

Fair Jobs Code

Procurement guidelines for

government departments
and agencies

1 September 2024

What is the Fair Jobs Code?

The Fair Jobs Code (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
- supply chain compliance.

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

Background

The code came into operation on 1 December 2022 and revisions to the code became operative on 1 September 2024.

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).

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
- all suppliers submitting a tender for a contract valued between **\$1 million** or more exclusive of GST (a *threshold procurement contract*) hold a Fair Jobs Code pre-assessment certificate
- suppliers for a contract valued at **\$20 million** or more exclusive of GST (a *high value procurement contract*) submit a Fair Jobs Code plan to show how they will deliver on the code standards including secure work (in addition to holding a pre-assessment certificate)
- all suppliers on a standing offer arrangement including state purchase contracts, sole entity purchase contracts and supplier panels and registers hold a Fair Jobs Code pre-assessment certificate
- the agency reports annually on code compliance and outcomes.

For more information

For more information about the code, visit buyingfor.vic.gov.au/fair-jobs-code.

Quick reference checklist for agencies – Pre-assessment certificate

A pre-assessment certificate (certificate) is required for all procurement valued at \$1 million and above (exclusive of GST) unless an exception applies. This checklist outlines the basic responsibilities for agencies where a certificate is required.

If the procurement is at \$20 million and above, then the supplier will also be required to submit a FJC plan/plan addendum. Refer to Appendix 2 at the end of this document for a quick reference checklist if a FJC plan/plan addendum is required.

Before tender submission		
1.	The procurement contract will be subject to the Fair Jobs Code if it is a: <ul style="list-style-type: none"> • threshold procurement contract – i.e. valued at \$1 million or more (exclusive of GST) • high value procurement contract – i.e. valued at \$20 million or more (exclusive of GST) • standing offer arrangements including state purchase contracts, sole entity purchase contracts and supplier panels and registers. 	<input type="checkbox"/>
2.	Incorporate FJC Model Clauses into approach to market and procurement documents including the requirement for potential suppliers to hold a certificate at the time of tender submission.	<input type="checkbox"/>
3.	Ensure information on how to apply for a certificate has been included in approach to market and procurement documents.	<input type="checkbox"/>
Tender submission		
4.	Review to ensure each tender submission for threshold or high value procurement contracts include a copy of the proposed supplier's or significant subcontractor's certificate or their certificate identifier. Proposed suppliers or significant subcontractors that do not hold a certificate must be excluded from the tender process unless an exception applies.	<input type="checkbox"/>
5.	Ensure the certificate identifiers in tender submissions have been checked as current on the certificate register at buyingfor.vic.gov.au/fair-jobs-code-pre-assessment-certificate-register	<input type="checkbox"/>
Tender submission is successful		
6.	Incorporate FJC Model Clauses in the contract.	<input type="checkbox"/>
7.	Ensure suppliers and significant subcontractors are aware that if a certificate expires or is revoked at any time during the contract term they may be in breach of the contract and remedy may be sought.	<input type="checkbox"/>
8.	Ensure mechanisms are in place to review the validity of the supplier's or significant subcontractor's certificate over the life of the contract.	<input type="checkbox"/>
Additional responsibilities		
9.	Notify the FJC Unit if a supplier or significant subcontractor discloses, or if the agency becomes aware, that a contracted supplier is subject to an adverse ruling or an enforceable undertaking. Notify the FJC Unit via the FJC portal buyingfor.vic.gov.au/complaints-under-fair-jobs-code .	<input type="checkbox"/>
10.	If a high value procurement contract has been entered into, ensure all requirements for an FJC plan or FJC plan addendum are complied with (refer to Appendix 2 for a quick reference checklist).	<input type="checkbox"/>
<i>This checklist is intended to be a quick reference only. For details, please consult the main body of the guidelines and the code or contact the FJC Unit.</i>		

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1. Foreword

The introduction of the Fair Jobs Code (code) demonstrates the Victorian Government's commitment to ensuring that suppliers tendering for threshold procurement contracts (contracts with a value of \$1 million but less than \$20 million, exclusive of GST) or high value procurement contracts (contracts with a value of \$20 million or more exclusive of GST), and businesses seeking to be considered for significant business expansion grants are recognised for their commitment to treating workers fairly.

By introducing the code, the Government aims to encourage suppliers and businesses who have a history of compliance with industrial relations (IR) and occupational health and safety (OHS) laws and who support Fair Jobs Code standards (FJC standards) including promotion of job security and secure employment.

These guidelines are designed to assist government departments, agencies and public bodies (agencies) to implement the code and to ensure that their contracts with suppliers for goods and services, including construction and construction works, comply with the code.

Separate guidelines have been issued for agencies who provide significant business expansion grants. The *Fair Jobs Code Grant Guidelines for Government Departments and Agencies* can be found at buyingfor.vic.gov.au/fair-jobs-code-agencies-grants.

These guidelines are issued by the *Fair Jobs Code Unit* (FJC Unit) of the Department of Jobs, Skills, Industry and Regions (DJSIR) under the authority of the Minister for Industry and Advanced Manufacturing, in accordance with section 9.2 of the code.

