



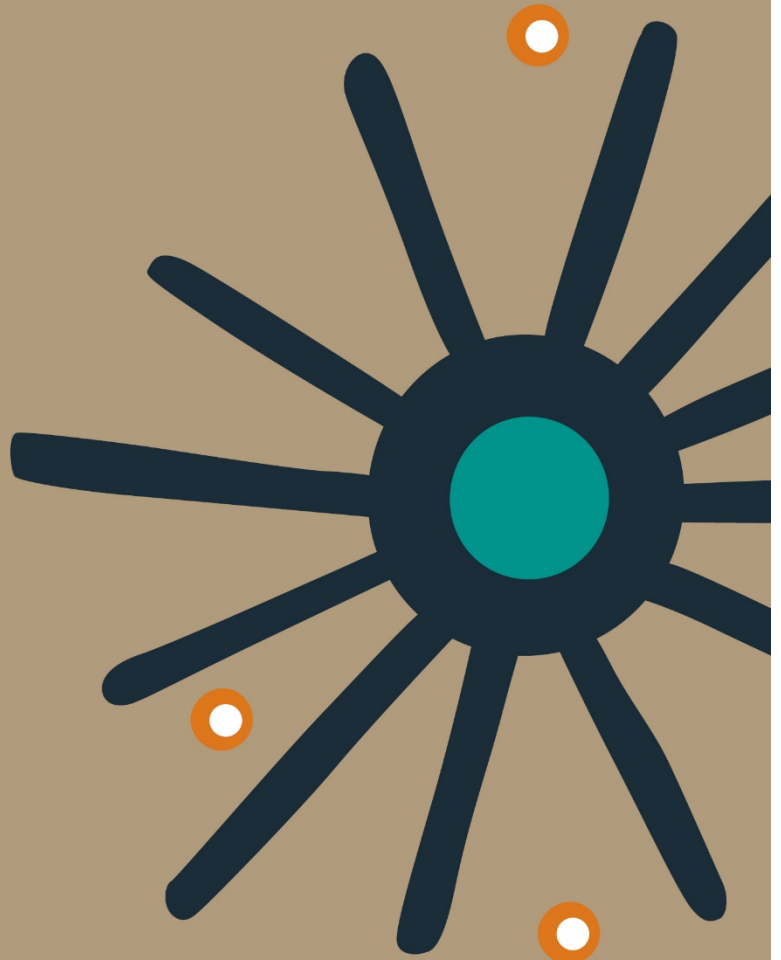
Australian Government

Indigenous Procurement Policy

Indigenous participation in high value Government Contracts (\$7.5million or more)

Model Clauses

Guide 5



**National Indigenous
Australians Agency**

Employment and
Economic Development

Indigenous Procurement Policy

Model Clauses

This guide

This guide provides draft model clauses to help Commonwealth procurement officials and contract managers to conduct procurement activities that are subject to mandatory minimum requirements (MMR) under the Indigenous Procurement Policy (IPP) and procurement using Exemption 16 of the Commonwealth Procurement Rules.

These documents should be read in conjunction with the IPP's overarching policy document – the Indigenous Procurement Policy and associated guidance material.

Further information is available on the [NIAA website](#)

