

Best practice principles: Quality, safe workplaces

Office of Industrial Relations
Office of the Chief Advisor – Procurement



Best practice principles: Quality, safe workplaces

v1.0 August 2018

The State of Queensland (Department of Education (Office of Industrial Relations) and the Department of Housing and Public Works) 2018.



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Disclaimer

This document is intended as a guide only for the internal use and benefit of government agencies. It may not be relied on by any other party. It should be read in conjunction with the Queensland Procurement Policy, your agency's procurement policies and procedures, and any other relevant documents.

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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 for people engaged on major state government projects, through the highest possible standards of workplace health and safety, engaging appropriate numbers of trainees and apprentices, and best practice industrial relations.

Ensuring quality, safe workplaces supports delivery of projects on time and on budget.

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

The best practice principles

The best practice principles with respect to quality, safe workplaces 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.
4. History of compliance with procurement, tendering and other government policy.

Scope

All government agencies¹ covered by the Queensland Procurement Policy (QPP) must apply the best practice principles to major projects of \$100 million or more.

Further, the Minister for Housing and Public Works, Minister for Digital Technology and Minister for Sport with the relevant Minister responsible for the major project, and the Premier and Minister for Trade, can declare specific projects under \$100 million as subject to, and having to apply, the best practice principles or can declare projects as exempt.

The best practice principles are not applicable to information and communication technology (ICT) projects, unless the project is declared by the Minister for Housing and Public Works, Minister for Digital Technology and Minister for Sport in consultation with the responsible Minister, and the Premier and Minister for Trade.

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

Agencies will apply the best practice principles when appointing contractors. Contractors will undertake to apply the best practice principles to subcontractors and suppliers performing work under the contract, in line with formal agency directions.

¹ Departments, statutory bodies, government owned corporations and special purpose vehicles – refer 'Definitions' section.

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 will also include explicit contractual provisions which require the application of the best practice principles.

A flowchart summarising the main steps in the application of the best practice principles is at **Appendix 1**.

Remember, application of the best practice principles is on a 'project' basis – not based on individual contract value

Calculation of the \$100 million threshold is based on the total value of contracts making up the project, and therefore is calculated based on the sum of all contracts issued under the project.

Relationship to the local benefits test

The QPP allows for a weighting of up to 30 per cent to be applied for the local benefits test. Up to 20 per cent can be applied for the best practice principles.

The local benefits test addresses:

- local jobs – quality and secure
 - where people live and work
 - permanency of employment
 - certainty of hours
 - fair wages and conditions
 - superannuation and workers compensation
 - genuine respect for the rights of workers to collectively bargain
- supply chain – use of local contractors, manufacturers and supply chain (local content) for the supply of goods and services
- use of local apprentices and trainees
- other benefits specifically identified (e.g. employment of Aboriginal people and Torres Strait Islander people).

A total combined weighting of up to 40 per cent can be applied taking into account the local benefits test, and the best practice principles (see page 9 for examples).

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 the [Local benefits test guide](#) for more help with applying the test and to view worked examples.

Relationship between the best practice principles and other legislation

The guide should not be used as a substitute for obtaining appropriate legal advice.

It is recommended that officers involved in applying the best practice principles seek legal advice specific to their procurement processes to ensure compliance with other legislation and other instruments such as:

- relevant state government legislation, including but not limited to the *Work Health and Safety Act 2011*, *Workers' Compensation and Rehabilitation Act 2003*, *Building Act 1975*, *Planning Act 2016*, *Electrical Safety Act 2002*
- the *Fair Work Act 2009* (Cth)
- the *Building Construction Industry (Improving Productivity) Act 2016* (Cth) and
- the *Code for the Tendering and Performance of Building Work 2016* (Building Code 2016) (Cth)
- and any other Australian Government requirements for Australian Government funded projects.

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

The best practice principles are not to be implemented in a way that breaches the *Fair Work Act 2009* (Cth) or the *Building Construction Industry (Improving Productivity) Act 2016* (Cth).

Applying the best practice principles

Determine if the project is subject to the best practice principles

1. Does the QPP apply to the project?

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

2. Industry Reference Groups consider forward procurement pipelines

An Industry Reference Group may in reviewing forward procurement pipelines for a category, consider government objectives, how they align to upcoming procurements and provide its views on possible declared projects. Advice provided by this group should then be included as part of the later departmental brief provided to the Minister when they are later approving the weighting for the best practice principles.

