Construction Supplier Register – Contractor pre-qualification

Attachment B



# Occupational Health and Safety guidance note for contractors

## The purpose of this guidance note

This guidance note has been prepared to assist Contractors to understand what is required for them to satisfy the Construction Supplier Register (CSR) Occupational Health and Safety (OHS) criteria.

The guidance note explains the purpose for each of the CSR’s criteria and provides guidance as to the standard required. It is not to be taken as an explanation of the *Occupational Health and Safety Act 2004* (the OHS Act) and the regulations made under the OHS Act.

## The CSR criteria

The CSR OHS criteria are designed to cover:

* specific requirements under the OHS Act and the regulations made under the OHS Act;
* general requirements of the OHS Act and regulations;
* additional requirements under the OHS Act and regulations; and
* criteria that represent recognised industry standards.

**Attachment A**, which is part of the CSR pre-qualification application package, incorporates some general guidance for Contractors as to the evidence and means by which the Contractor may demonstrate that they meet the particular criterion.

However *Attachment A* is not meant to be exhaustive and the CSR does not assess Contractors for a particular construction activity or project.

## Contractors must comply with all of the OHS criteria

Contractors must comply with all of the CSR OHS criteria to be eligible for pre-qualification and/or to maintain their pre-qualification. An exception is that a self-employed person not having employees or deemed employees, need not meet the criterion relating to WorkCover premium.

## Contractors must provide documentary evidence

The Contractor must provide specific data or documentary evidence to demonstrate compliance with the CSR, OHS criteria.

The documentary evidence will need to clearly demonstrate that the Contractor has in place a systematic, consistent and documented approach to the key criteria of OHS.

## The CSR panel of OHS assessors

The CSR has established a panel of OHS assessors to evaluate Contractors’ OHS system documents and to prepare reports for the CSR.

The assessors generally conduct ‘desktop’ assessments of the Contractor’s OHS system documents and any supporting evidence.

In some cases the assessor will evaluate the quality and/or applicability of the Contractor’s OHS system criteria, procedures and documents. In some cases the assessor may contact the Contractor to obtain additional information before an assessment can be completed.

## What if you fail one or more criteria?

A Contractor who fails to meet any of the criteria will be provided with details of the deficiencies and will be given the opportunity to discuss with the OHS Assessor and/or the CSR, the means by which deficiencies may be remedied.

The Contractor may be required to provide to the assessor and/or to the CSR:

* newly developed OHS documents to meet the requirements (e.g. development of a required instruction or document);
* amended documents;
* evidence of action taken to correct the identified deficiency; and
* evidence of the means taken by the Contractor to introduce new documents or procedures.

The CSR will consider the response of a Contractor to identified non-compliance without reference to previous failed applications.

## Meeting the requirements does not guarantee performance

Meeting the CSR’s pre-qualification requirements is an indication that the Contractor has some of the most fundamental systems in place to enable the Contractor to meet their obligations under the OHS Act and/or the regulations.

It is not an indication of ongoing satisfactory OHS performance by the Contractor, or that the Contractor is suitable for any particular project or work. The Contractor may be required to provide further information when submitting a proposal, tender or quotation for work.

Some of the pre-qualification requirements are not specifically prescribed by the OHS Act or Regulations, but are considered to be necessary to enable the Contractor to meet the requirements of the OHS Act or regulations or for effective OHS risk management.

# The occupational health and safety criteria

## Criterion 1: OHS policy

The Contractor must have and provide a copy of an organisational-specific OHS policy that, at the least, states:

* a clear commitment to providing for the health and safety of all employees and other workers and others who may be affected by their activities, and achieving legal compliance, through effective risk management;
* the means by which that commitment will be met (e.g. risk assessment, safe systems of work, training);
* the respective responsibilities and roles of stakeholders at all levels within and external to the organisation in ensuring safety; and
* a commitment to continuous improvement and policy review, including a date or time within which the policy will be reviewed.

The policy is significant as both a statement of values against which the organisation can be held accountable and an indication of the key criteria and roles in OHS. It can be a demonstration of the understanding of the organisation of the importance and criteria of OHS management.

The policy should preferably be signed by the most senior person within the organisation (e.g. Chairman, Managing Director, CEO, General Manager) to demonstrate commitment at the top of the organisation.

