour hire and the approach to performance management (e.g. documented disciplinary processes).</li><li>• Information on the application of BPICs if applicable.</li></ul>

## Appendix 3 – Key steps in the application of the best practice principles

### Step 1: When do the best practice principles apply to a project?

1. Is this a project?
  - If yes – proceed to question 2.
  - If no – the best practice principles do not apply. Also consider if this is a program that has been declared? If no, the best practice principles do not apply. If yes, the program, and all projects that comprise the program, will be subject to the best practice principles.
2. Is the project subject to the QPP?
  - If yes – proceed to question 3.
  - If no – the best practice principles do not apply.
3. Is the procurement category BCM, TIS, Med, SS, GGS or other (excluding ICT)?
  - If yes – proceed to question 4.
  - If no – is the project (or program) declared? If no, the best practice principles do not apply. If yes, the project (or program) is subject to the best practice principles.
4. Is the project value \$100 million or more?
  - If yes – the project is subject to the best practice principles.
  - If no – is the project (or program) declared? If no, the best practice principles do not apply. If yes, the project (or program) is subject to best practice principles.

Before moving to Step 2, agencies must include the best practice principles project in the Queensland Government Forward Procurement Pipeline.

### Step 2: How to apply the best practice principles during each stage of the procurement cycle

#### Procurement strategy development

Apply the best practice principles to any contract that meets all of the following three requirements:

##### Requirement 1

Contract is for a contractor or subcontractor to provide 'goods and services' (as defined in the QPP) on-site except for those contractors or subcontractors that provide services exclusively of the following kinds:

- architectural, design, surveying or quantity surveying services relating to construction work
- building, engineering, interior or exterior decoration or landscape advisory services relating to construction work
- soil testing services relating to construction work
- off-site prefabrication of made-to-order components to form part of any building, structure or works, unless that work is performed on an auxiliary or holding site that is separate from the primary construction site or sites
- transportation or supply of goods to be used for building work, directly to building sites (including any resources platform) where that work is being or may be performed.

## Requirement 2

Contract exceeds the minimum value threshold of \$20,000.

Contracts valued below the minimum value threshold will not be subject to the best practice principles.

An alternative minimum value threshold may be approved on a project-by-project basis as part of the Ministerial approval process for the best practice principles and local benefits test weightings.

## Requirement 3

Contract is established as part of taking the project to completion.

The best practice principles do not apply to ongoing contracts established for the purposes of providing ongoing goods or services following the completion of a project (e.g. the best practice principles would apply to the design and construction phase for a building or transport civil construction project but would not apply to ongoing facilities management, operation and maintenance contracts).

### If the best practice principles project is in the BCM procurement category

- Develop BPICs which reflect current economic conditions in consultation with DEPW.
- Seek Executive Government approval of the BPICs prior to application.
- Use Queensland Government Prequalification (PQC) System to engage contractors and subcontractors.

### If the best practice principles project is in the TIS procurement category

- For transport civil construction best practice principles projects only, consult DTMR about use of the Transport BPICs.
- Where applicable, seek Executive Government approval of the Transport BPICs prior to application.
- Use any applicable prequalification system to engage contractors consistent with the principles of the PQC System (e.g. National Prequalification System for Civil (Road and Bridge) Construction Contracts).

### If the best practice principles project is in other procurement categories

- BPICs do not apply (subject to future Executive Government review).
- Use any applicable prequalification system to engage contractors.

## Tender development

- Include the best practice principles (and BPICs where applicable) and other applicable QPP requirements in evaluation criteria. Note where BPICs apply, they must be included as a mandatory evaluation criterion.
- Determine weightings (including seeking relevant Industry Reference Group advice) - best practice principles weighted up to 20%; where both the local benefits test and best practice principles are applied, a total combined weighting of up to 40% may be applied.
- Responsible Minister to approve, amongst others, weightings for the best practice principles and local benefits test, and strategy for the best practice principles weightings to evaluate subcontract offers.
- On Ministerial approval of weightings for the best practice principles and local benefits test, Minister for Energy, Renewables and Hydrogen and Minister for Public Works and Procurement to be advised of approved weightings.
- Include tender requirements and contract conditions to:

- apply any applicable QPP requirement (e.g. best practice principles (including BPICs where applicable))
- authorise the evaluation panel to obtain historical information as part of assessing tender responses
- note application of ESM (where applicable), and enable audit and compliance activities to occur (e.g. through deeds poll)
- incentivise compliance with tender commitments related to the best practice principles (e.g. liquidated damages).
- Determine evaluation methodology, key performance indicators and performance measurement approach.
- Seek delegate approval of tender documents and associated plans.

