ASDEFCON CLAUSEBANK: INDIGENOUS PROCUREMENT POLICY

Step 1: Determine applicability of the Indigenous Procurement Policy.

The primary objective of the IPP is to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy. These clauses are for use when the procurement is subject to the Indigenous Procurement Policy and Mandatory Minimum Requirements (MMRs) for Indigenous participation apply.

The MMRs apply if:

1. the estimated value of the procurement is $7.5 million or above (GST inclusive); and
2. that value is to be spent in one or more of the specified industry sectors within Australia listed at:

http://drnet/casg/commercial/UndertakingProcurementinDefence/Pages/IPP-Minimum-Requirements.aspx

The MMRs will not apply, and these clauses should not be used, if the procurement:

1. is being conducted by limited tender directly to an Indigenous Enterprise under a CPR Appendix A exemption;
2. is exempt in accordance with paragraph 2.6 of the CPRs; or
3. will not be wholly delivered in Australia.

These clauses have been adapted from [model clauses produced by the National Indigenous Australian Agency](https://www.niaa.gov.au/resource-centre/indigenous-affairs/indigenous-procurement-policy-model-clauses) for use in ASDEFCON templates. Instructions are included to incorporate these clauses into the ASDEFCON (Support) and ASDEFCON (Support Short) templates; if they are required for use in other ASDEFCON templates seek commercial advice at defence.procurement@defence.gov.au.

Drafters should refer to the IPP website for the ‘IPP Guide 1: Procuring Officials and Contract Managers’ to help conduct procurement activities that are subject to Mandatory Minimum Requirements (MMRs) under the IPP at:

<https://www.niaa.gov.au/resource-centre/indigenous-affairs/indigenous-procurement-policy-ipp-guide-1-procuring-officials-and-contract-managers>.

More information on the IPP can be found at the following sites:

* National Indigenous Australians Agency website: <https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp>.
* [CASG Commercial Division Indigenous Procurement Policy intranet site](http://ibss/PublishedWebsite/LatestFinal/%7B836F0CF2-84F0-43C2-8A34-6D34BD246B0D%7D/Item/99ED33DF-8CE3-49F2-98CF-57B9136DD97E).

Any queries seeking assistance in implementing the Indigenous Procurement Policy can be directed to: indigenous.procurement@defence.gov.au.

Step 2: Where Mandatory Minimum Requirements apply, insert the appropriate clauses.

The below clauses are provided for inclusion in ASDEFCON (Support) or ASDEFCON (Support Short) based approaches to market, where the procurement is subject to the Indigenous Procurement Policy and Mandatory Minimum Requirements apply. Unless indicated otherwise, drafting is for inclusion into both the ASDEFCON (Support) and ASDEFCON (Support Short) templates. Drafters will need to check all cross-references for consistency across the approach to market documentation; cross-references are highlighted here for your attention. Any queries in relation to these clauses can be directed to the ASDEFCON and Contracting Initiatives team at procurement.asdefcon@defence.gov.au.

Part 1 – Conditions of Tender

Tender Details Schedule

Note to drafters: Insert the below additional Minimum Content and Format Requirement (‘Tenders are to include a draft indigenous Participation Plan’) into the Tender Details Schedule.

|  |  |
| --- | --- |
| **Minimum Content and Format Requirements:**(clause 3.2) | Tenders (including all attachments, annexes and supporting documentation), are to be written in English.All measurements in tenders are to be expressed in Australian legal units of measurement unless otherwise specified.Tenders are to include a PDF copy of the Tenderer’s Deed of Undertaking in the form of Annex B to the TDRL duly signed by the tenderer.Tenders are to include a draft Indigenous Participation Plan. |

Table of Contents

Note to drafters: Insert the Indigenous Procurement Policy tender annex as appropriate in the table of contents to the conditions of tender.

Annexes

H. Indigenous Procurement Policy A-H1

Clause 1.7 – Indigenous Procurement Policy

Note to drafters: Insert the below clause 1.7 and associated note to tenderers.

Note to tenderers: The objective of the Indigenous Procurement Policy (IPP) is to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy. More information on the IPP can be found at:

* <https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp>
	1. Indigenous Procurement Policy
		1. The Mandatory Minimum Requirements for Indigenous participation specified within the IPP will apply to any resultant contract.