IPP Policy Framework

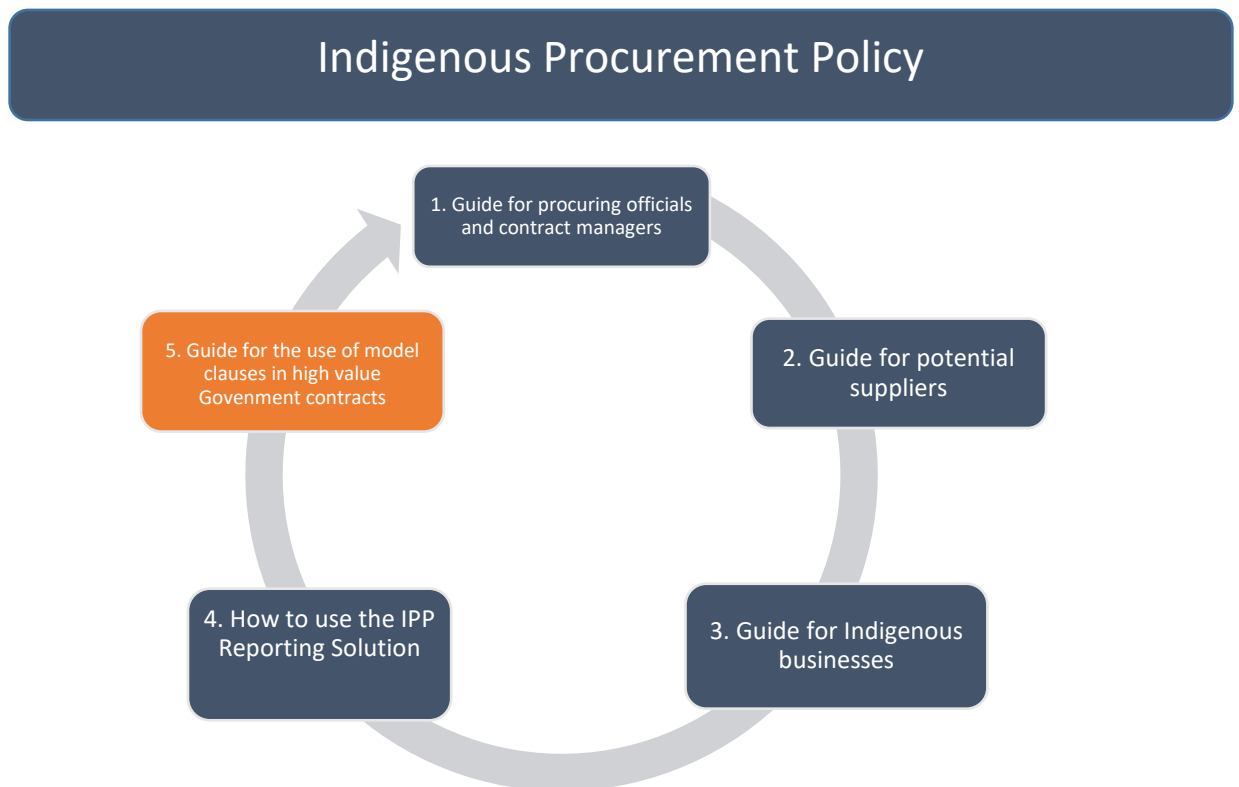


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Introduction

The Indigenous Procurement Policy (IPP) sets the minimum requirements to ensure increased Indigenous participation in the delivery of Australian Government contracts.

The primary purpose of the IPP is to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy.

Exemption 16 of the Commonwealth Procurement Rules (Appendix A) enables relevant Commonwealth entities to procure goods and services directly from small and medium enterprises (SME) with at least 50 per cent Indigenous ownership without having to apply the additional rules in Division 2 of the Commonwealth Procurement Rules.

Prior to the implementation of the policy on 1 July 2015, Indigenous enterprises secured limited business from Commonwealth procurement. The policy is intended to drive a significant increase in the rate of purchasing from Indigenous enterprises, helping to drive Indigenous economic development.

1.0 Model clauses for the mandatory application of the MMR

INSTRUCTIONS

The Indigenous Procurement Policy imposes specific obligations for all contracts subject to the Mandatory Minimum Requirements (MMR). These contracts are also known as High Value Contracts (see section 1.1.1 for a definition).

For all High Value Contracts, the following clauses may be inserted into your Approach to the Market documentation and resultant contract to give effect to the requirements described in the Indigenous Procurement Policy.

Instructions and guidance for the use of the model clauses are included in text boxes titled **Note to Draft** adjacent to the clause to which they apply.

Where the language used in a model clause may need to be amended to align with the language used in your template documentation (e.g. Tenderer v Respondent) this is indicated by square brackets with yellow highlight: **[Example]**.

Where a model clause includes a cross reference to another clause which will need to align with the format of your template documentation, this is indicated by square brackets with red highlight: **[X]**.

1.1 Approach to the Market

1.1.1 Definitions

Note to Draft: insert the following definitions in the appropriate section of your approach to the market documentation.

- (a) **“High Value Contract”** means a contract subject to the Mandatory Minimum Requirements, which apply where:
- (i) the Goods and/or Services will be wholly delivered in Australia;
 - (ii) the value of the Goods and/or Services is \$7.5 million (GST inclusive) or more;
 - (iii) more than half the value of the contract is being spent in one or more of the following industry sectors:
 - a. building, construction and maintenance services;
 - b. transportation, storage and mail services;
 - c. education and training services;
 - d. industrial cleaning services;
 - e. farming and fishing and forestry and wildlife contracting services;
 - f. editorial and design and graphic and fine art services;
 - g. travel and food and lodging and entertainment services; or
 - h. politics and civic affairs services.
 - i. financial instruments, products, contracts and agreements
 - j. mining and oil and gas services
 - k. industrial production and manufacturing services
 - l. environmental services
 - m. management and business professionals and administrative services (sub-category exemptions apply)
 - n. engineering and research and technology based services
 - o. financial and insurance services (sub-category exemptions apply)
 - p. healthcare services
 - q. personal and domestic services
 - r. national defence and public order and security and safety services (sub-category exemptions apply)
 - s. organisations and clubs; and
 - (iv) the value of the contract is **not** being spent in one of the following specific sub-category industry sectors:
 - a. Lease and rental of property or building
 - b. Land leases
 - c. Residential rental
 - d. Insurance and retirement services
 - e. Retirement fund
 - f. Military services and national defence
 - g. Military science and research

