

Tender clauses: work valued over \$25,000

Departments, agencies, CAC Act bodies and contractors should incorporate the clauses below into all tender documentation (including expressions of interest) for both directly and indirectly funded projects:

1. The Tenderer's attention is drawn to the National Code of Practice for the Construction Industry (the Code) and the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry (the Guidelines), revised September 2005, reissued June 2006. Copies of the Code and Guidelines are available at www.workplace.gov.au/building.
2. By submitting an expression of interest or tender to undertake the work/services you:
 - a) will be deemed to have read; and
 - b) agree that you must comply with, the Code and Guidelines.
3. Notwithstanding any other provisions of the Tender Documents, Tenderers hereby consent to the disclosure of information concerning compliance with the Code and Guidelines, including details of whether or not a sanction (see Section 9.2 of the Guidelines) has been imposed. This consent extends to disclosure by the Commonwealth, its agencies and ministers, and disclosure to others for the purposes of facilitating compliance with the Code and Guidelines and the exercise of their statutory and portfolio responsibilities. Tenderers shall ensure that their proposed subcontractors, consultants and material suppliers are also aware of, and agree to comply with, these rights of use and disclosure.
4. Tenderers should be aware that the Code and Guidelines apply to:
 - a) the project which is the subject of these Tender Documents; and
 - b) all construction building work undertaken by the Tenderer and its related entities (see section 2.6 of the Guidelines) thereafter as defined in the Guidelines, including work on all new privately funded construction projects in Australia. For further information on the definition of privately funded construction projects, see section 2.5 of the Guidelines.
5. It is a condition of tender that Tenderers comply with the Code and Guidelines. As part of their tender response, Tenderers must submit a signed declaration of compliance in accordance with the Declaration of Compliance set out on pages 10 to 13.
6. Each Tenderer must indicate in its Tender response:
 - a) how the Tenderer and its related entities have complied with the Code and Guidelines in the past (if the Tenderer has undertaken Australian Government funded construction work in the past);
 - b) how the Tenderer intends to comply with the Code and Guidelines in performing the Contract, should it be the successful Tenderer; and
 - c) where the Tenderer proposes to subcontract an element of the project, either:
 - i) the information detailed in the above subclauses (a) and (b) in relation to each subcontractor, or
 - ii) how the Tenderer intends to ensure each subcontractor complies with the Code and Guidelines.

Declaration of Compliance

The following Declaration of Compliance should be included as an attachment to tender documentation (including expressions of interest) for both directly and indirectly funded projects:

Declaration of Compliance with the National Code of Practice for the Construction Industry and the Australian Government Implementation Guidelines (Revised September 2005, Reissued June 2006)

Name of Australian Government project tendered for:

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.....

Name of Tenderer, ABN and ACN:

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1. The Tenderer confirms that it has complied with the National Code of Practice for the Construction Industry (the Code) and the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry (the Guidelines), revised September 2005, reissued June 2006, in preparing this Tender.
2. The Tenderer undertakes that it complies with Code and Guidelines, and has complied with the Code and Guidelines from the time of lodgement of this tender, and that it will require compliance by its related entities (see section 2.6 of the Guidelines).
3. The Tenderer undertakes to ensure compliance from all subcontractors (which includes consultants and material suppliers) engaged on this project, should it be the successful Tenderer. All contracts must expressly require compliance with the Code and Guidelines.
4. The Tenderer agrees that it and its subcontractors and its related entities will provide the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, with access to:
 - (a) inspect any work, material, machinery, appliance, article or facility;
 - (b) inspect and copy any record relevant to the Project and Works the subject of this Contract;
 - (c) interview any person; and
 - (d) any document requested under this contract. The document must be provided within the period specified either in person, by fax or by post,as is necessary to demonstrate its compliance with the Code and Guidelines.
5. The Tenderer acknowledges that it is aware the Commonwealth or Minister for Employment and Workplace Relations may impose a sanction on a Tenderer or Contractor that does not comply with the Code and Guidelines.

