Model Clauses for Procurement

1 September 2024

**What is the Fair Jobs Code?**

The Fair Jobs Code aims to encourage and reward businesses and suppliers that comply with industrial relations and occupational health and safety laws, and to promote Fair Jobs Code Standards including:

* secure employment and job security;
* cooperative and constructive relationships between employers, employees and their representatives;
* workplace equity and diversity; and
* supply chain compliance

All Victorian Government departments, agencies and public bodies with applicable procurement contracts have responsibilities in relation to implementing the code.

**What procurements are affected?**

The code applies to all tender and market approach processes (and subsequent procurement contracts) with a value of $1 million or more (exclusive of GST).

**Background**

The code came into operation on 1 December 2022 and revisions to the code will become operative on 1 September 2024. These guidelines apply to the revised code.

**What do agencies need to do?**

Agencies are required to ensure that tender documents and agreements include model clauses that give effect to the code.

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**For more information**

For more information about the code, visit [buyingforvic.gov.au/fair-jobs-code](https://www.buyingfor.vic.gov.au/fair-jobs-code).

**Model Clauses: Threshold Procurement Contracts**

**- Tendering / Approach to Market clauses for RFT/RFQs**

Fair Jobs Code

* 1. **Overview**
		1. The Fair Jobs Code (**FJC**) aims to improve employment outcomes for persons employed by suppliers and service providers to the Victorian Government. The FJC is implemented by Victorian Government departments, agencies and public bodies to support and promote fair labour standards and ensure compliance with employment law.
		2. The FJC applies to the purchase of goods and/or services regardless of the method of procurement.
		3. The FJC applies to threshold procurement contracts (contracts with a value of $1 million or more exclusive of GST).
		4. For further information, bidders should refer to the FJC and FJC Guidelines which can be found at [buyingfor.vic.gov.au/fair-jobs-code-guidelines-suppliers-and-businesses](https://www.buyingfor.vic.gov.au/fair-jobs-code-guidelines-suppliers-and-businesses).
	2. **Definitions**

**Agency** means [insert the name of the department, agency or public body issuing this approach to market document].

**DJSIR** means the Department of Jobs, Skills, Industry and Regions (and its successor Government department) as the Department responsible for the FJC.

**FJC Guidelines** means the Fair Jobs Code Guidelines, available at [buyingfor.vic.gov.au/fair-jobs-code-departments-and-agencies](https://www.buyingfor.vic.gov.au/fair-jobs-code-departments-and-agencies).

**FJC Model Clauses** means the model clauses issued by DJSIR as part of the FJC which must be included in the agreements for all threshold procurement contracts.

**FJC** means the Fair Jobs Code, available at [buyingfor.vic.gov.au/fair-jobs-code](https://www.buyingfor.vic.gov.au/fair-jobs-code).

**FJC Unit** means the Fair Jobs Code Unit, an administrative group within DJSIR with responsibilities in relation to the FJC.

**Significant Subcontractor** means an entity engaged, or to be engaged, under a subcontract directly with a successful bidder, where the value of that subcontract is $1 million or more (exclusive of GST).

**threshold procurement contract** means a contract between a supplier and a Victorian Government agency with a value of $1 million but less than $20 million (exclusive of GST).

* 1. **Fair Jobs Code Pre-Assessment Certificate**
		1. All bidders submitting bids for threshold procurement contracts must hold a valid Pre-Assessment Certificate issued by the FJC Unit in accordance with the FJC and the FJC Guidelines.
		2. A copy of the bidder’s Pre-Assessment Certificate number must be included in that bidder’s bid.
		3. Bidders that do not hold a valid Pre-Assessment Certificate may not be considered for this procurement.

***Drafting Note***

*The Agency needs to satisfy itself that (where required) a bidder holds a Pre-Assessment Certificate. The Agency may request a copy of the Pre-Assessment Certificate be attached to bids, or that bidders provide Pre-Assessment Certificate numbers.*

* + 1. If a bidder is unable to secure a valid Pre-Assessment Certificate, it must notify the Agency contact officer as soon as possible and prior to submitting its bid.
		2. An Agency may use its discretion to enter into a contract with a bidder that does not have a valid Pre-Assessment Certificate subject to sections 4.3 or 4.4 of the FJC.
	1. **Agreement and continuing FJC obligations**
		1. Successful bidders will be required to maintain a valid Pre-Assessment Certificate throughout the contract entered into between that bidder and the Agency.
		2. Any agreement between a successful bidder and the Agency will include the FJC Model Clauses.
	2. **Significant Subcontractors**
		1. If a bidder intends to engage Significant Subcontractor/s to perform any part of any agreement entered into with the Agency for this [Request for Tender/Expression of Interest/Request for Proposal], then that bidder must provide in its bid:
			1. details of each proposed Significant Subcontractor/s and what roles/responsibilities they will have under the agreement; and
			2. Pre-Assessment Certificate numbers for each proposed Significant Subcontractor.
	3. **Changes to Pre-Assessment Certificate Status**
		1. If a bidder's Pre-Assessment Certificate is revoked or lapses after the bid is submitted, but before contracts are awarded, that bidder must notify the Agency as soon as practicable but not later than ten (10) days after the revocation or expiry date.
		2. A bidder will not be awarded a contract if they do not have a valid Pre-Assessment Certificate unless an exception applies.
	4. **Further information and assistance**
		1. The FJC Guidelines provide guidance on the application of the FJC and are available at buyingfor.vic.gov.au/fair-jobs-code-departments-and-agencies.
		2. The FJC Unit provides information to assist bidders with Pre-Assessment Certificates. For further information or assistance, bidders can contact the FJC Unit:

[buyingfor.vic.gov.au/fair-jobs-code](https://www.buyingfor.vic.gov.au/fair-jobs-code)

fairjobscode@ecodev.vic.gov.au

END SECTION

**Model Clauses: Threshold Procurement Contracts**

**- Agreements**

***Drafting Note***

*1. These model clauses are designed to form a separate Schedule to the agreement, and the agreement should include a clause to stipulate that the Fair Jobs Code Schedule is operative and forms part of the Agreement.*

*2 Include a clause in the contract agreement in the appropriate place.*

***Example:*** *'The Fair Jobs Code applies to this Agreement, Schedule X forms part of the terms and conditions of this Agreement/Contract.' The Supplier in performing its obligations under this Agreement/Contract must comply with Schedule X.*

*3. The content of this Schedule is drafted in generic language to minimise the need to align it with the language of the project agreement. Care must still be taken to ensure that any clause of the project agreement is not inconsistent and which may render a clause of this Schedule inoperative by an order of precedence interpretation clause.*

*4. Remove all drafting notes from the final project agreement.*

Schedule X - Fair Jobs Code

* 1. **Definitions**

In this Schedule:

**Adverse Ruling** means a ruling (by any court, tribunal, board, commission or other entity with jurisdiction or legal authority to determine the matter) that the Supplier has breached an applicable employment, industrial relations or workplace health and safety law.

