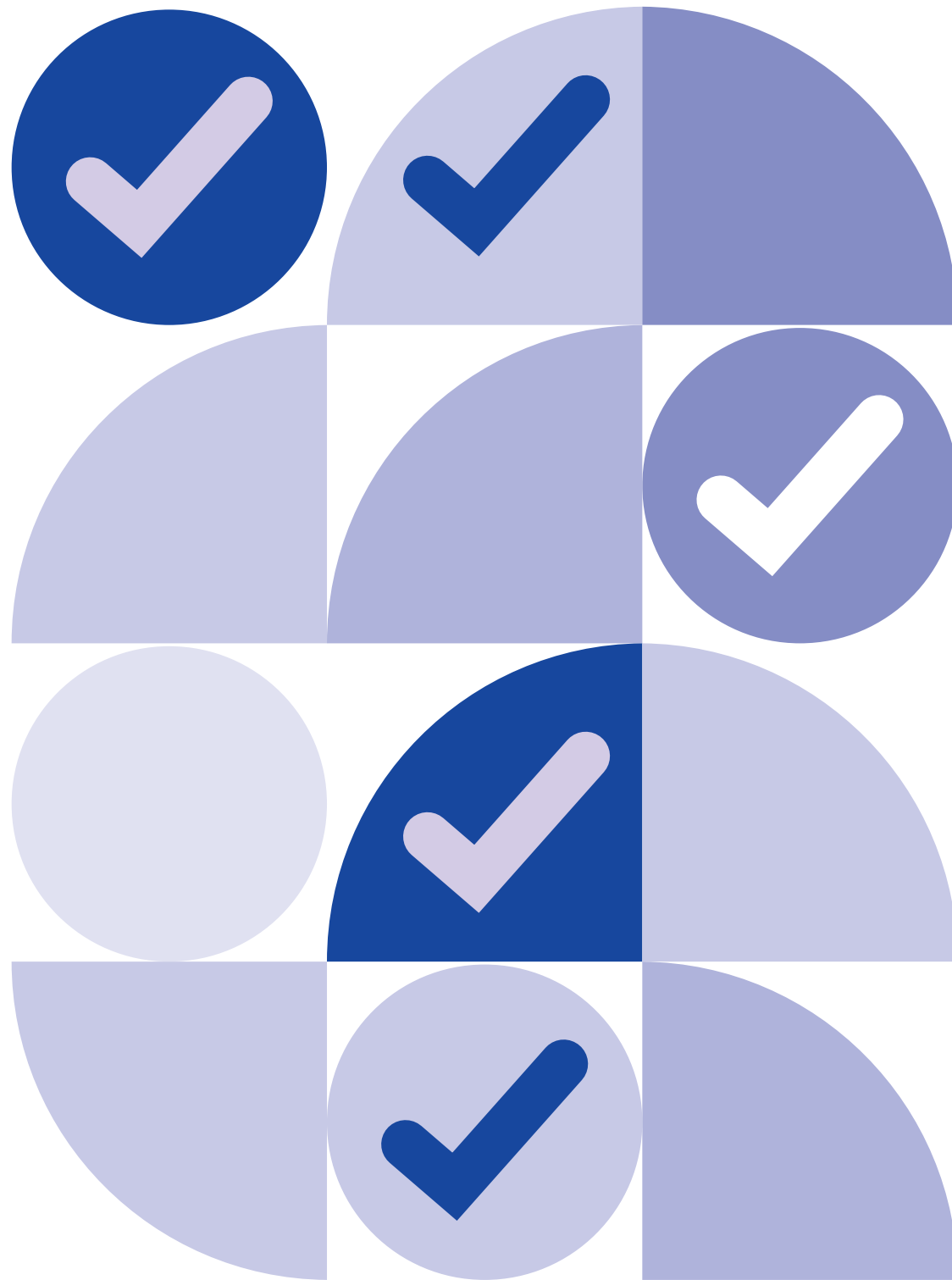


Ethical and sustainable work practices

Assuring ethical and sustainable work practices through procurement





Assuring ethical and sustainable work practices through procurement



Considering the compliance of your supply chain with relevant employment law can be essential to the continuation of your organisation's ability to operate. Besides exposing workers to unsafe and unfair behaviour, incidents of non-compliance in your supply chain can jeopardise the quality of products and services that you procure, and can have a significant negative impact on your organisation's brand, reputation, and sales revenue.