2. General information

- 2.1 The code and these guidelines apply to all agencies, being Victorian government departments or public bodies mandated to comply with the [Victorian Government Purchasing Board's goods and services supply policies](#) when purchasing goods, services or works from a supplier, as well as the agencies listed in Schedule 1 to the Fair Jobs Code.
- 2.2 The code applies to universities and their subsidiaries, who are defined as suppliers under the code.
- 2.3 The code does not currently apply:
 - a. when a supplier is a public entity (being Victorian government departments or public bodies mandated to comply with the Victorian Government Purchasing Board's goods and services supply policies, as well as agencies listed in Schedule 1 of the Fair Jobs Code) when acting as suppliers providing goods, services or works to other agencies
 - b. funding organisations that deliver services to the community on behalf of the Department of Families, Fairness and Housing and the Department of Health under a service agreement.
- 2.4 The code recognises the expectation that agencies will independently consider the merit of potentially insourcing projects ahead of, and as part of, any procurement or grant process.
- 2.5 The code includes provisions that aim to encourage compliance with IR and OHS laws and the FJC standards.
- 2.6 These guidelines should be read together with the code. A copy of the code can be found at buyingfor.vic.gov.au/fair-jobs-code.
- 2.7 Please contact the FJC Unit, Department of Jobs, Skills, Industry and Regions at fairjobscodes@ecodev.vic.gov.au regarding assistance with these guidelines or the application of the code.

3. Key points

- 3.1 The code applies to all:
 - a. agencies
 - b. suppliers seeking to be considered for threshold procurement contracts, high value procurement contracts and standing offer arrangements including state purchase contracts, sole entity purchase contracts and supplier panels and registers.
- 3.2 Agencies must apply the code to all tender and market approach processes (and subsequent procurement contracts) released to the market.
- 3.3 The code requires that:
 - a. any tender to which the code applies will include Fair Jobs Code Model Clauses (FJC Model Clauses) as provided by the FJC Unit
 - b. a supplier entering into a threshold procurement contract – that is, a contract valued at \$1 million but less than \$20 million (exclusive of GST) – must hold a valid Fair Jobs Code pre-assessment certificate (certificate), unless one of the limited exceptions apply (see Section 11 of Guidelines)
 - c. all high value procurement contracts – that is, a contract valued at \$20 million or more (exclusive of GST) – that are entered into require the supplier to hold a pre-assessment certificate and to submit a Fair Jobs Code plan (FJC plan) or Fair Jobs Code plan addendum (FJC plan addendum).
- 3.4 The code will apply to all standing offer arrangements (including state purchase contracts and sole entity purchase contracts) from the date that a standing offer arrangement commences, is updated or reissued after commencement of the code.
- 3.5 The code will apply to international or foreign suppliers who are required to hold an Australian Business Number (ABN). Non-residents may be entitled to an ABN if they're carrying on or starting an enterprise in Australia or making supplies connected with Australia's indirect tax zone. For further information, see [Australian Business Registry](#).
- 3.6 Exceptions to the code may apply in some circumstances (see section 11 below).

4. Implementation for agencies

The code introduces four key requirements for agencies to incorporate into their procurement process:

4.1 Fair Jobs Code pre-assessment certificate (certificate)

Agencies must ensure that a supplier who tenders for a threshold procurement contract (valued at \$1 million but less than \$20 million, exclusive of GST) or high value procurement contract (valued at \$20 million or more exclusive of GST) holds a certificate as a precondition of eligibility to tender. Where successful, the supplier is required to hold a valid certificate for the life of the contract (see section 5 below).

4.2 Fair Jobs Code plan (FJC plan)

Agencies must ensure that a supplier that tenders for a high value procurement contract submits a FJC plan as part of their tender. The FJC plan template is a prescribed document where the supplier sets out how they will deliver on the code standards including secure work. The commitments made in the FJC plan will form part of the contract. Agencies are required to review and monitor delivery of the FJC plan throughout the life of the contract.

Where a construction supplier is required to submit an Industrial Relations Plan under the Instructions for Public Construction Procurement in Victoria and Direction under Part 4 of the *Project Development and Construction Management Act 1994* (Vic) the supplier will utilise the *Fair Jobs Code plan addendum* template (FJC plan addendum) instead of the FJC plan template (see sections 6 and 7 below).

4.3 Inclusion of Fair Jobs Code Model Clauses (FJC Model Clauses)

Agencies will be required to include specified *Fair Jobs Code Model Clauses* (FJC Model Clauses) in tender documents and contracts.

4.4 Reporting on code outcomes

Agencies will be required to:

- a. attest annually to the FJC Unit that the agency is compliant with this code
- b. send a copy of all agreed FJC plans to fairjobscod@ecodev.vic.gov.au
- c. upon request, provide information to the FJC Unit for reporting and education purposes (see section 9 below).

