

Guidance on rail contracting arrangements and safety obligations

Rail Safety Regulators' Panel National Guidance

This guidance has been developed by the Rail Safety Regulators' Panel for rail safety regulators, rail industry stakeholders and others to support consistent interpretation and application of the national model rail safety legislation. The use of this Guidance material is not mandatory. Rail safety regulators may publish appendices to this guidance to provide information about local variations to the national model rail safety legislation which apply in a particular state or territory.



December 2009

ISBN: 978-0-9806753-4-4

Foreword

The Rail Safety Regulators' Panel (RSRP) consists of the Rail Safety Regulators from all States and the Northern Territory of Australia and New Zealand.

The key role of the RSRP is to provide advice on rail safety regulatory issues to help enhance safety and regulatory outcomes and work collaboratively to facilitate consistent application of the intent of the national model legislation.

Acknowledgements

RSRP Guidance material is developed through a collaborative process between jurisdictions and industry.

Disclaimer

This publication contains information regarding rail safety. It identifies references to possible obligations under the national model rail safety legislation. To ensure compliance with legal obligations reference must be made to the appropriate Acts that operate in the relevant jurisdiction. When reading this publication reference should always be made to the latest laws. Information on the latest laws can be checked on the relevant jurisdiction's website or via the links provided within this website.

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1. Introduction

1.1 Purpose

The National Model Rail Safety Legislation makes all persons carrying out railway operations accountable for rail safety through a general duty to ensure, so far as is reasonably practicable, the safety of those railway operations. The National Model Legislation also requires rail transport operators to be accredited, or exempt from accreditation, and have a safety management system (SMS) with which contractors carrying out railway operations are required to comply.

The purpose of this document is to provide guidance on:

- the general duties of rail transport operators, and other persons carrying out railway operations such as contractors
- identifying who may be accredited to undertake certain railway operations
- options for meeting the requirement that contractors carrying out railway operations must comply with the rail transport operator's SMS and
- good practice in contract management.

The Guidance is based on the provisions of the National Model Rail Safety Bill 2006 and the National Model Regulations 2007. Local variations may be made to these provisions when the Bill and Regulations are translated into rail safety legislation specific to jurisdictions.

This Guidance is intended to be read in conjunction with rail safety legislation. Refer to the applicable rail safety legislation specific to each jurisdiction where accreditation is sought and/or granted, or where railway operations are to be undertaken.

The Guidance refers to and complements the following guidelines that relate to contractor management:

- *National Rail Safety Guideline for Preparation of a Rail Safety Management System;*
- *National Rail Safety Guideline for the meaning of duty to ensure safety so far as is reasonably practicable; and*
- *National Rail Safety Guideline for Accreditation of Rail Transport Operators.*

The Guidance does not cover obligations under occupational health and safety legislation.

1.2 Interpretation

Definitions provided by rail safety legislation apply within this Guidance.

Use of the word 'consider' or 'may' indicates an option however rail transport operators and contractors are free to follow a different course of action provided that it complies with the legislation. Use of the word 'should' indicates a recommendation of the Rail Safety Regulators Panel; however rail transport operators and contractors are free to follow a different course of action provided that it complies with the legislation.

Use of words such as "must" or "mandatory" indicate that legal requirements exist which must be complied with. References to relevant provisions of the National Model Rail Safety Bill 2006 (RSB) or the National Model Regulations 2007 (NMR) are included in the Guidance where legal requirements exist.

This Guidance is intended to be a guide only. It is not intended to replace the legislation, or to limit or expand the scope of the legislation. In the event of an inconsistency between this Guidance and the legislation, the legislation will prevail. It is recommended that you obtain your own, independent legal advice about the legislation.

2. Key requirements of national model legislation

2.1 General duties of rail transport operators and contractors

Rail transport operators have a general duty to ensure, so far as is reasonably practicable, the safety of their railway operations (RSB s28). The general duty of rail transport operators extends to their contractors (RSB s28A).

The obligation on rail transport operators to ensure safety so far as is reasonably practicable is underpinned by a duty to manage risks to safety (RSB s7).

