# Tender and Contract Model Clauses

Aboriginal Procurement Policy – Aboriginal Participation Requirements

**Note for Agencies**

The model clauses contained in this document are provided for general agency guidance only. They should be reviewed and adjusted for consistency with any procurement or contract documentation in which they are used. If in doubt, an agency should seek legal advice about the model clauses prior to finalising any documentation in which they are used.

**Model Tender Provisions**

**Note for Agencies**

The Aboriginal Procurement Policy sets out Aboriginal participation requirements which require suppliers to commit to minimum levels of Aboriginal employment and direct Aboriginal business subcontracting.

These requirements apply to procurements with an Estimated Contract Value of $5 million or above in the following industries (applicable UNSPSC codes are included in brackets):

a. community and social services (all contracts delivered under the Delivering Community Services in Partnership policy);

b. education and training (86100000, 86110000, 86130000, 86140000);

c. public administration and finance services (93150000); and

d. construction (7210000, 72110000, 72120000, 72140000, 72150000); or

e. where the contract will be delivered to Aboriginal people or target the specific needs of Aboriginal people.

For details, refer to the [Agency Practice Guide](https://www.wa.gov.au/government/publications/aboriginal-procurement-policy-agency-practice-guide) available on wa.gov.au.

Below is a model provision for a Respondent to disclose in their Offer the commitment to either the Aboriginal employment target or the Aboriginal business sub-contracting target. It is of high importance that the form and treatment of the disclosure is clearly described and properly integrated into the overall procurement process that the agency proposes to use. Agencies should seek assistance from the Department of Finance or legal advice about appropriate wording if required.

The model provision uses the following terms which will most likely already be defined in the agency's tender and contract documentation. These terms should be adapted to be consistent with the terminology used in the relevant document.

**Offer** – the bid, tender or other offer to supply lodged by the Respondent in response to the Request.

**Aboriginal participation requirements –** Aboriginal participation requirements as set out in the [Aboriginal Procurement Policy](https://www.wa.gov.au/government/publications/general-procurement-direction-202108-aboriginal-procurement-policy) available on wa.gov.au.

**Respondent** – the prospective supplier lodging a bid, tender or other offer to supply.

1. **Aboriginal Participation Requirements disclosure**

The Respondent is to disclose in its Offer which Aboriginal Participation Requirement that the Respondent agrees to comply with:

* 1. [ ]  Aboriginal Business Subcontracting: award at least [Agency to insert minimum target as per Aboriginal Procurement Policy] per cent of the total contract value (as at contract award) to registered Aboriginal business subcontractors, as defined in [Agency to insert reference to Definitions contract clause], by the Expiry of the Customer Contract.

**or**

* 1. [ ]  Employment of Aboriginal Persons: at least [Agency to insert minimum target as per Aboriginal Procurement Policy] per cent of the total number of persons employed on the contract per annum will be Aboriginal Persons, as defined in [Agency to insert reference to Definitions contract clause].

**Note for Agencies**

**Aboriginal Business Subcontracting**

The Aboriginal Procurement Policy sets out minimum subcontracting targets for applicable contracts awarded in:

- 2021-22: 3 per cent;

- 2022-23: 3.5 per cent; and

- 2023-24: 4 per cent.

**Employment of Aboriginal Persons**

The Aboriginal Procurement Policy sets out minimum employment targets for applicable contracts with a delivery point in:

- Perth metropolitan area; Peel; South West; Great Southern; Wheatbelt; all statewide contracts: 2 per cent;

- Gascoyne, Mid West and Goldfields-Esperance: 5 per cent; and

- Pilbara; Kimberley: 10 per cent.

Where the contract will be delivered across multiple regions, the lowest applicable target is to be included.

For more details, refer to the [State Agency Practice Guide](https://www.wa.gov.au/government/publications/aboriginal-procurement-policy-agency-practice-guide) available on wa.gov.au.