The sanction imposed may include but is not limited to:

- (a) the reporting of the breach to an appropriate statutory body or law enforcement agency (if there is evidence that the breach may also be a breach of a Commonwealth or State law), or industry association;

- (b) issuing of a formal warning that future breaches may lead to more significant sanctions;
 - (c) preclusion from Tendering for any Commonwealth work for a specified period;
 - (d) communication of sanction details to all Commonwealth agencies to ensure a 'whole-of-government' approach;
 - (e) publication of details of the breach and identification of the party committing the breach; and
 - (f) a reduction in the number of tendering opportunities that are given.
6. The Tenderer is to select which of the following clauses in italics is appropriate and delete the remaining clause.
- a) :
- The Tenderer hereby gives its consent, and confirms that its related entities give their consent, to disclosure by the Commonwealth, its agencies and ministers, of information concerning the Tenderer's and its related entities' compliance with the Code and Guidelines and whether or not a sanction has been imposed on the Tenderer and/or related entity of the Tenderer, for the exercise of their statutory and portfolio responsibilities (the Purposes).*
- b) OR,:
- The Tenderer has previously given its consent, and confirms that its related entities have previously given their consent, to disclosure by the Commonwealth, its agencies and ministers, of information concerning the Tenderer's and its related entities' compliance with the Code and Guidelines and whether or not a sanction has been imposed on the Tenderer and/or a related entity of the Tenderer for the exercise of their statutory and portfolio responsibilities (the Purposes), and confirms that the Tenderer and its related entities have not revoked that consent.*
7. The Tenderer has obtained or will obtain the consent of each subcontractor, consultant and material supplier proposed in its Tender to disclosure by the Commonwealth, its agencies and ministers, of information concerning the proposed subcontractors, compliance with the Code and Guidelines and whether or not a sanction has been imposed on any proposed subcontractor, for the Purposes.
8. The Tenderer acknowledges that the consents provided in clause 6 are not limited to this Tender process as the Tenderer is expected to comply with the Code in future projects.
9. The Tenderer will:
- (a) Describe how the Tenderer has complied with the Code and Guidelines in the past (if the Tenderer has undertaken Australian Government funded construction work in the past) and how it will comply if successful. For example:
 - (i) comply with the Code and Guidelines;
 - (ii) require compliance with the Code and Guidelines from all subcontractors before doing business with them;
 - (iii) apply the Code and Guidelines to privately funded projects that commence after they first lodge an expression of interest or tender for Australian Government projects if the expression of interest or tender occurs on or after 1 November 2005;

- (iv) ensure that contractual documents allow for a person occupying a position in the ABCC to access sites, documents and personnel to monitor compliance with the Code and Guidelines, including privately funded construction sites;
 - (v) project managers or head contractors must establish appropriate processes to ensure freedom of association;
 - (vi) ensure there is an occupational health safety and rehabilitation (OHS&R) plan for the project;
 - (vii) ensure that where threatened or actual industrial action occurs on a project, contractors, subcontractors, consultants or employees report such action to the client agency;
 - (viii) respond to requests for information concerning Code-related matters made on behalf of Code Monitoring Group (CMG);
 - (ix) where practicable, ensure contractors or subcontractors initiate voluntary remedial action aimed at rectifying non-compliant behaviour when it is drawn to their attention;
 - (x) ensure that CMG secretariat is notified of any alleged breaches, voluntary remedial action taken or other Code-related matters within 21 days of the party becoming aware of the alleged breach; and
 - (xi) be aware that and ensure that sanctions applied under the Code are enforced including the exclusion of identified parties from work opportunities in accordance with decisions advised by CMG.
- (b) Where the Tenderer proposes to subcontract an element of the work, the Tenderer is either to:
- (i) provide the information detailed at (a) in relation to each subcontractor; or
 - (ii) detail how the Tenderer intends to ensure compliance with the Code and Guidelines by each subcontractor.

Privately Funded Projects:

The Tenderer declares that, in respect to privately funded projects:

10. The Tenderer and its related entities will comply with the Code and Guidelines on all the Tenderer's and its related entities' future privately funded projects.
11. The Tenderer shall maintain adequate records of compliance with the Code and Guidelines by the Tenderer, its subcontractors and related entities.
12. The Tenderer agrees that it and any of its related entities will provide the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, with access to:
 - (a) inspect any work, material, machinery, appliance, article or facility;
 - (b) inspect and copy any record relevant to the Project and Works the subject of this Contract; and

(c) interview any person

as is necessary to allow validation of its compliance with the Code and Guidelines.

Additionally, the Tenderer agrees that the Tenderer and its related entities will agree to a request from the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, to produce a specified document within a specified period, in person, by fax or by post.

13. The Tenderer will ensure that the Tenderer and its related entities permit the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, to have access to records and to the related entities' and subcontractors' premises (to inspect and copy records), as is necessary to ensure that the subcontractors and related entities are complying with the Code and Guidelines.

[To be signed by Tenderer—insert appropriate signature block.]