5. Pre-assessment certificate

5.1 What is a pre-assessment certificate and how does a supplier obtain a certificate?

- 5.1.1 Certificates are issued by the FJC Unit. The certificate verifies that a supplier's compliance with IR and OHS laws was assessed by the FJC Unit and considered satisfactory for the three-year period prior to the certificate being issued.
- 5.1.2 A supplier can make an application for a certificate at buyingfor.vic.gov.au/apply-fair-jobs-code-pre-assessment-certificate. Guidelines for suppliers can be found at buyingfor.vic.gov.au/fair-jobs-code-guidelines-suppliers-and-businesses. Applications are free of any charge.
- 5.1.3 The FJC Unit will endeavour to process applications for a certificate and to notify the supplier of the outcome of their application within 30 business days of receiving a completed certificate application.
- 5.1.4 A certificate is valid for two years from the date of issue.
- 5.1.5 A supplier tendering for a threshold procurement or high value procurement contract must hold a valid certificate for the life of the contract. This is a mandatory requirement unless an exception provision applies.
- 5.1.6 If a certificate is likely to expire during the life of the contract, the certificate must be renewed prior to expiry. The Fair Jobs Code Unit will send notifications to the certificate holder when it is time to renew their pre-assessment certificate.
- 5.1.7 A certificate may be revoked by the FJC Unit if the supplier no longer meets the certificate assessment criteria.
- 5.1.8 Failure to maintain a valid certificate will constitute a breach of contract. This will give the agency the right to pursue remedies provided under the terms of the contract.

5.2 How to check the validity of a certificate

- 5.2.1 The agency is required to ensure that a supplier holds a valid certificate as part of the assessment and procurement process.
- 5.2.2 A supplier must provide evidence of their certificate in any bid for a threshold procurement or high value procurement contract. This may be a copy of the certificate or the certificate number which is then verified on the public register at buyingfor.vic.gov.au/fair-jobs-code-pre-assessment-certificate-register.
- 5.2.3 Valid certificates are listed in a publicly accessible *Pre-assessment certificate register* (certificate register) which is maintained by the FJC Unit. The certificate register includes the business details of the certificate holder. The certificate register can be found at buyingfor.vic.gov.au/fair-jobs-code-pre-assessment-certificate-register.

5.3 Agency responsibilities in relation to the certificate

5.3.1 Tender documents

Agencies must incorporate the requirement to hold a valid certificate into approach to market and procurement documents for threshold and high value procurements. FJC Model Clauses for procurement documents can be found at buyingfor.vic.gov.au/fair-jobs-code-tools-and-templates-agencies.

5.3.2 Tender submissions

Agencies must require that all tender submissions include a copy of the supplier's certificate or certificate number. A supplier that is not able to provide a valid certificate must be excluded from the tender process (unless an exception applies).

5.3.3 Confirm validity of the certificate

Agencies must check that a supplier's certificate is valid by checking the certificate register at buyingfor.vic.gov.au/fair-jobs-code-pre-assessment-certificate-register.

Agencies must check that a supplier's certificate remains valid for the life of the contract, and if not, that the supplier intends to re-apply for a certificate prior to expiry. Agencies may wish to implement a system or process for reviewing validity of certificates where the certificate is due to expire within a contract period.

5.3.4 Contract

The FJC Model Clauses at buyingfor.vic.gov.au/fair-jobs-code-tools-and-templates-agencies must be incorporated into all threshold procurement and high value procurement contracts. Suppliers should be made aware that if a certificate expires at any time during the term of the contract, they risk a breach of the contract, and the agency will have the option of seeking remedies under the terms of the contract.

5.3.5 Continuous disclosure

Agencies must ensure that the supplier is made aware of their obligations to:

- a. notify the agency and the FJC Unit of any adverse rulings or enforceable undertaking against the supplier
- b. cooperate with reasonable requests from the FJC Unit, the agency or the Local Jobs First Commissioner relating to the performance of its functions under the code
- c. notify the agency within 10 business days of changes to the validity of its certificate including if its certificate has expired or is revoked during the term of the contract.

5.3.6 Notify the FJC Unit

If an agency is notified by a supplier or becomes aware that a supplier with whom the agency has a contract, is subject to an adverse ruling or enforceable undertaking or if the certificate has expired, the agency must notify the FJC Unit.

5.4 Summary of certificate Requirements

The quick reference checklist at the start of these guidelines provides a table summarising agency responsibilities in relation to the management of certificates.

6. Fair Jobs Code plan and Fair Jobs Code plan addendum

6.1 What is a FJC plan?

- 6.1.1 Suppliers who tender for contracts valued at \$20 million and above (exclusive of GST) must submit a FJC plan as part of their tender.
- 6.1.2 The FJC plan addresses IR and OHS standards as required by the code:
- Standard 1:** Comply with all applicable employment, industrial relations and workplace health and safety obligations.
- Standard 2:** Promote secure employment and job security.
- Standard 3:** Foster cooperative and constructive relationships between employers, employees and their representatives.
- Standard 4:** Foster workplace equity and diversity.
- Standard 5:** Promote supply chain compliance.
- For details on each Standard see Section 6 of the code.
- 6.1.3 The FJC plan must be completed using the *Prescribed FJC plan template* (prescribed template) available at buyingfor.vic.gov.au/prepare-fair-jobs-code-plan.
- 6.1.4 Each section of the prescribed template requires the supplier to provide:
- information on how code standards will be met; and
 - quantitative and measurable commitments focused on real and positive job outcomes that are consistent with the code's aims and objectives.
- 6.1.5 Commitments made under the FJC plan are binding and will form part of the contract. It is the agency's responsibility to monitor the supplier's delivery of the FJC plan and to ensure that the commitments and undertakings are fulfilled.