- (b) **"Indigenous Enterprise"** means an organisation that is 50 per cent or more Indigenous owned that is operating a business.
- (c) **"Indigenous Participation Plan"** means a plan detailing how the [Tenderer] will meet the minimum mandatory requirements for the Indigenous Procurement Policy (see template at clause [X]).
- (d) **"Indigenous Procurement Policy"** means the policy of that name, as amended from time to time, available on the Indigenous Procurement Website available at:
<https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp>
- (e) **"Indigenous Procurement Website"** means the website at <https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp>
- (f) **"Mandatory Minimum Requirements"** or **"MMR"** means the mandatory minimum Indigenous participation requirements imposed for High Value Contracts by the Indigenous Procurement Policy.
- (g) **"Remote Area"** means the areas identified in the Remote Indigenous Procurement Policy Map on the Indigenous Procurement Website, as updated from time to time.

1.1.2 Indigenous Procurement Policy

Note to Draft: Include the following general information in relation to the Indigenous Procurement Policy.

- (a) It is Commonwealth policy to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy (see Indigenous Procurement Policy for further information).
- (b) If any resultant contract is a High Value Contract, the mandatory minimum requirements for Indigenous participation will apply.

1.1.3 Evaluation criterion

Note to draft: Include the following Evaluation Criterion. You may include it as part of another Evaluation Criterion or as a stand-alone Evaluation Criterion as best suits your procurement needs.

- (a) In evaluating Tenders, the [Customer] will take into consideration:
 - (i) the [Tenderer]'s past performance and/or demonstrated commitment in relation to increasing Indigenous participation, including, where relevant, by having regard to the [Tenderer]'s past compliance with any mandatory minimum requirements; and
 - (ii) the extent to which the [Tenderer]'s proposed Indigenous Participation Plan will meet the mandatory minimum requirements.

Note to [Tenderers]: A [Tenderer] that has no past experience with any mandatory minimum requirements will not be disadvantaged by this alone. Its response will be assessed on other actions it has taken in the past to increase Indigenous participation and on its proposed Indigenous Participation Plan.

1.1.4 Minimum content and format requirements

Note to Draft: Include the following Minimum Content and Format requirement.

- (a) The [Customer] will exclude a Tender from further consideration if the [Customer] considers that the Tender does not comply with any one or more of the following minimum content and format requirements:
 - (i) the Tender must include a signed [Tenderer] declaration substantially in the form of the document contained at [insert]; and
 - (ii) the Tender must include an Indigenous Participation Plan.

1.1.5 [Tenderer] declaration

Note to Draft: Include the following in your [Tenderer] declaration.

Compliance with Indigenous Procurement Policy:

- (a) The [Tenderer] declares the following:
- (i) The [Tenderer] has or has had _____ [NIL OR SPECIFY NUMBER] contracts with the Commonwealth that included the Indigenous Procurement Policy mandatory minimum requirements.
- (ii) For the contracts referred to in clause [X] of this Declaration (if any), the [Tenderer] has
- fully met /
 - partially met /
 - not met /
 - not applicable as Nil contracts undertaken,
- the Indigenous Procurement Policy mandatory minimum requirements.

Note to [Tenderers]: Strike out the options that do not apply.

- (iii) The Indigenous enterprises referred to in the Indigenous Participation Plan submitted as part of this Tender are 50 per cent or more Indigenous owned.

1.1.6 Remote Area Contracts

Note to Draft: Include this clause if the contract is a Remote Area contract.

- (a) If a component of any resultant Contract will be delivered in a Remote Area, this creates an opportunity for that resultant Contract to deliver significant Indigenous employment or Indigenous supplier use outcomes in that Remote Area.

- (b) In its Indigenous Participation Plan, the [Tenderer] should detail how it will ensure that its provision of the Goods and/or Services will deliver a significant Indigenous employment or Indigenous supplier use outcomes in the Remote Area.

[Note to [Tenderers]: Refer to the Indigenous Procurement Policy and the IPP Guide for Suppliers for examples of options available to ensure any resultant Contract will deliver significant Indigenous employment or Indigenous supplier use outcomes in the Remote Area.]

1.1.7 Indigenous Participation Plan - Template Tender Response Form

Note to draft: Include this template Indigenous Participation Plan as part of the Tender Response Form. The text constitutes a note to Tenderers and text for inclusion in a Tender response form. The successful [Tenderer's] Indigenous Participation Plan will form part of its resultant Contract.