In many cases, your business' access to local and/or overseas markets may be affected if you are not meeting those markets' requirements for operating within them.

Those working in procurement can help protect workers from unfair and unsafe behaviours by requiring suppliers to comply with employment law including **employment standards**.

**EMPLOYMENT
NEW ZEALAND**

An effective way to seek assurance from your suppliers is by including it in your procurement process. During the process it is important that you:

- › Carry out due diligence to make sure your suppliers are meeting employment standards.
- › Make sure your suppliers carry out due diligence to make sure any sub-contractors they use are also meeting employment standards.
- › Understand the source of product supply including the route to market and manufacturer source.
- › Monitor both suppliers and their domestic supply chain to make sure they continue to comply with employment standards for the duration of the contract.

Completing due diligence is critical to helping you select the supplier/s with the capacity and capability to fully deliver the needs of your organisation throughout the life of the contract while meeting legislative requirements.

When undertaking your due diligence processes, you should ask your suppliers questions to test their understanding and obtain proof that backs up claims made.

You should verify information through your own research or by asking the supplier for documentation. You can also do this at times by seeking supplier' confirmation from their referees or third parties eg a supplier's accountant or bank.

The following guidance discusses three steps in the key phases of procurement (plan, source and manage) and how to implement ethical and sustainable work practices.

Step One: Plan

When planning your procurement, you should start by considering whether there is an increased risk of employment standards not being met by the suppliers in the markets that you are procuring from.

Many suppliers in various markets with certain characteristics may have a higher risk of employment standard breaches and worker exploitation. Some of the characteristics that you need to be cautious about include:

- › sectors that have a history of human and employment rights issues
- › industries that use many migrant, young, or older workers
- › high dependence on human labour services where over 75% of the contract value reflects the cost of labour
- › industries that use unskilled, temporary and/or seasonal workers.

Review the **risk factors table** for further elements to consider in assessing levels of risk, or visit **www.employment.govt.nz** and search for "risk factors table".

Think about the best way to make sure your suppliers and their supply chain comply with employment standards. This should include having mandatory conditions and questions in the tender documents, giving higher weight when evaluating the factors that are important to you, and including labour clauses in the contract with the supplier.



Ethical and sustainable work practices

Assuring ethical and sustainable work practices through procurement

Make sure the approach you decide to take is appropriate for the size of contract and the kinds of suppliers that might bid for it. For example, if the suppliers are likely to be small businesses, they may not have the capacity or capability to carry out comprehensive audits but may be able to show their compliance in other acceptable ways, see the **risk mitigations table**, or visit www.employment.govt.nz and search “risk mitigations table”.

Make sure you factor in the ongoing costs of ensuring compliance with employment standards that may be passed on to your organisation by the supplier. These costs could be significant and include expenses associated with:

- › leave and holidays
- › ACC levies
- › KiwiSaver employer contributions
- › minimum wage increases
- › assurance activities.



Step Two: Source

You should engage with suppliers early, to make sure they clearly understand you expect them to give you the assurance that they, and their supply chain, will comply with employment standards and any other requirements that promote good working conditions that you may have. This will help prepare your suppliers to respond appropriately to you.

You should clearly specify employment standard requirements in your tender documents and require your suppliers to detail:

- › the make up of their supply chain
- › their processes for auditing compliance with employment standards
- › their processes for dealing with employment standard breaches
- › their process for managing changes to their key sub-contractors.

Supplier code of conduct

This is very important: You should make clear your expectations of your supplier’s behaviour from the beginning, including their need to make their own suppliers aware of your expectations too.

Creating and communicating a supplier code of conduct can help to provide this essential clarity. You should ask your new suppliers to sign-up to your own supplier code of conduct as part of your tender process, and ask your existing suppliers to do the same as an update to their existing contracts.