**Model Contract Clauses**

**Note for Agencies**

The model clauses use the following terms which will most likely already be defined in the Contract. These terms should be adapted to be consistent with the terminology used in the Contract.

**Agency** – the procurement agency for the supply.

**Contract** – the agreement for the supply.

**Contractor** – the supplier engaged to provide the supply.

**Offer** – the bid, tender or other offer to supply lodged by the Respondent in response to the Request.

**Term** – the term of the Contract.

Agency to insert following definitions into the Contract definitions section:

1. **Definitions**

The following terms have the following meanings:

**Aboriginal Business** means a business registered on Supply Nation’s Indigenous Business Direct (https://supplynation.org.au/) or the Aboriginal Business Directory of WA (<https://www.abdwa.com.au/>).

**Aboriginal Participation Requirements** means the Contractor’s obligations under clause 2.

**Aboriginal Person** means a person who is of Aboriginal or Torres Strait Islander descent, who identifies as such and is accepted as such by the community in which he or she lives or has lived.

**Employment** means full-time, part-time, casual employees, apprentices and trainees, workers engaged by the Contractor and its direct (Tier 1) subcontractors through labour hire arrangements and other employer supported employment initiatives such as cadetships and internships, that engage in at least one hour of paid work per week. ‘Employed’ has a corresponding meaning.

**State** means State of Western Australia.

**Note for Agencies**

The Aboriginal participation requirement condition must be included in all procurements with an Estimated Contract Value of $5 million in certain industries or an Estimated Contract Value of $5 million where the contract will be delivered to Aboriginal people or target the specific needs of Aboriginal people.

The requirements do not apply where there is a Standing Offer with multiple suppliers and no commitment to spend or market share.

**Aboriginal Business Subcontracting Outcomes**

The Aboriginal Procurement Policy sets out minimum targets for applicable contracts awarded in:

- 2021-22: 3 per cent;

- 2022-23: 3.5 per cent; and

- 2023-24: 4 per cent.

**Employment of Aboriginal Persons**

The Aboriginal Procurement Policy sets out minimum targets for applicable contracts with a delivery point in:

- Perth metropolitan area; Peel; South West; Great Southern; Wheatbelt; all statewide contracts: 2 per cent;

- Gascoyne, Mid West and Goldfields-Esperance: 5 per cent; and

- Pilbara; Kimberley: 10 per cent.

Where the contract will be delivered across multiple regions, the lowest applicable target is to be included.

For more details, refer to the [State Agency Practice Guide](https://www.wa.gov.au/government/publications/aboriginal-procurement-policy-agency-practice-guide) available on wa.gov.au.

1. **Aboriginal Participation Requirements**
	1. As nominated by the Contractor in its Offer, the Contractor agrees to meet one of the following Aboriginal Participation Requirements:
2. **Aboriginal Business Subcontracting:** at least [Agency to insert] per cent of the total contract value (at contract award) awarded to Aboriginal Business subcontractors; or
3. **Employment of Aboriginal Persons**: annually, based on the anniversary of the commencement of the Term, at least [Agency to insert] per cent of the total number of persons employed on the contract will be Aboriginal persons.
	1. Only contracts awarded to subcontractors that are Aboriginal Businesses and who are contracted directly by the Contractor count towards clause 2.a.(i).
	2. Only employment by the Contractor and its direct (Tier 1) subcontractors counts towards clause 2.a.(ii).
	3. The Contractor must report on Aboriginal Business Subcontracting Outcomes or Employment of Aboriginal Persons, as nominated by the Contractor in its Offer, to the Contract Manager at the frequency outlined in clause 4.
	4. The Contractor acknowledges and agrees that the Aboriginal Participation Requirements apply during the Term, any extensions of the Term and until all of its reporting obligations as set out in Clause 4 are fulfilled.
4. **Variation or revision of Aboriginal Participation Requirements**

If a party wishes to vary or revise the Aboriginal Participation Requirements, the parties must liaise in good faith with a view to agreeing and then documenting the proposed variations or revisions. If the parties cannot agree on a variation or revision of the Aboriginal participation requirements, the requirements will remain unchanged.

