BUILDING CODE (OPTIONAL)

**Note to drafters: This Annex I should be included when clause 1.10 of the Conditions of Tender is used.**

Note to tenderers: Tenderers should refer to clauses 1.10, 3.4 and 3.11 of the Conditions of Tender.

Tenderers must complete and provide the information required in this Annex I to Attachment A. If the tenderer wishes to submit a consortium tender for the Services, the tenderer is to complete and lodge the information requested in this Annex I, for each consortium tender (as applicable).

Refer to Section 2 - Declaration of Compliance below regarding instructions for provision of a Workplace Relations Management Plan, when a consortium tender is submitted.

**Section 1 - DECLARATION OF COMPLIANCE**

**Declaration of Compliance with the Building Code**

**[INSERT RFT NUMBER, RFT NAME AND DESCRIPTION OF WORKS, AS APPLICABLE]**

**[INSERT NAME OF TENDERER, ABN AND ACN, AS APPLICABLE] (‘tenderer’)**

Note to tenderers: This clause applies to the tenderer and its Related Entities only in respect of Commonwealth Funded Building Work delivered in Australia.

Applicable Enterprise Agreements are only those that relate to Building Work delivered in Australia.

Further information on the Building Code can be found on the [Australian Building and Construction Commission](https://www.abcc.gov.au/building-code) website, including [the model declaration of compliance and model contract clauses](https://www.abcc.gov.au/building-code/contractors/engaging-subcontractors/engaging-subcontractors-commonwealth-work) applicable to contractors and subcontractors in relation to the Building Code.

1. DECLARATIONS
   1. The tenderer:
      1. confirms that it and its Related Entities are eligible to perform Commonwealth Funded Building Work at the time of lodging its tender;
      2. confirms that it has complied with the Building Code in preparing its tender;
      3. acknowledges that it and its Related Entities must comply with the Building Code in relation to all Building Work described in Schedule 1 of the Building Code for which an expression of interest or request for tender (however described) is called on or after the date that the Building Code commenced, being 2 December 2016, and, should it be the successful tenderer, in relation to the Commonwealth Funded Building Work;
      4. undertakes to ensure that it will, and that its Subcontractors that it subcontracts to perform any Commonwealth Funded Building Work will, comply with the Building Code (should it be the successful tenderer);
      5. acknowledges the powers and functions of the ABC Commissioner and the ABCC under the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth) and the Building Code and undertakes to ensure that it and its Subcontractors will comply with any requests made by the ABCC and the ABC Commissioner within those powers and functions, including requests:
         1. for entry under section 72 of the *Building and Construction Industry (Improving Productivity) Act* 2016 (Cth);
         2. to interview any person under section 74 of the *Building and Construction Industry (Improving Productivity) Act* 2016 (Cth);
         3. to produce records or documents under sections 74 and 77 of the *Building and Construction Industry (Improving Productivity) Act* 2016 (Cth); and
         4. for information concerning matters relating to the Building Code under subsection 7(c) of the Building Code;
      6. declares that where it proposes to subcontract any of the Commonwealth Funded Building Work, should it be the successful tenderer, it will:
         1. not enter into a subcontract with a Subcontractor who:

is covered by, or has Related Entities covered by, an Enterprise Agreement that does not meet the requirements of section 11 of the Building Code;

is subject to an Exclusion Sanction; or

unless approved otherwise by the ABC Commissioner, is excluded from performing Building Work funded by a State or Territory government; and

* + - 1. only enter into a subcontract where:

the Subcontractor undertakes to only use products in relation to the Commonwealth Funded Building Work that comply with the relevant Australian standards published by, or on behalf of, Standards Australia;

the Subcontractor undertakes to comply with the Workplace Relations Management Plan (if required) approved by the ABCC in accordance with part 6 of the Building Code that applies to the Commonwealth Funded Building Work;

the Subcontractor has submitted a declaration of compliance, including the further information outlined in Schedule 1 of this Declaration of Compliance, in substantively the same form as the model declaration of compliance applicable to contractors and Subcontractors in relation to the Building Code (or in such other form as notified by the Commonwealth);

the subcontract with the Subcontractor contains clauses in substantively the same form as the model contract clauses applicable to contractors and subcontractors in relation to the Building Code (or in such other form as notified in writing by the Commonwealth);

the Subcontractor has advised, prior to entering into a subcontract with the tenderer, whether the Subcontractor has within the preceding three year period:

had an adverse decision, direction or order made by a court or tribunal for a breach of a designated building law, work health and safety law or the *Migration Act 1958* (Cth); or

been required to pay any amounts under an adjudication certificate (provided in accordance with a law relating to the security of payments that are due to persons in respect of Building Work) or owed any unsatisfied judgement debts (including by any Related Entity) to a Building Contractor or Building Industry Participant; and

the Subcontractor has agreed to update the advice referred to in clause 1.1f.(ii)5) every six months for the duration of the subcontract between the tenderer and the Subcontractor;

