Australian Skills Guarantee Procurement Connected Policy Model Clauses

ASDEFCON Australian Skills Guarantee Clauses

The purpose of this document is to provide Department of Defence (Defence) officials with clauses to implement the Australian Skills Guarantee (ASG) Procurement Connected Policy (PCP) into the relevant [ASDEFCON Suite of Tendering and Contracting Templates](http://drnet/casg/commercial/CommercialPolicyFramework/Pages/ASDEFCON-Templates.aspx). These clauses were based on the [Department of Employment and Workplace Relations (DEWR) ASG Model Clauses](https://www.dewr.gov.au/australian-skills-guarantee/resources/australian-skills-guarantee-model-clauses).

These ASDEFCON Clauses apply to procurements subject to the ASG PCP as an eligible project. Eligible projects are:

* Major construction projects, where the total contract value of the project is $10 million (GST Inclusive) or more;
* Direct Commonwealth procurements in the ICT sector, where the total contract value of the procurement is $10 million (GST Inclusive) or more; and
* Flagship construction projects, where the total contract value of the project is $100 million or more in the construction sector).

An eligible project will not be subject to the ASG PCP if an exemption applies. An exemption is where:

* the eligible project is delivered wholly overseas; or
* the procurement is subject to a paragraph 2.6 of the CPRs exemption.

Defence Officials must still conduct their own enquiries and due diligence before inserting these clauses into the relevant draft [ASDEFCON Suite of Tendering and Contracting Templates](http://drnet/casg/commercial/CommercialPolicyFramework/Pages/ASDEFCON-Templates.aspx), including whether this will impact other clauses or documents included in the templates.

When inserting the clauses into the ASDEFCON templates, the ASDEFCON & Contracting Initiatives Team suggests including these clauses in the:

* Policy and Law provision of the relevant draft ASDEFCON Condition of Contract or Deed or as an additional stand-alone provision in the less complex templates; and
* Key Persons Management provision of the relevant draft ASDEFCON Statement of Work.

The example clauses provided below are drafted for inclusion in ASDEFCON Strategic Materiel. Appropriate amendments should be made when including the clauses in other ASDEFCON templates.

If you have any questions relating to the ASG clauses please email the ASDEFCON and Contracting Initiatives team at: [procurement.asdefcon@defence.gov.au](mailto:procurement.asdefcon@defence.gov.au)

If you have any questions relating to the ASG PCP or policy related questions, please email the Commercial Policy team at [procurement.policy@defence.gov.au](mailto:procurement.policy@defence.gov.au) or DEWR at [ASG@dewr.gov.au](mailto:ASG@dewr.gov.au).

Conditions of Tender

3.11 Tender Evaluation Criteria (Core)

Amend Key Criterion a.

| Key Criteria  Column (a) | Subordinate Criteria  Column (b) | Evaluation Items  Column (c) |
| --- | --- | --- |
| a. the suitability of the tenderer to perform the obligations in the draft Contract. | 1. past performance and/or demonstrated compliance with the Australian Skills Guarantee Policy, and the extent to which the tendered Australian Skills Guarantee Plan meets the Australian Skills Guarantee Policy. | * Australian Skills Guarantee Plan, Annex A |

**Tender Data Response – Annex A-2**

Note to Tenderers:

Note to tenderers: Information on the Australian Skills Guarantee (ASG) Procurement Connected Policy and the ASG Targets can be found at:

* <https://www.dewr.gov.au/australian-skills-guarantee>

The preferred tenderer’s response, and any negotiated adjustments, will be attached to any resultant Contract.

2.18 The tenderer is to provide a draft Australian Skills Guarantee Plan in the form of Schedule 1 to this Annex A to Attachment A to the Conditions of Tender.

**Schedule 1 – Australian skILLS GUarantee PLAN**

* 1. This Australian Skills Guarantee Plan is part of the Tender submission in response to **[INSERT RFT NUMBER]** (RFT).

