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1 Scope

These guidelines are aligned to AS/NZS ISO 14001:2016 Environmental management systems–Requirements with guidance for use. They are specific to construction procurement and apply to all project and contract activities for NSW Government construction projects, including those involving private sector investment and financing.

Project and contract activities may include:

- detailing project requirements
- project management
- option and concept development
- design and construct
- asset maintenance and operation
- decommissioning.


- Quality management guidelines
- Work Health & Safety management guidelines
- NSW Government Resource Efficiency Policy (GREP).

2 Purpose

Contractors should use these guidelines when planning and implementing their Environmental Management System (EMS), and when preparing site-specific Environmental Management Plans (EMPs). The purpose is to:

- specify the minimum EMS standards for all government construction projects
- provide a consistent approach to plan and implement environmental management systems
- improve environmental outcomes on projects
- demonstrate compliance with applicable environmental laws and Standards.
3 Application

3.1 Environmental Management Plans

All service providers undertaking construction related works are to prepare and implement an appropriate site-specific Environmental Management Plan, in accordance with the Guidelines, for all contracts prior to the commencement of relevant work.

An acceptable Environmental Management Plan is to be submitted to the agency before the relevant work commences and will be reviewed regularly for conformity with requirements of the contract.

Agencies may also require potential contractors to have a certified EMS lower valued, high risk and specialist contracts if the agency deems there is ‘sufficient’ risk to the environment. These may include:

- the work if of high environmental risk
- the work interfaces with other projects of high environmental risk
- the work is otherwise sensitive in terms of the environment.

Appropriate site-specific environmental management plans are required for all construction projects, regardless of project value.

3.2 Environmental Management System

Organisations seeking to undertake major or environmentally sensitive contracts for an agency are to have an independently certified environmental management system that is compliant with AS/NZS ISO 14001: 2016 – Environmental management systems.

Tenders (including applications for pre-qualification as a tenderer for a range of contracts and expressions of interest for pre-registration as a tenderer for a particular contract) will only be accepted from potential service providers with an independently certified Environmental Management System in place.

A major contract is defined as either a contract having a value of $10 million or more; or a contract having a value of under $10 million where the relevant agency determines that one of the following conditions apply:

- the work if of high environmental risk
- the work interfaces with other projects of high environmental risk
- the work is otherwise sensitive in terms of the environment
- project application will apply at a lower threshold.

All contractors bidding for government construction contracts must have an independently certified environmental management system that is compliant with AS/NZS ISO 14001: 2016 – Environmental management systems.

The application thresholds of this guideline may be modified by an Agency subject to a detailed analysis of specific project and/or contract related Environmental risks. The risk assessment must be undertaken using Agency processes that align with NSW Treasury’s Internal Audit and Risk Management Policy for the NSW Public Sector (TPP15-03)

5 Specifying requirements

To ensure prospective contractors are aware of all project-specific requirements, including the extent of monitoring and auditing activities, agencies must include all known environmental management requirements:
• as part of the request for tender and tender documentation
• in special clauses of the contract between the agency, the contractor and related suppliers.

These guidelines and the agency’s specified requirements do not in any way relieve contractors of meeting their legal obligations under environmental laws.

Prospective tenderers are to be informed of any project specific requirements, such as.
• recycling and reuse of materials, and minimising waste
• using resources (including energy, water and material) effectively.

6 Environmental Management System

6.1 Compliance

Where an EMS is required it must comply with the documentation requirements of AS/NZS 14001:2016 Environmental management systems.

• Formal JAS-ANZ certification (or equivalent) of a contractor’s EMS system is required for construction related contracts above $10 million
• The EMS must provide assurance the contractor will comply with applicable environmental law.

The EMS must include:
• processes to ensure compliance with all current NSW and Federal environmental legislation requirements, including duties with respect to design
• provision for ongoing reviews to ensure currency of the system
• external third-party review or audit of compliance, not less than once every three years, to ensure currency and effective implementation of the system.

6.1.1 Principal contractor

Contractors appointed as the principal contractor by an agency for construction related contracts must show how their EMS procedures address the additional responsibilities of a principal contractor, as well as, their normal responsibilities as a contractor, workplace controller and employer.