**Agency** means the organisation with which the Supplier has entered into this Agreement.

**Agreement** means this project or supply agreement.

***Drafting Note (optional)***

*If the project agreement is not referred to as 'Agreement', replace 'Agreement' with the word or phrase used to describe the project agreement. Ensure that 'Agreement' is then replaced throughout this Schedule.*

**Contract Manager** means the person (however described) appointed by the Agency as its representative for all communication and liaison with the Supplier for the purposes of this Agreement.

***Drafting Note (optional)***

*If the term 'Contract Manager' is not appropriate for this agreement, replace 'Contract Manager" with the term used to describe the Agency's responsible person. Ensure that 'Contract Manager" is then replaced throughout this Schedule.*

**DJSIR** means the Department of Jobs, Skills, Industry and Regions (and its successor Government department) as the Department responsible for the FJC.

**Enforceable Undertaking** means a promise or agreement made by the Supplier with a regulator, Court or other body (including the Fair Work Ombudsman, WorkSafe Victoria and Wage Inspectorate Victoria) in respect of a breach or alleged/suspected breach of an applicable employment, industrial relations or workplace health and safety law.

**FJC Guidelines** means Fair Jobs Code Guidelines, available at [buyingfor.vic.gov.au/fair-jobs-code-departments-and-agencies](https://www.buyingfor.vic.gov.au/fair-jobs-code-departments-and-agencies).

**FJC** means the Fair Jobs Code issued by the State of Victoria available at [buyingfor.vic.gov.au/fair-jobs-code](https://www.buyingfor.vic.gov.au/fair-jobs-code).

**FJC Unit** means the Fair Jobs Code Unit, an administrative group within DJSIR with responsibilities in relation to the FJC.

**Notice** means a notice given, delivered or served in accordance with this Agreement.

**Pre-Assessment Certificate** means a certificate issued to the Supplier by the FJC Unit prior to entering into this Agreement, or which is renewed during the term of this Agreement.

**Significant Subcontractor** means an entity engaged, or to be engaged, under a subcontract directly with a Supplier, where the value of that subcontract is $1 million or more (exclusive of GST).

**Supplier** means the person or entity (however described) providing the goods and/or services under this Agreement.

***Drafting Note (optional)***

*Replace with the relevant word or phrase in the Contract Precedent. Ensure that 'Supplier' is then replaced throughout this Schedule.*

* 1. **Fair Jobs Code**
		1. The Supplier warrants that at the time of entering this Agreement it holds a valid Pre-Assessment Certificate.
		2. In performing its obligations under this Agreement the Supplier acknowledges and agrees that it shall:
			+ 1. continue to hold a valid Pre-Assessment Certificate; and
				2. comply with the FJC.
		3. If at any time during the term of this Agreement the Supplier's Pre-‑Assessment Certificate is revoked by the FJC Unit that revocation will constitute a breach of this Schedule which will enable the Agency to exercise its rights under clause 8 of this Schedule.
		4. The Supplier acknowledges and agrees that the obligations for holding and maintaining a Pre-Assessment Certificate apply during the term of this Agreement and any extensions to the term.

***Drafting Note***

*The FJC Guidelines state that an Agency may determine the consequences that will apply for revocation. Agencies may choose to build into their contracts financial and or other disincentives that apply if FJC obligations are not met.*

* 1. **Verification of Supplier's compliance with the Fair Jobs Code**
		1. The Supplier must, on request by the Agency, provide a copy of the Pre-‑Assessment Certificate or any related correspondence with the FJC Unit.
		2. If, during the term of this Agreement, the Supplier's Pre-Assessment Certificate expires the Supplier must provide Notice to the Agency of the expiry within 10 Business Days.
		3. If the Supplier fails to promptly take steps to renew an expired Pre-Assessment Certificate after notifying the Agency of the expiration, the expiration will constitute a breach of this Schedule which will enable the Agency to exercise its rights under clause 8 of this Schedule.

***Drafting Note***

*The FJC Unit maintains a Public Register of Pre-Assessment Certificate holders. Generally, it is sufficient for agencies to confirm with the FJC Unit as to whether a supplier holds a valid certificate.*

* 1. **Ongoing duty of disclosure and cooperation**
		1. If during the term of this Agreement, the Supplier is the subject of an Adverse Ruling or Enforceable Undertaking, it must provide Notice to the Agency and the FJC Unit within 10 Business Days of the Adverse Ruling or Enforceable Undertaking being made.
		2. During the term of this Agreement the Supplier must:
			1. cooperate with all reasonable requests from the Agency seeking evidence of the Supplier's compliance with the FJC;
			2. permit the Contract Manager, an accountant or auditor on behalf of the Agency, DJSIR or any other person authorised by the Agency or DJSIR, from time to time during ordinary business hours and upon Notice, to inspect and verify all records maintained by the Supplier relating to compliance with the FJC under this Agreement; and
			3. ensure that its employees, agents and subcontractors give all reasonable assistance to any person authorised by the Agency or DJSIR to undertake such audit or inspection.
		3. The Agency will bear all costs for any audit in accordance with clause 4.2(b) of this Schedule.
		4. The Supplier acknowledges and agrees that the Agency, DJSIR, or their duly authorised representatives (including the FJC Unit), are authorised to obtain information from any relevant persons, firms or corporations, including third parties, regarding the Supplier’s compliance with the FJC.
		5. The obligations set out in this clause 4 are in addition to and do not derogate from any other obligation under this Agreement.
		6. A failure to comply with this clause 4 will constitute a breach of this Schedule which will enable the Agency to exercise its rights under clause 8 of this Schedule.