Note to tenderer: Labour Hours are the number of hours estimated to be worked on the Contract. This can include full time or part-time hours, and may include hours worked on-site and off-site training and education. Further information on the Labour Hours that contribute to the Skills Guarantee Targets can be found at:

* <https://www.dewr.gov.au/australian-skills-guarantee>
  1. The total estimated Labour Hours required for completion of the Contract is **[INSERT RESPONSE].**
  2. The Contractor will meet the Australian Skills Guarantee Targets for the purposes of the Australian Skills Guarantee Procurement Connected Policy of, at least:

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| ***Option A: to be used where the Contract is a Major Construction Project in accordance with the ASG PCP.***  Note to tenderer: Tenderers are required to identify targets based on the total estimated Labour Hours for the following targets by the end of the Initial Term of the Contract:   * an overarching apprentice target; * an overarching apprentice target for women; and * a trade-specific apprentice target for women.   For the performance of any resultant Contract, the successful tenderer must achieve:   1. at least 10 percent of the total estimated Labour Hours performed by Apprentices. 2. a minimum percentage, in accordance with Table 1, of all Apprentice Labour Hours to be performed by women during the relevant Contract period; and 3. a minimum percentage, in accordance with Table 1, of trade apprentice Labour Hours to be performed by women during the relevant Contract period.   Women working in trades are able to be counted for the overarching and trade specific apprentice targets for women.  Table 1 – Annual Increases of Targets for Women:   |  |  |  | | --- | --- | --- | | Targets Apply | Overarching apprentice Target for women | Trade-specific apprentice target for women | | July 2024 to 30 June 2025 | 6.0% | 4.0% | | 1 July 2025 to 30 June 2026 | 7.0% | 5.0% | | 1 July 2026 to 30 June 2027 | 8.0% | 6.0% | | 1 July 2027 to 30 June 2028 | 9.0% | 7.0% | | 1 July 2028 to 30 June 2029 | 10.0% | 8.0% | | 1 July 2029 to 30 June 2030 | 11.0% | 9.0% |   For further guidance on calculating Labour Hours and relevant apprentice targets, refer to the ASG PCP available at:   * <https://www.dewr.gov.au/australian-skills-guarantee>   + 1. **[INSERT EXACT PERCENTAGE]**% of **[INSERT COMPANY NAME]**’s Labour Hours on the contracted project must be performed by Apprentices over the Term;     2. **[INSERT EXACT PERCENTAGE]**% of **[INSERT COMPANY NAME]**’s Labour Hours on the contracted project must be performed by Apprentices who are Women over the Term; and     3. **[INSERT EXACT PERCENTAGE]**% of **[INSERT COMPANY NAME]**’s Labour Hours on the contracted project must be performed by Trade Apprentices who are women over the Term. |
| ***Option B: to be used where the Contract is a Flagship Construction Project in accordance with the ASG PCP.***  Note to tenderer: Tenderers are required to identify targets based on the total estimated Labour Hours for the following targets by the end of the Initial Term of the Contract:   * an overarching apprentice target; * an overarching apprentice target for women; and * a trade-specific apprentice target for women.   For the performance of any resultant Contract, the successful tenderer must achieve:   1. at least 10 percent of the total estimated Labour Hours performed by Apprentices. 2. a minimum percentage, higher than the percentages listed in Table 1, of all Apprentice Labour Hours to be performed by women for each financial year of the Contract Term; and 3. a minimum percentage, higher than the percentages listed in Table 1, of trade apprentice Labour Hours to be performed by women for each financial year of the Contract Term.   Women working in trades are able to be counted for the overarching and trade specific apprentice targets for women.  Table 1 – Annual Increases of Targets for Women:   |  |  |  | | --- | --- | --- | | Targets Apply | Overarching apprentice Target for women | Trade-specific apprentice target for women | | July 2024 to 30 June 2025 | 6.0% | 4.0% | | 1 July 2025 to 30 June 2026 | 7.0% | 5.0% | | 1 July 2026 to 30 June 2027 | 8.0% | 6.0% | | 1 July 2027 to 30 June 2028 | 9.0% | 7.0% | | 1 July 2028 to 30 June 2029 | 10.0% | 8.0% | | 1 July 2029 to 30 June 2030 | 11.0% | 9.0% |  * + 1. **[INSERT EXACT PERCENTAGE]**% of **[INSERT COMPANY NAME]**’s Labour Hours on the contracted project must be performed by Apprentices over the Term;     2. **[INSERT EXACT PERCENTAGE]**% of **[INSERT COMPANY NAME]**’s Labour Hours on the contracted project must be performed by Apprentices who are Women in **[INSERT FINANCIAL YEAR]**; and     3. **[INSERT EXACT PERCENTAGE]**% of **[INSERT COMPANY NAME]**’s Labour Hours on the contracted project must be performed by Trade Apprentices who are women in **[INSERT FINANCIAL YEAR]**.   Note to tenderers: Guidance on the Gender Equality Action Plan is set out at:   * <https://www.dewr.gov.au/resources/australian-skills-guarantee>   1. **[INSERT COMPANY NAME]** demonstrates its commitment to gender equality in recruitment as follows: **[INSERT RESPONSE]**.   2. **[INSERT COMPANY NAME]**’ demonstrates its commitment to gender equality in retention as follows: **[INSERT RESPONSE]**. |
| ***Option C: to be used where the Contract is a Major ICT Project in accordance with the ASG PCP.***  Note to tenderers: Proposed targets are to be based on workforce information provided by tenderers. The proposed targets are to achieve a genuine and meaningful increase in the proportion of Apprentices and ICT Cadets engaged in the workforce,   * + 1. **[INSERT EXACT PERCENTAGE]**% of **[INSERT COMPANY NAME]**’s Labour Hours on the contracted project must be performed by Apprentices or ICT Cadets over the Term;     2. **[INSERT EXACT PERCENTAGE]**% of **[INSERT COMPANY NAME]**’s Labour Hours on the contracted project must be performed by Apprentices or ICT Cadets who are Women over the Term; and   ***Note to tenderers: Tenderer to insert details of how the Australian Skills Guarantee Targets will be met, including details of the tenderer’s current workforce how the proposed percentages were set.***   * 1. The proposed Australian Skills Guarantee Targets will increase the proportion of Apprentices and/or ICT cadets (including subcontractors) engaged in the workforce of **[INSERT COMPANY NAME]** as follows: **[INSERT RESPONSE]**.   2. The proposed Australian Skills Guarantee Targets are based on **[INSERT COMPANY NAME]**’s current workforce data as follows: **[INSERT RESPONSE].**   3. The rationale for the proposed Australian Skills Guarantee Targets is **[INSERT RESPONSE].** |