6.2 The FJC plan addendum

- 6.2.1 Where a construction supplier is required to submit an Industrial Relations Plan under the Instructions for Public Construction Procurement in Victoria and Directions under Part 4 of the *Project Development and Construction Management Act 1994 (Vic)* (PD & CM Act) the supplier:
- is not required to submit a FJC plan but
 - is required to submit a FJC plan addendum.
- 6.2.2 The FJC plan addendum, in accordance with the prescribed *FJC Plan Addendum Template*, sets out matters required by the FJC plan which are not addressed by the PD & CM Act.
- 6.2.3 The *FJC Plan Addendum Template* for the construction category of procurement contracts, can be found at buyingfor.vic.gov.au/fair-jobs-code-tools-and-templates-suppliers-and-businesses.

7. Agency responsibilities in relation to the FJC plan/FJC plan addendum

7.1 Incorporate FJC Model Clauses into tender documentation

Agencies must ensure that tender documents incorporate the FJC Model Clauses, including a requirement that suppliers submit a FJC plan or FJC plan addendum for high value procurement contracts. FJC Model

Clauses for procurement documents can be found at buyingfor.vic.gov.au/fair-jobs-code-tools-and-templates-agencies.

7.2 Review and verify FJC plan/FJC plan addendum

- 7.2.1 The agency is required to verify that the FJC plan or FJC plan addendum (as relevant) has been completed on the relevant prescribed template.
- 7.2.2 The agency will review the FJC plan/FJC plan addendum to ensure the information provided addresses all the requirements of standards 1-5 of the code.
- 7.2.3 The agency will ensure that a supplier that does not provide a complete FJC plan/FJC plan addendum is excluded from the tender process.
- 7.2.4 The agency will review the FJC plan/FJC plan addendum for each shortlisted supplier to ensure it sufficiently addresses all the requirements of standards 1-5 of the code.
- 7.2.5 Agencies may use their discretion to determine the relevance of information provided in the FJC plan/FJC plan addendum to the tender bid, recognising each contract may have a different context and focus. For example, an agency may have a particular interest in supply chain compliance (Standard 5) if the contract is with a head supplier that will engage multiple subcontractors.
- 7.2.6 All agencies are encouraged to consider each supplier's commitment to the provision of secure work in Victoria (Standard 2) including whether a supplier will engage employees directly on a permanent or (in the case of a time-based project) fixed-term basis rather than rely upon casual or labour hire arrangements.
- 7.2.7 The FJC Unit is available for additional information and guidance on how to review FJC plans and FJC plan addendums.
- 7.2.8 Agencies must send a copy of FJC plans and FJC plan addendums approved in contracting with a supplier once a high value procurement contract has been entered into. Email a copy of agreed plans to fairjobscode@ecodev.vic.gov.au.
- 7.2.9 Agencies will be required to report to the FJC Unit on the implementation of the plans throughout the term of the contract. This will be done through ad-hoc audit requests or through the annual attestation and reporting process.

7.3 Ensure significant subcontractors (where the value of the subcontract is valued at \$1 million or more) hold a certificate

- 7.3.1 Standard 5 of the code – *Promote supply chain compliance* requires that suppliers with a threshold procurement contract or a high value procurement contract must only enter into a subcontracting arrangement for the value of \$1 million or more excluding GST with subcontractors (significant subcontractors) that have a certificate.
- 7.3.2 The agency must check that certificates for any significant subcontractors are valid by checking the certificate register.
- 7.3.3 Where a supplier is entering into a high value procurement contract, the agency is required to check that the supplier's FJC plan/FJC plan addendum includes a copy of all significant subcontractor certificates, or their certificate registration numbers.
- 7.3.4 Agencies will have limited line of sight to all subcontractors, however, it is expected that model clauses are included in the contract with the head contractor to ensure that they are checking that the significant subcontractors they engage hold a current pre-assessment certificate.

7.4 Incorporate FJC Model Clauses into contracts

- 7.4.1 FJC Model Clauses are to be included in all contracts.

- 7.4.2 Agencies should ensure that the terms and conditions of a contract with a supplier include regular reporting on implementation of FJC plan/FJC plan addendum commitments over the life of the contract and responding to reasonable information requests related to reviews or audits as required.
- 7.4.3 Suppliers should be made aware that the FJC plan/FJC plan addendum will form part of their contracted deliverables and failure to deliver the commitments outlined in the FJC plan/FJC plan addendum may breach the contract. The agency will have the option to seek remedies under the terms of the contract.
- 7.4.4 FJC Model Clauses for contracts can be found at buyingfor.vic.gov.au/fair-jobs-code-tools-and-templates-agencies.