***Drafting Note***

*This clause makes the obligations of ongoing disclosure as set out in the FJC contractually binding. A failure to disclose to the Agency or allow access for audit will constitute a breach of this Schedule which will enable the Agency to exercise its rights under clause 9 of this Schedule.*

*The reporting requirements for FJC compliance are the responsibility and within the discretion of the Agency. Agencies should consider if the reporting requirements on FJC compliance listed above are appropriate for their needs.*

* 1. **Significant Subcontracting**
		1. The Supplier warrants that any Significant Subcontractors engaged or proposed to be engaged to perform work under this Agreement hold a valid Pre-Assessment Certificate when they are engaged or proposed to be engaged.
		2. The Supplier must ensure that any subcontracts entered into by the Supplier with Significant Subcontractors in relation to work under this Agreement contain clauses requiring Significant Subcontractors to:
			1. comply with the FJC;
			2. hold a valid Pre-Assessment Certificate;
			3. notify the Supplier if its Pre-Assessment Certificate is revoked, or if its Pre-Assessment Certificate expires without being replaced with a new Pre-Assessment Certificate; and
			4. comply with the ongoing duty of disclosure and cooperation set out in clause 4, as if references to the Supplier were references to the Significant Subcontractor.
		3. The subcontracting obligations set out in this clause 5 are in addition to and do not derogate from any other obligations under this Agreement.
		4. The Supplier's failure to comply with this clause 5 will constitute a breach of this Schedule which will enable the Agency to exercise its rights under clause 8 of this Schedule.
	2. **Standing Offer Arrangements**

If this Agreement is a standing offer arrangement under which goods and/or services may be procured from time to time by way of a separate purchase order, work order or other ordering arrangement (however described), and the Supplier is in breach of clauses 2, 3 or 4 of this Schedule:

* + 1. all purchase order contracts entered into prior to the breach will continue unless and until terminated by the Agency; and
		2. no further Purchase Order Contracts may be entered into until such time as the breach is remedied.
	1. **Use of information**

The Supplier acknowledges and agrees that:

* + 1. FJC Unit will assess the Supplier’s compliance with the FJC.
		2. Information regarding the Supplier’s compliance with the FJC including any disclosures regarding Adverse Rulings or Enforceable Undertakings:
			1. will be reported by the Agency to the FJC Unit in compliance with the Agency’s obligations under the FJC; and
			2. may be disclosed in the circumstances authorised or permitted under the terms of this Agreement or as otherwise required by Law.
		3. Nothing in this provision removes the obligation for the Supplier to report Adverse Rulings or Enforceable Undertakings to the FJC Unit as per 4 above.
	1. **Consequences of breach**
		1. Any breach of the provisions of this Schedule will enable the Agency, in its absolute discretion, to do any or all of the following:
			1. suspend the Agreement until such time as the breach has been remedied to the satisfaction of the Agency and within a timeframe acceptable to the Agency;
			2. by written notice immediately terminate the Agreement; or
			3. exercise any rights that it has under this Agreement.

END SECTION

**Model Clauses: High Value Procurement Contracts (excl. construction)**

**- Tendering / Approach to Market clauses for RFT/RFQs**

Fair Jobs Code

* 1. **Overview**
		1. The Fair Jobs Code (**FJC**) aims to improve employment outcomes for persons employed by suppliers and service providers to the Victorian Government. The FJC is implemented by Victorian Government departments, agencies and public bodies to help promote fair labour standards and to ensure compliance with employment law.
		2. The FJC applies to the purchase of goods and/or services, regardless of the method of procurement.
		3. The FJC applies to high value procurement contracts (contracts with a value of $20 million or more exclusive of GST).
		4. For further information, bidders should refer to the FJC and FJC Guidelines which can be found at [buyingfor.vic.gov.au/fair-jobs-code-guidelines-suppliers-and-businesses](https://www.buyingfor.vic.gov.au/fair-jobs-code-guidelines-suppliers-and-businesses).
	2. **Definitions**

**Agency** means [insert the name of the department, agency or public body issuing this approach to market document].

**DJSIR** means the Department of Jobs, Skills, Industry and Regions (and its successor Government department) as the Department responsible for the FJC.

**FJC Guidelines** means the Fair Jobs Code guidelines, available at [buyingfor.vic.gov.au/fair-jobs-code-departments-and-agencies](https://www.buyingfor.vic.gov.au/fair-jobs-code-departments-and-agencies).

**FJC Model Clauses** means the model clauses issued by DJSIR as part of the FJC which must be included in the agreements for all high value procurement contracts.

**FJC Plan** means each bidder’s Fair Jobs Code Plan, addressing industrial relations, occupational health and safety requirements and commitments and standards as required by the Code.

**FJC Plan Template** means the template bidders must follow when submitting a FJC Plan as part of a bid. The FJC Template is available at [buyingfor.vic.gov.au/fair-jobs-code-tools-and-templates-agencies](https://www.buyingfor.vic.gov.au/fair-jobs-code-tools-and-templates-agencies).

**FJC** means the Fair Jobs Code, available at [buyingfor.vic.gov.au/fair-jobs-code](https://www.buyingfor.vic.gov.au/fair-jobs-code).

**FJC Unit** means the Fair Jobs Code Unit, an administrative group within DJSIR with responsibilities in relation to the FJC.

**high value procurement contract** means a contract between a supplier and a Victorian Government agency with a value of $20 million or more (exclusive of GST).

**Significant Subcontractor** means an entity engaged, or to be engaged, under a subcontract directly with a successful bidder, where the value of that subcontract is $1 million or more (exclusive of GST).

* 1. **Fair Jobs Code Pre-Assessment Certificate**
		1. All bidders submitting bids for high value procurement contracts must hold a valid Pre-Assessment Certificate issued by the FJC Unit in accordance with the FJC and FJC Guidelines.
		2. A copy of each bidder’s Pre-Assessment Certificate number must be included in that bidder’s bid.
		3. Bidders that do not hold a valid Pre-Assessment Certificate may not be considered for this procurement.