The general duty requires rail transport operators to, so far as is reasonably practicable:

- have safe systems for their railway operations;
- ensure their rail safety workers are:
 - of sufficient good health and fitness to work safely,
 - competent to undertake relevant rail safety work,
 - not carrying out rail safety work or on duty while more than the relevant concentration of alcohol is present in their blood or while impaired by a drug, and
 - comply with the operator's fatigue management program;
- provide adequate facilities for the safety of people at railway premises they control or manage;
- provide rail safety workers with the information, instruction, training and supervision necessary to enable them to do their work safely; and
- provide information to other persons on the railway premises so that those persons can be safe.

If a rail transport operator is a rail infrastructure manager, that is a person with effective management and control of rail infrastructure, the general duty also includes the obligation to, so far as is reasonably practicable:

- ensure that any design, construction, commissioning, use, installation, modification, maintenance, repair, cleaning or decommissioning of rail infrastructure is carried out in a way that ensures the safety of railway operations;
- establish systems and procedures for scheduling, control and monitoring of railway operations, to ensure the safety of the railway operations.

If a rail transport operator is a rolling stock operator, that is a person with effective management and control of the operation or movement of rolling stock the general duty also includes the obligation to, so far as is reasonably practicable,:

- provide or maintain safe rolling stock;
- ensure that design, construction, commissioning, use, modification, maintenance, repairs, cleaning or decommissioning of rolling stock is carried out in a way that ensures safety;
- comply with the rail infrastructure manager's rules and procedures for scheduling, control and monitoring of rolling stock;
- have equipment, procedures and systems to minimise risks to the safety of the railway operations; and
- have arrangements to ensure safety in connection with the use, operation and maintenance of rolling stock

Designers, manufacturers and suppliers also have general safety duties (RSB s29). In addition, there are general duties that apply to rail safety workers (RSB s70).

2.2 Meaning of 'rail transport operator'

A rail transport operator is a person who is a rail infrastructure manager or a rolling stock operator, or both.

A rail infrastructure manager means a person with effective management and control of the rail infrastructure of a railway (RSB s4). A rolling stock operator means a person with effective management and control of the operation or movement of rolling stock (RSB s4).

The meaning of "effective management and control" is discussed in Part 3 of this Guidance.

A "person" can mean any legal entity, for example, an individual or a body corporate. A body corporate is any body that has been incorporated and includes a private company, a public company, an incorporated association and a body deemed by statute to be a body corporate.

2.3 Meaning of 'railway operations'

Railway operations means:

- the construction of a railway, railway tracks and associated track structures or rolling stock;
- the management, commissioning, maintenance, repair, modification, installation, operation or decommissioning of rail infrastructure;
- the commissioning, maintenance, repair, modification, or decommissioning of rolling stock;
- the operation or movement (or causing the operation or movement) by any means, of rolling stock on a railway (including for the purposes of construction or restoration of rail infrastructure);
- the movement, or causing the movement, of rolling stock for the purposes of operating a railway service (RSB s4).

2.4 Meaning of 'so far as is reasonably practicable'

The following matters must be considered in determining what is reasonably practicable in relation to ensuring safety:

- the likelihood of the risk concerned eventuating;
- the degree of harm that would result if the risk eventuated;
- what the person concerned knows or ought reasonably to know, about the risk and any ways of eliminating or reducing the risk;
- the availability and suitability of ways to eliminate or reduce the risk;
- the cost of eliminating or reducing the risk (RSB s7).

The term "so far as is reasonably practicable" is explained in detail in the *National Rail Safety Guideline for the meaning of duty to ensure safety so far as is reasonably practicable*.

2.5 Other key requirements of the National Model Legislation

In addition to general duties, the legislation imposes other obligations on rail transport operators and contractors. These include requirements for:

- rail transport operators to be accredited or exempt from accreditation (RSB s31). Rail transport operators may be automatically exempt from accreditation (RSB s56) or may be granted exemption through a regulation (RSB s162(3)). Guidance on accreditation can be found in Part 3 of this Guidance.
- persons other than rail transport operators (i.e. contractors) carrying out railway operations to only carry out those operations if they are doing so "for and on behalf of" a rail transport operator that is accredited in relation to those operations or exempt from accreditation (RSB s31).

- contractors to comply with the SMS of the rail transport operator to the extent that it applies to the railway operations carried out by the contractor (RSB s71). Guidance on how to comply with this requirement can be found in Part 4 of this Guidance.
- rail transport operators to have SMSs which include systems and procedures in relation to contract management (RSB s57(1)(b) and NMR Schedule 1 item O). Guidance on this requirement, and on good practice in contract management, can be found in Part 5 of this Guidance.