Conditions of Contract

1. POLICY and Law

Note to drafters: Insert the below clause into clause 12 (Policy and Law).

* 1. Australian Skills Guarantee
     1. The Contractor shall comply with the Australian Skills Guarantee Plan set out in Attachment [x].
     2. The Contractor acknowledges and agrees that the Australian Skills Guarantee Plan and reports submitted in accordance with clause 3.4.2 of the SOW:
     3. will be recorded in a central repository;
     4. may be disclosed to or accessed by Commonwealth entities;
     5. may be used by Commonwealth entities for any purpose, including for the purposes of:
        1. meeting the objectives and requirements of the Australian Skills Guarantee Procurement Connected Policy;
        2. evaluation and monitoring;
        3. policy research and development;
        4. administration of the Australian Skills Guarantee Procurement Connected Policy; and
        5. as authorised or required by law.
     6. If the Commonwealth considers that the Contractor has failed to comply with, or is likely to fail to comply with the Australian Skills Guarantee Plan, the Commonwealth Representative may require the Contractor to provide:
        1. further information on the actual or potential problems, failures or breaches; and
        2. options available to prevent or mitigate the impacts of, actual or potential problems, failures or breaches.
     7. The Contractor shall comply with the reasonable directions issued by the Commonwealth Representative in accordance with clause 12.12.3.
     8. The Contractor acknowledges and agrees that compliance with this clause 12.11 does not limit or affect the Contractor’s obligations under the Contract.
     9. If the Contractor fails to comply with clause 12.12, the Commonwealth may give the Contractor a notice of termination for default under clause 13.2.1.e of the Contract.