Note to [Tenderers]:

Each [Tenderer] must submit an Indigenous Participation Plan with its Tender. The Indigenous Participation Plan should address:

- (a) how the [Tenderer] intends on meeting the mandatory minimum requirements for the Indigenous Procurement Policy;
- i. the [Tenderer's] current rate of Indigenous employment and Indigenous supplier use;
 - ii. the [Tenderer's] commitment to Indigenous participation. Some examples of the activities an organisation can take to demonstrate its commitment to Indigenous participation are set out in the Indigenous Procurement Policy; and
 - iii. if any part of the Contract will be delivered in a Remote Area, how the [Tenderer] will ensure that its provision of Goods and/or Services will deliver significant Indigenous employment or Indigenous supplier use outcomes in that Remote Area.
- (b) The mandatory minimum requirements can be met at:
- i. the contract-based level (see clause (c) below); or

- ii. the organisation-based level (see clause (d) below).

(c) To meet the mandatory minimum requirements at the contract-based level, by the end of the Initial Term of the Contract:

- i. at least 4 per cent of the full time equivalent Australian-based workforce deployed on the contracted project must be Indigenous Australians, on average over the Initial Term of the Contract; or
- ii. at least 4 per cent of the value of the work performed under the Contract must be subcontracted to Indigenous enterprises, over the Initial Term of the Contract; or
- iii. a minimum percentage of the full time equivalent Australian-based workforce deployed on the contracted project on average over the initial term of the contract must be Indigenous Australians, and a minimum percentage of the value of the work performed under the Contract must be subcontracted to Indigenous enterprises, so that both minimum percentages add up to 4 per cent, over the Initial Term of the Contract.

(d) To meet the mandatory minimum requirements at the organisation-based level, by the end of the Initial Term of the Contract:

- i. at least 3 per cent of the full time equivalent Australian-based workforce of the Contractor must be Indigenous Australians, on average over the Initial Term of the Contract; or
- ii. at least 3 per cent of the value of the Contractor's Australian supply chain must be subcontracted to Indigenous enterprises, over the Initial Term of the Contract; or
- iii. a minimum percentage of the full time equivalent Australian-based workforce must be Indigenous Australians on average of the initial term of the contract, and a minimum percentage of the value of the Contractor's supply chain must be subcontracted to Indigenous enterprises, such that both minimum percentages add up to 3 per cent over the Initial Term of the Contract.

(e) The mandatory minimum requirements can be met directly or through subcontracts.

- (f) The successful [Tenderer]'s Indigenous Participation Plan will be attached to the resultant Contract, and the successful [Tenderer] will be required to comply with and report against the Indigenous Participation Plan during the Term.

INDIGENOUS PARTICIPATION PLAN

[INSERT NAME OF TENDERER]

1. This is an Indigenous Participation Plan submitted as part of the Tender in response to [INSERT RFT NUMBER] (**RFT**).
2. If selected as the [Contractor] following evaluation of Tenders received in response to the RFT, [TENDERER] will meet the mandatory minimum requirements for the purposes of the Indigenous Procurement Policy:

at the contract-based level, in which regard at least:

- ____ [INSERT] percentage of [TENDERER'S] full time equivalent Australian-based workforce deployed on the contracted project must be Indigenous Australians over the Initial Term; and
- ____ [INSERT] percentage of the value of the work performed under the Contract will be subcontracted to Indigenous enterprises over the Initial Term; or

at the organisation-based level, in which regard at least:

- ____ [INSERT] percentage of [TENDERER'S] full time equivalent Australian-based workforce will be Indigenous Australians over the Initial Term; and
- ____ [INSERT] percentage of the value of [TENDERER'S] Australian supply chain will be subcontracted to Indigenous enterprises over the Initial Term.

[Note to [Tenderers]: Select which option(s) apply based on the requirements set out in clauses (b), (c) and (d) in the Note to Tenderers above.]

3. To meet the mandatory minimum requirements on and from 1 July 2016 for the purposes of the Indigenous Procurement Policy, [TENDERER] will undertake the following ([Tenderer] to insert details of how it will meet the mandatory minimum requirements (which may include details of its current workforce / supply chain) at either / both the contract / organisation level and how it will go about meeting the requisite percentages to meet the mandatory minimum requirements. [Tenderers] should note that the mandatory minimum requirements are averages over the Initial Term of any resultant Contract, and will accordingly need to detail their approach to achieving the specified targets over the Initial Term):

4. [TENDERER's] rate of Indigenous employment and Indigenous supplier use as at [Tender Closing Date] is:

5. [TENDERER] demonstrates its commitment to Indigenous participation as follows:

6. [TENDERER] will meet the mandatory minimum requirements:
directly; or
through subcontracts.