3. 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 for the proposal where this is estimated to be \$100 million or more.

4. Is the project an ICT project, or a standing offer arrangement?

ICT projects may be declared to be in scope for the application of the best practice principles.

Standing offer arrangements for goods and services are not within scope of the best practice principles.

5. Is the project a declared project?

As noted above, the Minister for Housing and Public Works, Minister for Digital Technology and Minister for Sport, the responsible Minister, and the Premier and Minister for Trade, can declare a project valued at less than \$100 million as subject to, and having to apply, the best practice principles.

The application of the best practice principles applies to the project itself and does not apply to ongoing contracts established following the completion of a project (e.g. the principles would apply to the design and construction phase for a building and would not apply to ongoing facilities management and maintenance contracts for the building).

Application of the best practice principles to contractors and subcontractors

The best practice principles are to be applied to all procurement contracts associated with a project in accordance with weightings approved by the responsible Minister.

The agency is responsible for applying the best practice principles when appointing the contractor, and for ensuring the contractor undertakes to apply the best practice principles when appointing subcontractors.

The agency will consider strategies proposed by the contractor for ensuring the best practice principles are applied to subcontractors during the evaluation of contracts under the project.

The Minister may approve that approval processes and weightings vary for subcontracts depending on the nature of procurement model (e.g. managing contractor compared to design and construct), and the particular trade package or good or service procured. This could include, for example:

- seeking an initial approval for weightings for the contractor, and seeking a subsequent approval for subcontractors, or
- seeking one approval that includes weightings for the contractor and approval for weighting ranges to be applied to subcontracts (may be broken down into trade package or good or services), or
- seeking one approval that includes weightings for the contractor and approval for the contractor, in applying the principles to subcontracts, to choose the most appropriate weightings as applicable to the trade package or good or service procured through subcontracts.

The above options will provide the necessary flexibility where contracts are progressively tendered during the life of a project.

This approach 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.

Procurement planning

Approval must be sought from the Minister with responsibility for the major project for the weighting to be assigned to the best practice principles and local benefits, prior to a tender's release. A departmental brief including advice from the Industry Reference Group regarding the potential weightings of best practice principles and the local benefits test should be provided to the Minister for approval.

Agencies develop a formal evaluation plan and establish an evaluation panel which consists of agency officers. The evaluation plan is approved by the agency delegate prior to the tender's release. Tender specifications and conditions are developed concurrently. This plan should define the evaluation criteria and approved weightings inclusive of those assigned to the best practice principles.

The approved weighting for the best practice principles and the local benefits test should be in the tender evaluation plan and approved by the designated delegate prior to a tender's release. Agencies are encouraged to disclose weightings related to the best practice principles and the local benefits test in their tender documentation.

Evaluation panels must carefully consider how the best practice principles will be assessed and applied, including the relationship to the local benefits test.

Updating existing processes to reflect 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.

Considerations when proposing weightings for the Minister's approval

An approved weighting of up to 20 per cent may be applied under the best practice principles.

The specific approved weighting applied will differ from project to project. The approved weighting must be appropriate relative to other criteria and what will deliver a value for money outcome. The overall allocation of approved weightings for a tender should also consider other government targets and commitments and policy requirements, along with a project's objective and location.

Remember that where a procurement process includes both the best practice principles and local benefits test a maximum combined weighting of up to 40 per cent may be applied.

The approved weighting 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 workplace health and safety and/or industrial relations performance, a higher emphasis on those principles would be expected.

Examples of some considerations in determining an approved weighting include²:

- location
- market capability and capacity
- relative risks associated with the project concerning workplace health and safety, and industrial relations
- project stage
- impact on time and budget
- value for money, including government targets and commitments.

The relevant Industry Reference Group may also provide input for the Minister's consideration when approving weightings.

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 pursue the best practice principles.

² These are examples only and not a definitive nor exhaustive list.

As with any major or complex procurement where subject matter expertise may be engaged during planning and evaluation, consider whether you should engage independent expertise in areas like workplace health and safety or industrial relations.

Where non-Queensland Government funding is involved

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

In practice – hypothetical examples for determining approved weightings

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

Example 1 – Metropolitan Brisbane

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.

As a result of the consideration of the relevant category council and the related Industry Reference Group, the example is based on a fictional major construction project where there is a high work health and safety risk.