For projects that meet the definition of schedules activities under Schedule 1 of the Protection of the Environment Operation Act 1997 (POEO Act), principal contractors may be required to obtain an Environmental Protection Licence (EPL) from the Environmental Protection Authority (EPA). In some instances, they may work under the existing EPL held by the Client.

6.2 Evidence of acceptability

The EMS must comply with the documentation requirements of AS/NZS ISO 14001:2016 environmental management systems – Requirements. Where required, the contractor must provide, as evidence of compliance, formal JAS-ANZ certification of a contractor’s EMS system.

Contractors that have been subject to any environmental prosecutions or penalties in the preceding three years will also be required to demonstrate that any area of non-compliance has been effectively remedied. This may be done by auditing, management review or submitting corrective action and system change information.
7 Environmental Management Plan

7.1 Compliance

Contractors must develop and implement a site-specific EMP for each contract (in accordance with its EMS where required). This helps to manage environmental performance and conformity with the environmental conditions of the contract and relevant legislative requirements.

Contract conditions may include approval/consent/licence/permit conditions for the relevant project/contract. The EMP would identify environmental aspects and significant impacts and help ensure the related environmental opportunities are realised and risks are properly managed.

Environmental impact assessment undertakings, consent conditions and pollution control approvals may include those identified in the:

- statement of environmental effects
- review of environmental factors
- development consent conditions under the Environmental Planning and Assessment Act
- authority licence and permit conditions for contract work.

Contractors must ensure they are aware of and address all statutory obligations attached to their activities under a contract.

In identifying environmental risks, opportunities and impacts, a contractor would consider whether any of the contractor's activities (including decisions), products and services relevant to the contract will have any impact on the environment, including air, water or land, or involving waste, emissions, resource uses and any physical attributes such as flora, fauna and heritage (both indigenous and cultural).

Examples of environmental questions to be asked are:

**Table 1: Environmental questions**

<table>
<thead>
<tr>
<th>Element</th>
<th>Question</th>
</tr>
</thead>
</table>
| Air     | • What sort of polluting emissions to the air will result from the contractor’s activities, such as dust, smoke or exhaust fumes?  
• Will noise levels resulting from the activities be above those specified in consent and/or licence conditions or above those recommended by the NSW Office of Environment and Heritage? |
| Water   | • How much water does/will the contractor use with its activities, products and services?  
• Where does or will waste water go?  
• Is anything (including sediment or other pollution) discharged or spilled, or will it discharge or spill into drains or watercourses (rivers, streams, ponds, dams and the like)? |
| Land    | • Do or will any of the contractor’s activities, products and services affect the soil, local wildlife/fauna or plants/flora (including through erosion and with pollution), or heritage items or other physical attributes? |
| Waste   | • What materials, energy and other resources does/will the contractor waste with its activities, products and services?  
• What waste can be reduced?  
• Is recycling an option? |
### 7.2 Evaluation criteria

A potential contractors’ environmental management capability would be assessed during the tender evaluation process. Evaluation criteria may include:

- the status of their EMS
- the nature of the environmental management measures implemented on current and/or recent comparable contracts.
- assessment of a potential contractor’s past EMPs and performance on comparable projects.

<table>
<thead>
<tr>
<th>Element</th>
<th>Question</th>
</tr>
</thead>
<tbody>
<tr>
<td>All</td>
<td>• What opportunities are there to reduce detrimental impacts to the environment such as emissions, water misuse, land degradation, wildlife/fauna or plant/flora loss, and waste?</td>
</tr>
</tbody>
</table>

In asking these questions the contractor under a construction contract would identify and consider, with the related risks and opportunities:

- the environmental impacts of its design and material/product/system selection decisions, during the whole life of the asset to be constructed
- the impacts of the decisions made regarding the manufacture, packaging and transport of products
- reasonably anticipated impact events such as disturbance, damage, spillages, breakdowns and inclement weather changes, which could affect and result from its day-to-day activities in construction and
- the potential for impacts, after the asset has been constructed, of the decisions and other actions during its construction.