[Tenderer to detail its approach to meeting the mandatory minimum requirements directly or through subcontracts.]

Note to draft: Include the following where a component of any resultant Contract will be delivered in a Remote Area.

Remote Area Contracts

7. A component of any resultant Contract will be delivered in a Remote Area. [TENDERER] proposes to ensure the Contract will deliver a significant Indigenous employment or Indigenous supplier use outcome in that Remote Area as follows:

1.8 Contract

Note to Drafter: This section outlines clauses to be included in High Value Contracts. Language used in the following model clauses may be amended to align with the language used in your template documentation (e.g. Tenderer v Respondent, etc.).

1.8.1 Definitions

"Indigenous Participation Plan" means the plan set out at Attachment ~~X~~.

"Indigenous Procurement Policy Reporting Solution (IPPRS)" means the online portal where Contractors report on their progress against their Mandatory Minimum Requirements under the Commonwealth's Indigenous Procurement Policy.

Note to Draft: The successful [Tenderer]'s Indigenous Participation Plan must be attached to the resultant Contract.

1.8.2 Indigenous Procurement Policy

- (a) It is Commonwealth policy to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy (see Indigenous Procurement Policy, for further information). Information about this policy was included in the RFT.

Note to Draft: Include a definition for "RFT" if one is not already included.

- (b) The **[Contractor]** must use its reasonable endeavours to increase its:
- (i) purchasing from Indigenous enterprises; and

- (ii) employment of Indigenous Australians,

in the delivery of the Goods and/or Services.

Note to draft: If [Tenderers] provide detail in their Tenders in relation to how they will increase purchasing from an Indigenous enterprise, you should consider including this as an obligation in the Statement of Work/Statement of Requirement.

- (c) The [Contractor] must comply with the Indigenous Participation Plan.
- (d) Purchasing from Indigenous enterprises may include engagement of an Indigenous enterprise as a subcontractor and/or use of Indigenous suppliers in the [Contractor]'s supply chain.
- (e) The [Contractor] must submit a written report to the [Customer] via the IPPRS on its compliance with the Indigenous Participation Plan, as follows:
 - (i) at least once every quarter during the Term; and
 - (ii) after the end of the Term (End of Term Report).
- (f) The End of Term Report must identify whether the [Contractor]:
 - (i) met the mandatory minimum requirements; and
 - (ii) complied with the Indigenous Participation Plan.

If the [Contractor] did not meet the mandatory minimum requirements or did not comply with the Indigenous Participation Plan it must provide an explanation for its non-compliance.

- (g) Throughout the term of the contract, the [Contractor] is responsible for managing the [Contractor]'s access to the IPPRS reporting portal including by managing the:
 - (i) enabling of its authorised personnel's access; and
 - (ii) disabling of its authorised personnel's access.

Note to Draft: Consider including other reporting, provision of documentation, review and auditing rights as you consider necessary to determine whether the Contractor is compliant with the Indigenous Participation Plan.

- (h) The [Contractor] must comply with all reasonable directions issued by the [Customer] in relation to the [Contractor]'s implementation of the Indigenous Participation Plan.
- (i) If at any time the [Customer] reasonably believes that the [Contractor]:
 - (i) may be or may become unable to comply with the Indigenous Participation Plan; or
 - (ii) is unlikely to meet the mandatory minimum requirements as set out in the Indigenous Participation Plan,the [Customer] may require the [Contractor] to provide additional detail in relation to its implementation of and ability to comply with the Indigenous Participation Plan.
- (j) Without limiting its other rights under the Contract or at law, any material failure by the [Contractor] to:
 - (i) implement the Indigenous Participation Plan; or
 - (ii) comply with a direction issued by the [Customer] under clause [X],will be a breach of this Contract, and the [Customer] may terminate this Contract .

Note to Draft: Insert reference to the clause in your contract that sets out [Customer] rights in the event of termination for default. As an alternative, you may wish to amend your existing termination clause to include failure to implement the IPP or comply with directions in relation to the IPP as a specific right of termination (to consolidate all termination rights into the one location).

The term [Contractor Confidential Information] may be replaced with the equivalent defined term which identifies the information subject to confidentiality protections in your contract. If there is no equivalent term in your contract this subclause should be deleted.

- (k) Notwithstanding any other clause of this Contract, the Contractor acknowledges and agrees that the reports it submits under clause :
- (i) will be recorded in the IPPRS, a central database that is able to be accessed by Commonwealth entities and may be made publicly available;
 - (ii) will not be considered to be [Contractor Confidential Information];
and
 - (iii) may be used by Commonwealth entities for any purpose, including for evaluation of an offer to provide Goods and / or Services to a Commonwealth entity.