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 approved by the Minister.
- 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 percentage weighting for the criteria was non-price criteria 70 per cent; price 30 per cent³. Alternatively, a points process could be used for weighting the evaluation criteria.

Non-price evaluation criteria	Example weighting	Example sub criteria and focus areas for response	Example sub criteria weighting
Best Practice Principles: Quality, safe workplaces	20%	<i>Workplace Health and Safety</i> Provide a detailed Work Health and Safety Management Plan outlining your approach to managing health and safety throughout all phases of this project.	25%
		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%
		<i>Commitment to apprentices and trainees</i> Detail the number of current employees (apprentices & trainees) anticipated to be working on this contract. For any new	20%

³ Note that for a two-stage process where non-price criteria are evaluated separately, non-price criteria may total to 100%.

		employees include, proposed start dates, anticipated length of employment, how they will be engaged.	30%
		<p><i>Industrial Relations</i></p> <p>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 https://www.fwc.gov.au/awards-and-agreements).</p>	
		<p><i>History of compliance with procurement, tendering and other government policy</i></p> <p>Please outline any instances of non-compliance with government procurement, tendering and/or government policy.</p>	
Local Benefits	10%	Provide evidence of your company's commitment to and relevant experience in local industry participation strategies.	40%
		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.	30%
		Provide a preliminary trade package analysis on likely opportunities for the businesses in the region.	30%
Experience and capability	25%	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.	20%
		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.	60%
		Detail any significant challenges and how they were managed in the projects outlined above. Also outline any value additions made by your company.	20%
Methodology	15%	Provide a Master Program and commentary which incorporates strategies to manage program risks and achieve completion within budget and by the target date.	60%
		<p>Provide a Project Management Plan that includes:</p> <ul style="list-style-type: none"> • A preliminary risk management plan addressing all stages of work • 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 • A preliminary traffic management plan that will ensure the minimisation of disruption to local road networks • A preliminary building handover plan detailing all deliverables required for practical completion and detailing the plan for managing defects. 	40%

Example 2 – Regional Queensland

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

Like Example 1, this example is also based on a fictional major construction project. Following consideration by the relevant category council and Industry Reference Group, a commitment to apprentices and trainees, along with a history of compliance with procurement, tendering and other government policy (like the Queensland Government Building and Construction Training Policy), have been identified as areas of focus to help support the regional economy for this project under the best practice principles.

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 (approved by the Minister) 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, along with a history of compliance with procurement, tendering and other government policy, given they were identified as key considerations for this hypothetical project
- the overall percentage weighting for the criteria, like Example 1, was non-price criteria 70 per cent; price 30 per cent⁴
- the below table shows the weightings used and is a simplified version of the table provided above for Example 1. Like Example 1, non-price criteria also included experience and capability along with methodology.

Non-price evaluation criteria	Example weighting	Example sub criteria and focus areas for response	Example sub criteria weighting
Best Practice Principles: Quality, safe workplaces	20%	<i>Workplace Health and Safety</i>	20%
		<i>Commitment to apprentices and trainees</i>	30%
		<i>Industrial Relations</i>	20%
		<i>History of compliance with procurement, tendering and other government policy</i>	30%
Local Benefits	20%	<i>Various sub criteria for each non-price evaluation criterion can be used as relevant (refer to Example 1, above)</i>	
Experience and capability	20%		
Methodology	10%		

⁴ Note that for a two-stage process where non-price criteria is evaluated separately, non-price criteria may total to 100%.

Going to market

Agencies must incorporate the four best practice principles into their tender documentation and request contractor responses against each principle.

To assist contractors in responding government agencies should also provide examples of best practice against each of best practice principles (relative to the project concerned) in their tender documents. Agencies may wish to draw from **Table 1** below in formulating evaluation questions and providing examples.