## Criterion 2: Officers’ governance of OHS

Sections 144 and 145 of the OHS Act provide for an officer of a company, partnership or association (the organisation) to be guilty of the same offence as that committed by the organisation, if that offence was attributable to the failure of the officer to exercise reasonable care.

The involvement of officers is considered to be a key to the proper and effective management of OHS in an organisation, by ensuring that the organisation has and applies appropriate resources and policies and procedures for OHS.

The definition of an officer in s9 of the Corporations Act is adopted in the OHS Act and includes:

* directors and secretary of a company;
* partners in a partnership;
* officers in an unincorporated association;
* persons involved in making decisions that affect the whole or a substantial part of the organisation (commonly known as the Executive or Management);
* those who have the capacity to affect significantly the financial standing of the organisation;
* those on whose instructions or wishes the directors are accustomed to act; and
* a liquidator, trustee, administrator, receiver and manager.

These are the people who have the role of governing the organisation and are able to determine or affect the ability of the organisation to properly and effectively manage OHS.

Ways in which the Contractor may demonstrate compliance with this criterion, and reasonable care for the purposes of the OHS Act include:

1. evidence of advice provided to the Contractor identifying who the officers are;

**Note**: if the Contractor is a company whose directors are the only managers of the business, then the directors may be the only officers and this step may not be needed).

1. details of a governance (management) structure and process that provide for:
	1. the gathering and analysis of relevant information;
	2. reports on relevant matters to be provided to the officers, in a timely fashion (e.g. regular reporting on some matters and timely reporting of incidents);
	3. advice to be provided to the officers (from sources within and external to the business); and
	4. monitoring, auditing and review of performance.
2. confirmation that information provided to officers allows them to have the required knowledge and understanding of each of the elements of the due diligence definition (e.g. as to hazards and risks, required resources and policies).

An officer may comply with this criteria where they receive and respond to information through direct involvement by them in work activities. This is typically the case for sole proprietors, small partnerships and for ‘hands on’ directors and managers in small businesses. Officers who are not involved directly in work activities, typically in medium to large size companies or partnerships, will need to demonstrate other means by which they receive and respond to relevant information.

## Criterion 3: OHS advisors

Section 22(2)(b) of the OHS Act requires an contractor to either (directly) employ or engage the services (externally) of a suitably qualified person [or persons] to provide advice to the contractor concerning the health and safety of employees.

The objective is to ensure that the contractor has available to it up to date knowledge of legal obligations and good industry practice. This is in part necessary to ensure that the Contractor meets the standard of ‘reasonably practicable’ required of them, and in part to enable the officers to meet their obligations for reasonable care and due diligence.

The CSR’s assessor will need to be satisfied that:

* the contractor has expertise and knowledge available to it covering all key aspects of OHS relevant to the business and activities of the contractor; and
* that the advisor(s) are suitably qualified taking into consideration the nature of the activities of the contractor and on the numbers and types of advisors employed or engaged by the contractor. Tertiary or post-graduate qualifications are not necessary, but may make it easier for the assessor to be satisfied that this criterion has been met.

This criterion may be satisfied by membership of an industry association or other organisation that provides the contractor with OHS advice and assistance. If the Contractor wishes to rely on membership of an association then the Contractor must clearly demonstrate understanding of how to access that association’s OHS assistance.

## Criterion 4: Consultation and issue resolution

Introduction to Criterion 4

Effective OHS risk management requires decisions to be made and implemented based on a proper flow of information between the Contractor and workers.

OHS issues must be resolved as soon as is reasonably practicable, which requires effective mechanisms for the exchange of information and consideration of various viewpoints.

The OHS Act and regulations recognise this by providing for management and employee representation in consultation and issue resolution and processes for undertaking those activities. Employees for this purpose include sub-contractors and their employees. The OHS Act will provide for representation and consultation for ‘workers’.

It is important that the management representative be sufficiently senior and competent to deal effectively with OHS issues. Otherwise, the process may be slowed down by a lack of knowledge, poor communication or perceptions of bad faith. This is recognised for example in sec 73(2)(b) of the OHS Act which requires seniority and competence of the Contractor’s representative.

## Criterion 4a: Management representation for consultation, issue identification and response

For this criterion the Contractor must produce evidence that an appropriate management representative has been nominated for consultation and issue resolution, and that the person has sufficient and current knowledge or timely access to appropriate sources of knowledge to effectively undertake that role.

