



# Aboriginal Procurement Policy – Aboriginal Participation Requirements – Request and Contract Model Clauses

The Aboriginal Procurement Policy sets out Aboriginal participation requirements which require suppliers to commit to minimum levels of Aboriginal employment and direct subcontracting with Aboriginal businesses/Aboriginal Community Controlled Organisations (ACCOs).

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.

## Aboriginal Business/ACCO 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](#) available on [wa.gov.au](http://wa.gov.au).

## Purpose

State Agencies are required to insert tender provisions and contract clauses into contract documentation to implement the Aboriginal participation requirements where applicable.

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 Provision

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 available on [wa.gov.au](http://wa.gov.au).
- **Respondent** – the prospective supplier lodging a bid, tender or other offer to supply.

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/ACCO 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.

### 1. Aboriginal Participation Requirements disclosure

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

- Aboriginal Business/ACCO 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/ACCO subcontractors, as defined in [\[Agency to insert reference to Definitions contract clause\]](#), by the Expiry of the Customer Contract.
- or**
- 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 [\[Agency to insert reference to Definitions contract clause\]](#).

## Model Contract Clauses

The following Aboriginal participation requirement conditions 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.

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 the 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/>).

**ACCO** means Aboriginal Community Controlled Organisation as defined in the [DCSP Policy](#).

**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.

Agency to insert the following contract conditions into relevant contract documentation:

## **2. Aboriginal Participation Requirements**

- a. As nominated by the Contractor in its Offer, the Contractor agrees to meet one of the following Aboriginal Participation Requirements:
  - (i) **Aboriginal Business/ACCO Subcontracting:** at least [Agency to insert] per cent of the total contract value (at contract award) awarded to Aboriginal Business/ACCO subcontractors; or
  - (ii) **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.
- b. Only contracts awarded to subcontractors that are Aboriginal Businesses/ACCOs and who are contracted directly by the Contractor count towards clause 2.a.(i).
- c. Only employment by the Contractor and its direct (Tier 1) subcontractors counts towards clause 2.a.(ii).
- d. The Contractor must report on Aboriginal Business/ACCO 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.
- e. 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.

## **3. 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.

## **4. Aboriginal participation reports**

- a. The Contractor must submit each report as to the matters covered in clause 4.a on Tenders WA unless the Agency advises otherwise.

Agency to amend the frequency in the subclauses below, as required. The reporting frequency outlined in this clause are minimum reporting requirements under the Aboriginal Procurement Policy.

- (i) For the Employment of Aboriginal Persons requirement, a report no later than 30 calendar days after each anniversary of the commencement of the Term.
- (ii) For the Aboriginal Business/ACCO Subcontracting requirement, a report no later than 30 calendar days after the Expiry of the Customer Contract.
  - A. Subcontracts valued at \$50,000 and above must be reported towards this requirement.
  - B. The Contractor may report subcontracts valued less than \$50,000, but contracts valued less than \$50,000 will not be acknowledged towards achieving this requirement.
- b. For either Aboriginal Participation Requirement, (that is, under clause 2a.(i) or 2a.(ii) above), 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.

## **5. Verification of Contractor's compliance with Aboriginal Participation Requirements**

- a. The Contractor must:
  - i. 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;
  - ii. 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
  - iii. 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.
- b. 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.
- c. 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.
- d. The obligations set out in this clause 5 are in addition to and do not derogate from any other obligation under this Contract.

## **6. Verification of Aboriginal participation reports**

- a. Each report required under clause 4 must be accurate, up-to-date, comprehensive, sufficiently detailed, and in no way misleading or deceptive.
- b. 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.

## **7. 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.

## **8. 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) [\[Agency to insert. Consider the varying severity of potential breaches and associated risks. An example of a contractual remedy that may be included here is to not award a supply contract, or supply contracts, to the Contractor in the future.\]](#)

## **9. Clause survives**

This clause survives the termination or expiration of the Contract.