2.6 Prohibition on 'contracting out' legal obligations

A contract may include a term known as an 'exclusion clause'. There are three main types of exclusion clauses:

- clauses which operate to exclude a person's rights and obligations which that person would otherwise possess under the legislation;
- clauses which operate to limit (or restrict) the rights and obligations which that person would otherwise possess under the legislation; and
- clauses which operate to modify (or qualify) the rights and obligations which that person would otherwise possess under the legislation.

The practice of excluding, limiting or modifying a legal right or obligation by way of contract is generally referred to as 'contracting out' legal obligations.

The legislation imposes a prohibition on contracting out legal obligations and the use of exclusion clauses in regards to the provisions of the legislation (RSB s161). Therefore, any person (including a rail transport operator) who possesses an obligation under the legislation cannot 'contract out' their obligations. This is different from contracting out railway operations, which is permissible.

The key result of the prohibition on contracting out legal obligations is that

persons subject to the requirements of the legislation remain bound to those exact requirements. This is the case irrespective of any express or implied contractual provision which provides otherwise. Accordingly, rail transport operators, and others with duties under the legislation, cannot use exclusion clauses as a defence to any contravention of the legislation.

For example, a rail transport operator may wish to include and then rely on a term in a contract restricting the operator's duty to establish a safety management system for railway operations which the other party to the contract will carry out on the operator's behalf. In this case the prohibition on contracting out would render that particular term void and ineffectual.

Rail transport operators consequently remain responsible for the safety of their railway operations and their other obligations under the legislation. These responsibilities (and their inherent risks) cannot be limited or transferred to other parties by contractual terms, either express or implied.

It is important to note that the prohibition will operate in all cases. That is, there can be no conditions or exceptions. Accordingly, a person may not be able to argue that a contractual exclusion of, or limitation on, a provision of the legislation was fair and reasonable, or otherwise acceptable, in the circumstances.

3. Who may be accredited for railway operations

3.1 Accreditation requirements for railway operations

The legislation requires railway operations to be carried out by or on behalf of a rail transport operator who is accredited or exempt from accreditation (s31 RSB). Note: the legislation specifically exempts the rail infrastructure managers of private sidings from accreditation (RSB s56). The purpose of accreditation is to attest that the rail transport operator has demonstrated the competence and

capacity to manage risks to safety associated with its railway operations (RSB s30).

A person who carries out railway operations without being a rail transport operator who is accredited or exempt from accreditation, or who is not carrying out railway operations on behalf of a rail transport operator who is accredited or exempt from accreditation, may face severe penalties.

Further guidance on accreditation, including applications for accreditation and applications for variation to accreditation, may be found in the *National Rail Safety Guideline for Accreditation of Rail Transport Operators*.

3.2 Meeting the accreditation requirements

To avoid breaching the legislative requirements relating to accreditation, it is recommended that the principal – that is, the party tendering the contract - and the prospective contractor actively consider, before entering into the contract, which party will be the rail transport operator in relation to the relevant railway operations.

In considering accreditation requirements, it is recommended that the following matters are taken into account:

- the scope of railway operations which will need to be undertaken to carry out the contract;
- which party is carrying out, causing or permitting to be carried out those railway operations;
- in relation to those railway operations, which party has “effective management and control” of the rail infrastructure or rolling stock operations; and
- whether any parties to the contract are already accredited or exempt in relation to those railway operations.

The rail transport operator must be accredited or exempt from accreditation in respect of the relevant railway operations before carrying out those railway operations. Where an accredited rail

transport operator proposes to undertake new or altered railway operations which are not covered by its existing accreditation, it will need to apply for and be granted a variation to accreditation before undertaking the railway operations.

3.2.1 Scope of railway operations

In planning to engage contractors to carry out railway operations, it is recommended that the principal identifies the scope of railway operations to be carried out under the contract i.e. the type of railway operations to be carried out and the geographic location where they are to be carried out.

The legislation sets out the purposes for which accreditation may be granted (RSB s32).

If the rail transport operator for the specific railway operations is already accredited or exempt from accreditation, their existing notice of accreditation or exemption may be reviewed to determine whether the railway operations to be carried out fit within this accreditation or exemption.

It is recommended that the principal and contractor also consider the need for accreditation for ancillary railway operations, for example the movement of track maintenance vehicles to, from and around a site for the purpose of carrying out rail infrastructure maintenance.