Contract Attachments: Glossary

| Abbreviation | Description |
| --- | --- |
| 1. ASG | 1. Australian Skills Guarantee |
| 1. ASGR | 1. Australian Skills Guarantee Report |

| Term | Status | Definition |
| --- | --- | --- |
| 1. Apprentice | 1. (Core) | means a person who is:   * + - 1. employed under a Training Contract that has been registered with, and validated by, their State/Territory training authority;       2. undertaking paid work and structured training which comprises both on and off the job training;       3. undertaking a negotiated training program that involves obtaining a nationally recognised qualification; and       4. either directly employed by the supplier or sub-contractors, or indirectly employed in the performance of the Contract. |
| 1. Australian Skills Guarantee Procurement Connected Policy | 1. (Core) | means the *Australian Skills Guarantee Policy,* as updated from time to time, available at:  <https://www.dewr.gov.au/australian-skills-guarantee> |
| 1. Australian Skills Guarantee Targets | 1. (Core) | means the targets specified in Attachment [x] to the Conditions of Contract. |
| 1. ICT Cadet | 1. (Core) | means a paid employee who is:   1. working on a major ICT project; 2. employed in an entry-level role; and 3. undertaking academic study through either the VET or higher education system towards a qualification under the Australian Qualification Framework,   where the employer has formally committed to providing the employee with on-the-job training and support to complete the specific course of academic study. |
| 1. Labour Hours | 1. (Core) | means the number of hours a worker worked on the Contract. This may include:   1. hours worked on-site; 2. hours worked off-site that deliver inputs to the Contract; or 3. formal off-site training and education,   provided that in circumstances where off-site hours are to be split between multiple projects, the sum of the reported hours must not be greater than the total hours the person worked off-site. |
| 1. Trade Apprentice | 1. (Core) | means a person who:  a. is classified as an Apprentice; and  b. works in a role that is classified as Technicians and Trade Worker in accordance with the Australian and New Zealand Standard Classification of Occupations. |
| 1. Women | 1. (Core) | means people, who regardless of their sex assigned at birth, identify as a woman irrespective of age. |

Contract Attachments: Australian Skills Guarantee Plan

Note to drafters: Insert new Attachment to the Conditions of Contract as indicated on the following page. Ensure that the Attachment letter is reflected correctly in the list of attachments at the Conditions of Contract Table of Contents, and that the header and footer is consistent with the rest of the contract documents.

Australian skills guarantee PLAN

Note to tenderers: Attachment [insert] will consist of the successful tenderer’s response to Schedule 1 to TDR A (Australian Skills Guarantee Plan) and any negotiated changes.

Statement of Work

1. Project management

Note to drafters: Insert the below clause into 3.4 (Key Persons Management).

* 1. Australian Skills Guarantee
     1. The Contractor shall develop, deliver and update an Australian Skills Guarantee Report (ASGR) in accordance with CDRL Line Number MGT-1410.

| CDRL Line Number | Data Item Title | SOW Clause Ref | Ref | Version | Delivery Schedule | Quantity | Delivery Location | Data Item Description Reference | C'wealth Action Period | C'wealth Action Required | Maintenance | Notes |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| a | b | c | d | e | f | g | h | i | j | k | l | m |
| 1. MGT-1410 | 1. Australian Skills Guarantee Report (ASGR) | 1. 3.4.2 | 1. a | 1. Initial | 1. See notes | 1. DMS | 1. CR | 1. DID-PM-MGT-ASGR | 1. 10 | 1. Review | 1. N/A | 1. The ASGR is to conform to the ASGR template, as updated from time to time, available at: 2. <https://www.dewr.gov.au/resources/australian-skills-guarantee> 3. Delivery is required within:  * 10 Working Days following the end of every quarter during the Term; * 10 Working Days following each end of financial year during the Term; * 10 Working Days after the end of the Term. |
|  |  |  | 1. b | 1. Updates | 1. See notes | 1. DMS | CR | 1. See note | 1. 10 | 1. Review | 1. N/A | 1. As above. |