1. **Aboriginal participation reports**

Each report submitted under clause 4.a. must address the relevant data fields set out in Attachment [Agency to insert].

* 1. The Contractor must submit to the Agency, directly in .xls/xlsx format [Agency to amend file format and extensions as required] or via the Agency’s nominated reporting platform, a report as to the matters covered in clause 4.a.

Agency to amend below frequency as required. The reporting frequency outlined in this clause are minimum reporting requirements under the Aboriginal Procurement Policy. Any adjustments to the below reporting frequencies should also be reflected in clause 4.b.i., 4.b.ii., and 4.c. for consistency.

1. For the Employment of Aboriginal Persons requirement, a report to the Agency no later than 30 calendar days after each anniversary of the commencement of the Term.
2. For the Aboriginal Business Subcontracting requirement, a report no later than 30 calendar days after the Expiry of the Customer Contract.
	1. Subcontracts valued at $50,000 and above must be reported towards this requirement.
	2. The Contractor may report subcontracts valued less than $50,000, but contracts valued less than $5,000 will not be acknowledged towards achieving this requirement.
	3. For either Aboriginal Participation Requirement, where the Term is 12 months or less, only one report from the Contractor is required to be submitted no later than 30 calendar days after the Expiry of the Customer Contract.
3. **Verification of Contractor’s compliance with Aboriginal Participation Requirements**
	1. The Contractor must:
		1. permit the Agency or its duly authorised representative, from time to time during ordinary business hours and upon notice, to inspect, verify and make copies at the Agency’s expense of all records maintained by the Contractor for the purposes of this Contract;
		2. permit the Agency, or its duly authorised representative, from time to time to undertake a review of the Contractor’s performance of the Aboriginal Participation Requirements; and
		3. ensure that its employees, agents and sub-contractors give all reasonable assistance to any person authorised by the Agency to undertake such audit or inspection.
	2. If the Agency requests from the Contractor information or access to documentation in connection with the Aboriginal Participation Requirements, or information or documentation in connection with any report referred to in clause 4, the Contractor must promptly comply with such requests, ensuring that the information or documentation provided, or to which access is provided, is accurate, up-to-date, comprehensive, sufficiently detailed, and in no way misleading or deceptive.
	3. The Contractor authorises the Agency, and any duly authorised representative of the Agency, to obtain information from any relevant persons, firms or corporations, including third parties, regarding the Contractor’s compliance with the Aboriginal Participation Requirements.
	4. The obligations set out in this clause 5 are in addition to and do not derogate from any other obligation under this Contract.
4. **Verification of Aboriginal participation reports**
	1. Each report required under clause 4 must be accurate, up-to-date, comprehensive, sufficiently detailed, and in no way misleading or deceptive.
	2. The Contractor must ensure that each report referred to in clause 4 is endorsed and verified by the Contractor's Chief Executive Officer, Managing Director or equivalent.
5. **Use of Information**

Both the Agency and the State may use or disclose any report provided under clause 4, or any information or documentation referred to in clause 6 for the legitimate purposes of or relating to government or the business of government.

1. **Compliance with Aboriginal Participation Requirements**

The Contractor acknowledges that if the Contractor does not comply with the Aboriginal Participation Requirements, this may result in the State (including any agency, department, authority or instrumentality of the State) [Agency to insert. Consider the varying severity of potential breaches and associated risks. An example of a contractual remedy that may be included here is to not award a supply contract, or supply contracts, to the Contractor in the future.]

1. **Clause survives**

This clause survives the termination or expiration of the Contract.