7.5 Monitor the implementation of the FJC plan or FJC plan addendum

- 7.5.1 Agencies must monitor the supplier's implementation of their FJC plan/FJC plan addendum throughout the term of the contract.
- 7.5.2 The supplier must provide the agency with:
 - a. reports on progress with implementation
 - b. updates or amendments to the FJC plan/FJC plan addendum particularly changes relating to the number and composition of the workforce or adding significant subcontractors
 - c. an end-of-contract report on outcomes from the FJC plan/FJC plan addendum.
- 7.5.3 The supplier should provide a report to agencies at least annually, but more frequent reports can be requested at the agency's discretion.

7.6 Summary of FJC plan or FJC plan addendum requirements

Appendix 2 of these guidelines provides a table summarising agency responsibilities in relation to the management of FJC plans and FJC plan addendums.

8. Standing offer arrangements and supplier panels and registers

- 8.1 The code will apply to all standing offer arrangements (including a state purchase contract or sole entity purchase contracts) that commence or are reissued after commencement of the code.
- 8.2 A supplier applying for any standing offer arrangement must hold a valid certificate.
- 8.3 A supplier under a standing offer arrangement must submit a FJC plan in the following circumstances:
 - a. where a supplier tenders for an individual contract with a dollar value of \$20 million or more (exclusive of GST). In this case, the tendering agency should provide the FJC plan/FJC plan addendum of the successful supplier to the category manager of the Standing Offer Arrangement
 - b. where a supplier is engaged to provide goods or services totalling \$20 million or more (exclusive of GST) in aggregate contracts under a standing offer arrangement. In this case the supplier must submit a FJC plan/FJC plan addendum to the category manager of the standing offer arrangement.
- 8.4 In relation to 8.3 (and in circumstances where it may not be clear if the aggregate contracts will total \$20 million) the agency may exercise its discretion to determine whether an FJC plan is required at the outset or at the time of reaching the aggregate threshold of \$20 million. If the agency determines that a plan is not required at the outset, they should include a requirement in the initial contract to provide an FJC plan within 10 days of the aggregate threshold of \$20 million being met.
- 8.5 Agencies are required to incorporate these requirements into contracts from the date that the standing offer arrangement commences or is reissued after commencement of the code.
- 8.6 The FJC Model Clauses can be found at buyingfor.vic.gov.au/fair-jobs-code-tools-and-templates-agencies.

- 8.7 The code applies to suppliers under any Victorian Government goods and services registers from 1 December 2022 buyingfor.vic.gov.au/browse-goods-and-services-registers.
- 8.8 The pre-assessment certificate will be phased in as a precondition for all Victorian Government goods and services registers from 1 December 2023.

9. Agency reporting obligations

- 9.1 Annually, agencies will be required to attest to activities in relation to implementation of the code. Reports from suppliers will inform annual attestations on implementation and operation of the code.
- 9.2 The reporting period will be from 1 July to 30 June each financial year.
- 9.3 The FJC Unit will provide agencies with a template for reporting.
- 9.4 The attestation will require that the agency confirm that it has complied with the code by:
- ensuring that suppliers have obtained a certificate in all cases required
 - ensuring that suppliers have submitted a FJC plan/FJC plan addendum in all cases required
 - any exceptions to 9.4(a) have been carried out in accordance with section 11 of these guidelines.
- 9.5 Agency attestations will form part of the FJC Unit's annual report on implementation of the code by agencies.
- 9.6 In addition to an attestation, agencies will be required to report annually on code activities. Specifically:
- the number of contracts signed in that financial year where a supplier held a certificate
 - the number of contracts signed in that financial year where a supplier was required to hold a certificate but did not, and the reasons for this (i.e., exception applied)
 - the number of contracts signed in that financial year where a supplier submitted a FJC plan or FJC plan addendum
 - the number of contracts signed in that financial year where a supplier was required to submit a FJC plan or plan addendum but did not, and the reason for this
 - the business names of suppliers that submitted a Fair Jobs Code plan/plan addendum
 - the number of workers that were engaged on a permanent, fixed term, casual or labour hire basis (including the delivery of any new or retained jobs) as committed in the FJC plan/FJC plan addendum for applicable contracts in that financial year
 - the number of significant subcontractors utilised in that financial year where a significant subcontractor was required to hold a certificate
 - the number of significant subcontractors utilised in that financial year where a significant subcontractor was required to hold a certificate but did not, and the reason for this.

10. Ongoing agency monitoring obligations

- 10.1 A supplier that holds a certificate has an ongoing duty of disclosure to the agency it has contracted with and the FJC Unit regarding any actions that may compromise the certificate validity, such as any new Victorian Government contract it enters into and any adverse ruling or an enforceable undertaking made against it.
- 10.2 It is important for an agency to monitor compliance with contractual obligations and compliance with the code. Verifying the validity of each suppliers' certificate should form part of the agency's general monitoring of the performance of the supplier and their adherence to contractual obligations.
- 10.3 A supplier must also cooperate with reasonable requests to provide information made by the agency, FJC Unit or Local Jobs First Commissioner. The agency will be responsible for facilitating cooperation to enable responses to enquiries to be received in a timely manner.