After identifying the environmental risks, opportunities and impacts, the contractor must then determine how the contractor is to manage them. For example:

- How will design minimise energy use and allow for and use the natural environment?
- How will materials/products/systems be selected or designed to minimise adverse impacts and/or benefit the environment?
- How will paintbrushes be washed?
- How will soil erosion be controlled if it rains?

Everybody working on the contract will be inducted into the project-specific EMP. All required controls that are communicated to them will be recorded in the risk register.

- what significant environmental risks and opportunities are involved
- what procedures are in place to manage these risks and opportunities
- who is responsible for ensuring that workers follow procedures
- what to do and who to contact if there is an incident/emergency?

Contractors working for a principal contractor or principal with a project-specific EMP need to comply with these requirements when working on site and update any impact of aspects in relation to the contractor’s work activities. All staff are to be inducted into the EMP and EMP requirements for work at the site.

The scope of an EMP will vary, depending on the nature of the environmental impacts and the contract involved.

All EMPs would cover at least the following five elements to suit the contractor’s EMS (as applicable) and AS/NZS ISO 14001.
• Notification of any current or past prosecutions related to environmental performance.

Consideration of EMPs may not be required in a tender process if:
• the relative abilities of the potential contractors are known (via existing contracted works), or
• it is assessed that they will not affect the tender evaluation outcome (such as with low risk contracts).

7.3 Contractor performance

Under applicable contracts, before relevant work commences and from time to time thereafter, agencies will arrange for the contractor’s Environmental Management Plan and its implementation to be reviewed. The reviews will include an on-site evaluation of the extent to which the contractor has correctly implemented and conformed with the Plan generally. The reviews/audits completed of the Plan and its implementation by the contractor may be considered in reviews by agencies.

- See Appendix B - Environmental management plan review checklist

An independent or in-house reviewer may be appointed by the agency to manage a review. The communication with the contractor regarding reviews will be in accordance with the contract, including the notice of an impending Environmental Management Plan review.

The number of reviews and the scope of each review by the agency for each contract will be determined by the agency and will depend on the size and nature of the contract.

All such reviews will be carried out:
• with honesty and fairness
• with full regard to confidentiality
• with reasonable skill and care and
• in a timely manner.

For the purposes of a review, the reviewer will be allowed access to the contractor's environmental management records and be entitled to obtain any information and explanations required from the contractor.

The reviewer will provide a written report to the agency on the contractor's conformity with EMP requirements. Any irregularities/nonconformities found during the review will be noted in the report.

Any constraints that impair the reviewer’s ability to express an unqualified opinion will be noted and an appropriately qualified opinion expressed in the report.

The agency will forward a copy of the report to the contractor. The contractor will correct any nonconformities identified and may comment on the report findings. The agency will properly consider any comment before acting on the report.

8 Documents and records

Agencies will maintain records of the environmental procedures, plans and performance of their contractors. Their repository will include a copy of the contractors EMP, EMS review reports, EMP review and performance reports, comments by contractors on review and performance assessment findings and related registers.
Appendix A - Terms and definitions

The terms used in this document include the following. Where relevant, they are aligned to those defined in AS/NZS ISO 14001:2016 Environmental management systems – Requirements with guidance for use.

The following also apply, and take precedence.