***Drafting Note***

*The Agency needs to satisfy itself that (where required) a bidder holds a Pre-Assessment Certificate, the Agency may request a copy of the Pre-Assessment Certificate be attached to bids, or that bidders provide Pre-Assessment Certificate numbers*

* + 1. If a bidder is unable to secure a Pre-Assessment Certificate, it must notify the Agency contact officer as soon as possible and prior to submitting its bid.
		2. An Agency may use its discretion to enter into a contract with a Supplier that does not have a valid Pre-Assessment Certificate subject to sections 4.3 or 4.4 of the FJC.
	1. **Fair Jobs Code Plan**
		1. In addition to the Pre-Assessment Certificate, all bidders submitting bids for high value procurement contracts must submit a FJC Plan using the FJC Plan Template at the time of submitting its bid.
		2. Bidders that do not submit a FJC Plan will not be considered for this procurement.
		3. Commitments made under the FJC Plan are binding and will form part of the agreement entered into between a successful bidder and the Agency. The Agency and the FJC Unit will monitor the delivery of the FJC Plan to ensure that the commitments are fulfilled.
	2. **Agreement and continuing FJC obligations**
		1. Successful bidders will be required to maintain a valid Pre-Assessment Certificate throughout the agreement entered into between that bidder and the Agency.
		2. Any agreement between a successful bidder and the Agency will include the FJC Model Clauses.
	3. **Changes to Pre-Assessment Certificate Status**
		1. If a bidder’s Pre-Assessment Certificate is revoked or lapses after the bid is submitted, but before contracts are awarded, that bidder must notify the Agency as soon as practicable but not later than ten (10) business days after the revocation or expiry date.
		2. A bidder will not be awarded a contract if they do not have a valid Pre-Assessment Certificate unless an exception applies.
	4. **Significant Subcontractors**
		1. If a bidder intends to engage Significant Subcontractor/s to perform any part of any agreement entered into with the Agency for this [Request for Tender/Expression of Interest/Request for Proposal], then that bidder must provide in its bid:
			1. details of each proposed Significant Subcontractor/s and what roles/responsibilities they will have under the agreement; and
			2. Pre-Assessment Certificate numbers for each proposed Significant Subcontractor.
	5. **Further information and assistance**
		1. The FJC Guidelines provide guidance on the application of the FJC and are available at [buyingfor.vic.gov.au/fair-jobs-code-departments-and-agencies](https://www.buyingfor.vic.gov.au/fair-jobs-code-departments-and-agencies).
		2. The FJC Unit provides information to assist bidders regarding Pre- Assessment Certificates and FJC Plans. For further information or assistance, bidders can contact the FJC Unit:

[buyingfor.vic.gov.au/fair-jobs-code](https://www.buyingfor.vic.gov.au/fair-jobs-code)

fairjobscode@ecodev.vic.gov.au

END SECTION

**Model Clauses: High Value Procurement Contract (excl. construction)**

**- Agreements**

***Drafting Note***

*1. These model clauses are designed to form a separate Schedule to the agreement, and the agreement should include a clause to stipulate that the Fair Jobs Code Schedule is operative and forms part of the Agreement.*

*2 Include a clause in the contract agreement in the appropriate place.*

***Example:*** *‘The Fair Jobs Code applies to this Agreement, Schedule X forms part of the terms and conditions of this Agreement/Contract.’ The Supplier in performing its obligations under this Agreement/Contract must comply with Schedule X.*

*3. The content of this Schedule is drafted in generic language to minimise the need to align it with the language of the project agreement. Care must still be taken to ensure that any clause of the project agreement is not inconsistent and which may render a clause of this Schedule inoperative by an order of precedence interpretation clause.*

*4. Remove all drafting notes from the final project agreement.*

Schedule X – Fair Jobs Code

* 1. **Definitions**

In this Schedule:

**Adverse Ruling** means a ruling (by any court, tribunal, board, commission or other entity with jurisdiction or legal authority to determine the matter) that the Supplier has breached an applicable employment, industrial relations or workplace health and safety law.

**Agency** means the organisation with which the Supplier has entered into this Agreement.

**Agreement** means this project or supply agreement.

***Drafting Note (optional)***

*If the project agreement is not referred to as ‘Agreement’, replace ‘Agreement’ with the word or phrase used to describe the project agreement. Ensure that ‘Agreement’ is then replaced throughout this Schedule.*

**Contract Manager** means the person (however described) appointed by the Agency as its representative for all communication and liaison with the Supplier for the purposes of this Agreement.

***Drafting Note (optional)***

*If the term ‘Contract Manager’ is not appropriate for this agreement, replace ‘Contract Manager” with the term used to describe the Agency’s responsible person. Ensure that ‘Contract Manager” is then replaced throughout this Schedule.*

**DJSIR** means the Department of Jobs, Skills, Industry and Regions (and its successor Government department) as the Department responsible for the FJC.

**Enforceable Undertaking** means a promise or agreement made by the Supplier with a regulator, Court or other body (including the Fair Work Ombudsman, WorkSafe Victoria and Wage Inspectorate Victoria) in respect of a breach or alleged/suspected breach of an applicable employment, industrial relations or workplace health and safety law.

**FJC Guidelines** means Fair Jobs Code Guidelines, available at [buyingfor.vic.gov.au/fair-jobs-code-departments-and-agencies](https://www.buyingfor.vic.gov.au/fair-jobs-code-departments-and-agencies).

**FJC Plan** means the Supplier’s Fair Jobs Code Plan, addressing industrial relations, occupational health and safety requirements and commitments and standards as required by the FJC.

**FJC** means the Fair Jobs Code issued by the State of Victoria available at [buyingfor.vic.gov.au/fair-jobs-code](https://www.buyingfor.vic.gov.au/fair-jobs-code).

**FJC Unit** means the Fair Jobs Code Unit, an administrative group within DJSIR with responsibilities in relation to the FJC.

**Notice** means a notice given, delivered or served in accordance with this Agreement.

**Practical Completion** means:

* + - 1. Practical Completion as defined in the main body of this Agreement; or
			2. if not defined in the main body of this Agreement, when the Supplier has completed the delivery of the goods and/or services to be provided under this Agreement (excluding administrative or regulatory obligations remaining to be fulfilled); or
			3. in any case, such other reporting dates for the purposes of clause 4.3 of this Schedule as notified by the Agency.

**Pre-Assessment Certificate** means a certificate issued to the Supplier by the FJC Unit prior to entering into this Agreement, or which is renewed during the term of this Agreement.

**Significant Subcontractor** means an entity engaged, or to be engaged, under a subcontract directly with a Supplier, where the value of that subcontract is $1 million or more (exclusive of GST).