3.2.2 Determining who has ‘effective management and control’

In planning to engage contractors to carry out railway operations, it is recommended that the principal identifies whether the principal or the contractor will be considered to be the rail transport operator in relation to the specific railway operations. The key question here is: which party has the “effective management and control”?

In the case of a rail infrastructure manager, the party with “effective management and control” will be the party that has the ability to **influence or direct** railway operations relating to the state or condition

of the rail infrastructure. In the case of a rolling stock operator, the party with “effective management and control” will be the party that has the ability to **influence or direct** the operation or movement of rolling stock.

This will point to the person that prescribes or defines:

- the standards to be applied to the relevant railway operation;
- the specifications for the performance of the relevant railway operations;
- the quality that will be accepted for the railway operations.

In relation to “worksites” it is necessary to distinguish between contractors having control over a worksite for the purposes of carrying out discrete construction or maintenance work on railway infrastructure from the person that has the overall control and management responsibility for the whole of the railway infrastructure. It is unlikely that contractors carrying out such work will be regarded as having “effective management and control” over rail infrastructure as this will only be temporal. They are not the party that defines or prescribes the above matters in relation to the particular rail infrastructure or rolling stock.

Which party has the “effective management and control” is a question of fact, to be considered on a case by case basis.

However, the following may be indicators of “effective management and control”:

- Generally, in the case of rail infrastructure:
- the owner or lessee is likely to have effective management and control if functions such as construction, maintenance and operations have not been contracted out;
- if all functions such as construction, maintenance and operations have been contracted out to a single party, that party is likely to have effective management and control;

- if functions such as construction, maintenance and operations are contracted out to more than one party then the contractor exercising the operations functions or the owner may have effective management and control.

Generally, the party likely to have effective management and control of the operation or movement of rolling stock may be the party:

- that has the access agreement with the relevant rail infrastructure manager; or
- under whose safety management system the operation and movement of rolling stock is carried out.
- That assesses and checks drivers’ competency and training requirements.

It is suggested that, in the first instance, the relevant parties should consider which of them has effective management and control and, therefore, ought to be accredited. Following this, the parties may wish to contact the relevant rail safety regulator to confirm or clarify the situation.

3.3 Evidence regulators might expect to see in relation to identifying who is to be accredited for railway operations

Rail safety regulators will expect to see evidence that the accredited person for railway operations under and ancillary to a contract has been identified. It is recommended that the following be documented:

- railway operations to be carried out under the contract and any ancillary railway operations;
- identification of under whose accreditation the railway operations will be carried out;
- if works are carried out under the contractor’s accreditation, evidence that the principal has obtained a copy of the contractor’s notice of accreditation and has reviewed it;
- if works are carried out under the principal’s accreditation, evidence that

the contractor has obtained a copy of the principal's notice of accreditation and has reviewed it; and

- processes for the review of accreditation requirements if the railway operations to be carried out under the contract or ancillary to the contract change during the course of the contract.

The legislation obliges a rail transport operator to have a current notice of accreditation or exemption from accreditation available for inspection (RSB s46).

4. Contractor compliance with rail transport operator's safety management system

4.1 Requirement to comply with rail transport operator's safety management system

The legislation requires a contractor carrying out railway operations for a rail transport operator to comply with the operator's SMS to the extent that it applies to the contractor's railway operations (RSB s71).

The following options for complying with this obligation are suggested:

1. The rail transport operator sets safety and operational outcomes, and the contractor is required to demonstrate that it has systems to meet these outcomes through the tendering and/or contracting process (i.e. the rail transport operator amends its SMS to incorporate the contractor's systems);
2. The accredited operator sets out the systems by which a contractor must carry out the railway operations (i.e. the contractor applies the rail transport operator's existing SMS to the extent that it applies to the contractor's railway operations).
3. A combination of options 1 and 2.

A rail transport operator, before establishing or reviewing or varying its

SMS, is obliged to consult, so far as is reasonably practicable, with:

- any person likely to be affected by the SMS, or its review or variation, their health and safety representatives and the unions which represent them;
- any other rail transport operator with whom there is an interface; and
- the public, as appropriate (RSB s57(2)).

Note: The consultation requirements of the Rail Safety Bill may be subject to local variation.

It is recommended that the rail transport operator and contractor agree the SMS arrangements through the contract formation process and that these arrangements are specified in the contract documentation.