Table 1: Example subject areas related to each principle could include⁵:

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

⁵ 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"> ○ administration – how does the organisational structure for the project affect labour productivity, including the identification of staff, reporting lines ○ risk assessment – what are the industrial relations risks that the project might face and how will those risks be managed ○ subcontractor management - how the organisation will manage subcontractors and their designated employees including how the selection and mobilisation of contractors, trade packages, labour hire and apprentices ○ conditions of employment - how are terms and conditions of employment established ○ 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 ○ performance metrics – how is labour performance measured to ensure project is on track ○ employee participation - how are employee issues are heard, addressed and resolved in accordance with the relevant industrial instrument or policy. <ul style="list-style-type: none"> ● Declarations in relation to the <i>Fair Work Act 2009</i> (in the last 5 years): <ul style="list-style-type: none"> ○ convicted of an offence ○ the subject of an enforceable undertaking ○ issued an infringement notice.
<p>4. History of compliance with procurement, tendering and other government policy</p>	<p>A demonstrated history of and compliance with government policies and undertakings given to government for past projects:</p> <ul style="list-style-type: none"> ● Past performance: <ul style="list-style-type: none"> ○ evidence of action about how the organisation has advanced government policy objectives, and complied with relevant government policy, codes etc ○ record of compliance with undertakings made during tender processes ○ declaration in respect to any contracts with the Queensland Government terminated or suspended in the past two years. Reasons for termination or suspension and remedial action taken.

In terms of workplace health and safety, industrial relations or compliance with codes, policies etc, agencies may ask tenderers to provide written undertakings to identify historical performance.

Evaluating offers

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

Once received, the agency evaluation panel must score responses against each of the best practice principles (along with all other criteria) as part of the evaluation process. As noted in the Planning section above, 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. **Table 2** below provides example indicators of best practice that panels may wish to draw on.

Table 2: Examples in relation to each principle include⁶:

Best practice principle	Indicators of best practice
<p>1. Best practice workplace health and safety (WHS) systems and standards</p>	<p>Compliance with work health and safety laws such as:</p> <ul style="list-style-type: none"> • if a company recording matters such as adverse findings, penalty infringement notices, warnings, infringements or penalties, pursuant to the the <i>Work Health and Safety Act 2011</i> over the past 10 years, confirm matters have been resolved • confirmation of current accreditation through the Work Health and Safety Accreditation Scheme • 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 suppliers safety systems complies with relevant WHS legislation • workers’ compensation insurance policy, policy type and policy number • compliance with <i>Electrical Safety Act 2002</i> (Qld). <p>A documented WHS system that incorporates:</p> <ul style="list-style-type: none"> • appropriate level of insurances are in place • determination of workgroups each with a nominated Health and Safety Representative (HSR) • a nomination, election and notification process for HSRs, with mandatory training provided covering role and responsibilities • involvement of HSRs in pre-start meetings, Toolbox Talks and WHS incident responses and investigations • 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 • 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. <p>Policies and procedures that incorporate (where relevant):</p> <ul style="list-style-type: none"> • 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 • strategy for encouraging digital engineering use by subcontractors • the level of training the company provides in the use of digital engineering and • projects previously worked on using digital engineering from design to construction. <p>Other:</p> <ul style="list-style-type: none"> • arrangements for the assessment, monitoring and review of Safe Work Method Statement (SWMS) • arrangements in place for consultation, cooperation and coordination of activities in relation to compliance with the WHS Act • any site specific WHS rules and the arrangements for ensuring that all persons at the workplace are informed of the rules.

⁶ These are examples only and not a definitive nor exhaustive list.

Best practice principle	Indicators of best practice
2. Best practice commitment to apprentices and trainees	<ul style="list-style-type: none"> • Record of compliance with the Queensland Government Building and Construction Training Policy. • 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). • Evidence of workplace related training provided to employees. • Number of current apprentice and trainee employees.
3. Best practice industrial relations	<ul style="list-style-type: none"> • 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. • 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. • Site establishment and management – in addition to preparatory works and site establishment issues the tenderer should consider workforce growth • 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. • 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. • Performance measures - How is labour productivity and lost time measures (to ensure project remains on track). Who is responsible for collating the performance metrics, and for their review. • 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).
4. History of compliance with procurement, tendering and other government policy	<p>Record of compliance with the Queensland Government Building and Construction Training Policy.</p> <p>Record of compliance with undertakings given during tender processes, including relating to the Queensland Charter for Local Content, the Local Benefits Test, etcetera.</p>

Fair and proper conduct

As with all procurement processes, when applying the best practice principles, observe standards of fairness and proper conduct.

Evaluation processes in scoring against criteria related to 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.

Agencies should ensure that debriefing processes are 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.

There may be different strategies to achieve best practice industrial relations, not limited to offering leading wages and conditions, however favouritism or coercion is unlawful.

Due diligence

Separate due diligence should be undertaken as part of evaluation. Consider 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 <https://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 <https://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.

