**TENDER AND CONTRACT MODEL CLAUSES**

**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**

**The *Western Australian Jobs Act* 2017 (WA) – Participation Plans**

**NOTE FOR AGENCIES**

The *Western Australian Industry Participation Strategy* (**WAIPS**) sets out requirements for a procurement agency in respect of supplier participation plans for WAIPS supplies, including as to the form of participation plan to be required by an agency and as to evaluation by an agency of participation plans submitted. Refer to the *Western Australian Jobs Act* 2017 (WA), the WAIPS and the *Agency Guidelines for Assessment of a Participation Plan* for further detail.

Set out below is model wording for a participation plan requirement. Note that this wording is base wording only and is set out to enable an agency to adapt it or build on it in settling the appropriate wording to cover submission and evaluation of participation plans in the context of its procurement process documents. It is of high importance that the method of evaluation of participation plans is both clearly described and properly integrated into the overall evaluation process which the agency proposes to use. Agencies should seek assistance from the Department of Finance, or legal advice, about appropriate wording if required.

The model wording uses the following terms which will most likely already be defined in the agency's request or other relevant procurement process document(s). These terms should be adapted to be consistent with the terminology used in the relevant document.

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

***Closing Date*** *– the latest time at which offers in response to the Request may be lodged.*

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

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

***Participation Objectives –*** *the criteria or objectives against which the Agency will assess Section B of the Participation Plan, as outlined in the Request.*

***Participation Plan*** *– defined in the model wording.*

***Qualitative Requirement*** *– a weighted qualitative evaluation criterion to be used by the Agency in evaluating offers.*

***Request*** *– the request for tenders, request for proposals or other request document issued by the Agency for the supply.*

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

***Template Participation Plan*** *– defined in the model wording; the Agency must include the template as an attachment to the Request.*

1. **Participation Plan**
	1. The *Western Australian Jobs Act* 2017 (WA) and the *Western Australian Industry Participation Strategy* (**WAIPS**) made under it contain obligations for agencies to require from prospective suppliers, and to assess, participation plans in connection with the supply of goods or services to or for agencies or the State.
	2. A template participation plan is available to download from the Industry link portal. [Ctrl + Click on this link to download the template](https://industrylink.wa.gov.au/participation-plans/participation-plans) (**Template Participation Plan**).
	3. The Respondent must submit to the Agency a participation plan with or as part of its Offer which addresses each of the matters outlined in the Template Participation Plan (**Participation Plan**).
	4. **Industry Link Advisory Service** or **ILAS**, is part of the Industry Development division of the Department of Jobs, Tourism, Science and Innovation and is located at Level 6, 1 Adelaide Terrace, East Perth, Western Australia 6004. ILAS plays a key role in liaising with agencies and bidders in WAIPS applicable projects and procurements. ILAS is able to provide advice to Respondents on preparation of a Participation Plan and on maximising the opportunities for local industry and workers. More information on ILAS can be found on the WA Industry Link portal at [www.industrylink.wa.gov.au](https://industrylink.wa.gov.au/)
	5. All requests for assistance from ILAS need to be made not later than 5 business days prior to the Closing Date in order to allow ILAS sufficient time to respond.
2. **Evaluation**
	1. The Agency will, in its value for money assessment, consider as a Qualitative Requirement the extent to which Section B of the Participation Plan meets the Participation Objectives.
	2. The Agency reserves the right to reject any Offer that does not contain a Participation Plan which properly addresses the matters outlined in the Template Participation Plan.
	3. The Participation Plan Qualitative Requirement will be weighted at [Agency to determine as to 10% or 20%; refer to the WAIPS] per cent of the qualitative evaluation of the Offer.

**NOTE FOR AGENCIES**

The Participation Plan evaluation score is to be weighted at 10% or 20%, as determined by the Agency. See the WAIPS for further information.

**Model Contract Clauses**

**NOTE FOR AGENCIES**

These 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.*

***Term*** *– the term of the Contract*.

1. **Definitions**

In this clause [Agency to insert], the following terms have the following meanings, unless the context otherwise requires:

**Annual Report** has the meaning given in clause 4(a)(i).

**Final Report** has the meaning given in clause 4(a)(ii).

**Industry Link Advisory Service** or **(ILAS)** means Industry Link Advisory Service of Level 6, 1 Adelaide Terrace, East Perth, Western Australia 6004. ILAS plays a key role in liaising with Agencies and bidders in Western Australian Industry Participation Strategy (WAIPS) applicable projects and procurements.

**Participation Commitments** means the statements of intention, proposals, undertakings and commitments which are given or made by the Contractor in Section B of the Participation Plan.

**Participation Plan** means the *Western Australian Industry Participation Strategy – Participation Plan* document attached to the Contract and marked Attachment [Agency to insert].

