Building Code 2013

Declaration of Compliance

The following Declaration of Compliance should be included as an attachment to tender documentation (including expressions of interest) for both directly and indirectly funded projects:

Declaration of Compliance with the *Building Code 2013*.

Name of Australian Government project tendered for: _____

_____

Name of Tenderer ……

ABN ……

ACN ……

1. The Tenderer confirms that it has complied with the *Building Code 2013* (Building Code), in preparing this Tender.

2. The Tenderer undertakes that it complies with the Building Code, and has complied with the Building Code from the time of lodgement of this tender, and that it will require compliance by its related entities (see section 8 of the Building Code).

3. The Tenderer undertakes to ensure compliance from all subcontractors and consultants engaged on this project, should it be the successful Tenderer. All contracts must expressly require compliance with the Building Code.

4. The Tenderer agrees that it and its subcontractors and its related entities will provide the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Fair Work Building Industry Inspectorate, with access to:
   a. inspect any work, material, machinery, appliance, article or facility;
   b. inspect and copy any record relevant to the Project and Works the subject of this Contract;
   c. interview any person; and
   d. any document requested under this contract. The document must be provided within the period specified either in person, by fax or by post,

   as is necessary to demonstrate its compliance with the Building Code.

5. The Tenderer acknowledges that it is aware the Commonwealth or Minister for Employment and Workplace Relations may impose a sanction on a Tenderer or Contractor that does not comply with the Building Code.

   The sanction imposed may include but is not limited to:
   a. the reporting of the breach to an appropriate statutory body or law enforcement agency (if there is evidence that the breach may also be a breach of a Commonwealth or State law), or industry association;
   b. issuing of a formal warning that future breaches may lead to more significant sanctions;
   c. preclusion from Tendering for any Commonwealth funded building and construction work for a specified period;
   d. communication of sanction details to all Commonwealth agencies to ensure a 'whole-of-Government' approach;
   e. publication of details of the breach and identification of the party committing the breach; and
   f. a reduction in the number of tendering opportunities that are given.

6. The Tenderer is to select which of the following clauses in italics is appropriate and delete the remaining clause:

   a. *The Tenderer hereby gives its consent, and confirms that its related entities give their consent, to disclosure by the Commonwealth, its agencies and ministers, of information concerning the Tenderer's and its related entities' compliance with the Building Code and whether or not a sanction has been imposed on the Tenderer and/or related entity of the Tenderer, for the exercise of their statutory and portfolio responsibilities (the Purposes).*

   OR

   b. *The Tenderer has previously given its consent, and confirms that its related entities have previously given their consent, to disclosure by the Commonwealth, its agencies and ministers, of information concerning the Tenderer's and its related entities' compliance with the Building Code and whether or not a sanction has been imposed on the Tenderer and/or a related entity of the Tenderer for the exercise of their statutory and portfolio responsibilities (the Purposes), and confirms that the Tenderer and its related entities have not revoked that consent.*

7. The Tenderer has obtained or will obtain the consent of each subcontractor and consultant proposed in its Tender to disclosure by the Commonwealth, its agencies and ministers, of information concerning the proposed subcontractors, compliance with the Building Code and whether or not a sanction has been imposed on any proposed subcontractor, for the Purposes.

8. The Tenderer acknowledges that the consents provided in clause 6 are not limited to this Tender process as the Tenderer is expected to comply with the Building Code in future projects.

9. The Tenderer will:
   a. Describe how the Tenderer has complied with the Building Code in the past (if the Tenderer has undertaken Australian Government funded construction work in the past) and how it will comply if successful. For example, the tenderer will:
      i. comply with the Building Code;
      ii. require compliance with the Building Code from all subcontractors before doing business with them;
      iii. apply the Building Code to privately funded projects that commence after they first lodge an expression of interest or tender for Australian Government projects if the expression of interest or tender occurs on or after 1 November 2005;
      iv. ensure that contractual documents allow for a person occupying a position in the Fair Work Building Industry Inspectorate to access sites, documents and personnel to monitor compliance with the Building Code, including privately funded construction sites;
      v. ensure project managers or head contractors establish appropriate processes to ensure freedom of association;
      vi. ensure there is a work health safety and rehabilitation (WHS&R)plan for the Project;
      vii. respond to requests for information concerning Building Code-related matters made on behalf of Code Monitoring Group (CMG);
      viii. where practicable, ensure contractors or subcontractors initiate voluntary remedial action aimed at rectifying non-compliant behaviour when it is drawn to their attention;
      ix. ensure that CMG secretariat is notified of any alleged breaches, voluntary remedial action taken or other Building Code-related matters within 21 days of the party becoming aware of the alleged breach; and
      x. be aware that and ensure that sanctions applied under the Building Code are enforced including the exclusion of identified parties from work opportunities in accordance with decisions advised by CMG.

   b. Where the Tenderer proposes to subcontract an element of the work, the Tenderer is either to:
      i. provide the information detailed at (a) in relation to each subcontractor; or
      ii. detail how the Tenderer intends to ensure compliance with the Building Code by each subcontractor.

c. Ensure that where threatened or actual industrial action occurs on a project, contractors, subcontractors, consultants or project managers report such action to the Funding Entity.

10. Where the tenderer has a *Fair Work Act 2009* enterprise agreement that was approved on or after 1 February 2013 that enterprise agreement includes a genuine dispute resolution procedure that includes the following:

- the ability for employees to appoint a representative in relation to the dispute;
- in the first instance procedures to resolve the dispute at the workplace level;
- if a dispute is not resolved at the workplace level, the capacity for a party to the dispute to refer the matter to an independent third party for mediation or conciliation; and
- if the dispute is still not resolved, the capacity for an independent third party to settle the dispute via a decision binding on the parties.

Privately Funded Projects:

11. The Tenderer declares that, in respect to privately funded projects:
    a. The Tenderer and its related entities will comply with the Building Code on all the Tenderer's and its related entities' future privately funded projects.
    b. The Tenderer must maintain adequate records of compliance with the Building Code by the Tenderer, its subcontractors and related entities.
    c. The Tenderer agrees that it and any of its related entities will provide the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Fair Work Building Industry Inspectorate, with access to:
        i. inspect any work, material, machinery, appliance, article or facility;
        ii. inspect and copy any record relevant to the Project the subject of this Contract; and
        iii. interview any person, as is necessary to allow validation of its compliance with the Building Code.
    d. The Tenderer agrees that the Tenderer and its related entities will agree to a request from the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Fair Work Building Industry Inspectorate, to produce a specified document within a specified period, in person, by fax or by post.
    e. The Tenderer will ensure that the Tenderer and its related entities permit the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Fair Work Building Industry Inspectorate, to have access to records and to the related entities' and subcontractors' premises (to inspect and copy records), as is necessary to ensure that the subcontractors and related entities are complying with the Building Code.

[To be signed by Tenderer]

……..
Name

……..
Company

……..
Position