**Supplier** means the person or entity (however described) providing the goods and/or services under this Agreement.

***Drafting Note (optional)***

*Replace with the relevant word or phrase in the Contract Precedent. Ensure that ‘Supplier’ is then replaced throughout this Schedule.*

* 1. **Fair Jobs Code**
		1. The Supplier warrants that at the time of entering this Agreement it holds a valid Pre-Assessment Certificate.
		2. In performing its obligations under this Agreement the Supplier acknowledges and agrees that it shall:
			+ 1. continue to hold a valid Pre-Assessment Certificate;
				2. comply with its FJC Plan;
				3. perform all obligations required to be performed under the FJC Plan by the due date; and
				4. comply with the FJC.
		3. If at any time during the term of this Agreement the Supplier’s Pre-Assessment Certificate is revoked by the FJC Unit that revocation will constitute a breach of this Schedule which will enable the Agency to exercise its rights under clause 9 of this Schedule.
		4. The Supplier acknowledges and agrees that the obligations for holding and maintaining a Pre-Assessment Certificate apply during the term of this Agreement and any extensions to the term and until all of its reporting obligations set out in clause 4 of this Schedule are fulfilled.

***Drafting Note***

*The FJC Guidelines state that an Agency may determine the consequences that will apply for revocation. Agencies may choose to build into their contracts financial and or other disincentives that apply if FJC obligations are not met.*

* 1. **Verification of Supplier’s compliance with the Fair Jobs Code**
		1. The Supplier must, on request by the Agency, provide a copy of the Pre-Assessment Certificate or any related correspondence with the FJC Unit.
		2. If, during the term of this Agreement, the Supplier’s Pre-Assessment Certificate expires the Supplier must provide Notice to the Agency of the expiry within 10 Business Days.
		3. If the Supplier fails to promptly take steps to renew an expired Pre-Assessment Certificate after notifying the Agency of the expiration, the expiration will constitute a breach of this Schedule which will enable the Agency to exercise its rights under clause 9 of this Schedule.

***Drafting Note***

*The FJC Unit maintains a Public Register of valid Pre-Assessment Certificate holders. Generally, it is sufficient for agencies to confirm with the FJC Unit as to whether a supplier holds a certificate.*

* 1. **Reporting**
		1. The Supplier must prepare and maintain records demonstrating its compliance with, and implementation of, the FJC Plan.
		2. The Supplier must provide reports during this Agreement which demonstrate the Supplier’s progress towards implementing the FJC Plan at a time or times to be determined by the Agency.
		3. Prior to or at Practical Completion, the Supplier must provide to the Contract Manager:
			1. a final report identifying FJC Plan commitments and actual achievements; and
			2. a statutory declaration to confirm that the information contained in the final FJC Plan report is true and accurate. The statutory declaration must be made by a director of the Supplier or the Supplier's Chief Executive Officer or Chief Financial Officer.
		4. At the request of the Contract Manager, the Supplier must provide further information or explanation of any differences between expected and achieved FJC Plan outcomes.
		5. The reporting obligations in this Schedule are in addition to and do not derogate from any other reporting obligations as set out in this Agreement.
	2. **Ongoing duty of disclosure and cooperation and audits**
		1. If during the term of this Agreement, the Supplier is the subject of an Adverse Ruling or Enforceable Undertaking it must provide Notice to the Agency and the FJC Unit within 10 Business Days of the Adverse Ruling or Enforceable Undertaking being made.
		2. During the term of this Agreement the Supplier must:
			1. cooperate with all reasonable requests from the Agency seeking evidence of the Supplier’s compliance with the FJC and the FJC Plan;
			2. permit the Contract Manager, an accountant or auditor on behalf of the Agency, DJSIR or any other person authorised by the Agency or DJSIR, from time to time during ordinary business hours and upon Notice, to inspect and verify all records maintained by the Supplier relating to compliance with the FJC and FJC Plan under this Agreement; and
			3. ensure that its employees, agents and subcontractors give all reasonable assistance to any person authorised by the Agency or DJSIR to undertake such audit or inspection.
		3. The Agency will bear all costs for any audit in accordance with clause 5.2(b) of this Schedule.
		4. The Supplier acknowledges and agrees that the Agency, DJSIR, the Agency’s and DJSIR’s duly authorised representatives (including the FJC Unit) are authorised to obtain information from any relevant persons, firms or corporations, including third parties, regarding the Supplier’s compliance with the FJC.
		5. The obligations set out in this clause 5 are in addition to and do not derogate from any other obligation under this Agreement.
		6. A failure to comply with this clause 5 will constitute a breach of this Schedule which will enable the Agency to exercise its rights under clause 9 of this Schedule.

***Drafting Note***

*This clause makes the obligations of ongoing disclosure and audit as set out in the FJC contractually binding. A failure to disclose to the Agency or allow access for audit will constitute a breach of this Schedule which will enable the Agency to exercise its rights under clause 9 of this Schedule.*

*The reporting requirements for FJC compliance are the responsibility and within the discretion of the Agency. Agencies should consider if the reporting requirements on FJC compliance listed above are appropriate for their needs.*

* 1. **Significant Subcontracting**
		1. The Supplier warrants that any Significant Subcontractors engaged or proposed to be engaged to perform work under this Agreement hold a valid Pre-Assessment Certificate when they are engaged or proposed to be engaged.
		2. The Supplier must ensure that any subcontracts entered into by the Supplier with Significant Subcontractors in relation to work under this Agreement contain clauses requiring Significant Subcontractors to:
			1. comply with the FJC;
			2. hold a valid Pre-Assessment Certificate;
			3. notify the Supplier if its Pre-Assessment Certificate is revoked, or if its Pre-Assessment Certificate expires without being replaced with a new Pre-Assessment Certificate;
			4. comply with the ongoing duty of disclosure and cooperation set out in clause 5, as if references to the Supplier were references to the Significant Subcontractor;
			5. comply with the FJC Plan, to the extent that it applies to work performed under the subcontract;
			6. provide necessary information that allows the Supplier to comply with its reporting obligations under clause 4 of this Schedule; and
			7. permit the Agency and DJSIR to exercise their inspection and audit rights under clause 5 of this Schedule.
		3. The subcontracting obligations set out in this clause 6 are in addition to and do not derogate from any other obligations under this Agreement.
		4. The Supplier's failure to comply with this clause 6 will constitute a breach of breach of this Schedule which will enable the Agency to exercise its rights under clause 9 of this Schedule.
	2. **Standing Offer Arrangements**