# ATTACHMENT [Agency to insert] – Required data fields and corresponding descriptions to be included in Aboriginal participation reporting

## Aboriginal Business Subcontracting Outcomes Reporting

|  |  |
| --- | --- |
| **Field name** | **Description** |
| **Contractor and contract details** |
| Business name | Business name as listed on Tenders WA |
| ABN | Australian Business Number registered with the Australian Government. |
| Contract Title | Contract description |
| Contract Reference Number  | Contract identifier |
| Contract Procuring Agency | Name of the agency responsible for the contract. |
| Contract Commencement Date:  | Commencement date of contract. |
| Contract Completion Date: | Contract expiry date at end of all terms/extensions. |
| Contract Value (at Award) (inc. GST): | Value of the contract, including any extension options, at Contract Award. |
| Contract Spend to Date (Inc. GST):  | Total spend on the contract up to the date the report is submitted. |
| Date of this Report:  | Date participation plan report submitted. |
| **Subcontractors (on a per contract basis)** |
| A. Subcontractor | Business name of the subcontractor. |
| Contract description | Contract title or description of the work undertaken. |
| Registered Aboriginal business | Is the business registered on Supply Nation’s Indigenous Business Direct and/or the Aboriginal Business Directory of WA. |
| Total estimated contract(s) valued in $AUD (including GST) | Value of awarded contract/works. |
| B. Subcontractor | Business name of the subcontractor. |
| Contract description | Contract title or description of the work undertaken. |
| Registered Aboriginal business | Is the business registered on Supply Nation’s Indigenous Business Direct and/or the Aboriginal Business Directory of WA. |
| Total estimated contract(s) valued in $AUD (including GST) | Value of awarded contract/works. |

## Employment of Aboriginal Persons Outcomes Reporting

| **Field name** | **Description** |
| --- | --- |
| **Contractor and contract details** |
| Business name | Business name as listed on Tenders WA |
| ABN | Australian Business Number registered with the Australian Government. |
| Contract Title | Contract description |
| Contract Reference Number  | Contract identifier |
| Contract Procuring Agency | Name of the agency responsible for the contract. |
| Contract Commencement Date:  | Commencement date of contract. |
| Contract Completion Date: | Contract expiry date at end of all terms/extensions. |
| Contract Spend to Date (Inc. GST):  | Total spend on the contract up to the date the report is submitted. |
| Date of this Report:  | Date participation plan report submitted. |
| **Contractor and subcontractor workforce (per year of contract)** |
| Non-Aboriginal Workforce, Excluding Apprentices & Trainees (Supplier Workforce)**WA metro –** male, female, other**WA regional –** male, female, other**Other Australian States and Territories International** | Total number of non-Aboriginal employees directly employed on the contract by the supplier, not including any apprentices or trainees.  |
| Aboriginal Workforce, Excluding Apprentices & Trainees (Supplier Workforce)**WA metro –** male, female, other**WA regional –** male, female, other**Other Australian States and Territories International** | Total number of Aboriginal employees directly employed on the contract by the supplier, not including any apprentices or trainees. |
| Non-Aboriginal Apprentices & Trainees (Supplier Workforce)**WA metro –** male, female, other**WA regional –** male, female, other**Other Australian States and Territories International** | Total number of non-Aboriginal apprentices and trainees directly employed on the contract by the supplier. |
| Aboriginal Apprentices & Trainees (Supplier Workforce)**WA metro –** male, female, other**WA regional –** male, female, other**Other Australian States and Territories International** | Total number of Aboriginal apprentices and trainees directly employed on the contract by the supplier. |
| Non-Aboriginal Workforce, Excluding Apprentices & Trainees (Subcontractor Workforce)**WA metro –** male, female, other**WA regional –** male, female, other**Other Australian States and Territories International** | Total number of non-Aboriginal employees directly employed on the contract by Tier 1 subcontractors, not including any apprentices or trainees.  |
| Aboriginal Workforce, Excluding Apprentices & Trainees (Subcontractor Workforce)**WA metro –** male, female, other**WA regional –** male, female, other**Other Australian States and Territories International** | Total number of Aboriginal employees directly employed on the contract by Tier 1 subcontractors, not including any apprentices or trainees. |
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