

Government Procurement (Secure Local Jobs Audit) Guidelines 2018

Disallowable instrument DI2018–287

made under the

Government Procurement Act 2001, s22U (Guidelines for audits, complaints and requests for information)

1 Name of instrument

This instrument is the *Government Procurement (Secure Local Jobs Audit) Guidelines 2018*.

2 Commencement

- (1) This instrument commences on the day after its notification day.
- (2) The *Legislation Act 2001*, section 81 (6) applies to this instrument.

Note: The *Legislation Act 2001*, s 81 provides for the exercise of a power given by a law if the law, or amending law, has been notified but has not yet commenced.

3 Secure Local Jobs Audit Guidelines

I make the Secure Local Jobs Audit Guidelines attached to this instrument.

Rachel Stephen-Smith
Minister for Government Services and Procurement
30 November 2018



SECURE LOCAL JOBS

Audit Guidelines

Chief Minister, Treasury and
Economic Development

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1. INTRODUCTION

- 1.1. The ACT Government has amended the *Government Procurement Act 2001* (**the Act**) to support businesses that do the right thing by their workers. The Secure Local Jobs Code (**the Code**) strengthens the ACT Government's procurement practices so its contracts are only awarded to businesses that meet the highest ethical and labour standards.
- 1.2. The Act establishes a registrar, an independent statutory appointment, whose functions include:
 - > maintaining a number of registers
 - > administering the Code and the legislative obligations conferred on Territory entities, Code Certified Entities and approved auditors
 - > making decisions regarding applications for Secure Local Jobs Code Certificates
 - > appointing approved auditors
 - > conducting investigations in response to complaints and apparent noncompliance with the Code
 - > acting on the outcomes of such investigations, including imposing sanctions
 - > granting exemptions.
- 1.3. The registrar is supported by a dedicated compliance unit (**the Compliance Unit**) which conducts education, compliance and investigation activities associated with the Code.
- 1.4. These audit guidelines (**Guidelines**) are made pursuant to the Act and have been developed to communicate the Territory's requirements regarding:
 - > approval of auditors (approved auditors)
 - > appointment and allocation of auditors
 - > the conduct of audits and content of audit reports.
- 1.5. These Guidelines outline:
 - > the processes for applying to the registrar to become an approved auditor
 - > qualifications and experience required for approved auditors
 - > the determination by the registrar to approve an auditor
 - > conditions that apply to an approved auditor
 - > conduct of audits and general requirements of approved auditors
 - > the minimum contents of an audit report
 - > circumstances where the status as an approved auditor may be revoked.
- 1.6. Some terms used in these Guidelines have a defined meaning set out in the Code. In addition, some terms are defined in these Guidelines by including the defined term in brackets and bolded following the definition.

2. PROCESS TO BECOME AND APPROVED AUDITOR

- 2.1. For the registrar to consider an approved auditor the applicant is required to:
 - > complete the Territory's application form to become an approved auditor and submit it with supporting information to the registrar

- > ensure all particulars in the application are true and correct
- > demonstrate their expertise in auditing with specialist knowledge of industrial relations and employment matters, and provide evidence of the required qualifications outlined in Section 3 of these Guidelines
- > confirm their understanding of the obligations for approved auditors set out in these Guidelines, particularly around conflict of interest and collusion, and provide an undertaking to comply with them
- > provide indicative pricing to prepare an audit report on behalf of Secure Local Jobs Code Certificate applicants for the following sized businesses:
 - 0 – 9 employees – micro business
 - 10 – 49 employees – small business
 - 50 – 249 employees – medium business
 - 250 employees or over – large business.

Note: Auditor pricing will be kept confidential by the Territory. The Territory will consolidate all approved auditor pricing and will publish a range of prices to help applicants understand indicative costs for obtaining an audit report for their size business. Indicative audit pricing will be published at procurement.act.gov.au (or another site determined by the Territory).

- 2.2. Prospective auditors may download information and documentation for their application at procurement.act.gov.au (or another site determined by the Territory).
- 2.3. Additional information about becoming an approved auditor may be obtained by contacting the registrar.

3. QUALIFICATIONS REQUIRED FOR APPROVED AUDITORS

- 3.1. Prospective auditors must demonstrate to the registrar they have the appropriate qualifications and experience to exercise the functions of an approved auditor. Qualifications and experience may include, but is not limited to:
 - > demonstrated expertise in auditing
 - > demonstrated knowledge of industrial relations and employment matters
 - > the ability to undertake specified checks regarding compliance with Code requirements
 - > any other qualifications set out in the application form.