There are no set standards or qualifications specified for the management representative, however tertiary or post-graduate qualifications may make it easier for the assessor to be satisfied that this criterion has been met.

The management representative should be familiar with the OHS legal obligations of the Contractor and the key principles for effective OHS risk management.

The management representative should be able to demonstrate a good knowledge of consultation and issue resolution obligations and procedures; or at least knowledge of the Contractor’s obligations relating to consultation and issue resolution and access to an appropriate internal or external advisor. The availability to the management representative of advisors referred to in Criterion 3 above, may be relevant to the qualifications necessary for the management representative.

Currency of knowledge is important given regular changes to OHS laws and practice.

## Criterion 4b: Elected Health and Safety Representative (HSR)

This criterion recognises that the election and training of a Health and Safety Representative (HSR) may assist in consultation and issue resolution (and is common in the construction industry). Representation is ordinarily limited to employees, but the OHS Act provides for representation of the broader class of ‘workers’ by agreement, which commonly occurs in the construction industry.

The purpose of this criterion is:

* to identify whether the workers are represented by a HSR elected under Part 7 of the OHS Act; and
* whether the HSR has received training (which is usually a five day initial course with subsequent refresher and other training).

The law does not require the election of a HSR, or the training of the HSR, although the HSR is entitled to training if they require it.

Where there has been no request from workers for designated work groups or the election of a HSR, the Contractor may certify this to be the case. The absence of a HSR will place more significance on Criterion 4c and may require a higher level of detail of consultation arrangements to be provided to satisfy that criterion.

## Criterion 4c: Consultation and issue resolution procedures

This criterion is concerned with ensuring that the contractor has in place a process for effectively undertaking communications relating to consultation and issue resolution.

For this criterion the contractor should be able to provide either consultation and issue resolution procedures that are agreed with workers (directly or through the HSR or other representative) or demonstrate that the contractor is familiar with the requirements of the OHS Act and regulations, including the default process provided in the regulations, whether or not they have needed to use them.

## Criterion 4d: Health and Safety Committee

It is recognised that an effective Health and Safety Committee can be a good means to develop OHS strategy and processes and to ensure that appropriate consultation occurs with employees.

It is not compulsory for a contractor to have a committee, although it must have if requested. The absence of an effective committee may however place greater significance on Criterion 4c.

The provision of committee charter or constitution or similar will assist in determining the effectiveness of it and the degree to which it assists in satisfying Criterion 4d.

## Criterion 4e: Consulting and working with other parties

The OHS Act does not includes a specific duty on a Contractor to consult, cooperate and coordinate activities with others who have a duty over the same matter.

These processes are however necessary in most situations for compliance with the duties under the OHS Act.

The Contractor has duties in relation to its employees under Section 21 of the OHS Act. These duties may require the Contractor to identify risks to its employees from attendance at workplaces that are managed or controlled by others, or at which the activities of others may expose the employees of the Contractor to OHS risks. The Contractor in carrying out its activities, including attendance at workplaces, also has a duty to persons who are not employees under Section 23 or 24 of the OHS Act.

Others involved in work in which the Contractor is involved may also owe duties to the Contractor and its employees.

To comply with these duties, the Contractor should ensure that it has the information necessary to enable it to understand and manage the risks arising from their involvement and that of other parties in the work and ensure that the Contractor works together with other parties for the effective management of OHS risks.

This means that a Contractor should in some circumstances consult, cooperate and coordinate activities in relation to OHS with the client, sub-contractors, labour on-hirers, the person with management or control of the workplace and suppliers of plant and substances.

The aim of this criterion is to ensure that OHS is properly and effectively catered for through each party:

* having sufficient knowledge of the activities of others that may affect OHS
* understanding what others have in place to provide for OHS risk management
* determining what they must do to provide for OHS risk management; and
* coordinating their activities with those of others to ensure there are no gaps in risk management.

These activities represent good practice and may be necessary to meet the standard of ‘reasonably practicable’ and comply with duties of care under the OHS Act, particularly in relation to contractor safety management.

Compliance with this Criterion may be achieved by demonstrating the means by which the Contractor identifies other parties with whom they must consult, cooperate and coordinate activities, and the requirements to meet each of the elements noted above.