Contract formation

Contracts resulting from tender processes must include provisions requiring the successful tenderer to fulfil the commitments made in respect of the best practice principles in the tender.

Therefore, a contractor is responsible for ensuring they meet these obligations.

Contracts must require the contractor to:

- include the best practice principles in the subcontract construction tender documentation
- ask tenderers to demonstrate how they propose to address each of the four best practice principles
- provide tenderers with guidance examples on best practice, may vary from project to project
- apply weightings when assessing tenders for works on this project, which have been approved by the Minister responsible for the project, relating to the best practice principles
- include a provision in any resulting contract with successful contractors requiring the contractor to fulfil the commitments made in its tender in respect of the best practice principles.

Example clauses

An example clause 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:

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. 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.*

Contract management

Fulfillment of the best practice principles should form part of the normal contract management processes. For each contract, consider the form in which monitoring takes place. Monitoring by the contract manager could be a mix of regular reporting regarding contract KPIs, site visits, or scheduled meetings.

Where a complaint is received, or monitoring detects non-compliance, usual contract management avenues include pursuing contractual and other remedies (such as court action) to enforce contractual obligations are required.

As with any contract, legal advice should be sought prior to activating any provisions related to breach of contract.

The best practice principles state that a past failure to comply with tender commitments can be taken into account for assessing suitability for any future tenders. Appropriate records should be kept to support the application of the principles.

Probity considerations

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. 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.

Probity planning activities should address procedures which ensure transparency of decisions made with respect to the allocation of approved weightings.

For more information, please refer to the guide *Probity and integrity in procurement* at www.hpw.qld.gov.au.

Compliance

The Office of the Chief Advisor – Procurement, maintains a Compliance Coordination and Referral Unit.

This is an independent avenue for contractors, the public or employee representative bodies to make complaints where contractors do not fulfil commitments made as part of tendering and contracting processes.

The unit may refer complaints to agencies for resolution and then monitor outcomes.

For complaints about the application of the best practice principles by contractors or subcontractors, contact the Office of the Chief Advisor – Procurement on (07) 3215 3508 or QPPCompliance@hpw.qld.gov.au.

Definitions

The following definitions apply for the purpose of this guide:

Contractor means the person bound to execute the work under the contract, and for the purpose of this guide includes suppliers.

Local has the definition included in the QPP.

Project value means:

- estimated capital cost of \$100 million or more, or
- the net present value of financial commitments entered into by the state for the proposal where this is estimated to be \$100 million or more.

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

Advice about applying the best practice principles

For advice on construction tender and contract clauses, contact: contractservices@hpw.qld.gov.au.

For advice on civil infrastructure and contract clauses contact: infrastructureproc@tmr.qld.gov.au.