## **Go to market**

- Release tender and manage enquiries in accordance with approved evaluation and probity framework.

## **Evaluation**

- Evaluate tender responses against determined weightings.

## **Contract formation and award**

- Capture best practice principles commitments, including applicable industrial relations commitments, and other commitments made by the preferred tenderer in the contract.
- Ensure contract contains provisions to enable audit, compliance, monitoring, reporting and measurement of commitments.
- Consider the use of liquidated damages for non-compliance with best practice principles commitments.

## **Contract management**

- Manage the contract to ensure fulfillment of contracted commitments.
- Document instances of non-compliance with contracted commitments and seek legal advice prior to taking action.
- Ensure regular contact with the QGP Compliance Branch, DEPW.

## Appendix 4 – Worked examples for proposing weightings

### In practice – hypothetical examples for determining approved weightings

Below are two hypothetical examples for determining the approved weightings for non-price criteria including the best practice principles and the local benefits test.

#### Example 1 – Metropolitan Brisbane project (including application of BPICs)

Key features of hypothetical project:

- major building construction project, in the BCM procurement category
- value of \$150 million
- based in metropolitan Brisbane
- led by a Queensland Government agency.

As the project is in the BCM procurement category and is valued above \$100 million, the best practice principles will apply to the project by default.

The agency must include this project in the Queensland Government Forward Procurement Pipeline and is required to apply the best practice principles to any contract that meets all of the following three requirements outlined in the 'Applying the best practice principles to contracts' section of this guide.

As part of project and procurement planning, the agency must:

- develop BPICs which reflect current economic conditions in consultation with DEPW
- seek Executive Government approval of the BPICs prior to application
- use the Queensland Government PQC system to engage contractors and subcontractors.

In determining weightings for the best practice principles and local benefits test, advice is sought from the BCM category council and the related Industry Reference Group. In terms of the best practice principles, it is determined that work health and safety, and industrial relations are key areas of focus.

This example has a combined weighting of local benefits and best practice principles of 30 per cent. It is noted that the maximum weighting for local benefits and best practice principles is 40 per cent.

Assumptions:

- local benefits weighted at 10 per cent to focus on use of local suppliers, and to avoid duplication as workplace health and industrial relations elements covered by the application of the best practice principles
- following on from the above, the best practice principles receive a 20 per cent weighting
- sub-criteria for the best practice principles gives a higher recognition to work health and safety, and industrial relations, as they are key considerations for this hypothetical project
- the weightings assigned for the local benefits test and best practice principles, and strategy to apply best practice principles weightings to selection of subcontracts are approved by the responsible Minister
- **Table 7** below shows the weightings used noting that the percentage weighting for the evaluation criteria was non-price criteria 70 per cent; price 30 per cent<sup>10</sup>. Alternatively, a points process could be used for weighting the evaluation criteria.

<sup>10</sup> Note that for a two-stage process where non-price criteria are evaluated separately, non-price criteria may total to 100%.