* + 1. declares that it has provided all of the further information required by Schedule 1 to this Declaration of Compliance;
    2. declares that:
       1. it and its Related Entities are not covered by an Enterprise Agreement that does not meet the requirements of section 11 of the Building Code (and it must complete question 1 of Schedule 1 to this Declaration of Compliance);
       2. it is not subject to an Exclusion Sanction;
       3. it has not had an adverse decision, direction or order made by a court or tribunal for a breach of the *Building and Construction Industry (Improving Productivity) Act* 2016 (Cth), a designated building law, work health and safety law or competition and consumer law which has not been stayed or revoked and for which the period for compliance has expired without it having complied with the decision, direction or order;

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| ***Option: For use if a Workplace Relations Management Plan is required.***   * + - 1. it has provided as part of its tender a Workplace Relations Management Plan for approval by the ABCC in accordance with Part 6 of the Building Code; |

* + - 1. it will only use products in relation to the Commonwealth Funded Building Work that comply with the relevant Australian standards published by, or on behalf of, Standards Australia, should it be the successful tenderer; and
    1. confirms that all information provided in this Annex I to Attachment A is true and correct at the time of lodging its tender.

In the interpretation of this declaration, unless the contrary intention appears, terms defined in the RFT have the same meaning when used in this declaration.

Note for Signature: Guidance on executing agreements, including some statutory requirements to ensure the execution is effective, are detailed in the ‘Executing Agreements Fact Sheet’, found on the Procurement and Contracting intranet page at:

<http://drnet/casg/commercial/CommercialPolicyFramework/Pages/Factsheets-and-Guidance.aspx>

This guidance should be used to assess the Tenderers execution of the Declaration.

**(INSERT APPROPRIATE TENDERER'S EXECUTION CLAUSE)**

**Schedule 1 - Information regarding compliance with the Building Code**

The tenderer must provide the following information as part of its Declaration of Compliance:

Note to tenderers: Compliance with section 11 of the Building Code can be demonstrated by the provision of either an ABCC issued Letter of Compliance or completed Self-Declaration of Eligibility. More information and relevant templates in respect of this can be found at: <https://www.abcc.gov.au/building-code/contractors/eligibility-tender>

1. Does the tenderer or its Related Entities have an Enterprise Agreement that does not meet the requirements of section 11 of the Building Code?

** YES  NO**

Please provide details:

[**INSERT**]

Note to tenderers: Complete the following question and attach the required evidence according to the tenderer’s circumstances. See clause 1.10 of the conditions of tender regarding providing evidence of eligibility to lodge a tender for Building Work and the consequences of a failure to provide this evidence. The onus is on the tenderer to establish to the Commonwealth’s satisfaction its eligibility to submit a tender.

Does the tenderer or its Related Entities have an Enterprise Agreement made or varied (in accordance with section 207 of the *Fair Work Act 2009* (Cth)) on or after 25 April 2014 that covers the tenderer or its Related Entities in respect of Building Work?

** YES  NO**

If Yes, the tenderer must:

* 1. attach a:
     1. copy of the letter of compliance issued by the ABCC; or
     2. completed Self-Declaration of Eligibility A (a template of which is available from the ABCC),