11. Exceptions to the code

Note: Exceptions to certificate requirements should be relied upon only when necessary.

11.1 Exception to certificate requirements – emergency procurement

- 11.1.1 An agency may enter into a threshold procurement contract or high value procurement contract with a supplier that does not have a certificate, if the procurement is for:
- a. emergency goods, services or works provided to protect the essential security interests, or avoid the loss of critical services or prevent critical services from being disrupted
 - b. goods, services or works required to prevent a risk to health and safety or to avoid life-threatening situations.
- 11.1.2 The agency should consider whether the procurement activity is an emergency prior to accepting applications from suppliers that do not hold a certificate.
- 11.1.3 Significant subcontractors may be included in any emergency procurement exception, however any exception for a head contractor must include a list of potential significant subcontractors.
- 11.1.4 Where the agency proposes to enter into a contract under these emergency provisions of the code, the agency:
- a. should contact the FJC Unit for initial advice as the FJC Unit is authorised to receive these reports on behalf of the Minister
 - b. must report such emergency procurement contracts to the Minister within 20 business days of entering into such a contract. The report should:
 - i. be addressed to the Minister
 - ii. inform the Minister of the precise reasons for the procurement including:
 - the goods, services or works being procured
 - which supplier or suppliers including any potential significant subcontractors are to be used
 - information on why the procurement was necessary
 - the basis for procurement urgency
 - reasons that it was not possible to make the procurement from a supplier that holds a certificate.
- 11.1.5 The FJC Unit can provide a recommended format for the report.

11.1.6 The completed report should be sent to the FJC Unit at fairjobscode@ecodev.vic.gov.au. The FJC Unit will contact the agency if the report is incomplete, or if the Minister requires clarification or additional information.

11.2 Exception to certificate requirements – procurement critical interest of the state

11.2.1 An agency may enter into a threshold procurement contract or high value procurement contract with a supplier that does not have a certificate, if the Minister is satisfied that:

- a. the procurement is critical to the state's interest
- b. no other supplier that holds a certificate is considered suitable to meet the requirements of the procurement.

11.2.2 Procurements that are critical to State interests must not proceed without the formal and written approval of the Minister or the Minister's delegate.

11.2.3 The Minister will only approve projects that are demonstrably critical to the state's interest and if there is no other supplier that is suitable and holds a certificate.

11.2.4 Where an agency proposes to seek an exception on the basis that the procurement is critical to the interests of the state, the agency may contact the FJC Unit for initial advice.

11.2.5 The request for an exception should:

- a. be addressed to the Minister
- b. provide sufficient detail to inform the Minister (or delegate) of the precise reasons for the procurement including:
 - i. the goods, services or works being procured
 - ii. which supplier or suppliers, including any potential significant subcontractors are proposed to be used
 - iii. an explanation as to why the procurement is necessary
 - iv. the basis for procurement urgency
 - v. reasons as to why it is not possible to engage a supplier that holds a certificate.

11.3 Exemption for public entities

11.3.1 The code defines a supplier as any entity that supplies or proposes to supply goods, services or works, including construction works and services, to a Victorian Government agency, except for public entities providing goods, services or works for essential services related to the supply of electricity, natural gas, water, wastewater or telecommunications.

11.3.2 The code does not apply to procurement between two agencies where an agency that is required to comply with the Victorian Government Purchasing Board's goods and services supply policies as a purchaser and is providing goods, services or works to another agency.

11.3.3 For the avoidance of doubt any other public entity *not* mandated to comply with the Victorian Government Purchasing Board's good and services supply policies as a purchaser (e.g. universities) as well as agencies listed in Schedule 1 of the Fair Jobs Code, will be deemed a supplier and the code will apply.

11.4 Exemption for service agreements

11.4.1 While not specified in the code, funded organisations that deliver services in the community on behalf of the Department of Health and Department of Families, Fairness and Housing under a Service Agreement are currently exempt from the code.

11.4.2 The current exemption is subject to a 12-month review.

12. Fair Jobs Code Unit and Locals Jobs First Commissioner

12.1 Role of the FJC Unit

The FJC Unit will:

- a. issue certificates
- b. maintain the publicly accessible certificate register with details of suppliers and businesses holding a valid certificate
- c. support agencies with implementation of the code, and provide guidance relating to certificates, FJC plans and FJC plan addendums
- d. collect copies of agreed FJC plans from agencies
- e. undertake audits, investigations and reviews of code implementation
- f. maintain a register of breaches by, and complaints about, suppliers that hold or held a certificate including any reported non-compliances, their source and any advice given, or action taken
- g. obtain attestations from agencies on implementation of the code
- h. monitor, evaluate and report on code outcomes
- i. provide advice and support to the Minister
- j. develop materials under the direction of the Minister including procedures, guidance material, model clauses, forms, and templates to support the implementation of the code.