**Table 7:** Example 1 - Non-price evaluation criteria weightings and sub-criteria weightings

Non-price evaluation criteria	Example weighting	Example sub-criteria and focus areas for response	Example sub-criteria weighting
<b>Best practice principles</b>	20%	<b>Workplace Health and Safety</b> Provide a detailed Work Health and Safety Management Plan outlining your approach to managing health and safety throughout all phases of this project.	25%
		<b>Workplace Health and Safety</b> Detail if your company has been subject to any adverse findings or penalties pursuant to the <i>Work Health and Safety Act 2011</i> .	15%
		<b>Commitment to apprentices and trainees</b> Detail the number of current employees (apprentices & trainees) anticipated to be working on this contract. For any new employees include, proposed start dates, anticipated length of employment, how they will be engaged.	20%
		<b>Industrial Relations</b> Provide an outline of your current Industrial Relations environment and how this would be impacted by this project, including lessons from previous projects. Please provide an outline of the conditions of employment for the employees associated with this contract (examples of agreements between employers and employees can be found here <a href="https://www.fwc.gov.au/awards-and-agreements">https://www.fwc.gov.au/awards-and-agreements</a> ).	10%
		<b>Industrial Relations</b> <ul style="list-style-type: none"> <li>• Provide a commitment to implementing conditions for contractor's own employees which are at least equivalent to the BPICs.</li> <li>• Provide a plan on how you would undertake a best endeavours process to engage subcontractors who will commit to providing terms and conditions of employment for their employees who will perform work on the project, which will be at least equivalent to the BPICs.</li> <li>• Provide evidence of undertaking the best endeavours process as part of your tender response.</li> </ul>	30%
<b>Local benefits</b>	10%	Provide evidence of your company's commitment to and relevant experience in local industry participation strategies.	40%

Non-price evaluation criteria	Example weighting	Example sub-criteria and focus areas for response	Example sub-criteria weighting
		<p>Provide a completed <i>Statement of Intent</i>* with your submission outlining your likely strategies as Managing Contractor to maximise the use of local businesses, create local employment opportunities and form local alliances in an effort to encourage more effective and adaptive approaches to maximising local benefits.</p> <p>*For further information on the <i>Statement of Intent</i>, please refer to the <a href="#">guidelines and templates</a> published by the Department of State Development, Infrastructure, Local Government and Planning.</p>	30%
		<p>Provide a preliminary trade package analysis on likely opportunities for the businesses in the region.</p>	30%
<b>Experience and capability</b>	25%	<p>Outline the key team members and their experience in the delivery of similar projects. Include a 1-page curriculum vitae for each person. Please also include details of the Principal Consultancy team and provide details as outlined above.</p>	20%
		<p>Provide an outline of projects of a similar value and complexity completed by your company in the last 10 years including a brief outline of each project, its location, length of engagement, staff responsible for the project and referees.</p>	60%
		<p>Detail any significant challenges and how they were managed in the projects outlined above. Also outline any value additions made by your company.</p>	20%
<b>Methodology</b>	15%	<p>Provide a Master Program and commentary which incorporates strategies to manage program risks and achieve completion within budget and by the target date.</p>	60%
		<p>Provide a Project Management Plan that includes:</p> <ul style="list-style-type: none"> <li>• A preliminary risk management plan addressing all stages of work</li> <li>• A preliminary design management plan detailing the process for the management of the design including building services, trade package documentation bundling and value management process</li> <li>• A preliminary traffic management plan that will ensure the minimisation of disruption to local road networks</li> <li>• A preliminary building handover plan detailing all deliverables required for practical completion and detailing the plan for managing defects.</li> </ul>	40%

## Example 2 – Regional Queensland project (including application of BPICs)

Key features of hypothetical project:

- major building construction project, in the BCM procurement category
- value of \$80 million
- based in regional Queensland
- led by Queensland Government agency.

As the project is valued at less than \$100 million, the best practice principles do not apply by default. However, the project is declared as being subject to the best practice principles through a declaration process.

The agency must include this project in the Queensland Government Forward Procurement Pipeline and is required to apply the best practice principles to any contract that meets all of the following three requirements outlined in the 'Applying the best practice principles to contracts' section of this guide.

As part of project and procurement planning, the agency must:

- develop BPICs which reflect current economic conditions in consultation with DEPW
- seek Executive Government approval of the BPICs prior to application
- use the Queensland Government PQC system to engage contractors and subcontractors.

In determining weightings for the best practice principles and local benefits test, advice is sought from the BCM category council and the related Industry Reference Group. In terms of the best practice principles, a commitment to apprentices and trainees has been identified as an area of focus to help support the regional economy for this project.

This example has a combined, maximum weighting of local benefits and best practice principles of 40 per cent.