Key areas to consider in applying your supplier code of conduct:

- › The code of conduct being signed off by the supplier’s chief executive or a senior manager is highly recommended because it shows that the commitment is coming from the top of the business.
- › Businesses in your supply chain should agree to at least comply with employment standards.
- › The commitment to the supplier code of conduct is communicated to all employees in the supplier’s business to raise awareness of expectations.

- › Suppliers are expected to extend the expectations and responsibilities in the policy down through their own supply chain.
- › A requirement should be included for your suppliers and their partners to act on the issues they identify through checks, and to communicate where labour rights issues are being investigated or even have just been found. This is important to keep you properly informed.

Discuss with your suppliers before writing your own suppliers’ code of conduct, they may have already agreed to other codes of conduct with other parties they do business with. If this is the case look for ways to be consistent across the codes wherever possible. This will help to reduce the amount of administration required by your suppliers.

What to include in an RFx

In a tender process, asking suppliers and their sub-contractors to comply with a supplier code of conduct is one part of seeking assurance that suppliers will comply with employment standards.

Another is to include questions about employment standards in your tender documents. You’ll find ‘**Questions to include in an RFx**’ at the end of this document. The questions you choose for your tender documents should also be used for assurance activities with your existing suppliers.

Other ways to get assurance

Some industry bodies and associations either already have or are planning to create, third-party audits to make sure their members comply with employment standards.

Other industry bodies and associations offer certifications that provide assurance that members are going above and beyond what they need to do to comply with employment standards. Suppliers, who have these member requirements and certifications, may give you these instead of replying to your specific due diligence questions and assurance requests.

You need to decide for yourself if there are any current assurance processes from third parties that meet your requirements.



Ethical and sustainable work practices

Assuring ethical and sustainable work practices through procurement

Pricing

When developing response templates for pricing, it is important to ask for enough information to determine whether your suppliers are paying their workers at least the minimum wage.

Ask your suppliers to break down costs, and then check that the cost of labour is not less than the relevant minimum hourly wage. Some of the factors to consider are:

- › proportion of highly skilled labour and unskilled labour
- › percentage and cost of materials
- › whether fixed price for an outcome versus on-going labour supply.
- › use of apprentice's labour rates and employment status
- › if the supplier has accounted for employer-related costs such as paid leave, ACC, tax, administrative and management costs.

View the **current minimum wage rates** or visit www.employment.govt.nz and use search words "Current minimum wages rates".

Contractual terms and conditions

The requirement for suppliers, and their supply chain, to meet New Zealand employment standards for the life of the contract should be built into the terms and conditions of the contract. All of your supply contracts should require suppliers to take these actions:

- › Report any investigations by the **Labour Inspectorate** or pending **Employment Relations Authority (ERA)** or **Employment Court** actions.
- › Report breaches of employment standards and non-compliance with other legislation.
- › Consider how they are going to fix these breaches.

It's important to check suppliers have not been stood down from supporting visa applications for having received a penalty (or similar) for an employment law breach before entering into a contract with them. You can do this by checking the **stand down list** or visiting www.employment.govt.nz and searching for "Employers who have breached minimum employment standards".

Higher-risk contracts should also detail the assurance process your organisation will use to make sure the supplier continues to meet employment standards over the life of the contract.



Step Three: Manage

Your organisation should check which of your existing and new contracts have a higher risk of employment standard breaches. You can then use the following guidance to help you manage these contracts.

A. Managing supplier relationship

The level of supplier relationship management that you will need will depend on the overall risk level of the contract and your organisation's **risk appetite**.

When your organisation contracts a supplier to deliver higher-risk contracts, the relationship needs stronger supplier management. This means that you should take these actions:

- › engage with suppliers more frequently for updates
- › undertake more due diligence
- › share more information.

These actions are very important and can help you to:

- › mitigate and manage risks and issues as they arise
- › identify changes to the supply chain, e.g. the addition of new sub-contractors
- › help so that breaches of employment standards are raised immediately.

Suppliers engaged in smaller, lower-risk contracts don't need the same level of supplier management. So for low-risk suppliers, just an annual due diligence exercise to confirm they continue to comply with employment standards may be sufficient.

B. Due diligence

The purpose of due diligence is to give your organisation assurance that suppliers and their supply chain comply with employment standards throughout the life of the contract.

