

Queensland Government Supplier Code of Conduct

Guidance for buyers on applying the Supplier Code of Conduct – Example clauses

Background

The *Buy Queensland* approach to procurement emphasises the government's intent to do business with ethically, environmentally and socially responsible suppliers.

The Queensland Government Supplier Code of Conduct (Code) helps government agencies to implement this by outlining the expectations that the Queensland Government has of those suppliers that want to do business with government.

How to implement the Code

Consistent with the government's 'agency-led, centrally enabled' model for procurement each agency is responsible for implementing the Code within its procurement activities.

Tender documents can state the government's preference to do business with suppliers that meet the Code's expectations. Tenders can also include targeted questions on aspects of the Code (e.g. a question could be specifically asked on cartel activity if there is a history of collusive activity in the market concerned). Alternatively, for more significant procurement activities, suppliers can also be asked to sign a commitment letter to abide by the Code as part of their response.

This document provides several example clauses for tender documents, guidance on how buyers could evaluate supplier responses, and example clauses that can be put into resulting contracts.

There is no policy requirement to apply a weighting to compliance with the Code. Where a weighting is to be used, it will need to be decided on a case-by-case basis relative to the procurement's context and other evaluation criteria. The Code can also be applied to require a 'yes/no' response which an agency could elect to make mandatory.

Government agencies are encouraged to take a simple pragmatic approach to implementation. The size of the supplier and nature of the procurement should inform how the Code is implemented. For example, it may be unrealistic to expect small businesses to have sophisticated workplace strategies, policies and practices. Having said that the Code does not prevent even small businesses from implementing simple approaches to demonstrate their ethical, environmental and social credentials.

Applying tender and contract clauses

The following tables include example clauses for use or adaptation in tender documents. These range from very generic and simple to more complex and can be targeted towards specific aspects of the Code. Before using any of these clauses consider carefully the complexity of the procurement, your market assessment and what benefits you are looking to achieve.

Column one of the tables below lists example clauses that can be used, or adapted for use, in tender documents. The column, ‘How would this be evaluated?’ provides guidance on how to assess supplier responses against each question. The third column (where appropriate) provides example contract clauses. If inserting such a clause, government buyers will also need to monitor supplier compliance, for example, by applying key performance indicators or standard contract management processes. If a supplier fails to comply, consideration may be given to possible suspension or termination actions as contained with the contract’s terms and conditions.

Note: The procuring government agency is referred to as the ‘Customer’ in the following tables. Terms which are capitalised in the tables are defined under the ‘Definitions and Interpretation’ document published as part of the standard terms and conditions for the procurement of general goods and services. These clauses are provided as examples and it is strongly recommend that you consider rewording to fit the required procurement, and to align with any agency specific terms and conditions. Buyers are encouraged to seek procurement and legal review in accordance with their agency procurement processes.

1: General acknowledgement

When would these provisions be suitable?

- ✓ to broadly to raise awareness of the Code and the government’s intent to do business with suppliers who are ethically, environmentally and socially responsible
- ✓ procurement aimed at small and medium businesses
- ✓ lower value procurements.

Response questions	How this would be evaluated	Example clauses for inclusion in resulting contract
<p>Is your organisation compliant with the expectations as contained in the Queensland Government Supplier Code of Conduct?</p>	<p>These questions require a ‘yes/no’ response.</p> <p>In the event of a ‘no’ response, evaluators may wish to seek advice as to whether the offer should be set aside from further consideration. To do this, the evaluation plan must have been written in a way that allows for this to occur. Care should be taken in preparing the evaluation plan accordingly.</p>	<p>The Supplier is to comply with all expectations as contained in the Queensland Government Supplier Code of Conduct. The Supplier is to notify the Customer, in writing, within ten (10) business days, should it cease to be compliant with the Queensland Government Supplier Code of Conduct.</p> <p>The Customer reserves the right, at its sole and absolute discretion, to require the Supplier to provide confirmation of their compliance with the Queensland Government Code of Conduct Code.</p> <p>The Queensland Government may, from time-to-time, update or amend the Queensland Government Supplier Code of Conduct. The Supplier is solely responsible for informing themselves and ensuring compliance with any updated or amended Queensland Government Supplier Code of Conduct. The Customer is under no obligation to inform the Supplier of any updates or amendments to the Queensland Government Supplier Code of Conduct.</p>

2: Specific provisions

When would these provisions be suitable?

- ✓ where it is necessary to address a specific area of concern within a particular supply market/industry
- ✓ where a more formalised response to the Code is desired (through the ‘commitment letter’)
- ✓ procurement aimed at medium to large businesses
- ✓ more significant procurements, and when setting up common-use supply arrangements.

Note: The ‘General acknowledgement’ questions in Section 1 can be used in addition to the below if needed.

Response question	How this would be evaluated	Example clause for inclusion in resulting contract
<p>To address a particular area of concern</p> <p>The Queensland Government Supplier Code of Conduct includes expectations related to <<insert area of concern>>. Please detail what action your organisation has and/or will take to ensure compliance with this expectation. Please provide supporting information in evidence of your response.</p>	<p>This will vary depending on the specific area of concern. Key things to look for may include evidence of the organisation’s internal policies or procedures, or copies of relevant certifications or accreditations.</p>	<p>If the supplier, as part of its response, includes reference to a particular document, the following can be used</p> <p>The Supplier shall maintain its <<insert name>> for the term of this Contract. The Supplier is to notify the Customer, in writing, within ten (10) business days, should it cease to have <<insert name>> within its organisation.</p>
<p>Commitment letter</p> <p>In responding to this Invitation to Offer, the Supplier is to provide a signed commitment letter in relation to the Queensland Government Supplier Code of Conduct.</p>	<p>It would be expected that suppliers sign the commitment letter.</p> <p>If a supplier does not sign the commitment letter, evaluators may wish to seek advice as to whether the offer should be set aside from further consideration. To do this, the evaluation plan must have been written in a way that allows for this to occur. Care should be taken in preparing the evaluation plan accordingly.</p>	<p>The signed commitment letter forms part of the resulting contract – all relevant provisions are contained within the letter</p>

Managing adverse responses during the tender process

In the event of negative or adverse responses to questions in tender documents, evaluators may wish to seek advice about whether to exclude the offer from further consideration. To exclude offers requires the evaluation plan to have included provisions for this to occur. It is therefore extremely important to ensure the evaluation panel is prepared accordingly. Each case must be considered taking into account the particular circumstances and context.

Clauses which have been assigned a weighting, should be treated and scored in accordance with the evaluation plan and in line with other weighted requirements.

Contract management

Contract requirements in relation to the Code should be monitored and managed regularly in the same way as other contract expectations such as quality and costs.

Contact

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Disclaimer

This document is intended as a guide only for the internal use and benefit of government agencies. It may not be relied on by any other party. It should be read in conjunction with the Queensland Procurement Policy, your agency's procurement policies and procedures, and any other relevant documents.

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