Assumptions:

- local benefits are weighted at 20 per cent given the government's objective to support the use of local suppliers in this regional area. To avoid duplication with the best practice principles the application of the local benefits test does not include apprenticeship and traineeship elements
- following on from the above, the best practice principles receive a 20 per cent weighting to ensure that these are given adequate consideration in the tender process
- sub-criteria for the best practice principles gives a higher recognition to the commitment to apprentices and trainees given it was identified as a key consideration for this hypothetical project
- the weightings assigned for the local benefits test and best practice principles, and strategy to apply best practice principles weightings to subcontracts are approved by the responsible Minister
- the overall percentage weighting for the criteria, like Example 1, was non-price criteria 70 per cent; price 30 per cent<sup>11</sup>
- **Table 8** below shows the weightings used and is a simplified version of **Table 7** provided for Example 1. Like Example 1, non-price criteria also included experience and capability along with methodology.

<sup>11</sup> Note that for a two-stage process where non-price criteria is evaluated separately, non-price criteria may total to 100%.

**Table 8:** Example 2 - Non-price evaluation criteria weightings and sub-criteria weightings

Non-price evaluation criteria	Example weighting	Example sub-criteria and focus areas for response	Example sub-criteria weighting
<b>Best practice principles</b>	20%	<i>Workplace Health and Safety</i>	30%
		<i>Commitment to apprentices and trainees</i>	40%
		<i>Industrial Relations (including commitment to BPICs)</i>	30%
<b>Local Benefits</b>	20%	<i>Various sub criteria for each non-price evaluation criterion can be used as relevant (refer to Example 1, above)</i>	
<b>Experience and capability</b>	20%		
<b>Methodology</b>	10%		

## Appendix 5 – Example clauses

### Example clauses

An example clause incorporating best practice principles commitments into the contract may be:

*The contractor:*

- (a) acknowledges that the State values a commitment to the best practice principles*
- (b) undertakes to fulfil the commitments made in its offer/tender in respect of the best practice principles*
- (c) undertakes to require and actively ensure compliance with the commitments made in its offer in respect of the best practice principles by any subcontractor.*

An example clause about sanctions could include:

*Without limiting any of the Principal's rights under this contract or at law, the contractor acknowledges that where it, or a subcontractor, fails to comply with the commitments in respect of the best practice principles, a sanction may be imposed on it by the QGP Compliance branch (etc). The sanctions that can be imposed include, but are not limited to, one or more of the following:*

- (a) a formal warning*
- (b) referral of a complaint to the relevant industry organisation for assessment against its own professional code of conduct and appropriate action*
- (c) reporting the breach to an appropriate statutory body*
- (d) partial exclusion from tendering opportunities that is a reduction in the number and/or nature of tendering opportunities*
- (e) preclusion from tendering for any work for a specified period.*

An example clause about BPICs in a tender may be:

*The Queensland Government's Best Practice Principles set an expectation that projects will implement best practice industrial relations to ensure a skilled workforce is attracted and retained for the life of a project's delivery.*

*The Best Practice Industry Conditions are a set of terms and conditions of employment that might be expected to best achieve these aims by facilitating a detailed focus on all aspects of the employment relationship and achieving the goals of the project in a cooperative and productive way. This includes facilitating the adoption of practices to support the implementation of the highest possible levels of health and safety practices, procedures and training.*

*The Tenderer is required to demonstrate in its Tender:*

- (i) how it will provide terms and conditions of employment, including specific pay rates, for its personnel who will perform work under the Contract, which are at least equivalent to the Best Practice Industry Conditions; and*
- (ii) the Best Endeavours Process by which the Tenderer will use its best endeavours to engage subcontractors who provide terms and conditions of employment, including specific pay rates, for their personnel who perform work under the Contract, which are at least equivalent to the Best Practice Industry Conditions.*

*Although the Best Practice Industry Conditions are set out in the form of an agreement, it is not mandatory that Tenderers enter into an agreement, or require subcontractors to enter into an agreement, or an agreement in that form, in order to demonstrate that terms and conditions are at least equivalent to the Best Practice Industry Conditions.*

*An agreement with the named employee organisations is not a mandatory requirement. Tenderers are able to demonstrate how they will provide terms and conditions of employment which are at least equivalent to the substantive obligations, entitlements, conditions and amounts contained in the Best Practice Industry Conditions in any manner the Tenderer chooses to nominate.*

*Where a particular supplier of training, income protection insurance or superannuation is referred to in the Best Practice Industry Conditions, this entitlement or obligation relates to that supplier or any suitable equivalent which the Tenderer may choose to nominate.*

*Nothing in the Best Practice Industry Conditions requires a Tenderer to make any commitment that would breach any laws.*