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agency or government agency</td>
<td>A NSW government department, authority, corporation or other entity established by an Act of the NSW Parliament, excluding state owned corporations not represented on the Construction Consultative Committee. The terms ‘government agencies’, ‘agency’ or ‘agencies’ may be used interchangeably. An agency may act for a client as the customer or be the client for a project.</td>
</tr>
<tr>
<td>Authorised assessor</td>
<td>A person certified by a JAS-ANZ personnel certifier, as a Lead or Business Improvement Auditor, or, an employee of an Agency approved by the Agency as having the requisite competencies which may include successful completion of training, similar in duration and content to the management system audit course conducted by TAFE or similar formal attainment. An authorised assessor may also be approved by an agency.</td>
</tr>
<tr>
<td>Audit</td>
<td>An examination of a random or discrete sample of processes to determine if correct procedures are being followed and includes a document review or an examination of activities or an examination of documents and activities, to assess their conformity with requirements.</td>
</tr>
<tr>
<td>Certification</td>
<td>Attestation by certificate that the Environmental Management System meets certain defined requirements for use for a certain scope of activities (usually following an audit by another organisation accredited to provide such certifications, as the certifier).</td>
</tr>
<tr>
<td>Client</td>
<td>The owner of the asset to be procured or project product, and representative of the end users of the asset.</td>
</tr>
<tr>
<td>Construction</td>
<td>Services relating to construction of buildings or works, including: a) pre-erection works b) construction works c) repairs, alterations and restorations.</td>
</tr>
<tr>
<td>Contractor</td>
<td>An organisation that contracts with a Principal to carry out the work under the contract, including construction and related services, to deliver an asset or construction product.</td>
</tr>
<tr>
<td>Customer</td>
<td>An entity calling for tenders and awarding a contract. Each contract involves a customer and a service provider.</td>
</tr>
<tr>
<td>Design</td>
<td>The process (and product) of converting a brief into design details ready for documentation, including concept design and design development, and then documentation or detailing of the technical and other requirements for the project in a written form that details the project product sufficiently for it to be constructed or otherwise provided.</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
</tr>
<tr>
<td>----------------------</td>
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</tr>
<tr>
<td>Environmental opportunity</td>
<td>Potential for beneficial environmental impacts</td>
</tr>
<tr>
<td>Environmental risk</td>
<td>Potential for adverse environmental impacts</td>
</tr>
<tr>
<td>Management</td>
<td>Planning and interactive controlling of human and material resources to achieve time, cost, quality, performance, functional and scope requirements. It involves the anticipation of changes due to changing circumstances and the making of other changes to minimise adverse effects.</td>
</tr>
<tr>
<td>Principal</td>
<td>The Minister for a departmental agency, or the agency where it is a state-owned corporation or authority, which awards and enters a contract as the customer, and for whom the contract work is done under s of a contract (and whose agent invites, receives and processes tenders).</td>
</tr>
<tr>
<td>Procurement</td>
<td>The collection of activities performed by and for an agency to acquire services and products, including assets, beginning with the identification/detailing of service requirements and concluding with the acceptance (and where applicable, disposal) of the services and products.</td>
</tr>
<tr>
<td>Project</td>
<td>An undertaking with a defined beginning and objective by which completion is identified. Project delivery may be completed using one contract or a number of contracts.</td>
</tr>
<tr>
<td>Subcontractor</td>
<td>An organisation that contracts with a contractor as the customer to carry out construction and related services, and/or provide other products.</td>
</tr>
<tr>
<td>Supplier</td>
<td>An organisation that contracts with a contractor/Principal to supply a product and/or service.</td>
</tr>
</tbody>
</table>
Appendix B - Environmental management plan review checklist

This checklist has been designed to assist government agencies and others in reviewing service providers’ Environmental Management Plans. It may also assist service providers in developing their Environmental Management Plans and reviewing their service providers' Environmental Management Plans.

✓ = Yes  X = No  0 = Not applicable

Minimum requirements for all contracts

Does the Environmental Management Plan include:

☐ a statement of objectives?
☐ a listing of the environmental aspects, (with risks and opportunities) and significant related impacts associated with the work?

Do the environmental aspects and impacts listed include:

☐ specific undertakings arising from any formal environmental impact assessment?
☐ relevant development consent conditions?
☐ pollution control approvals/licences/permits and any conditions attached to these?
☐ other statutory and contract obligations?
☐ environmental risks and opportunities with significant impacts with the activities involved?
☐ environmental objectives, targets and measures (where practical) for the significant impacts, risks and opportunities?

Does the Environmental Management Plan include:

☐ documented procedures to be followed to manage the identified aspects and significant impacts, risks and opportunities identified? (These measures are subject to compliance with the contract involved)
☐ a clear indication of the respective environmental management roles and responsibilities of the service provider and its service providers?
☐ emergency response procedures, covering the details required?