12.2 Role of the Local Jobs First Commissioner

12.2.1 The Local Jobs First Commissioner (Commissioner) will engage with agencies and industry to educate and promote the code. This may mean that agencies will be asked to provide data and information from time to time for specific activities or for general purposes associated with implementation of the code.

12.2.2 It is important that any requests from the Commissioner are responded to in a timely manner.

12.2.3 The powers and functions of the Commissioner are detailed in Part 3, Division 2 of the *Local Jobs First Act 2003*.

12.2.4 Without in any way limiting the powers and functions of the Commissioner, the Commissioner's role in relation to the code and governance arrangements, is summarised in section 9.5 of the code.

13. Complaints management

- 13.1 The FJC Unit will have authority to receive, investigate and resolve complaints in relation to the suitability of a supplier to hold a certificate.
- 13.2 Complaints will be managed in accordance with the Department of Jobs, Precincts and Regions policies and procedures (with any necessary modifications) and in line with the *Victorian Ombudsman's Complaint Good Practice Guide for Public Sector Agencies*.

14. Information sharing

- 14.1 The FJC Unit will maintain the publicly accessible certificate register database which will provide details of those suppliers holding a valid certificate.

- 14.2 Information provided by suppliers and businesses in their certificate applications may be shared with the Local Jobs First Commissioner and other agencies.
- 14.3 Guidelines, policies, procedures, forms, templates, instructions, or other material supporting the implementation of the code can be found at buyingfor.vic.gov.au/fair-jobs-code-departments-and-agencies.
- 14.4 Further information, advice and support will be provided by the FJC by email at fairjobscodes@ecodev.vic.gov.au.

15. Relationship between code, guidelines and commonwealth and state laws and policies

- 15.1 If there is any inconsistency between these guidelines and the code, the code will prevail.
- 15.2 In the event of a conflict between the code (including these guidelines) and any commonwealth or state laws (including subordinate instruments made pursuant to those laws), those laws prevail.
- 15.3 The code or the granting of a certificate does not remove the requirements for suppliers to undergo assessments for other mandatory government pre-qualification schemes and approved registers.
- 15.4 The FJC Unit will not duplicate the legislated responsibility of regulators, such as the Fair Work Ombudsman, the Fair Work Commission and WorkSafe Victoria, nor will they replace the function of Victorian Government agencies and their contract managers.
- 15.5 There are several other Victorian Government codes and policies that relate to industrial relations and occupational health and safety laws and standards. Examples of complementary Victorian Government policies include:
 - a. *The Supplier Code of Conduct*
 - b. *The Local Jobs First Policy*
 - c. *The Social Procurement Framework*
 - d. *The Building Equality Policy*
 - e. *The Victorian Government Call Centre Code*
- 15.6 The FJC Unit is actively working with agencies and industry to review how policies complement each other, and how any duplication can be removed.

Appendices

Appendix 1: Glossary

Term	Definition
adverse ruling	a ruling by any court, tribunal, board, commission or other entity with jurisdiction or legal authority to determine the matter, that the supplier or business has breached an applicable employment, industrial relations or workplace health and safety law.
agency	means a department or public body mandated to comply with the Victorian Government Purchasing Board's goods and services supply policies. https://www.buyingfor.vic.gov.au/goods-and-services-mandated-agencies , as well as the agencies listed in Schedule 1 to the Fair Jobs Code.
agencies	the plural of 'agency'.
business	any entity that is not an agency that is awarded a significant business expansion grant from an agency.
contracts	in this document shall refer to a threshold procurement contract or a high value procedure contract.
enforceable undertaking	a promise or agreement made by a supplier or business 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 plan	a business' or supplier's Fair Jobs Code Plan, which addresses industrial relations, occupational health and safety requirements and commitments and standards required by the code.
FJC plan addendum	a business' or supplier's Fair Jobs Code plan addendum as required under section 5.18(b)(ii) of the Victorian Fair Jobs Code.
FJC Unit	the Fair Jobs Code Unit, an administrative group within the Department of Jobs, Skills, Industry and Regions with responsibilities in relation to the code.
high value procurement contract	a contract between a supplier and a Victorian Government agency with a value of \$20 million or more (exclusive of GST).
including	including but not limited to.
Minister	the Minister for Industry and Advanced Manufacturing.
significant business expansion grant	a grant from a Victorian Government agency with a value of \$500,000 or more (exclusive of GST) and where a key milestone of the grant agreement specifies that the business will increase or retain the number of employees engaged by the business.