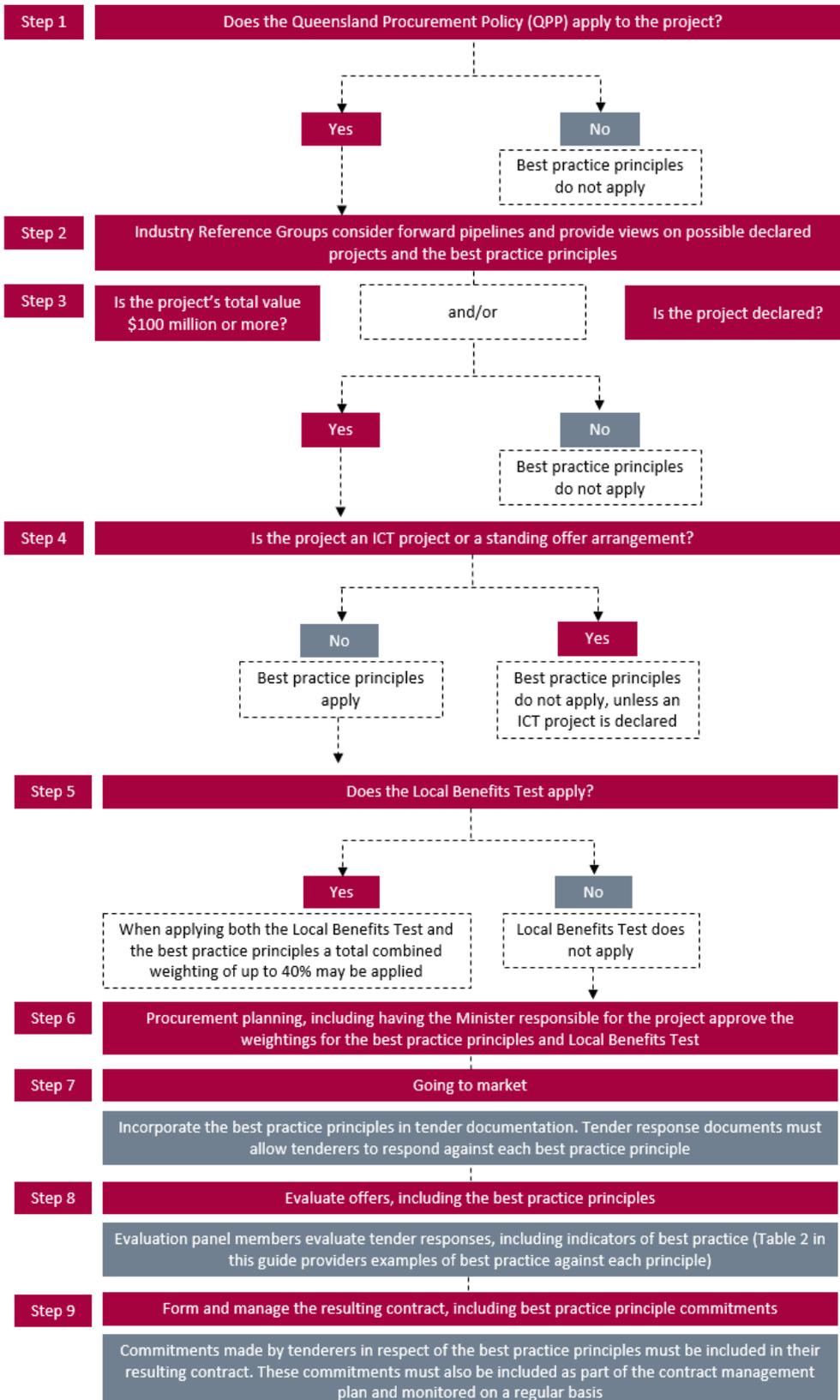
For industrial relations advice, contact: (07) 3406 9999.

For workplace health and safety advice, contact: constructionstrategy@oir.qld.gov.au.

For advice in relation to apprentices and trainees, contact the Queensland Apprenticeship and Traineeship Office, Department of Employment, Small Business and Training on 1800 210 210.

For general advice, contact the Office of the Chief Advisor – Procurement on (07) 3215 3593, or betterprocurement@hpw.qld.gov.au.

Appendix 1 – Key steps in the application of the best practice principles



Appendix 2 – Summary of key considerations

Planning

- Where non-Queensland Government funding is involved, check funding agreement conditions.
- 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 EOIs and tenders in Part 5 of the Building Code.
- As with any major or complex procurement where subject matter expertise may be engaged during planning and evaluation, consider whether you should engage independent expertise in areas like work health and safety or industrial relations.

Go to market

- Assess past performance. Check past compliance with undertakings made in tender documents, or contract commitments.
- Don't refuse to engage a contractor, discriminate against a contractor in the terms or conditions on which a contractor is engaged (i.e. by including contract terms for one contractor that you would not include for any contractor), or refuse to make use of the services of a contractor, because the contractor has particular industrial relations arrangements in place.
- Don't pressure a person in relation to the exercise of a workplace right.

Contract formation

- Include a provision requiring the successful tenderer to fulfil the commitments made in respect of the best practice principles in the tender. Seek legal advice about the drafting of the provision, if necessary.
- Include provisions requiring the contractor to apply the best practice principles in respect of subcontractors, as described in this section.
- Establish formal monitoring or auditing requirements.
- Identify if assurance through formal monitoring or audit activities is required. Seek advice from the Office of Industrial Relations if you determine independent assessors are required.

Contract management

- Regularly monitor contracts for compliance.
- Seek legal advice as part of normal processes where non-compliance is identified.
- Record non-compliance with obligations.
- Don't proceed to terminate a contract, cause loss, injury or harm to a contractor in relation to the terms of a contract, alter the position of a contractor to the contractor's prejudice, or refuse to make use of the services of a contractor, because the contractor or sub-contractor has particular industrial relations arrangements in place, without seeking legal and industrial relations advice first.