If this Agreement is a standing offer arrangement under which goods and/or services may be procured from time to time by way of a separate purchase order, work order or other ordering arrangement (however described), and the Supplier is in breach of clauses 2, 3, 4, 5 or 6 of this Schedule:

* + 1. all purchase order contracts entered into prior to the breach will continue unless and until terminated by the Agency; and
		2. no further Purchase Order Contracts may be entered into until such time as the breach is remedied.
	1. **Use of information**

The Supplier acknowledges and agrees that:

* + 1. FJC Unit will assess the Supplier's compliance with the FJC and may monitor FJC Plan implementation.
		2. Information regarding the Supplier's compliance with the FJC including any disclosures regarding Adverse Rulings or Enforceable Undertakings:
			1. will be reported by the Agency to the FJC Unit in compliance with the Agency's obligations under the FJC; and
			2. may be disclosed in the circumstances authorised or permitted under the terms of this Agreement or as otherwise required by Law.
		3. Nothing in this provision removes the obligation for the Supplier to report Adverse Rulings or Enforceable Undertakings to the FJC Unit as per clause 5.
	1. **Consequences of breach**
		1. Any breach of the provisions of this Schedule will enable the Agency, in its absolute discretion, to do any or all of the following:
			1. suspend the Agreement until such time as the breach has been remedied to the satisfaction of the Agency and within a timeframe acceptable to the Agency;
			2. by written notice immediately terminate the Agreement; or
			3. exercise any rights that it has under this Agreement.

END SECTION

**Model Clauses: High Value Procurement Contracts (construction)**

**- Tendering / Approach to Market clauses for RFT/RFQs**

Fair Jobs Code

* 1. **Overview**
		1. The Fair Jobs Code (**FJC**) aims to improve employment outcomes for persons employed by suppliers and service providers to the Victorian Government. The FJC is implemented by Victorian Government departments, agencies and public bodies to help promote fair labour standards and ensure compliance with employment law.
		2. The FJC applies to construction agreements (incorporating design and construction phases and all related elements).
		3. The FJC applies to high value procurement contracts (contracts with a value of $20 million or more exclusive of GST).
		4. For further information, bidders should refer to the FJC and Guidelines which can be found at [buyingfor.vic.gov.au/fair-jobs-code-guides](https://www.buyingfor.vic.gov.au/fair-jobs-code-tools-and-templates-agencies).
	2. **Definitions**

**Agency** means [insert the name of the department, agency or public body issuing this approach to market document].

**DJSIR** means the Department of Jobs, Skills, Industry and Regions (and its successor Government department) as the Department responsible for the FJC.

**FJC Guidelines** means the Fair Jobs Code guidelines, available at [buyingfor.vic.gov.au/fair-jobs-code-departments-and-agencies](https://www.buyingfor.vic.gov.au/fair-jobs-code-departments-and-agencies).

**FJC Model Clauses** means the model clauses issued by DJSIR as part of the FJC which must be included in the agreements for all high value procurement contracts.

**FJC Plan Addendum** means the Supplier’s Fair Jobs Code Plan, addressing industrial relations, occupational health and safety requirements and commitments and standards as required by the FJC.

**FJC Plan Addendum Template** means the template bidders must follow when submitting a FJC Plan Addendum as part of a bid. The FJC Plan template is available at [buyingfor.vic.gov.au/fair-jobs-code-tools-and-templates-agencies](https://www.buyingfor.vic.gov.au/fair-jobs-code-tools-and-templates-agencies).

**FJC** means the Fair Jobs Code, available at [buyingfor.vic.gov.au/fair-jobs-code](https://www.buyingfor.vic.gov.au/fair-jobs-code).

**FJC Unit** means the Fair Jobs Code Unit, an administrative group within DJSIR with responsibilities in relation to the FJC.

**High value procurement contract** means a contract between a d supplier and a Victorian Government agency with a value of $20 million or more (exclusive of GST).

**Significant Subcontractor** means an entity engaged, or to be engaged, under a subcontract directly with a successful bidder, where the value of that subcontract is $1 million or more (exclusive of GST).

* 1. **Fair Jobs Code Pre-Assessment Certificate**
		1. All bidders submitting bids for high value procurement contracts must hold a valid Pre-Assessment Certificate issued by the FJC Unit in accordance with the FJC and FJC Guidelines.
		2. A copy of each bidder's Pre-Assessment Number must be included in that bidder's bid.
		3. Bidders that do not hold a valid Pre-Assessment Certificate may not be considered for this procurement.

***Drafting Note***

*The Agency needs to satisfy itself that (where required) a bidder holds a valid Pre-Assessment Certificate, the Agency may request a copy of the Pre-Assessment Certificate be attached to bids, or that bidders provide Pre-Assessment Certificate numbers.*

* + 1. If a bidder is unable to secure a valid Pre-Assessment Certificate, it must notify the Agency contact officer as soon as possible prior to submitting its bid.
		2. An Agency may use its discretion to enter into a contract with a supplier that does not have a valid Pre-Assessment Certificate subject to sections 4.3 or 4.4 of the FJC.
	1. **Fair Jobs Code Plan Addendum**
		1. In addition to the Pre-Assessment Certificate, all bidders submitting bids for high value procurement contracts must submit a FJC Plan Addendum using the FJC Plan Addendum Template at the time of submitting its bid.
		2. Bidders that do not submit a FJC Plan Addendum will not be considered for this procurement.
		3. Commitments made under the FJC Plan Addendum are binding and will form part of the agreement entered into between a successful bidder and the Agency. The Agency and the FJC Unit will monitor the delivery of the FJC Plan Addendum to ensure that the commitments are fulfilled.
	2. **Agreement and continuing FJC obligations**
		1. Successful bidders will be required to maintain a valid Pre-Assessment Certificate throughout the agreement entered into between that bidder and the Agency.
		2. Any agreement between a successful bidder and the Agency will include the FJC Model Clauses.
	3. **Changes to Pre-Assessment Certificate Status**
		1. If a bidder's Pre-Assessment Certificate is revoked or lapses after bids are submitted, but before contracts are awarded, the bidder must notify the Agency as soon as practicable but not less than 10 business days after the revocation or expiry date.
		2. A bidder will not be awarded a contract if they do not have a valid Pre-Assessment Certificate unless an exception applies.
	4. **Significant Subcontractors**
		1. If a bidder intends to engage Significant Subcontractor/s to perform any part of any agreement entered into with the Agency for this [Request for Tender/Expression of Interest/Request for Proposal], then that bidder must Provide in its bid:
			1. details of each proposed Significant Subcontractor/s and what roles/responsibilities they will have under the agreement; and
			2. Pre-Assessment Certificate numbers for each proposed Significant Subcontractor.
	5. **Further information and assistance**
		1. The FJC Guidelines provide guidance on the application of the FJC and are available at buyingfor.vic.gov.au/fair-jobs-code-departments-and-agencies.