OFFICIAL

Term	Definition
significant subcontractor	an entity engaged, or to be engaged, under a subcontract directly with a supplier for a threshold or high value procurement contract, where the value of that subcontract is \$1 million or more (exclusive of GST).
Sole Entity Purchase Contract	a sole entity purchase contract is like a state purchase contract except that it is established for one department or part of a department (the sole entity) to use.
Standing Offer Arrangement	means an agreement with a supplier or group of suppliers engaged under contract to provide goods or services in a defined future period.
State Purchase Contract	means a standing offer arrangement for the whole of the Victorian government for commonly used goods and services, which are established when value for money can best be achieved through aggregating demand.
subcontractor	an entity engaged, or to be engaged by a supplier, under a subcontract.
supplier	all types of entities that supply or propose to supply goods, services, or works, including construction works and services, to a Victorian Government agency, with the exception of; <ul style="list-style-type: none"> • agencies (within the meaning of the code) • public entities that provide goods, services or works for essential services related to the supply of electricity, natural gas, water, wastewater, or telecommunications.
threshold procurement contract	a contract between a supplier and a Victorian Government agency with a value of \$1 million but less than \$20 million (exclusive of GST).

Appendix 2:

Fair Jobs Code plan/Fair Jobs Code plan addendum: Quick reference checklist for agencies – procurement

A Fair Jobs Code plan (FJC plan) must be submitted for all high value procurement contracts unless the supplier is required to submit PD&CM Act plans. A Fair Jobs Code plan addendum (FJC plan addendum) must be submitted where the supplier is required to submit PD&CM Act plans.

This checklist outlines the basic responsibilities for agencies where a FJC plan/FJC plan addendum is required. This is in addition to certificate requirements.

Before tender submission	
1. The procurement contract will be subject to the code requirements for a FJC plan/addendum if it is a high value procurement contract – i.e. valued at \$20 million or more (exclusive of GST).	<input type="checkbox"/>
2. Incorporate FJC Model Clauses into approach to market and procurement documents including the requirement for potential suppliers to submit a FJC plan/FJC plan addendum at the time of submitting a tender.	<input type="checkbox"/>
3. Ensure information on how to submit a FJC plan/FJC plan addendum has been included in approach to market and procurement documents.	<input type="checkbox"/>
Tender submission	
4. Review to ensure each Tender submission for a high value procurement contract includes a copy of the supplier's FJC plan/FJC plan addendum. Suppliers who do not provide a FJC plan/FJC plan addendum must be excluded from the tender process.	<input type="checkbox"/>
5. Where the bidder will be a head supplier, ensure that the FJC plan/ FJC plan addendum includes the certificate identifiers for all significant subcontractors to be engaged by the supplier during the contract.	<input type="checkbox"/>
6. Ensure mechanisms are in place for the agency to review the FJC plan/FJC plan addendum for shortlisted suppliers to confirm the information provided addresses all the requirements and sets measurable/quantifiable obligations in relation of standards 1–5 of the code.	<input type="checkbox"/>
Tender submission is successful	
7. Ensure FJC Model Clauses for high value procurement are incorporated in the contract.	<input type="checkbox"/>
8. Send a copy of agreed FJC plan/plan addendum to fairjobscode@ecodev.vic.gov.au and provide to the FJC Unit details of the FJC plan/FJC plan addendum agreed with the supplier either through ad-hoc audit requests, or through the annual attestation and reporting process.	<input type="checkbox"/>
9. Ensure mechanisms are in place to monitor the delivery/implementation of the FJC plan/FJC plan addendum over the life of the contract.	<input type="checkbox"/>
10. Ensure mechanisms are in place to facilitate regular reporting to the FJC Unit and/or respond to reasonable requests for information from the FJC Unit regarding the FJC plan/FJC plan addendum and implementation.	<input type="checkbox"/>
Additional responsibilities	
11. Notify the FJC Unit if a supplier discloses, or if the agency become aware that, a contracted supplier is not meeting their commitments under the FJC plan/FJC plan addendum. Notify the FJC Unit via the FJC portal buyingfor.vic.gov.au/complaints-under-fair-jobs-code .	<input type="checkbox"/>
<i>This checklist is intended to be a quick reference only. For details, please consult the main body of the guidelines and the code or contact the FJC Unit.</i>	

Appendix 3: Related information

Fair Jobs Code	buyingfor.vic.gov.au/fair-jobs-code
Guidelines for businesses and suppliers	buyingfor.vic.gov.au/fair-jobs-code-guidelines-suppliers-and-businesses
Pre-assessment certificate application	buyingfor.vic.gov.au/apply-fair-jobs-code-pre-assessment-certificate
Certificate register	buyingfor.vic.gov.au/fair-jobs-code-pre-assessment-certificate-register
Code complaints	buyingfor.vic.gov.au/complaints-under-fair-jobs-code
FJC Unit	Email: fairjobscode@ecodev.vic.gov.au
Fair Jobs Code grants guidelines for departments and agencies	buyingfor.vic.gov.au/fair-jobs-code-agencies-grants
FJC Model Clauses for procurement	buyingfor.vic.gov.au/fair-jobs-code-tools-and-templates-agencies
Prescribed FJC plan template	buyingfor.vic.gov.au/fair-jobs-code-tools-and-templates-agencies
FJC plan addendum template	buyingfor.vic.gov.au/fair-jobs-code-tools-and-templates-suppliers-and-businesses

Fair Jobs Code



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