The assurance activities your organisation carries out, will depend on the contract's level of risk, your **risk appetite**, and how much information the supplier gave about their compliance with employment standards during the sourcing phase of your procurement. For a lower-risk contract, your organisation could ask suppliers to submit an annual statement to confirm



Ethical and sustainable work practices

Assuring ethical and sustainable work practices through procurement

they continue to meet employment standards. For a higher-risk contract, you'll need more assurance than this. For more information review the **risk mitigations table** or visit www.employment.govt.nz and search "procurer risk mitigations table".

C. Above and beyond employment law

You may decide to work with suppliers and their supply chains to apply practices that go above and beyond, in that they exceed employment law requirements (employment standards or the higher level of minimum employment rights). Practices that suppliers may adopt include: Setting up a working group to focus and advise you on labour market issues.

- › Creating channels for workers to raise issues about employment rights.
- › Providing vocational training.
- › Paying a living wage.
- › Making buildings easier for all workers to access.

You can start by agreeing strategic objectives with suppliers. Then you can use **balanced scorecards** to monitor the supplier's performance against those objectives at regular intervals over the life of the contract.

For more information about exceeding minimum rights, see:

- › **Improving conditions for New Zealand workers** or visit: www.procurement.govt.nz
- › Living wage or visit: www.livingwage.org.nz

Why it's important to correctly classify contractors and employees

Employment standards don't apply to "independent contractors". An independent contractor is someone who is self-employed and who is engaged to perform services under a contract. Some suppliers and employers choose to use independent contractors instead of employing staff.

Suppliers and employers can legitimately do this, as long as the contract for service is not being used simply to avoid meeting employment standards. Independent contractors should be people who work differently, and are paid differently, from the supplier's employees. They are often specialists in their field, who have control over their own work. Where independent contractors are merely providing labour on a low hourly rate, this may be a sign that these workers are employees, and should be paid accordingly, provided with an employment agreement, their correct entitlements, such as holidays and leave, and given the right to raise a personal grievance.

'Sham' independent contracting arrangements are not acceptable. This is when suppliers deliberately try to disguise employment relationships as independent contracting arrangements so they can avoid meeting employment standards.

In your procurement process and for existing contracts, consider asking to see your supplier's contracting models so you can identify such situations. This is important to assure yourself that genuine, but low-wage, independent contractors receive fair working conditions too.

View information about the **differences between contractors and employees** or visit www.employment.govt.nz and search "Contractor versus employee".





A. Questions to include in an RFx

One way to carry out due diligence to ensure your suppliers are meeting employment law requirements (including employment standards) is to include the following questions in your **RFx**.

Opening questions

Does your company agree to comply with our supplier code of conduct and make your sub-contractors aware of the code? Yes No

Is your company complying with New Zealand employment standards, including:

Do all of your employees have a written employment agreement (employment contract)? Yes No

Do your employment agreements include all of the clauses required by law to ensure employment standards are met? Yes No

Does your company keep accurate and up-to-date wage, time, leave, and holiday records? Yes No

Do you pay all of your employees at least the minimum wage for each hours of work? Yes No

Do you correctly pay all of your employees for their annual holidays? Yes No

Do your employees receive bereavement leave, alternate holidays, public holidays, sick leave and family violence leave in accordance with New Zealand legislation? Yes No

Do your employees receive the legally required rest and meal breaks? Yes No

Do you provide all of your employees with information about their employment rights and obligations? Yes No

Do all of your workers, including independent contractors, have the right to work in New Zealand? Yes No

Do you provide all of your employees with equal opportunities? Yes No





Ethical and sustainable work practices

Assuring ethical and sustainable work practices through procurement

B. Requesting policy and compliance records

As good practice, you should make sure the statements that suppliers make about their compliance with employment standards are supported by evidence.

This should include checking if new and existing suppliers and their supply chain have been found to have breached employment standards.

If they have, you'll need to find out what action has been taken to resolve the issues that resulted in the breaches.

Previous non-compliance should not necessarily stop a supplier from being given a contract. However, you will need to carefully consider if the supplier is at risk of becoming non-compliant again.

Your consideration should take into account these questions:

- › How serious was the breach?
- › How long ago did the breach occur?
- › What has been done to resolve the breach?