The FJC Unit provides information to assist bidders regarding Pre‑Assessment Certificates and FJC Plan Addendums. For further information or assistance, bidders can contact the FJC Unit:

[buyingfor.vic.gov.au/fair-jobs-code](https://www.buyingfor.vic.gov.au/fair-jobs-code)

fairjobscode@ecodev.vic.gov.au

**Model Clauses: High Value Procurement Contract (Construction)**

END SECTION

**- Agreements**

***Drafting Note***

*1. These model clauses are designed to form a separate Schedule to the agreement, and the agreement should include a clause to stipulate that the Fair Jobs Code Schedule is operative and forms part of the Agreement.*

*2 Include a clause in the contract agreement in the appropriate place.*

***Example:*** *'The Fair Jobs Code applies to this Agreement, Schedule X forms part of the terms and conditions of this Agreement/Contract.' The Supplier in performing its obligations under this Agreement/Contract must comply with Schedule X.*

*3. The content of this Schedule is drafted in generic language to minimise the need to align it with the language of the project agreement. Care must still be taken to ensure that any clause of the project agreement is not inconsistent and which may render a clause of this Schedule inoperative by an order of precedence interpretation clause.*

*4. Remove all drafting notes from the final project agreement.*

Schedule X - Fair Jobs Code

* 1. **Definitions**

In this Schedule:

**Adverse Ruling** means a ruling (by any court, tribunal, board, commission or other entity with jurisdiction or legal authority to determine the matter) that the Supplier has breached an applicable employment, industrial relations or workplace health and safety law.

**Agency** means the organisation with which the Supplier has entered into this Agreement.

**Agreement** means this project or supply agreement.

***Drafting Note (optional)***

*If the project agreement is not referred to as 'Agreement', replace 'Agreement' with the word or phrase used to describe the project agreement. Ensure that 'Agreement' is then replaced throughout this Schedule.*

**Contract Manager** means the person (however described) appointed by the Agency as its representative for all communication and liaison with the Supplier for the purposes of this Agreement.

***Drafting Note (optional)***

*If the term 'Contract Manager' is not appropriate for this agreement, replace 'Contract Manager" with the term used to describe the Agency's responsible person. Ensure that 'Contract Manager" is then replaced throughout this Schedule.*

**DJSIR** means the Department of Jobs, Skills, Industry and Regions (and its successor Government department) as the Department responsible for the FJC.

**Enforceable Undertaking** means a promise or agreement made by the Supplier with a regulator, Court or other body (including the Fair Work Ombudsman, WorkSafe Victoria and Wage Inspectorate Victoria) in respect of a breach or alleged/suspected breach of an applicable employment, industrial relations or workplace health and safety law.

**FJC Guidelines** means Fair Jobs Code Guidelines, available at [buyingfor.vic.gov.au/fair-jobs-code-departments-and-agencies](https://www.buyingfor.vic.gov.au/fair-jobs-code-departments-and-agencies).

**FJC Plan Addendum** means the Supplier's Fair Jobs Code Plan Addendum, addressing industrial relations, occupational health and safety requirements and commitments and standards as required by the FJC.

**FJC** means the Fair Jobs Code issued by the State of Victoria available at buyingfor.vic.gov.au/fair-jobs-code.

**FJC Unit** means the Fair Jobs Code Unit, an administrative group within DJSIR with responsibilities in relation to the FJC.

**Notice** means a notice given, delivered or served in accordance with this Agreement.

**Practical Completion** means:

* + - 1. Practical Completion as defined in the main body of this Agreement; or
			2. if not defined in the main body of this Agreement, when the Supplier has completed the delivery of the goods and/or services to be provided under this Agreement (excluding administrative or regulatory obligations remaining to be fulfilled); or
			3. in any case, such other reporting dates for the purposes of clause 4.3 of this Schedule as notified by the Agency.

**Pre-Assessment Certificate** means a certificate issued to the Supplier by the FJC Unit prior to entering into this Agreement, or which is renewed during the term of this Agreement.

**Significant Subcontractor** means an entity engaged, or to be engaged, under a subcontract directly with a Supplier, where the value of that subcontract is $1 million or more (exclusive of GST).

**Supplier** means the person or entity (however described) providing the goods and/or services under this Agreement.

***Drafting Note (optional)***

*Replace with the relevant word or phrase in the Contract Precedent. Ensure that 'Supplier' is then replaced throughout this Schedule.*

* 1. **Fair Jobs Code**
		1. The Supplier warrants that at the time of entering this Agreement it holds a valid Pre-Assessment Certificate.
		2. In performing its obligations under this Agreement the Supplier acknowledges and agrees that it must:
			+ 1. continue to hold a valid Pre-Assessment Certificate;
				2. comply with its FJC Plan Addendum;
				3. perform all obligations required to be performed under the FJC Plan Addendum by the due date; and
				4. comply with the FJC.
		3. If at any time during the term of this Agreement the Supplier's Pre-Assessment Certificate is revoked by the FJC Unit that revocation will constitute‑ a breach of this Schedule which will enable the Agency to exercise its rights under clause 9 of this Schedule.
		4. The Supplier acknowledges and agrees that the obligations for holding and maintaining a valid Pre-Assessment Certificate apply during the term of this Agreement and any extensions to the term and until all of its reporting obligations as set out in clause 4 of this Schedule are fulfilled.

***Drafting Note***

*The FJC Guidelines state that an Agency may determine the consequences that will apply for revocation. Agencies may choose to build into their contracts financial and or other disincentives that apply if FJC obligations are not met.*

* 1. **Verification of Supplier's compliance with the Fair Jobs Code**
		1. The Supplier must, on request by the Agency, provide a copy of the Pre-Assessment Certificate or any related correspondence with the FJC Unit.
		2. If, during the term of this Agreement, the Supplier's Pre-Assessment Certificate expires the Supplier must provide Notice to the Agency of the expiry within 10 Business Days.
		3. If the Supplier fails to promptly take steps to renew an expired Pre-Assessment Certificate as soon as practicable after notifying the Agency of the expiration, the expiration will constitute a breach of this Schedule which will enable the Agency to exercise its rights under clause 9 of this Schedule.