Tender Evaluation Criteria – ASDEFCON (Support)

Note to drafters: Amend the Subordinate Criteria (column b) and Evaluation Items (column c) for Key Criterion a. in the tender evaluation criteria table at clause 3.11 of the conditions of tender by inserting the below text in addition to the existing Subordinate Criteria and Evaluation Items. Do not replace the existing Subordinate Criteria and Evaluation Items.

| Key CriteriaColumn (a) | Subordinate CriteriaColumn (b) | Evaluation ItemsColumn (c) |
| --- | --- | --- |
| 1. the suitability of the tenderer to perform the obligations in the draft Contract.

Note to tenderers: If the Commonwealth takes an adverse view of tenderer past performance or proposes to exclude the tenderer from further consideration based on information collected under this criterion, the Commonwealth may request further information from the tenderer in accordance with clause 3.2.2c. | 1. past performance and/or demonstrated commitment to increasing Indigenous participation, including, where relevant, the Tenderer's past compliance with any Mandatory Minimum Requirements; and the extent to which the tendered Indigenous Participation Plan meets the Mandatory Minimum Requirements.
 | * Indigenous Participation Plan, Annex H
 |

Tender Evaluation Criteria - ASDEFCON (Support Short)

Note to drafters: Add the below evaluation criteria at clause 3.9.1 (Tender Evaluation Criteria) to the Conditions of Tender.

* + - 1. past performance and/or demonstrated commitment to increasing Indigenous participation, including, where relevant, the Tenderer's past compliance with any Mandatory Minimum Requirements; and
			2. the extent to which the tendered Indigenous Participation Plan meets the Mandatory Minimum Requirements.

Attachment A to Conditions of Tender: Tender Data Requirements List

Note to drafters: Add the below Tender Response Volume and Tender Data Requirement to the Tender Data Requirements List.

|  |  |
| --- | --- |
|  | Volume 7: Indigenous Procurement Policy |
| H-1 | 1. Indigenous Procurement Policy
 |

Conditions of Tender Annex: Tenderer’s Deed of Undertaking

Note to drafters: Include the following clauses at the end of clause 4 (Undertakings and Warranties).

* 1. The Tenderer represents and warrants that it has or has had **[INSERT THE WORD ‘NIL’ IF NONE OR INSERT THE NUMBER]** contracts with the Commonwealth that included Mandatory Minimum Requirements.
	2. For the contracts referred to in clause 4.13 of this Declaration, the Tenderer declares that it has **[INSERT THE WORDS ‘FULLY MET’ / ‘PARTIALLY MET’ / ‘NOT MET’ / ‘NOT MET’ (as Nil contracts undertaken)]** the Mandatory Minimum Requirements.
	3. The Tenderer represents and warrants that, to its knowledge and after having made reasonable enquiries, the Indigenous Enterprises referred to in the draft Indigenous Participation Plan submitted as part of the Tender are 50 per cent or more Indigenous owned.

Conditions of Tender Annex: Indigenous Procurement Policy

Note to drafters: Insert a new tender annex and schedule as indicated in the following 3 pages. Ensure that the annex letter is reflected correctly in the Tender Data Requirements List and the list of annexes at the Conditions of Tender Table of Contents, and that the header and footer is consistent with the rest of the tender annex documents.

**Response Volume: INDIGENOUS PROCUREMENT POLICY (OPTIONAL)**

***Note to tenderers: An Indigenous Enterprise is an organisation that is 50 per cent or more Indigenous owned that is operating as a business.*** [***Supply Nation***](https://supplynation.org.au/) ***is a membership body that validates and promotes Indigenous Enterprises.***

***For further information on what elements should be included within an Indigenous Participation Plan, tenderers should refer to the ‘Developing and Evaluating an Indigenous Participation Plan Guidance Document’ at:***

* <https://www.defence.gov.au/business-industry/procurement/selling-to-defence/encouraging-indigenous-business>.
	1. Tenderers are to provide a draft Indigenous Participation Plan in the form of Schedule 1 to this Annex H to Attachment A to the Conditions of Tender. The successful Tenderer's Indigenous Participation Plan will form part of any resultant Contract.

**Schedule 1 – Indigenous PARTICIPATION PLAN**

***Note to tenderers: The Indigenous Participation Plan should demonstrate:***

1. ***how the tenderer intends on meeting the Mandatory Minimum Requirements (MMRs) for the Indigenous Procurement Policy;***
2. the tenderer's current rate of Indigenous employment and Indigenous supplier use;
3. the tenderer's commitment to Indigenous participation; and
4. if any part of the Contract will be delivered in a Remote Area, how the tenderer will ensure that its provision of Goods and/or Services will deliver significant Indigenous employment or Indigenous supplier use outcomes in that Remote Area.