4.1.1 How a contractor's systems may be incorporated into the rail transport operator's SMS

The following steps may be taken to incorporate a contractor's systems into the rail transport operator's SMS:

1. Rail transport operator sets safety and operational outcomes.
2. Rail transport operator develops list of railway operations to be undertaken under contract and conducts risk assessment.
3. Rail transport operator reviews contractor's systems against railway operations, safety and operational outcomes and its SMS to identify any inconsistencies or issues.
4. Contractor amends systems to meet railway operations, safety and operational outcomes and address inconsistencies or issues if necessary.
5. Rail transport operator amends SMS to address any inconsistencies or issues if necessary.
6. Rail transport operator references contractor's systems in its SMS.
7. The SMS arrangements are documented.

4.1.2 How the rail transport operator's existing SMS may be applied to a contractor

The following steps may be taken to apply a rail transport operator's existing SMS to a contractor:

1. Rail transport operator develops list of railway operations to be undertaken under contract and conducts risk assessment.
2. Rail transport operator reviews its SMS to identify and assess the parts of the SMS relevant to the railway operations to be undertaken under the contract.
3. Rail transport operator amends its SMS if necessary to reflect railway operations to be undertaken under contract.
4. Contractor reviews relevant parts of the rail transport operator's SMS to identify any issues.
5. Rail transport operator amends SMS to address issues if necessary.
6. The SMS arrangements are documented.

4.2 Evidence regulators might expect to see in relation to the requirement to comply with the rail transport operator's safety management system

The SMS itself must comply with the requirements set out in the legislation (RSB s57). In particular, an SMS must identify and assess any risks to safety arising from railway operations carried out on or in relation to the rail transport operator's rail infrastructure or rolling stock, and specify controls to manage those risks.

Elements of an SMS are listed at Appendix A, however it is noted that the SMS requirements may vary between jurisdictions due to local variations. An SMS is required to cover elements that are relevant to the railway operations for which the rail transport operator is accredited, and the level of detail in the SMS must reflect the scope, nature and risks to safety of the railway operations (NMR cl 10).

The *National Rail Safety Guideline for Preparation of a Rail Safety Management System* provides detailed guidance on the SMS requirements.

Rail Safety Regulators will expect to see a compliant SMS with a level of detail that is appropriate to the scope, nature and risks to safety of the railway operations and the need to comply with general duties (NMR cl 10).

In addition, rail transport operators and contractors will need to be able to provide evidence that they have considered and agreed the SMS arrangements that are to apply to railway operations to be undertaken under the contract.

5. Good practice in contract management

5.1 Requirement to have systems and procedures for contract management

A rail transport operator must, if relevant to the railway operations for which it is accredited, have systems and procedures:

- for the review of tender documents and contracts to ensure that safety requirements under the rail transport operator's SMS are adequately defined and documented;
- to ensure that the terms of any tender documents or contracts do not lead to unsafe work or an activity that may affect the safety of railway operations;
- for the selection and control of contractors and to ensure the monitoring and performance of contractors, including conducting or commissioning audits of the contractor's performance in relation to the safety aspects of the contract;
- to ensure that safety duties under the Act are being met under contracts, and procedures for the taking of remedial action where necessary; and

- to ensure that goods and services provided to the railway operations meet the standards and specifications required for the safety of the railway operations (NMR Schedule 1 item O).

These requirements are discussed in the *National Rail Safety Guideline for Preparation of a Rail Safety Management System*.

5.2 How to achieve good practice in contract management

Good practice in contract management is achieved by knowledge of legislative requirements, sound planning, cooperation and communication between the rail transport operator and the contractor. It requires safety and compliance considerations at all stages of the contracting process from pre-tendering to contract evaluations.

The checklist at Appendix B is a guide to the safety considerations in contracting for the use of both rail transport operators and contractors. The checklist supplements the guidance on contractor management which is provided in Section 2.18 of the *National Rail Safety Guideline for Preparation of a Rail Safety Management System*.