4. DETERMINING APPLICATIONS FOR APPROVED AUDITORS

- 4.1. The registrar will consider applications and make a determination on whether to grant an approved auditor status (including applications for renewal). The registrar will grant approved auditor status for a period of 12 months. The registrar will only issue approved auditor status to an individual.
- 4.2. Where an application is not approved by the registrar, a decision notice and reason statement will be issued to the applicant. The applicant will be given 10 business days to respond to the registrar about the decision.

- 4.3. If by the time specified in a decision notice the applicant fails to respond, or fails to satisfy the registrar they have the appropriate qualifications and experience to exercise the functions of an approved auditor, the registrar will not grant approved auditor status to the applicant.
- 4.4. Applicants who have not been granted approved auditor status may re-apply when they are able to demonstrate to the registrar they have the appropriate qualifications and experience to exercise the functions of an approved auditor.

5. CONDITIONS APPLICABLE TO APPROVED AUDITORS

5.1. Acknowledgement

- 5.1.1. Approved auditors must comply with the conditions of these Guidelines and application form and acknowledge and accept these may be varied from time to time.

5.2. Conditions on approved auditors

- 5.2.1. The registrar may place conditions on an approved auditor. Conditions may include but are not limited to:

- > limitations on the industries an approved auditor may conduct audits
- > limitations on the size of businesses an approved auditor may conduct audits
- > any other condition determined by the registrar.

- 5.2.2. The registrar will publish the details of any conditions placed on an approved auditor. Details will be publicly available.

5.3. Conflicts of interest

- 5.3.1. Approved auditors must ensure that in performing an audit they do not have a conflict of interest with the applicant or any related entities. In particular, the approved auditor should not agree to conduct an audit if:

- > they are acting (or have previously acted) as an accountant or in a legal matter for or against the applicant or a related entity
- > the approved auditor is, or has previously been, employed by a business that has acted for or against the applicant or a related entity
- > the approved auditor is an office holder, employee, or representative of a Member Organisation and the applicant is a member of the Member Organisation
- > it may otherwise be perceived that a conflict of interest may exist between the approved auditor and the applicant or a related entity.

- 5.3.2. In this section Member Organisation means:

- > an association of employers, that is registered or recognised as such (however described), under a workplace law
- > an association of employers where the principal purpose is the protection and promotion of their interests in matters concerning employment and/or independent contractors

and includes:

- > a branch of such an association
- > an organisation
- > a branch of an organisation.

5.3.3. An approved auditor must not:

- > agree to conduct an audit on an entity applying for a Secure Local Jobs Code Certificate (or one of its related entities) more than three times consecutively
- > accept a request from the registrar to conduct an audit on a Code Certified Entity whose current certificate was issued on the basis of an audit report prepared by them.

5.3.4. Allegations of conflict of interest between an approved auditor and a Code Certified Entity will be investigated by the registrar. If allegations are substantiated, the approved auditor's status will be reviewed by the registrar in accordance with Section 8 of these Guidelines and may result in the registrar revoking an auditor's approved status.

5.4. List of approved auditors

5.4.1. The registrar will publish and maintain a list of approved auditors, their contact details, and any conditions placed upon them.

5.4.2. The registrar will publish the details of an approved auditor who conducted an audit and produced an audit report for a Code Certified Entity. Details will be publicly available.

5.5. Contractual arrangements

5.5.1. Entities applying for a Secure Local Jobs Code Certificate (including renewals) will directly engage an approved auditor to produce an audit report as part of their application to the registrar.

5.5.2. The applicant entity will be responsible for paying all fees of the approved auditor associated with the production of the audit report. Approved auditors have no contractual relationship or claims against the Territory for fees or other costs incurred in preparing audit reports in response to applications for Secure Local Jobs Code Certificates.

5.5.3. The registrar may engage an approved auditor to undertake an audit in response to an allegation of, or apparent noncompliance with the Code by a Code Certified Entity. In such cases, the registrar will engage an approved auditor to conduct an audit and produce an audit report and the Territory will pay costs.

6.CONDUCT OF AUDITS

6.1. General requirements of approved auditors

6.1.1. Approved auditors must ensure they have all information from an entity to produce a complete audit report.

6.1.2. All information provided by an entity must be independently verified by an approved auditor where possible. For example, by reviewing published orders and decisions by relevant courts and tribunals, the Fair Work Commission, or Worksafe ACT.

6.1.3. Approved auditors are responsible for undertaking due diligence when assessing information associated with preparing an audit report for the registrar. Failure to

exercise due diligence in the preparation of audit reports may result in the registrar reviewing an auditor's approval status in accordance with Section 8 of these Guidelines.

- 6.1.4. Approved auditors are required to retain copies of applications, supporting information and records relied upon in preparing an audit report for a period of seven years.