Documents showing examples of consultation with other parties and the outcomes may be sufficient to demonstrate this criterion is being met.

## Criterion 5: Currency of awareness of OHS

This criterion is clearly linked to Criteria 3 and 4 above and reference is made to the comments in relation to those criteria.

The Checklist notes some of the means by which the contractor may keep informed of changes in OHS regulations, guidelines and practice. These are not exclusive. This is a specific element of the due diligence requirement for officers.

The assessor must be satisfied however that the contractor has a consistent process by which it is regularly informed of changes relevant to its operations.

## Criterion 6: Induction and training

The provision of information, instruction and training to employees and to other workers is clearly provided for in sec 21(2)(e) of the OHS Act and in the regulations.

Compliance with these obligations requires the provision of site specific induction and training that is relevant to the individual employee and as is necessary to enable them to safely perform their work tasks.

The assessor must be satisfied through documented systems and training records that the Contractor has in place systems for ensuring induction and training occurs.

## Criterion 7: Hazard identification and risk control

The OHS Act requires a contractor to provide and maintain for its employees and other workers, so far as is reasonably practicable, systems of work that are safe and without risks to health.

Different construction projects will require the identification of specific systems of work. The systems of work must be appropriate to meet the risks associated with the particular work being undertaken. To meet this requirement the contractor will often need to have and use systems to identify, assess and control hazards and risks.

The OHS Act also imposes requirements on contractors that may have the management or control of the workplace or the design of the workplace; design or manufacture or supply plant; install, erect or commission plant.

There are well known risks in the construction industry (e.g. fall from heights) for which systems of work and supporting training should be provided. Other identified construction industry risks may have accepted industry standard risk controls. However the contractor must still identify hazards and provide systems and other control measures for the elimination or reduction of associated risks.

For some activities involving high risks the contractor may be required to provide additional evidence of analysis of risks and availability of skills before the work can commence.

For *Criterion 7* the Contractor needs to demonstrate and provide documentary evidence:

* of the availability to the Contractor of safe systems of work and procedures;
* of the Contractor’s awareness of the need for such systems and progress toward the provision of same;
* of a process for the identification of hazards and the identification and application of risk controls;
* of the Contractor’s awareness of each of the obligations imposed on them by the OHS Act and regulations by virtue of the Contractor’s role and activities and has in place processes for meeting those obligations; and
* showing how the Contractor assesses risks and identifies risk control measures.

Documents that show a system for doing this (e.g. formats for job safety analysis, or processes for developing safe work method statements) will assist in demonstrating the contractor’s compliance with this criterion.

The contractor must also provide an example of how these system documents have been used.

Third party certification of the contractor’s OHS management systems will be a strong indicator of satisfaction of this criterion, however the CSR may also require evidence of such a certified system and in particular how specific legal requirements are met.

Regulations made under the OHS Act require the process of hazard identification and risk control, with specific measures relevant to the activities of the contractor.

From 1 July 2008 this has included the requirement for coordination plans for higher value projects and the preparation of safe work method statements for high risk work.

Coordination Plans are required to be developed and maintained by Contractors where they are appointed to the role of Principal Contractor.

(Regulations 5.1.16, 5.1.17 and 5.1.18 of the Occupational Health and Safety Regulations 2007 – Part 5.1 – Construction).

## Criterion 8: Contractor and sub-contractor safety management

For this criterion the Contractor must provide information as to how the Contractor complies with its obligations for the safety of all workers and others, including:

* independent Contractors engaged by the Contractor;
* employees of those independent Contractors;
* sub-contractors;
* employees of Victorian Government Departments that use the Construction Supplier Register; and
* the public and others.

The Contractor must also provide documentary evidence of the systems, contractual and process documents supporting the systems and evidence of their implementation (e.g. completed checklist and inspection records).

For matters over which the Contractor has control or would, but for an agreement to the contrary, has had control, the Contractor has duties and requirements under the OHS Act to ‘employees’ which includes:

* independent contractors engaged by the Contractor;
* employees of those independent Contractors; and
* sub-contractors.

The hazardous nature of construction related activities, the extensive duties and obligations imposed by the OHS Act and regulations and the complexity of activities on a construction site or project, mean that Contractor safety management can only be achieved through the implementation of effective and enforced systems.