Some other helpful documents and guidance on contractor management include:

- Australian Standard AS4292.1 – 2006 Railway Safety Management
- Australian Safety and Compensation Council *Guidance on OHS in Government Procurement 2006*
- Contractor Management System, Civil Contractors' Federation of Australia
- Health and Safety Executive UK, *Use of Contractors: a joint responsibility*
- Roads and Traffic Authority of NSW *Contractor Health & Safety Information Pack*
- WorkCover Authority of NSW *Subby Pack*

APPENDIX A

Safety Management System Elements

The following elements make up a rail transport operator's safety management system:

- Safety policy
- Governance and internal control arrangements
- Management responsibilities, accountabilities and authorities
- Regulatory compliance
- Document control arrangements and information management
- Review of the safety management system
- Safety performance measures
- Safety audit arrangements
- Corrective action
- Management of change
- Consultation
- Internal communication
- Risk management
- Human factors
- Procurement and contract management
- General engineering and operational systems safety requirements
- Process control
- Asset management
- Safety interface coordination
- Management of notifiable occurrences
- Rail safety worker competence
- Security management
- Emergency management
- Fatigue
- Drugs and alcohol
- Health and fitness
- Resource availability

APPENDIX B

Checklist for good practice in contract management*

Contract stage	Rail safety considerations	Action
<p>Procurement stage</p> <p>Planning:</p> <ul style="list-style-type: none"> ● Identify railway operations to be undertaken under contract ● Identify elements relevant to the railway operations: supply, design, verification, construction, manufacture, install, erect, repair, modification, operation, decommissioning ● Risk management 	<ul style="list-style-type: none"> ● Identify the railway operations to be carried out under the contract. ● Identify which party to the contract will be the rail transport operator for those railway operations and ensure that the appropriate accreditation or exemption is held. ● Ensure there are formal links between the safety and contract functions. ● Review your SMS against the railway operations to be undertaken. e.g. <ul style="list-style-type: none"> ■ undertake contract specific risk assessments relevant to each contract stage; ■ identify contract risk controls, including rail safety worker competence, and document who will be responsible for applying and managing these controls; and ■ consult with persons likely to be affected by the review of the SMS, their health and safety representatives and the unions which represent them; rail transport operators with whom you have interfaces; the public (if appropriate). ● Check that relevant SMS safety and design, supply, manufacture, verification, construction, commissioning, modification, operation, repair, maintenance, and/or decommissioning requirements are included in the contract documentation ● Consider the contract safety requirements in relation to sub-contracting. ● Consider the contract requirements, such as record keeping and reporting, in relation to monitoring safety. 	

* This design concept and some content of this checklist has been drawn from ASCC *Guidance on OHS in Government Procurement 2006*

APPENDIX B

Checklist for good practice in contract management (continued)

Contract stage	Rail safety considerations	Action
<p>Planning</p> <p><i>Continued ...</i></p>	<ul style="list-style-type: none"> ● Identify the safety representatives for all stages of contract management and document their roles and responsibilities. ● Consider what tender documentation relating to safety you might require from prospective contractors. 	
<p>Approaching the market:</p> <ul style="list-style-type: none"> ● Select method of procurement of goods or services ● Prepare tender and contract documentation ● Prepare evaluation plan 	<ul style="list-style-type: none"> ● Ensure tender safety requirements are appropriate to the railway operations and to the type of procurement – simple, panel contract, pre-qualification scheme, involved and/or complex contracts. ● Ensure tender documents specify safety and operational outcomes. ● Look at different safety requirements for services tenders versus design/supply/manufacture tenders. ● Check for adequate control of contract compliance and reporting requirements. ● Include specific safety management requirements in contract. ● Consider guidance for evaluating safety criteria. ● Consider weighting safety criteria, and whether there is a “no go” evaluation decision if safety requirements are not met. ● Consider penalties on contractors for failing to meet safety criteria 	
<p>Evaluation of submissions</p> <ul style="list-style-type: none"> ● Supplier selection ● Feedback 	<ul style="list-style-type: none"> ● Check that submissions address the safety criteria. ● Identify and obtain any further particulars needed from tenderers regarding safety. ● Check skills and qualifications of contractor management and safety staff, including previous clients’ safety references for project and safety managers. 	