2.0 Model clauses to promote Indigenous participation, including for contracts that may become high value for the purposes of the MMR.

INSTRUCTIONS

For all Contracts that:

- (a) are not subject to the Mandatory Minimum Indigenous Participation Requirements as they are not High Value Contracts; and
- (b) do not use the Commonwealth Contracting Suite,

the following clauses may be inserted into the terms and conditions of your Approach to the Market (ATM) documentation and contract terms and conditions.

Instructions and guidance for the use of the model clauses are included in text boxes titled **Note to Draft** adjacent to the clause to which they apply.

Where the language used in a model clause may need to be amended to align with the language used in your template documentation (e.g. Tenderer v Respondent) this is indicated by square brackets with yellow highlight: **[Example]**.

Where a model clause includes a cross reference to another clause which will need to align with the format of your template documentation, this is indicated by square brackets with red highlight: **[X]**.

2.1 Approach to the market

2.1.1 Agency directed application of Mandatory Minimum Indigenous Participation Requirements

Note to Draft: Use the following clauses in your ATM terms and conditions where the Mandatory Minimum Requirements do not apply and you wish to direct the Tenderer to apply Indigenous employment and supply use targets.

- (a) In its Tender, each **[Tenderer]** is requested to detail how it will increase its:
 - (i) purchasing from Indigenous enterprises (being an organisation that is 50 per cent or more Indigenous owned that is operating a business); and
 - (ii) employment of Indigenous Australians,

in the delivery of any resultant Contract.

- (b) Purchasing from an Indigenous enterprise may include engagement of an Indigenous enterprise as a subcontractor, and / or use of Indigenous suppliers in the [Tenderer's] supply chain.

Note to Draft: If you expect your procurement may result in multiple contracts being awarded of varying value, below and above the \$7.5 million, you should include in the ATM a clause that will indicate if the Tender is willing to accept a contract valued at equal to or above \$7.5 million. This declaration will determine whether or not a Tender is required to submit an Indigenous Participation Plan.

- (c) In its Tender, each [Tenderer] is requested to indicate if they are willing to accept a contract valued at equal to or above \$7.5 million. This will determine whether or not you are required to submit an Indigenous Participation Plan.

2.1.2 [Tenderer] Declaration

Note to Draft: Include the following in your [Tenderer] declaration.

- (a) I confirm that my organisation is willing/not willing to accept a contract valued at equal to or above \$7.5 million through this tender.

Note to [Tenderers]: Strike out the option that does not apply.

2.1.3 Evaluation criterion

Note to Draft: You may use the following clauses where the Mandatory Minimum Requirements do not apply, and you wish to direct the Tenderer to apply Indigenous employment and supply use targets. This Evaluation Criterion can be used if the Indigenous Procurement Policy is an evaluation criterion rather than a mandatory requirement. You may include it as part of another Evaluation Criterion or as a stand-alone Evaluation Criterion as best suits your procurement needs.

- (a) In evaluating Tenders, the [Customer] will take into consideration:

- (i) the [Tenderer's] proposed approach to:
 - a. using Indigenous enterprises in its supply chain; and
 - b. the employment of Indigenous Australians.
-

2.2 Contract

2.2.1 Indigenous Procurement Policy

- (a) It is Commonwealth policy to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy (see Indigenous Procurement Policy for further information:

Note to Draft: Use the following clauses in your contract terms and conditions where the Mandatory Minimum Requirements do not apply and you wish to direct the Contractor to apply Indigenous employment and supply use targets.

- (b) The Contractor must use its reasonable endeavours to increase its:
 - (i) purchasing from Indigenous enterprises; and
 - (ii) employment of Indigenous Australians,in the delivery of the Goods and/or Services.

Note to Draft: If a [Tenderer] has provided detail in their Tender in relation to how they will increase purchasing from an Indigenous enterprise, consider including this as an obligation in the Statement of Work/Statement of Requirement.

- (c) Purchasing from Indigenous enterprises may include engagement of an Indigenous enterprise as a subcontractor, and/or use of Indigenous suppliers in the [Contractor's] supply chain.

- (d) In this clause, "Indigenous enterprise" means an organisation that is 50 per cent or more Indigenous owned that is operating a business.

Note to Draft: You should consider including an obligation to report on this obligation in your contract. The following clause is optional in this regard.

- (e) The [Contractor] must provide written reports and evidence of its compliance with this clause every [quarter/6 months/year] during the [Term].

Note to Draft: You may wish to include the following clauses if it is possible that the contract will become a High Value Contract during its term (either through a contract variation or through the exercise of a contract option).