***Drafting Note***

*The FJC Unit maintains a Public Register of valid Pre-Assessment Certificate holders. Generally, it is sufficient for agencies to confirm with the FJC Unit as to whether a supplier holds a certificate.*

* 1. **Reporting**
		1. The Supplier must prepare and maintain records demonstrating its compliance with, and implementation of, the FJC Plan Addendum.
		2. The Supplier must provide reports which demonstrate the Supplier’s progress towards implementing the FJC Plan Addendum at a time or times to be determined by the Agency but not less than once per year.
		3. Prior to or at Practical Completion, the Supplier must provide to the Contract Manager:
			1. a final report identifying FJC Plan Addendum commitments and actual achievements; and
			2. a statutory declaration to confirm that the information contained in the final FJC Plan Addendum report is true and accurate. The statutory declaration must be made by a director of the Supplier or the Supplier's Chief Executive Officer or Chief Financial Officer.
		4. At the request of the Contract Manager, the Supplier must provide further information or explanation of any differences between expected and achieved FJC Plan Addendum outcomes.
		5. The reporting obligations in this Schedule are in addition to and do not derogate from any other reporting obligations as set out in this Agreement.
	2. **Ongoing duty of disclosure and cooperation and audits**
		1. If during the term of this Agreement, the Supplier is the subject of an Adverse Ruling or Enforceable Undertaking it must provide Notice to the Agency and the FJC Unit within 10 Business Days of the Adverse Ruling or Enforceable Undertaking being made.
		2. If during the term of this Agreement, the Supplier enters into any additional contract with a Victorian Government department or agency, the Supplier must provide Notice of that new contract to the FJC Unit within 10 Business Days.
		3. During the term of this Agreement the Supplier must:
			1. cooperate with all reasonable requests from the Agency seeking evidence of the Supplier's compliance with the FJC and the FJC Plan Addendum;
			2. permit the Contract Manager, an accountant or auditor on behalf of the Agency, DJSIR or any other person authorised by the Agency or DJSIR, from time to time during ordinary business hours and upon Notice, to inspect and verify all records maintained by the Supplier relating to compliance with the FJC and FJC Plan Addendum under this Agreement; and
			3. ensure that its employees, agents and subcontractors give all reasonable assistance to any person authorised by the Agency or DJSIR to undertake such audit or inspection.
		4. The Agency will bear all costs associated with undertaking any audit in accordance with clause 5.2(b) of this Schedule.
		5. The Supplier acknowledges and agrees that the Agency, DJSIR, the Agency's and DJSIR's duly authorised representatives (including the FJC Unit) are authorised to obtain information from any relevant persons, firms or corporations, including third parties, regarding the Supplier's compliance with the FJC.
		6. The obligations set out in this clause 5 are in addition to and do not derogate from any other obligation under this Agreement.
		7. A failure to comply with this clause 5 will constitute a breach of this Schedule which will enable the Agency to exercise its rights under clause 9 of this Schedule.

***Drafting Note***

*This clause makes the obligations of ongoing disclosure and audit as set out in the FJC contractually binding. A failure to disclose to the Agency or allow access for audit will constitute a breach of this Schedule which will enable the Agency to exercise its rights under clause 9 of this Schedule.*

*The reporting requirements for FJC compliance are the responsibility and within the discretion of the Agency. Agencies should consider if the reporting requirements on FJC compliance listed above are appropriate for their needs.*

* 1. **Significant Subcontracting**
		1. The Supplier warrants that any Significant Subcontractors engaged or proposed to be engaged to perform work under this Agreement hold a valid Pre-Assessment Certificate when they are engaged or proposed to be engaged.
		2. The Supplier must ensure that any subcontracts entered into by the Supplier with Significant Subcontractors in relation to work under this Agreement contain clauses requiring Significant Subcontractors to:
			1. comply with the FJC;
			2. hold a valid Pre-Assessment Certificate;
			3. notify the Supplier if its Pre-Assessment Certificate is revoked, or if its Pre-Assessment Certificate expires without being replaced with a new Pre-Assessment Certificate;
			4. comply with the ongoing duty of disclosure and cooperation set out in clause 5, as if references to the Supplier were references to the Significant Subcontractor;
			5. comply with the FJC Plan Addendum, to the extent that it applies to work performed under the subcontract;
			6. provide necessary information that allows the Supplier to comply with its reporting obligations under clause 4 of this Schedule; and
			7. permit the Agency and DJSIR to exercise their inspection and audit rights under clause 5 of this Schedule.
		3. The subcontracting obligations set out in this clause 6 are in addition to and do not derogate from any other obligations under this Agreement.
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	2. **Standing Offer Arrangements**

If this Agreement is a standing offer agreement under which goods and/or services may be procured from time to time by way of a separate purchase order, work order or other ordering arrangement (however described), and the Supplier is in breach of clauses 2, 3, 4, 5 or 6 of this Schedule:

* + 1. all purchase order contracts entered into prior to the breach will continue unless and until terminated by the Agency; and
		2. no further Purchase Order Contracts may be entered into until such time as the breach is remedied.
	1. **Use of information**

The Supplier acknowledges and agrees that:

* + 1. FJC Unit will assess the Supplier's compliance with the FJC and may monitor FJC Plan implementation.
		2. Information regarding the Supplier's compliance with the FJC including any disclosures regarding Adverse Rulings or Enforceable Undertakings:
			1. will be reported by the Agency to the FJC Unit in compliance with the Agency's obligations under the FJC; and
			2. may be disclosed in the circumstances authorised or permitted under the terms of this Agreement or as otherwise required by Law.
		3. Nothing in this provision removes the obligation for the Supplier to report Adverse Rulings or Enforceable Undertakings to the FJC Unit as per clause 5.
	1. **Consequences of breach**
		1. Any breach of the provisions of this Schedule will enable the Agency, in its absolute discretion, to do any or all of the following:
			1. suspend the Agreement until such time as the breach has been remedied to the satisfaction of the Agency and within a timeframe acceptable to the Agency
			2. by written notice immediately terminate the Agreement; or
			3. exercise any rights that it has under this Agreement.

END SECTION