C. Sub-contracting arrangements

Your business may need assurance that your suppliers are using sub-contracting arrangements that are genuine and appropriate versus using them to purposely avoid meeting their legal employment obligations.

Appropriate use of workers as independent contractors may include the following:

- › to do work in a remote location that is not easily accessible by employees
- › to do specialist work that employees don't currently have the capacity and/or capability to do
- › to do work where they are acting quite independently in terms of control, hours worked, how the work is done, and use of their own equipment etc.

Policy and compliance records

Do you have policies / a code of conduct in place detailing your commitment to employment standards? If yes, provide a copy of the policies. Yes No

Do you provide information about your employment standards expectations and requirements to your sub-contractors and franchisees? Yes No

Has the Labour Inspectorate, Employment Relations Authority (ERA), or the Employment Court ever found you, your sub-contractors or franchisees, in breach of employment standards? If yes, provide details. Yes No

Are you or any of the employers in your supply chain under investigation by the Labour Inspectorate? If yes, provide details. Yes No

Have you or your sub-contractors ever been investigated or found to have non-compliance with employment legislation overseas. Yes No

Have you, or any of your sub-contractors or franchisees, engaged workers who do not have the right to work in New Zealand? If yes, provide details. Yes No

Sub-contracting arrangements

Will you be using any sub-contractors, independent contractors and/or franchisees? Yes No

If yes:

- › Explain what each of them will deliver.
- › Provide details or a diagram that explains your sub-contracting model.
- › Explain why you are not supplying the services directly.





D. Monitoring and reporting

It is good practice to monitor suppliers and their domestic supply chain to ensure they continue to comply with employment standards.

Asking the following questions can help to establish if the suppliers have systems and processes in place to monitor their own and their supply chain compliance with employment standards for the duration of the contract.

You can also ask suppliers to monitor and report on specific risk areas, eg by carrying out spot checks.

Monitoring and reporting

What processes do you have in place to monitor your continuing compliance with employment standards?

Does your business take part in internal and/or third-party audits for assurance that it continues to comply with employment standards? Yes No

If yes, provide details.

Do you require your sub-contractors to report on their compliance with employment standards, or to take part in third-party audits? If yes, provide details. Yes No

Does your business have a person whose role it is to actively work with and monitor worker' rights issues. This includes coverage of suppliers and sub-contractors in your supply chain. Yes No





Ethical and sustainable work practices

Assuring ethical and sustainable work practices through procurement

Glossary

Employment standards are just some of the minimum employment rights. They are specifically defined in section 5 of the Employment Relations Act 2000 that states*:

"Employment standards means any of the following:

- › the requirements of any of sections 64, 69Y, 69ZD, 69ZE, and 130 of the Employment Relations Act 2000 (*employment agreements, breastfeeding, rest and meal breaks, wage and time records*)
- › the provisions of the Equal Pay Act 1972 (*equal pay*)
- › the minimum entitlements and payment for these under the Holidays Act 2003 (*annual holidays*)
- › the requirements of sections 81 and 82 of the Holidays Act 2003 (*holiday and leave records*)
- › the minimum entitlements under the Minimum Wage Act 1983 (*minimum wage*)
- › the provisions of the Wages Protection Act 1983 (*wages, salaries and other remuneration*)."

*Note: words in italics have been added for clarification.

Risk appetite is the level of risk that an organisation is prepared to accept in pursuit of its objectives, before action is deemed necessary to reduce the risk.

Balanced scorecards are a management performance indicator used to identify and improve various internal business functions and their resulting external outcomes. They are used to measure and provide feedback to organisations.

RFx is a family of documents for strategic sourcing and procurement to solicit responses of various types from suppliers. Commonly-used documents include: Request for Information (RFI), Request for Proposal (RFP), Request for Quote (RFQ), and Request for Bid (RFB).

Legal disclaimer:

The information in this PDF has no statutory or regulatory effect and is of a guidance nature only. Guidance cannot override the law and is not legally binding. Users of this guidance should not substitute this for legal advice.

MBIE does not accept any responsibility or liability for error of fact, omission, interpretation or opinion that may be present, nor for the consequences of any decisions based on this information.



MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

New Zealand Government