Use OPTION A if the Contractor was given notice in the ATM and it has been agreed that the contract may become subject to Indigenous participation requirements where the contract value changes to exceed \$7.5 million.

Use OPTION B if the contract is only to become subject to Indigenous participation requirements where the contract value changes to exceed \$7.5 million and it is subsequently negotiated with the Contractor (see the Indigenous Procurement Policy for further information).

- (f) If at any time during the [Term] the value of this Contract exceeds \$7.5 million (GST inclusive), this Contract may become subject to Indigenous participation requirements for the purposes of the Indigenous Procurement Policy [OPTION A: at the absolute discretion of the Customer] [OPTION B: where agreed in writing by both parties]. In this case, the [Contractor] must:
- (i) within [X Business Days] of the date from which the contract value exceeds \$7.5 million, develop an Indigenous Participation Plan that addresses:
- a. how the [Contractor] will meet the mandatory minimum Indigenous participation requirements of the Indigenous Procurement Policy;
 - b. the [Contractor]'s current rates of Indigenous employment and Indigenous supplier use;
 - c. the [Contractor]'s commitment to Indigenous participation; and
 - d. if any part of the Contract is being or will be delivered in a Remote Area, how the [Contractor] will ensure that its provision of Goods and/or Services will deliver significant

Indigenous employment or Indigenous supplier use outcomes in that Remote Area; and

- (ii) submit the draft Indigenous Participation Plan to the [Customer] for its review and approval.
- (g) Upon approval of the draft Indigenous Participation Plan under clause , the [Contractor] must:
 - (i) comply with the Indigenous Participation Plan; and
 - (ii) report against its compliance with the Indigenous Participation Plan quarterly during the [Term]; and
 - (iii) comply with any directions issued by the [Customer] in relation to the [Contractor]'s implementation of the Indigenous Participation Plan.

Note to Draft: If you do not have a definition of "Business Day" in your contract terms and conditions, you should insert the following definition into your contract glossary:

Business Day means a day that is not a Saturday, a Sunday or a public holiday in the place where this Contract is being performed.

3.0 Model clauses to support the use of Appendix A Exemption 16 to the Commonwealth Procurement Rules (Indigenous Business Exemption)

INSTRUCTIONS

For all contracts that:

- a) Are awarded to an Indigenous business using Exemption 16 of Appendix A to the Commonwealth Procurement Rules; and
- b) Do not use the Commonwealth Contracting Suite,

the following clauses may be inserted into the terms and conditions of your Approach to the Market (ATM) documentation and contract terms and conditions.

Instructions and guidance for the use of the model clauses are included in text boxes titled **Note to Draft** adjacent to the clause to which they apply.

Where the language used in a model clauses may need to be amended to align with the language used in your template documentation (e.g. Tenderer v Respondent), this is indicated by square brackets with yellow highlight: **[Example]**.

Where a model clause includes a cross reference to another clause which will need to align with the format of your template documentation, this is indicated by square brackets with red highlight: **[X]**.

3.1 Approach to the market

3.1.1 Indigenous Procurement Policy

Note to Draft: Use the following clauses in your ATM terms and conditions for all procurements from an Indigenous enterprise pursuant to exemption 16 of Appendix A to the CPRs.

- (a) **[Tenderers]** should note that the Indigenous Procurement Policy applies to this procurement. More information on the Indigenous Procurement Policy, including a definition for Indigenous enterprises, can be found at <https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp>
- (b) In particular, **[Tenderers]** should note that the purpose of the Indigenous Procurement Policy is to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy (see Indigenous Procurement Policy for further

information).

- (c) It is a mandatory condition for participation for all [Tenderers] to be an Indigenous enterprise at the time of lodging their Tender. The [Customer] will exclude a Tender from further consideration if the [Customer] considers that the [Tenderer] does not meet the evaluation criterion of being an Indigenous enterprise at the time of lodging its Tender, unless the [Tenderer's] status is rectified prior to entering into the Contract.
- (d) The [Tenderer] acknowledges and agrees that if it is a successful tenderer, it will be a condition of the resulting Contract that the [Tenderer] declares that it is an Indigenous enterprise at the commencement of the Contract and that the [Tenderer] must provide Notice to the [Customer] if, at any time during the term of the Contract:
 - (i) there is any change to the status of the [Tenderer's] Indigenous ownership, that results in Indigenous ownership of less than 50 per cent; or
 - (ii) the [Tenderer] is removed or suspended from the list of registered or certified Indigenous businesses maintained by Supply Nation.
- (e) The [Tenderer] must provide the [Customer] with Notice in writing immediately if at any time prior to entering into the Contract:
 - (i) there is any change to the status of the [Tenderer's] Indigenous ownership; or
 - (ii) it is removed or suspended from the list of registered or certified Indigenous businesses maintained by Supply Nation.
- (f) The [Customer] will exclude the [Tenderer] from further consideration if, at any time prior to entering into the Contract, the [Customer] becomes aware that:
 - (i) there is a change to the status of the [Tenderer's] Indigenous ownership, unless the [Tenderer's] status is rectified prior to entering into the Contract; or
 - (ii) the [Tenderer] has been removed or suspended from the list of registered or certified Indigenous businesses maintained by Supply Nation.
- (g) In this clause:
 - (i) "Notice" means a written notice sent from one party to another party at the address, or email address, [or facsimile number] set out in the Tender.