6.2. Applications for Secure Local Jobs Code Certificate

- 6.2.1. Entities will be required to provide an approved auditor with a complete, true and correct application for a Secure Local Jobs Code Certificate, associated statutory declaration, and all documentation specified by that form to substantiate their compliance with requirements of the Code. The application is a form specified by the Territory.
- 6.2.2. Approved auditors are responsible for undertaking due diligence assessing the information supplied by the applicant, including that their application is complete.
- 6.2.3. Approved auditors should request and obtain information from the applicant if it believes that insufficient, inaccurate, false or misleading information has been supplied with, or in, the application or statutory declaration.

Note: the Secure Local Jobs Code Approved Auditor Application form requires auditors applying for approval to demonstrate how they check an applicant's compliance. For example with corporations law, industrial relations law, tax law and including any record of previous adverse findings/decisions.

- 6.2.4. Once the approved auditor has finalised their audit they must forward the completed audit report, application and statutory declaration to the registrar.

6.3. Applications for exemption from requirements of the Code

- 6.3.1. An entity seeking an exemption from a requirement of the Code must apply to the registrar for an exemption. The application for exemption must be completed as part of the entity's application for a Secure Local Jobs Code Certificate. The application form is publicly available.
- 6.3.2. An entity's application for exemption must be:
- > in writing to the registrar on the specified application form
 - > supported with an audit report from an approved auditor.
- 6.3.3. The audit report accompanying an entity's application for exemption must clearly outline for the registrar where the approved auditor has identified that complying with a requirement(s) of the Code is likely to cause the entity not to comply with Commonwealth law.
- 6.3.4. Once the approved auditor has finalised their audit they must forward the completed audit report, application for exemption and statutory declaration to the registrar.

6.4. Allegations of noncompliance with the Code

- 6.4.1. In response to an allegation or apparent noncompliance with the Code by a Code Certified Entity, the registrar may appoint an approved auditor to conduct an audit on the entity, being either:
- > an audit of the entity's compliance with their obligations under the Code with specific reference to the alleged complaint; or

- > an audit of compliance with the obligations of one or more Code Certified Entities under the Code.
- 6.4.2. If such an appointment is made, the registrar will provide written notification of the audit to the Code Certified Entity. Written notification will include the details of the approved auditor appointed to conduct the audit and the timeframe the audit will be completed.
- 6.4.3. The Code requires that, subject to law, a Code Certified Entity must comply with any reasonable request for information, access to records, or directions given by the approved auditor for the purpose of undertaking an audit (of alleged noncompliance). Failure to comply with the audit requirements may result in a finding of noncompliance and the imposition of sanctions on the Code Certified Entity.
- 6.4.4. The approved auditor is required to carefully check and independently verify (to the extent available, such as through examination of publicly available information) all information provided by the Code Certified Entity and actively seek any omitted information.
- 6.4.5. Once an audit is complete, the approved auditor will provide the registrar with an audit report within a reasonable timeframe.
- 6.4.6. The registrar has the powers to undertake their own investigation into allegations of noncompliance with the Code as detailed in the Complaints and Noncompliance Investigation Guidelines.

7.AUDIT REPORTS

- 7.1. Approved auditors must prepare an audit report in the format specified by the Territory and must contain, at a minimum, the matters set out in any specified audit report template.
- 7.2. The Territory may remit an audit report back to the approved auditor if it is in an incorrect format, is incomplete, or appears to be based on incomplete data. The prescribed format of the audit report template may be modified by the Territory from time to time.

8.MAINTAINING APPROVED AUDITOR STATUS

- 8.1. The registrar will monitor and assess the performance of each approved auditor on an ongoing basis. Approved auditors should ensure their audits are conducted and reports prepared with due diligence, accuracy and completeness to maintain their approved auditor status.
- 8.2. In addition to the ongoing assessment of an approved auditor's performance through assessment of the audit reports they produce, the registrar may review an approved auditor's status at any time. A review of an approved auditor may be initiated, among other reasons, for one or more of the following:
- > where an approved auditor's performance in the production of audit reports is identified as being unsatisfactory or of a low standard when compared with that of other approved auditors
 - > where a complaint is lodged against an approved auditor
 - > where a subsequent audit report conducted on a Code Certified Entity identifies issues relating to previous work carried out by the approved auditor

- > the approved auditor fails to comply with these Guidelines or their application.
- 8.3. As a result of a review, the registrar may cancel, suspend, or place conditions on an auditor's approved status.
- 8.4. If any such action is proposed, the auditor will first be given the opportunity to show reason why their approval status should not be adjusted. The registrar will issue a 'show reason' notice and the auditor will be given 10 business days to respond.
- 8.5. If by the time specified in the notice the auditor fails to respond or to satisfy the registrar that they should not adjust their approval status, the registrar may revoke or suspend the approved auditor's status.
- 8.6. Auditors wishing to retain their approved auditor status must renew their application with the registrar every 12 months.



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