Is it demonstrated that all personnel:

☐ are or will be familiar with the Environmental Management Plan?
☐ understand the Plan, including with the following:
   ☐ application of the Plan to them?
   ☐ assessment of training needs?
   ☐ communication, training and induction procedures?
   ☐ training programs?
**Enhancements for major contracts**

**Does the Environmental Management Plan include the following, as they apply to the nature and scope of the contract:**

Identification of organisational and individual roles, responsibilities and authorities for establishing, implementing and maintaining procedures, and monitoring activities and performance, to ensure conformity with each environmental management requirement (documenting all such responsibilities)?

With:

- supervisory/management protocols for personnel and service providers?
- appointment of an environmental manager?

- Documented procedures, with roles, responsibilities and authorities, for controlling all activities/processes and performance to ensure conformity with each environmental management requirement (listing all such requirements)? Including for:
  - management of service providers?
  - training of personnel?
  - communicating requirements, including legislation/regulations, and approval/permit/licence and contract conditions?
  - keeping records?
  - providing regular reports on the implementation of the Environmental Management Plan?
  - activities with compliance bonds/undertakings and penalties for nonconformity?
  - Other activities? (give details) .................................................................

- Cross-references to, or inclusion of, other environmental and other management related documents such as:
  - work method statements? (give details) ..........................................................
  - design plan?
  - landscape plan?
  - soil and water management plan/erosion control plan?
  - statement of heritage significance?
  - incident management plan?
  - traffic management plan?
  - communications plan?
  - industrial relations/training plan?
  - OHS management plan?
  - quality management plan?
  - Others? (give details) ....................................................................................

- Monitoring, measurement, evaluation and review (including audit) procedures, including provisions for:
  - review criteria/measures/scope/personnel/program?
• addressing the consequences of nonconformities?
• investigation, analysis, evaluation and follow-up verification?
• corrective and preventive action?
• Others? (give details) ........................................................................................................
Appendix C - Relevant environmental legislation

Legal compliance

To ensure legal compliance, Agencies and Contractors must identify and understand the regulatory requirements applicable to their activities, products and services, and manage these accordingly. An EMS would include procedures for ensuring the identification and understanding of legal compliance requirements is kept up to date.

A comprehensive website database of NSW law records is provided by the NSW Parliamentary Counsel. The database is available at http://www.legislation.nsw.gov.au

The Environmental Defenders' Office (EDO) Environmental Law Fact Sheets are a source of basic guidance on environmental law, and are available at http://www.edo.org.au/edonsw/site/factsheets.php

There is a duty under the Protection of the Environment Operations Act to notify a the Department of Planning, Industry and Environment of incidents that harm or threaten to harm the environment/ecosystems, property or persons.

The following information is also provided as a guide only. Appropriate professional advice should be obtained to suit particular circumstances and projects.

Aboriginal heritage

A licence is needed from the National Parks and Wildlife Service (NPWS) to damage, deface or remove any relics or places on the site of any construction work. Under the National Parks and Wildlife Act there is a duty to notify the NPWS of the discovery of any such relics and places.

Air

- emissions on scheduled premises
- emissions from, and use of, plant consuming more than 300kg fuel/hour.
- Agencies to implement the NSW Government Resource Efficiency Policy (GREP).

Building and other approvals from councils

Under the Local Government Act certain approvals may need to be obtained from a council for such activities as:

- installing temporary structures on land
- certain activities on community land
- carrying out sewerage works.

Contaminated or unhealthy land
The **Contaminated Land Management Act** imposes a duty to report contamination to the Planning, Industry and Environment in the following cases:

- the first duty is on any person who becomes aware that their activities in, on or under land (where land includes water on or below the land surface and the bed of such water) have caused contamination and
- the second duty is on a landowner who has become aware that the land has been contaminated (whether before or during the owner's ownership of the land).

**Dangerous goods**

Under the **Dangerous Goods (Road and Rail Transport) Act**, licences are required from SafeWork NSW for the storage and transport of dangerous goods and the transport of explosives. Under the Act, SafeWork NSW administers on-premises provisions relating to dangerous goods, such as the packaging, loading/unloading of vehicles and classification of dangerous goods and the Department of Planning, Industry and Environment licenses and administers the on-road provisions for the transport of dangerous goods.