The requirements of Criterion 4e relating to consultation, cooperation and coordination of activities with other duty holders are clearly relevant to this Criterion 8 and evidence provided by the Contractor relating to Criterion 4e may also satisfy this Criterion.

## Criterion 9: Emergency response

Emergency response is a critical aspect of safety management in the construction industry, given the hazardous nature of the activities and the difficulties associated with site access etc.

Effective emergency response is a part of the Contractor’s obligations under the OHS Act to provide and maintain safe systems of work, adequate welfare facilities and information, instruction and training for employees and other workers.

An important aspect of the Contractor’s emergency response is the regular review and testing of systems and training (e.g. through emergency evacuation trials).

Adequate welfare facilities must include first aid facilities and training as is appropriate to the nature of the activities, numbers of workers and location.

The Contractor must provide documents to:

* verify the existence of emergency procedures;
* confirm first aid facilities and training; and
* verify the dissemination of information to employees and other workers by notices, training and testing.

## Criterion 10: Incident notification, investigation and response

The management of serious incidents is a critical aspect of safety management in the construction industry, given the hazardous nature of many construction activities, (e.g. failure of registered plant, collapse of a trench, explosion or fire, fall of an object from height).

The obligations of the Consultant for the safety of its workers and others necessarily require the proper investigation of incidents, identification of causes and remediation of deficiencies. Information available as a result of an incident is part of the knowledge on which an assessment will be made on what may be reasonably practicable for a Contractor to do.

The OHS Act imposes obligations on the Contractor including:

* a requirement to notify Victorian WorkCover Authority of serious incidents;
* a requirement to preserve an incident site following a notifiable incident until an inspector attends or otherwise directs (except where disturbance of the site is necessary for rescue or health and safety protection); and
* entitling HSRs to inspect a workplace after an incident and be involved in various processes and activities following an incident.

Under this criterion the Contractor will need to provide documented systems or records such as:

* a procedure or instruction requiring information to be provided to a person nominated to fulfil these obligations for the Contractor, familiarity with the requirements and the notification form;
* evidence of the Contractor’s satisfactory notification and investigation of an incident; and
* evidence of the Contractor’s satisfactory response to the notifiable incident, for example to prevent its recurrence.

The requirements for due diligence by an officer include ensuring processes are in place to meet the obligations to notify incidents to Victorian WorkCover Authority.

## Criterion 11: Enforcement activity

The level, nature and seriousness of enforcement activity and the response of the Contractor to it may be a significant indicator of the Contractor’s OHS capability and performance.

Enforcement activity may reflect non-compliance and poor safety performance by a Contractor. A timely and effective response by the Contractor to enforcement activity may demonstrate the quality of their safety systems and processes.

Demonstrated compliance with a notice, or effective response or remediation following enforcement activity may render that enforcement activity no longer relevant and may even show improvements in the Contractor’s systems and processes.

Victorian WorkCover Authority and other agencies relevant to OHS (e.g. Energy Safe) and HSRs may seek to enforce OHS related legislation and regulations through:

* directions;
* improvement notices;
* prohibition notices;
* prosecutions; and
* enforceable undertakings.

HSRs are entitled to issue provisional improvement notices which have the same effect as an improvement notice issued by an inspector (unless a review is sought by the Contractor).

For this criterion the Contractor will need to provide information (if any) in relation to enforcement activity and the Contractor’s response. Documents which the Contractor should provide include:

* associated Entry Reports, to provide a clear picture of the alleged non-compliance or risk; and
* evidence that the Contractor has responded appropriately to the breach or the risk which was the subject of the enforcement activity.

Certification by the Contractor of an absence of regulator activity of the kind indicated will be satisfactory evidence of compliance with this criterion.

## Criterion 12: Workers’ Compensation Insurance

Workers’ compensation premium rates for a Contractor reflect the claims performance of the Contractor and are related to industry average performance.

High levels of workers’ compensation claims may indicate poor safety performance.

The Contractor will need to provide details of the Contractor’s workers’ compensation insurance premium level compared to the industry rate.

**Note**: A premium rate of more than 150 per cent of the industry rate will usually reflect an unacceptably high level of claims. Where the Contractor has a premium rate of more than 150 per cent of the industry rate the Contractor will need to provide a satisfactory explanation for the high premium rate.



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