***Some examples of the activities an organisation can take to demonstrate its commitment to Indigenous participation are set out in the Indigenous Procurement Policy which can be found at:***

* <https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp>.
	1. This Indigenous Participation Plan is part of the Tender submission in response to **[INSERT RFT NUMBER]** (RFT).
	2. If selected as the successful Contractor following evaluation of Tenders received in response to the RFT, **[INSERT COMPANY NAME]** will meet the Mandatory Minimum Requirements for the purposes of the Indigenous Procurement Policy at:

|  |
| --- |
| ***Option A: To be used when the contractor will meet the MMRs at the contract based level.***Note to tenderers: To meet the MMRs at the contract based level, by the end of the Initial Term of the Contract at least one of the following targets must be achieved:1. ***at least 4 per cent of the full time equivalent Australian-based workforce deployed on the contracted project must be Indigenous Australians, on average over the Initial Term of the Contract;***
2. at least 4 per cent of the value of the work performed under the Contract must be subcontracted to Indigenous Enterprises over the Initial Term of the Contract; or
3. a minimum percentage of the full time equivalent Australian-based workforce deployed on the contracted project on average over the initial term of the contract must be Indigenous Australians, and a minimum percentage of the value of the work performed under the Contract must be subcontracted to Indigenous enterprises, so that both minimum percentages add up to at least 4 per cent, over the Initial Term of the Contract.
	* 1. the contract based level, at least:
			1. **[INSERT EXACT PERCENTAGE]**% of **[INSERT COMPANY NAME]**’s full time equivalent Australian-based workforce deployed on the contracted project must be Indigenous Australians over the Initial Term; and
			2. **[INSERT EXACT PERCENTAGE]**% of the value of the work performed under the Contract will be subcontracted to Indigenous Enterprises over the Initial Term.
 |

|  |
| --- |
| ***Option B: To be used when the contractor will meet the MMRs at the organisation based level.***Note to tenderers: To meet the MMRs at the organisation based level, by the end of the Initial Term of the Contract, at least one of the following targets must be achieved:1. at least 3 per cent of the full time equivalent Australian-based workforce of the Contractor must be Indigenous Australians, on average over the Initial Term of the Contract;
2. at least 3 per cent of the value of the Contractor’s Australian supply chain must be subcontracted to Indigenous Enterprises, over the Initial Term of the Contract; or
3. a minimum percentage of the full time equivalent Australian-based workforce must be Indigenous Australians on average of the initial term of the contract, and a minimum percentage of the value of the Contractor’s supply chain must be subcontracted to Indigenous enterprises, such that both minimum percentages add up to at least 3 per cent over the Initial Term of the Contract.
	* 1. the organisation based level, at least:
			1. **[INSERT EXACT PERCENTAGE]%** of **[INSERT COMPANY NAME]**’s full time equivalent Australian-based workforce will be Indigenous Australians over the Initial Term; and
			2. **[INSERT EXACT PERCENTAGE]%** of the value of **[INSERT COMPANY NAME]**’s Australian supply chain will be subcontracted to Indigenous Enterprises over the Initial Term.
 |

***Note to tenderers: Tenderer to insert details of how the MMRs will be met. This may include details of the tenderer’s current workforce / supply chain at either / both the contract / organisation level and how the proposed percentages to meet the MMRs will be achieved.***

* 1. To meet the Mandatory Minimum Requirements for the purposes of the Indigenous Procurement Policy, **[INSERT COMPANY NAME]** will undertake the following: **[INSERT RESPONSE]**
	2. **[INSERT COMPANY NAME]**’s rate of Indigenous employmentand Indigenous supplier use as at **[INSERT TENDER CLOSING DATE]** is **[INSERT RESPONSE]**.
	3. **[INSERT COMPANY NAME]** demonstrates its commitment to Indigenous participation as follows: **[INSERT RESPONSE]**.
	4. **[INSERT COMPANY NAME]** will meet the Mandatory Minimum Requirements directly; or through subcontracts using the following approach: **[INSERT RESPONSE]**.

|  |
| --- |
| ***Option: To be used where a component of any resultant Contract will be delivered in a Remote Area.**** 1. **[INSERT COMPANY NAME]** proposes to ensure the Contract will deliver a significant Indigenous employment or Indigenous supplier use outcome in that Remote Area as follows: **[INSERT RESPONSE]**
 |

Conditions of Contract: Table of Contents

Note to drafters: Insert the Indigenous Participation Plan contract attachments to the list of attachments after the Table of Contents.