APPENDIX B

Checklist for good practice in contract management (continued)

Contract stage	Rail safety considerations	Action
<p>Evaluation of submissions</p> <p><i>Continued ...</i></p>	<ul style="list-style-type: none"> ● Check contractor incident history. ● Check contractor procedures for sub contractor selection. ● Seek demonstrated evidence of contractor's SMS implementation. ● Apply weighting for safety criteria. ● Give feedback on safety content to unsuccessful tenderers. 	
<p>Contract award stage</p> <p>Contract negotiation</p>	<ul style="list-style-type: none"> ● Establish shared understanding of safety risks and issues. ● Discuss, consult on and agree SMS content. ● Develop and finalise SMS documentation. ● Schedule contract safety coordination and communications, pre-job meetings, safety inspection and test/hold points, KPI monitoring. ● Agree and establish program for education, instruction, supervision and training in new or contract specific aspects of SMS. ● Discuss and agree specifications for design, supply, manufacture, verification, construction, modification, operation, repair, maintenance, decommissioning. ● Agree non compliance procedures. ● Agree on contract risk assessment, register and controls, including rail safety worker competence. Identify persons responsible for these controls and document their responsibilities. ● Establish clear and formal process for variations and management of change including sub-contracting. ● Agree performance reporting and incident notification requirements 	

APPENDIX B

Checklist for good practice in contract management (continued)

Contract stage	Rail safety considerations	Action
<p>Responsibilities and accountabilities</p>	<p>Identify who from the rail transport operator and the contractor is responsible for:</p> <ul style="list-style-type: none"> ● Supervision of safety aspects of contract ● SMS compliance ● Safety assurance ● Safety representation at project management meetings ● Managing reporting content and format for project management meetings ● Negotiations/Disputes discussions ● Variations ● Approvals – develop a register of approved signatures ● Management of change ● Communications ● Induction ● Training ● Hazard and risk management ● Safety occurrence investigation and reporting 	
<p>Variations and management of change</p>	<ul style="list-style-type: none"> ● Ensure compliance with variation procedure and approvals, including management of change. ● Ensure use of register of approved persons and signatures for variations and management of change. ● Identify, communicate and action variations and management of change impacts – such as interface agreements, programs for fatigue management and drug and alcohol management, plans for emergency management ● Communicate variations that affect staff, contractors and others 	

APPENDIX B

Checklist for good practice in contract management (continued)

Contract stage	Rail safety considerations	Action
Communications	<ul style="list-style-type: none"> ● Make arrangements or prepare communications plan about contract arrangements to staff contractors and others 	
Contract management stage Induction	<ul style="list-style-type: none"> ● Staff, contractors, sub-contractors and others. ● Progressive for contract stage, site and works. ● Check all contractor and sub-contractor staff meet the required competencies, health assessments, and other relevant requirements. 	
Monitoring <ul style="list-style-type: none"> ● Dependent on nature of works, risks, length of contract, number of sites and sub-contractors, consultation and reporting requirements 	<ul style="list-style-type: none"> ● Undertake monitoring as agreed, ensuring schedule is met and site visits occur. ● Document findings from inspections, compliance audits and investigations and provide copies to relevant parties. ● Monitor SMS generally, including specific monitoring such as: <ul style="list-style-type: none"> ■ managing sub contractors. ■ implementation of programs, plans and competencies ■ safety and design management and procedures ■ notification of occurrences and incident investigations ■ effectiveness of on-site risk controls ■ currency and effectiveness of risk register ■ management of non compliance 	
Auditing	<ul style="list-style-type: none"> ● Undertake auditing as agreed, both desk top and site based. 	

APPENDIX B

Checklist for good practice in contract management (continued)

Contract stage	Rail safety considerations	Action
<p>Supervision</p> <ul style="list-style-type: none"> ● Dependent on nature of operations, number of sub-contractor, levels of protection under network rules 	<ul style="list-style-type: none"> ● Check supervision occurs as required in contract, especially where protection and/or possessions are in place. ● Ensure approvals and permits are properly established and managed in compliance with supervision requirements and network rules. 	
<p>Communications</p>	<ul style="list-style-type: none"> ● Ensure continued communications with staff on contract issues affecting safety. 	
<p>Contract evaluation stage</p> <p>Safety compliance</p>	<ul style="list-style-type: none"> ● Identify compliance/non compliance. ● How was non compliance managed? Was non-compliance reported in a timely manner? ● What lessons were learned? How can these lessons improve future tendering and contract management? ● Review occurrences and notifications. 	
<p>Risk assessment</p> <ul style="list-style-type: none"> ● What unanticipated issues emerged? ● Lessons learned for the future procurement? 	<ul style="list-style-type: none"> ● Review SMS risk register against project/ contract risks, issues, and notifications of occurrences. ● Add newly assessed risks and controls to contract risk register. ● Add contract management specific risks that affect safety to the risk register. 	