

VICTORIAN GOVERNMENT'S 'CODE OF PRACTICE' FOR THE BUILDING INDUSTRY

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Contractors who tender for Victorian Government construction projects will be aware of the Government's commitment to implementing its 'Code of Practice for the Building and Construction Industry'.

The current edition of the Code was published in 1999 and is intended to regulate public construction methods, including tendering procedures. The Code provides 'minimum standards of acceptable practice' for the construction industry in its dealings with Government, and by Government agencies who are the clients in construction projects.

REQUIREMENTS FOR THE 'CLIENT'

Amongst other things, the Code requires Government agencies to reject non-complying tenders and to evaluate tenders fairly. Clients must choose the procurement strategy which is best suited to their needs, and ensure that they have the financial resources required to complete the project.

Clients must provide tender documentation which clearly specifies the client's requirements to enable tenderers to tender. The Code also requires tender documents to clearly define the contractual obligations of the parties and to give a reasonable time for tendering and construction.

REQUIREMENTS FOR CONTRACTORS

The Code states that all tenderers must comply with it and tender documents must include a statement to that effect.

Contractors are required to refrain from tendering for projects 'without a firm intention to proceed', and must ensure that their tenders comply. There are prohibitions on 'collusive tendering'. Selection of subcontractors must be made in accordance with the Code.

ENFORCEMENT

Contractors found to have breached the Code may have their tendering opportunities at Government level restricted, or may be excluded from tendering for certain projects for certain periods of time. Sanctions against Government agencies for breaching the Code are less clear. A Government agency which does not act fairly in assessing tenders, or which fails to, for example, clearly identify all of its requirements during the tender period, may cause significant loss to a contractor. Contractors may report agencies in breach of the Code to the Minister responsible for the project in question. By itself, this seems an unsatisfactory avenue for relief.

It is possible that the building contract will incorporate the requirements of the Code as terms of the contract itself. Breach of the Code by the client might then give rise to a claim by the contractor for breach of contract. Alternatively, it is arguable that a client which represents that it will adhere to the Code, but does not, may be in breach of Victoria's fair trading legislation for engaging in 'misleading or deceptive conduct' to the detriment of the contractor.

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