



Model clauses for Building Contractors

Western Australian Building and Construction Industry Code of Conduct 2016 (BCI Code)

Building Contractors who have been engaged to provide building work in connection with a project involving State Building Work (as defined in the Western Australian Building and Construction Industry Code of Conduct 2016 (**BCI Code**)), must ensure that all expressions of interest, requests for tender and subcontracts refer to the BCI Code. Similarly, if a Building Contractor is covered by the BCI Code by reason of the above, it will also be covered for Private Covered Building Work.

(Note that the terms “Building Contractor” and “Building Work” are defined in the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth)).

This document contains model clauses which may be used in connection with expressions of interest, requests for tender, purchase orders and Subcontracts between a contractor and its Subcontractor in circumstances where the BCI Code applies.

The Department of Commerce has made no attempt to analyse or understand the procurement processes or documents used by the Building Contractor. Therefore, the example clauses below may or may not be suitable for the Building Contractor to use. The Building Contractor should independently assess the suitability of the example clauses having regard to its individual circumstances.

Below are some example clauses which may be used between a Building Contractor and potential or actual Subcontractor including:

1. advertisement clause;
2. tender clauses;
3. purchase order clause; and
4. subcontract clauses.

Advertisement clause

When a Building Contractor releases an advertisement calling for expressions of interest or tender responses, the example advertisement clause below may be used. Words in [square brackets] may need to be amended (and defined) to reflect terminology/specific context in which the advertisement is being made.

[Note: Insert specifics of advertisement.] Any party interested in [tendering/responding] to this [expression of interest or tender] should note that the Western Australian Building and Construction Industry Code of Conduct 2016 (**BCI Code**) applies to the [Building Contractor]. As such, any party [tendering/responding] will also be required to comply with the BCI Code.

A copy of the BCI Code can be downloaded from www.commerce.wa.gov.au/publications/wa-building-and-construction-industry-code-conduct-2016

Tender clauses

When a Building Contractor releases an expression of interest or tender, the example tender clauses below may be included for the purposes of Subcontracting State Building Work. Words in [square brackets] may need to be amended (and defined) to reflect the specific context.

- (a) The Western Australian Building and Construction Industry Code of Conduct 2016 (**BCI Code**) applies to the [Contractor].
- (b) The [Tenderer/Respondent] is strongly encouraged to familiarise itself with the obligations under the BCI Code before submitting a [Tender/Response] as the [Tenderer/Respondent] becomes subject to the BCI Code if it submits a [Tender/ Response].
- (c) In submitting a [Tender/Response], the [Tenderer/ Respondent] acknowledges and accepts that:
 - (i) it will, from the time of submission, be subject to the BCI Code:



- A. for the duration of the procurement process; and
 - B. if awarded a contract resulting from this procurement process, for the duration of the contract;
- (ii) while the [Tenderer/Respondent] is subject to the BCI Code, the [Tenderer/Respondent] is required to comply with the BCI Code for all works performed under a contract resulting from this procurement process and all Private Covered Building Work (as defined in the BCI Code).
- (d) Where the [Tenderer/Respondent] submits a [Tender/Response] while there is a current finding of material non-compliance against the [Tenderer/Respondent] under paragraph 30 of the BCI Code, the [Contractor] may, at its complete discretion, exclude the [Tenderer/Respondent] from further consideration in this procurement process.

Note: Taking the additional step of obtaining a declaration of compliance from the Tenderer/Respondent/Subcontractor may, depending on the specific circumstances in each case, be one of the ways for the Building Contractor to demonstrate that it is proactively ensuring compliance with the BCI Code under paragraph 8.3(b) of the BCI Code. Please see an example of a declaration of compliance below:

I/We acknowledge and agree that in submitting this [Tender/Response], I/we:

- (a) understand that the [Tenderer/Respondent] is required to comply with the BCI Code:
 - (i) for the duration of the procurement process; and
 - (ii) if awarded a contract resulting from this procurement process, for the duration of the contract
(Relevant Period);
- (b) understand that the obligation to comply with the BCI Code also applies to all Private Covered Building Work (as defined in the BCI Code) during the Relevant Period;
- (c) understand my/our obligations as a “Building Contractor” (as defined in the BCI Code) to comply with the BCI Code;
- (d) declare that I/we have not engaged in any collusive conduct in this procurement process; and
- (e) declare that neither I/we or any related entity is currently the subject of a finding of material non-compliance under paragraph 30 of the BCI Code.

[Insert signing clause for the Tenderer/Respondent]

Purchase order

The following example clause may be included in a purchase order. Words in [square brackets] may need to be amended (and defined) to be consistent with the terms used in the purchase order.

Note that there are a number of useful reporting templates at www.commerce.wa.gov.au/publications which can be used as a guide for Building Contractors seeking to report issues to the BCCMU in accordance with their obligations under the BCI Code.

The Western Australian Building and Construction Industry Code of Conduct 2016 (**BCI Code**) applies to the [works/services] the subject of this [purchase order]. By accepting this [purchase order], or otherwise commencing the [works/services] the subject of this [purchase order], the [Subcontractor]:

- (a) agrees to comply with its obligations as a “Building Contractor” under the BCI Code; and
- (b) warrants that it is not subject to a current finding of material non-compliance under paragraph 30 of the BCI Code.

Subcontract clauses

The following example clauses may be included in subcontracts with Subcontractors.

Clause (c) below reinforces important aspects of BCI Code compliance and may, depending on the specific circumstances in each case, help a Building Contractor to demonstrate a proactive approach with its subcontractors to ensure BCI Code compliance. Words in [square brackets] should be amended to be consistent with the terms used in the Subcontract.

Note that there are a number of useful reporting templates at www.commerce.wa.gov.au/publications which may be used by building contractors seeking to report issues to the BCCMU in accordance with their obligations under the BCI Code.

- (a) The Western Australian Building and Construction Industry Code of Conduct 2016 (**BCI Code**) applies to this [Subcontract].
- (b) The [Subcontractor] must comply with the obligations of a “Building Contractor” under the BCI Code for the term of this [Subcontract].
- (c) Without limiting the generality of [clause/paragraph] (b), the [Subcontractor] must:
 - (i) ensure that compliance with the BCI Code is a condition of any Subcontracts that the [Subcontractor] enters into in respect of the [works] under this [Subcontract];

- (ii) do the following and ensure that its Subcontractors do the following:
 - A. provide the Building and Construction Code Monitoring Unit (**BCCMU**) with access to the [Subcontractor's] business premises and any other places where records, documents or information is kept by the [Subcontractor];
 - B. assist the BCCMU in locating and accessing any record, document or information whether in hard copy or electronic format;
 - C. allow the BCCMU to speak with or interview the [Subcontractor's] employees or contractors;
 - D. allow the BCCMU to take copies of any record, document, information or other evidence whether in hard copy or electronic format;
 - E. respond to requests for information made by the BCCMU; and
 - F. do not obstruct the BCCMU;
- (iii) initiate and ensure that its Subcontractors initiate voluntary remedial action aimed at rectifying BCI Code non-compliance;
- (iv) report actual or threatened Industrial Action (as defined in the BCI Code) as soon as practicable but no later than 24 hours after becoming aware of the threat or action in relation to any work under this [Subcontract];
- (v) notify the BCCMU of a breach or suspected breach of the BCI Code as soon as practicable, but no later than 48 hours after becoming aware of the breach or suspected breach; and
- (vi) advise the BCCMU in writing when the [Subcontractor] enters into a Covered Contract (as defined in the BCI Code) having a value in excess of \$2 million in respect of Private Covered Building Work (as defined in the BCI Code).