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **NAME OF ENTITY COVERED BY THE ENTERPRISE AGREEMENT** | **TITLE OF ENTERPRISE AGREEMENT THAT COVERS THE TENDERER OR ITS RELATED ENTITIES IN RESPECT OF BUILDING WORK** | **DATE MADE OR VARIED (IN ACCORDANCE WITH SECTION 207 OF THE FAIR WORK ACT 2009 (CTH))** | **FAIR WORK COMMISSION REFERENCE** | **DOES THE ENTITY HAVE AN ABCC LETTER OF COMPLIANCE (DETERMINATION) IN RELATION TO THE AGREEMENT?** | **IF NO, IS THE ENTITY ENTITLED TO AN EXEMPTION OUTLINED IN SCHEDULE 5 OF THE BUILDING CODE IN RELATION TO THE ENTERPRISE AGREEMENT?** |
| **[INSERT]** | **[INSERT]** | **[INSERT]** | **[INSERT]** | **[YES/NO]** | **[INSERT]** |

**only related to the entity that will carry out the Building Work** in relation to the project; and

* 1. list all Enterprise Agreements made or varied (in accordance with section 207 of the *Fair Work Act 2009* (Cth)) on or after 25 April 2014 that cover the tenderer or its Related Entities in respect of Building Work:

If No, the tenderer must complete and attach Self-Declaration of Eligibility A (a template of which is available from the ABCC).

1. Is the tenderer excluded from performing Building Work funded by a State or Territory government? If so, the Commonwealth reserves the right to exclude the tenderer from further consideration in accordance with clause 1.10.5 of the Conditions of Tender.

** YES  NO**

Please provide details:

**[INSERT]**

1. Does the tenderer confirm that it and its Related Entities are eligible to perform Commonwealth Funded Building Work at the time of lodging its tender?

** YES  NO**

Please provide details:

**[INSERT]**

1. Does the tenderer positively commit to the provision of appropriate training and skills development for its workforce, and, if so, what evidence can the tenderer supply in relation to this (for example, evidence of its compliance with any State or Territory government building training policies and evidence of its support in the delivery of nationally endorsed building and construction competencies)?

** YES  NO**

Please provide details:

**[INSERT]**

1. How many current apprentice and trainee employees are engaged or intended to be engaged by the tenderer to undertake the Commonwealth Funded Building Work?

Please provide details:

**[INSERT]**

1. How many and what classes of persons that hold visas under the *Migration Act 1958* (Cth) are engaged or intended to be engaged by the tenderer to undertake the Commonwealth Funded Building Work?

Please provide details:

**[INSERT]**

1. Has the tenderer within the preceding three years had an adverse decision, direction or order of a court or tribunal made against it for a breach of a designated building law, work health and safety law or the *Migration Act* 1958 (Cth)?

** YES  NO**

Please provide details:

**[INSERT]**

1. Has the tenderer or its Related Entities within the preceding three years been required to pay any amount under an adjudication certificate (provided in accordance with a law relating to the security of payments that are due to persons in respect of Building Work) to a Building Contractor or Building Industry Participant?

** YES  NO**

Please provide details:

**[INSERT]**

1. Has the tenderer or its Related Entities within the preceding three years owed any unsatisfied judgement debts to a Building Contractor or Building Industry Participant?

** YES  NO**

Please provide details:

**[INSERT]**

1. To what extent does the tenderer intend to use domestically sourced and manufactured building materials to undertake the Commonwealth Funded Building Work?

Please provide details:

**[INSERT]**

Note to tenderers: For questions 11-13, the ‘project’ referred to is the project to which the Commonwealth Funded Building Work relates.

1. What is the tenderer's assessment of the whole-of-life costs of the project?

Please provide details:

**[INSERT]**

1. What does the tenderer consider the impact on jobs will be of the project?

Please provide details:

**[INSERT]**

1. Does the tenderer consider that the project will contribute to skills growth?

** YES  NO**

Please provide details:

**[INSERT]**

|  |
| --- |
| ***Option: For use if a Workplace Relations Management Plan is required.***  Note to tenderers: If Workplace Relations Management Plan (WRMP) is required it must be provided with the tender response.  Tenderers can find further information regarding WRMPs, including a model WRMP, at the following ABCC website:  <https://www.abcc.gov.au/building-code/workplace-relations-management-plans>  **Section 2 - WORKPLACE RELATIONS MANAGEMENT PLAN**  Tenderers are to provide a Workplace Relations Management Plan that meets the requirements described in section 32 of the Building Code (including any matters in Schedule 3 of the Building Code that the ABCC considers necessary) for the approval of the ABCC.  Where a consortium tender is submitted, a single Workplace Relations Management Plan must be provided with the tenderer's response to Annex I to Attachment A, which relates to all members of the consortium (as applicable). |