**Participation Plan Obligations** means the Contractor's obligations under clause 2(a).

**State** means State of Western Australia.

1. **The Participation Plan**
	1. The Contractor must, in performing its obligations under the Contract, comply with the Participation Commitments.
	2. The Contractor acknowledges and agrees that its Participation Plan Obligations apply during the Term, any extensions of the Term and until all of its reporting obligations as set out in Clause 4 are fulfilled.
	3. The Contractor acknowledges and agrees that the Participation Plan Obligations include the Contractor ensuring its sub-contractors (at any tier) do what is necessary to enable the Contractor to comply with clauses 2(a) and 2(b).

**NOTE FOR AGENCIES** Final copy of the Contractor’s Participation Plan to be an attachment to the Contract.

1. **Variation or revision of Participation Plan**

If a party wishes to vary or revise the Participation Plan, 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 Participation Plan, it will remain unchanged.

1. **Participation Plan Reporting**
	1. The Contractor must submit to the Agency a report as to the matters covered by the Participation Plan:
2. in every year of the Term, in respect of that year (**Annual Report**); and
3. after the end of the Term, in respect of the whole of the Term (**Final Report**), in accordance with this clause.
	1. Each report submitted under clause 4(a) must use the form of, and must address the matters outlined in, the Participation Plan Report Template which is available to download from the Industry Link portal. [Ctrl + Click on this link to download the reporting template](https://industrylink.wa.gov.au/participation-plans/reporting-for-participation-plans)
	2. Subject to clause 4(d), the Contractor must submit:

(i) an Annual Report the Agency on each anniversary of the commencement of the Term, or on such other date each year as is notified by the Agency to the Contractor; and

(ii) a Final Report no later than 2 months after the end of the Term.

* 1. Where the Term is 12 months or less, only one report from the Contractor is required, which the Contractor must lodge within 2 months after the end of the Term.
	2. Each report required under clause 4(a) report must be accurate, up-to-date, comprehensive, sufficiently detailed, and in no way misleading or deceptive.

**NOTE FOR AGENCIES** Participation Plan Report Template to be an attachment to the Contract.

1. **Verification of Contractor’s compliance with Participation Plan**
	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 Participation Plan Obligations; and
		3. ensure that its employees, agents and sub-contractors (at all tiers) 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 Participation Plan or the Participation Plan Obligations, or information or documentation in connection with any report referred to in clause 4, the Contractor must promptly comply with such request, 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 Participation Plan Obligations.
	4. The obligations set out in this clause 5 are in addition to and do not derogate from any other obligation under this Contract.
2. **Verification of Participation Plan**

The Contractor must ensure that both the Participation Plan and each report referred to in clause 4 is endorsed and verified as being true and correct by the Contractor's Chief Executive Officer, Managing Director or equivalent.

1. **Use of Information**

Both the Agency and the State may use or disclose the Participation Plan, any report provided under clause 4, or any information or documentation referred to in clause 5 for the legitimate purposes of or relating to government or the business of government.

1. **Compliance with Participation Plan**

The Contractor acknowledges that if the Contractor does not comply with the Participation Plan Obligations, this may result in the State (including any agency, department, authority or instrumentality of the State) not awarding 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.

**GRANTS**

The objectives of the Western Australian Industry Participation Strategy 2020 (WAIPS 2020) apply to State Agency grants that are for the purposes of the construction or refurbishment of capital infrastructure or facilities exceeding $5 million (including GST). Refer to the WAIPS 2020 for further information.

**NOTE FOR AGENCIES**

The model clause and wordings 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 clause or wordings prior to finalising any documentation in which they are used.

**Agency Instructions:**

The Agency must notify the Industry Link Advisory Service (ILAS) at the Department of Jobs, Tourism, Science and Innovation by emailing industrylink@jtsi.wa.gov.au when a grant, which meets the definition of a grant under the Western Australian Industry Participation Strategy (WAIPS 2020) is awarded.

The Grant Recipient must submit a report to the Agency within two months after the completion of the grant project.

The Agency must forward the report to ILAS by email to industrylink@jtsi.wa.gov.au

**Suggested words to include in a grant award letter**

The Grant Recipient must submit a report to the Industry Link Advisory Service at the Department of Jobs, Tourism, Science and Innovation within two months after the completion of the grant project. A reporting template is available for download from the WA Industry Link portal – *insert link here*

**Suggested clause to include in a financial assistance agreement**

1. **Reporting**
	1. The Agency must notify the Industry Link Advisory Service by emailing industrylink@jtsi.wa.gov.au when a grant, which meets the definition of a grant under the Western Australian Industry Participation Strategy (WAIPS 2020) is awarded.
	2. The Grant Recipient must submit a report to the Agency within two months after the completion of the grant project. A reporting template is available for download from the WA Industry Link portal – *insert link here*.
	3. The Agency must forward the report to ILAS by email to industrylink@jtsi.wa.gov.au