

Introduction and application

The purpose of these guidelines is to assist NSW Government Agencies and their Industry partners in providing a consistent, reasonable and equitable approach to developing contractual requirements for projects in procurement and delivery during the COVID-19 Pandemic¹. These guidelines should be considered by NSW Government Agencies and their Industry partners as they develop contracts for NSW Government projects and PPPs starting procurement from 1 November 2021 during the COVID-19 pandemic.

Recent experience of COVID-19 impacts means mitigation measures and disruptions can be priced with increasing certainty. The focus of these Guidelines is on appropriate risk sharing and encouraging mitigation. Discussions about appropriate contractual terms will be led by agencies within existing decision-making delegations and bodies.

Commercial principles

These guidelines recommend that NSW Government Agencies and their Industry partners incorporate into contracts the following requirements:

- Delivery agencies are clear on what is required to be priced during the tender phase (including site shutdowns)
- Principal Contractors to provide a baseline program at tender submission, which is updated at Contract Close and forms the basis of the Contract Program. This program is to be updated monthly and used to assess COVID-19 impacts to program
- Principal Contractors to provide a COVID-19 Management Plan at tender submission in addition to other Safety Plans. It is to be project specific, scalable and demonstrate how the contractor will mitigate COVID-19 impacts to the project (e.g., disruption to supply chains or materials, personnel on site, managing vaccination data; testing and cleaning regimes; and critical path updates after disruption events). As part of the COVID-19 Management Plan:
 - where requested, the Principal-Contractor should price the COVID-19 Management Plan, with allowances in the tender price for any COVID Management Plan items clearly identified and specified in the contract. This will provide the baseline for determining any future entitlement.
- Relief for shutdowns:
 - time delays for full-day site closures will be assessed under the relevant contractual provisions and consider if the closure impacted critical path activities; and
 - cost impacts to use a special COVID-19 daily rate (discounted from the full day rate), having regard to actual productivity on the site at the time of the delay as well as the true costs of the shutdown.

¹The COVID-19 infectious disease that is declared as a pandemic by the World Health Organization.

Expected behaviours

- A collaborative approach by all parties
- Transparent and open book dealings on claims by contractors, subcontractors and suppliers
- Timely settlement of claims
- Contractors, subcontractors and suppliers should not seek to profit in any way from the COVID-19 virus impacts and should treat subcontractors, consultants, and suppliers in a fair and appropriate manner by only claiming for genuine costs incurred by the pandemic and provide evidence this is being done
- Contractors, subcontractors and suppliers should explore all other avenues of Government support for which they are eligible and avoid double dipping
- Parties are encouraged to advise relevant Secretaries, CEOs or Infrastructure NSW in the event that these principles are not consistently applied.