L. Indigenous Participation Plan (Optional) L-1

Conditions of Contract: Policy and Law clause

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

* 1. Indigenous Procurement (Optional)
		1. The Contractor shall comply with the Indigenous Participation Plan at Attachment L.
		2. The Contractor shall use reasonable endeavours to increase the Mandatory Minimum Requirements specified in Attachment L by subcontracting to Indigenous enterprises and employing Indigenous Australians in the delivery of the Services.
		3. If at any time the Commonwealth reasonably believes that there is, or is likely to be, any failure to meet the requirements specified within the Indigenous Participation Plan the Commonwealth may request the Contractor to develop and submit a Remediation Plan in accordance with clause 6.7.
		4. Notwithstanding any other clause of this Contract, the Contractor acknowledges and agrees that the reports submitted in accordance with clause 3.16.2 of the SOW[:](#_bookmark24)
			1. will be recorded in the Indigenous Procurement Policy Reporting Solution (IPPRS);
			2. may be accessed by Commonwealth Entities;
			3. may be made publicly available;
			4. is not Confidential Information; and
			5. may be used by Commonwealth Entities for any purpose.

Contract Attachments: Glossary

Note to drafters: Ensure the following acronyms and definitions are in the Glossary.

1. Acronyms and Abbreviations

| Abbreviation | Description |
| --- | --- |
| IPP | 1. Australian Government Indigenous Procurement Policy
 |
| IPPRS | 1. Indigenous Procurement Policy Reporting Solution
 |
| NIAA | 1. National Indigenous Australians Agency
 |

1. DEFINITIONS

| Term | Status | Definition |
| --- | --- | --- |
| 1. Commonwealth Entity
 | 1. (Core)
 | means a Corporate Commonwealth entity or a Non-corporate Commonwealth entity as defined in section 8 of the *Public Governance, Performance and Accountability Act 2013* (Cth), and Commonwealth entities has a corresponding meaning. |
| 1. High Value Contract
 | 1. (Core)
 | in the context of the Indigenous Procurement Policy, means a contract delivered in Australia valued at $7.5 million (GST inclusive) or more, in specified sectors, and subject to the Mandatory Minimum Requirements in accordance with the Indigenous Procurement Policy. High Value Contracts has a corresponding meaning. |
| 1. Indigenous Enterprise
 | 1. (Core)
 | 1. means an organisation, operating a business, that is 50 per cent or more Indigenous owned. It may take the form of a company, incorporated association or trust. A social enterprise or registered charity may also be an Indigenous enterprise if it is operating a business.
2. Supply Nation ([www.supplynation.org.au](http://www.supplynation.org.au)) maintains a list of Indigenous Enterprises that meet this definition.
 |
| 1. Indigenous Participation Plan
 | 1. (Core)
 | 1. means a plan in the form of Schedule 1 to Annex H to Attachment A to the Conditions of Tender detailing how the Contractor will meet the Mandatory Minimum Requirements for the Indigenous Procurement Policy.
 |
| 1. Indigenous Procurement Policy Reporting Solution
 | 1. (Core)
 | 1. means the online portal through which Contractors submit reports on their progress against their Mandatory Minimum Requirements under the Commonwealth’s Indigenous Procurement Policy, and the central database containing those reports.
 |
| 1. Indigenous Procurement Policy or IPP
 | 1. (Core)
 | 1. means the Commonwealth Indigenous Procurement Policy as amended from time to time.
2. A copy of the IPP is available from the NIAA’s IPP website:
3. <https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp>.
 |
| 1. Mandatory Minimum Requirements
 | 1. (Core)
 | 1. means the mandatory minimum Indigenous participation requirements imposed for High Value Contracts by the Indigenous Procurement Policy.
 |
| 1. Remote Area
 | 1. (Core)
 | 1. means the areas identified as being remote in the electronic Remote Indigenous Procurement Policy Map on the NIAA’s Indigenous Procurement website, as updated from time to time. The electronic Remote Indigenous Procurement Policy map can found here:
2. <https://www.niaa.gov.au/resource-centre/indigenous-affairs/ripp-map-data>
 |

Contract Attachments: Indigenous Participation 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.

INDIGENOUS PARTICIPATION PLAN

Note to tenderers: Attachment L will consist of the successful tenderer’s response to Schedule 1 to TDR H (Indigenous Participation Plan) and any negotiated changes.