

Government Procurement (Secure Local Jobs Model Contract Terms) Determination 2018

Disallowable instrument DI2018–282

made under the

Government Procurement Act 2001, s 22G (4) (Requirements for procurement – secure local jobs code certificates etc)

1 Name of instrument

This instrument is the *Government Procurement (Secure Local Jobs Model Contract Terms) Determination 2018*.

2 Commencement

This instrument commences on 15 January 2019.

3 Determination of model contract terms

I determine the secure local jobs model contract terms as set out in the Schedule to this instrument.

Rachel Stephen-Smith
Minister for Employment and Workplace Safety
22 November 2018

Secure Local Jobs Model Contract Terms

The following terms are determined under section 22G as the model contract terms for incorporation into contracts for territory-funded work that relate to the requirements of part 2B of the *Government Procurement Act 2001* (ACT).

M1 Secure Local Jobs Model Contract Terms

- (1) This clause [M1] applies to the extent that this contract provides for the performance of Territory-Funded Work.
- (2) In this clause:
 - (a) **Adverse Ruling** means a ruling by any court, tribunal, board, commission or other entity (including but not limited to the Fair Work Commission) with jurisdiction to determine the matter, that the *[insert the name of the party]* or one of its Associated Entities has contravened an Industrial Law;
 - (b) **Approved Auditor; Code; Labour Relations, Training and Workplace Equity Plan; Secure Local Jobs Code Certificate; Registrar; Territory Entity and Territory-Funded Work** each has the meaning as set out in the *Government Procurement Act 2001* (ACT);
 - (c) **Associated Entity** has the meaning given by section 50AAA of the *Corporations Act 2001* (Cth);
 - (d) **Full Details** means:
 - (i) the nature of the Adverse Ruling;
 - (ii) any conviction recorded or adverse finding made in respect of the Adverse Ruling;
 - (iii) any penalty or orders imposed by a court, tribunal, board, commission or other entity in respect of the Adverse Ruling and the maximum penalty that could have been imposed under the relevant Industrial Law;
 - (iv) the name of the court, tribunal, board, commission or other entity, the jurisdiction in which the proceeding or prosecution was brought, the date on which the proceeding or prosecution commenced and the number or description assigned to the proceeding or prosecution by the court, tribunal, board, commission or other entity;
 - (v) the name of the entity against which the Adverse Ruling was made; and

- (vi) any other relevant information that the *[insert the name of the party]* may rely on as grounds for not terminating this Contract as a result of the Adverse Ruling;
- (e) **Industrial Law** means any Commonwealth, State or Territory legislation that deals with matters relating to industrial relations and includes employment and workplace safety obligations.
- (3) The *[insert the name of the party]* must comply with all of its obligations under the Code.
- (4) The *[insert the name of the party]* must maintain a valid Secure Local Jobs Code Certificate during the term of the contract.
- (5) Failure of the *[insert the name of the party]* to maintain a valid Secure Local Jobs Certificate will constitute a breach of an essential term of this contract entitling the Territory to terminate the contract on written notice to the *[insert the name of the party]*.
- (6) If at any time during the term of the contract an Adverse Ruling is made, the *[insert the name of the party]* must, within 7 working days of the making of the Adverse Ruling, provide a statutory declaration by an authorised representative of the *[insert the name of the party]* setting out the Full Details of the Adverse Ruling and (if applicable) any existing or planned remedial measures taken or to be taken to prevent a contravention, breach or offence similar to the contravention, breach or offence on which the Adverse Ruling is based from recurring.
- (7) The *[insert the name of the party]* must ensure terms are included in all agreements with subcontractors engaged to perform Territory-Funded Work:
 - (a) requiring the subcontractor to comply with the Code; and
 - (b) imposing obligations on the subcontractor in the same form as those set out in this clause [M1] and imposed on the *[insert the name of the party]* (subject to any necessary variation to reflect the different parties).
- (8) The *[insert the name of the party]* must ensure:
 - (a) all subcontractors engaged to perform Territory-Funded Work:
 - (i) hold a Secure Local Jobs Code Certificate; and
 - (ii) maintain a Secure Local Jobs Code Certificate during the term of their agreement; and
 - (b) the obligations in paragraph (8)(a) are included in the relevant agreement with the subcontractor.

- (9) The *[insert the name of the party]* must provide the Territory with a statutory declaration in a form approved by the Territory regarding its compliance with the Code:
- (a) within 5 working days of a written request from the Territory; and
 - (b) if requested in writing by the Territory, at the time the *[insert the name of the party]* provides a payment claim.
- (10) Failure of the *[insert the name of the party]* to provide a statutory declaration in accordance with paragraph (9) or the making of a false statement in a statutory declaration by the *[insert the name of the party]* or its representative will constitute a breach of this contract.
- (11) If the *[insert the name of the party]* fails to provide a statutory declaration in accordance with paragraph (9)(b) the Territory may withhold payment of monies otherwise due to the *[insert the name of the party]* in respect of the relevant payment claim until the statutory declaration is received.
- (12) The Territory may by written notice request the *[insert the name of the party]* obtain a statutory declaration from a subcontractor regarding its compliance with the Code and provide it to the Territory within 15 working days of the date of the written notice. The *[insert the name of the party]* must use its reasonable endeavours to ensure the subcontractor supplies the declaration to enable the *[insert the name of the party]* to comply with this paragraph.
- (13) The Territory may require that *[insert the name of the party]* conduct face-to-face induction sessions with employees at the commencement of Territory-Funded Work or commencement of employment in relation to Territory-Funded Work.
- (14) The Territory may require a union workplace delegate or employee representative to attend staff induction sessions held by the *[insert the name of the party]* except in circumstances where attendance would result in a conflict with Commonwealth laws.
- (15) The *[insert the name of the party]* must, at all reasonable times, allow the Territory, Registrar or person nominated by the Territory or Registrar to enter the *[insert the name of the party]* worksite where the Territory-Funded Work is being performed in order to undertake education and awareness raising activities in relation to the Code. A person may not be nominated by the Territory or Registrar under this paragraph in circumstances where entry would result in a conflict with Commonwealth laws.
- (16) Without limiting the powers of the Territory's Auditor-General under the *Auditor-General Act 1996* (ACT), the Territory (or nominated representative) and Approved Auditors may, at the Territory's cost, access records kept by the *[insert the name of the party]* or its subcontractors and conduct audits and other reviews and checks, to monitor the delivery of the *[insert Works/Services etc]* and compliance with this contract and the Code, except in circumstances where a nomination would result in a conflict with Commonwealth laws.

- (17) If the *[insert the name of the party]* was required to submit a Labour Relations, Training and Workplace Equity Plan (if any) submitted as part of its tender for the *[insert Works/Services etc]*:
- (a) the *[insert the name of the party]* must implement its commitments set out in its Labour Relations, Training and Workplace Equity Plan;
 - (b) the *[insert the name of the party]* must report to the Territory on its compliance with paragraph (17(a)) quarterly during the term of this contract;
 - (c) the *[insert the name of the party]* must attend any meetings scheduled by the Territory to review its progress in implementing its commitments set out in the Labour Relations, Training and Workplace Equity Plan; and
 - (d) failure to comply, in whole or in part, with the commitments contained in any Labour Relations, Training and Workplace Equity Plan may be taken into account in the award of future contracts for Territory Entities and/or the granting of future Secure Local Jobs Code Certificates by the Registrar.