**Dredging and reclamation**

Under the **Fisheries Management Act** the Minister for Fisheries must be informed of any proposal to dredge or reclaim in any waters.

**Fish passage protection**

A number of notifications in writing must be made to the Minister for Fisheries by public authorities/agencies (so relieving them of the need to obtain a permit) in the following circumstances:

- before carrying out or authorising dredging or reclamation work (such as a service provider's contract work) in any waters and
- before acting to construct, alter or modify a dam, weir or reservoir (so as to include a suitable fishway design, including to alter an existing fishway).

In addition, it is an offence to create and obstruction across a bay, inlet or river so that fish are or will be or could be left stranded.

**Flora, fauna and vegetation protection and weed control**

Several Acts address the protection of vegetation and flora, and the related fauna habitats and soil.

**Habitat of threatened species (fish and marine vegetation)**

Under the **Fisheries Management Act**, NSW Fisheries approval is required if any activity is likely to significantly affect threatened species, populations or ecological communities, or is in an area mapped as a critical habitat.

**Habitat of threatened species (flora and fauna)**

If any works, including clearing are:
• likely to significantly affect threatened species, populations or ecological communities or their habitats
• likely to harm or result in the picking of threatened flora species, populations or ecological communities
• on land that is mapped as critical habitat, or
• likely to damage a critical habitat of a threatened species, population or ecological community.

A NPWS approval of a Species Impact Statement is required prior to planning/development consent or approval being given under the relevant planning legislation.

Hazardous chemicals

Under the Environmentally Hazardous Chemicals Act, a licence, from the Department of Planning, Industry and Environment, and safeguards are needed for the storage, transport and disposal of certain environmentally hazardous chemicals, e.g. chlorine and pickle liquor.

Heritage

Approval is needed from the Heritage Council under the Heritage Act to demolish, damage, remove or alter any heritage item. There are also restrictions that may be placed on works that expose relics without consent.

Mangroves, sea grasses and other marine vegetation

A permit is needed from the NSW Fisheries to cut, remove, damage or destroy mangroves, sea grasses and other marine vegetation on public water or land, agricultural leases or foreshores. These are valuable habitats protected under the Fisheries Management Act.

Native Vegetation

The Native Vegetation Act 2003 was repealed on 25 August 2017 and legislation governing the clearing of native vegetation has changed.

Rural land

Clearing of native vegetation on rural land is legislated by the Local Land Services Act 2013 and the Biodiversity Conservation Act 2016.

Urban areas and land zoned for environmental protection

Clearing of native vegetation in urban areas and land zoned for environmental protection is legislated by the NSW Vegetation SEPP.

Noise

• conditions of operation with noise on scheduled premises.

Noxious weeds

Noxious weeds must be controlled and destroyed under the Biodiversity Conservation Act 2016.

Pollution licences and approvals
Licences and approvals may be needed from the Office of Environment and Heritage under the Protection of the Environment Operations Act for:

**Protected plants**

Native plants are protected under the National Parks and Wildlife Act. A licence is needed from the NPWS to pick certain plants.

**Rivers and foreshores improvements**

Permits are likely to be needed to:

- excavate or remove material within 40m of protected waters
- reclaim or till land
- design, realign or divert a channel and
- cause any change to a riverbed or bank.

A permit is not required by a public authority/agency to carry out the above activities.

**Water**

- discharge to any waters.
- installing or modifying equipment for waste treatment discharge.

**Waterways**

Apart from controls on State protected land under the Native Vegetation Act and controls on vegetation removal under the Fisheries Management Act, other requirements apply specifically to construction in or near waterways.

**Waste disposal**

To the extent they relate to construction procurement, you must comply with the Protection of the Environment Operations Act. If you are disposing construction waste, the construction and demolition waste facility must comply with the Standards for Managing Construction Waste in NSW.

You should refer to the construction and Demolition Waste Management Toolkit prepared by the Environmental Protection Authority (EPA) for guidance on engaging contractors and working on contracts that involve construction and demolition.

Unlawful waste disposal or fraudulent behaviour by contractors and subcontractors creates the potential for significant reputation damage, financial penalty and criminal conviction.