Note to Draft: Include the following statement in your Tenderer's Declaration for all procurements from an Indigenous enterprise pursuant to exemption 16 to Appendix A of the CPRs.

3.1.2 [Tenderer] Declaration

- (a) I confirm that at the [Closing Time] my organisation is an Indigenous enterprise as defined in the Commonwealth Indigenous Procurement Policy.

3.1.3 Evaluation criterion

Note to Draft: Include the following criterion in your Evaluation Criteria for all procurements from an Indigenous enterprise pursuant to exemption 16 to Appendix A of the CPRs.

- (a) whether the [Tenderer] is an Indigenous enterprise at the time of lodging their Tender. The [Customer] will exclude a Tender from further consideration if the [Customer] considers that the [Tenderer] does not meet the evaluation criterion of being an Indigenous enterprise at the time of lodging its Tender.

3.2 Contract

Note to Draft: You may use the following clauses for all procurements from an Indigenous enterprise pursuant to exemption 16 to Appendix A of the CPRs.

3.2.1 Indigenous Procurement Policy

- (a) It is Commonwealth policy to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy (see Indigenous Procurement Policy for further information).
- (b) In this clause, "Indigenous enterprise" means an organisation that is 50 per cent or more Indigenous owned that is operating a business.

3.2.2 Warranty

- (a) The [Contractor] warrants that at the [Commencement Date] of the Contract, it is an Indigenous enterprise.

Note to Draft: If you do not have a definition of Business Day in your Contract terms and conditions, you should insert the following definition into your Contract glossary:

Business Day means a day that is not a Saturday, a Sunday or a public holiday in the place where this contract is being performed.

3.2.3 Notifiable Event

- (a) The [Contractor] must provide the [Customer] with Notice if any of the following events occur during the term of the Contract:

- (i) there is any change in the [Contractor's] status as an Indigenous enterprise, including any change in the [Contractor's] ownership; or
 - (ii) the [Contractor] is removed or suspended from the list of registered or certified Indigenous businesses maintained by Supply Nation;
- (each an **IPP Notifiable Event**).
- (b) The [Contractor] must provide the [Customer] with Notice of an IPP Notifiable Event no later than 20 Business Days after the occurrence of each IPP Notifiable Event.

3.2.4 Change of Indigenous Ownership

Note to Draft: In model clause (b)(i) below insert a reference to your relevant termination clause.

- (a) Where the [Customer] becomes aware, through any means whatsoever, of any IPP Notifiable Event, the [Customer] may, by Notice to the [Contractor]:
 - (i) require the [Contractor] to provide information as reasonably required by the [Customer] in relation to the IPP Notifiable Event;
 - (ii) request that the [Contractor] rectify the IPP Notifiable Event within 20 Business Days after the date of the [Customer's] Notice to the [Contractor]; and/or
 - (iii) request that the [Contractor] provide proof to the satisfaction of the [Customer] that the IPP Notifiable Event has been rectified.
- (b) Where the [Contractor] fails to rectify the IPP Notifiable Event, the [Customer] may, at its sole and absolute discretion:
 - (i) exercise termination rights under clause [X]; or
 - (ii) take any other action the [Customer] considers appropriate in the circumstances.
- (c) Where the [Contractor] fails to provide the [Customer] with Notice of an IPP Notifiable Event, the [Customer] may request the [Contractor] provide such Notice including any additional information as reasonably required.

Note to Draft: This Notice clause should reflect the terms of the general notice clause in your contract template.

- (d) In this clause:
 - (ii) "Notice" means a written notice sent from one party to another party at the address, or email address, [or facsimile number] set out in the [Contract].
 - (iii) a Notice is taken to be received:
 - A. if hand delivered, on delivery;
 - B. if sent by pre-paid post, five (5) Business Days after the date of posting; or
 - C. if sent by Electronic Communication, at the time that would be the time

of receipt under the *Electronic Transactions Act 1999* (Cth) as if the Notice was being given under a law of the Commonwealth.