



Australian Government

Department of Employment and Workplace Relations
Office of the Federal Safety Commissioner

Model clauses



Applying the Australian Government Building
and Construction OHS Accreditation Scheme
from 1 October 2007

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Section 1: Introduction

This document provides information to assist in the application of the Australian Government Building and Construction OHS Accreditation Scheme (the Scheme) to construction projects that are funded by the Australian Government.

1.1 Who should read this guide?

This document is intended for use by:

- Australian Government employees who are responsible for the procurement of building work on behalf of the Australian Government (see **Section 2**)
- Australian Government employees who are responsible for the delivery and management of Australian Government funding agreements, grants and programmes (see **Section 3**)
- persons who are responsible for the procurement of building work using funding provided by the Australian Government (see **Section 4**).

1.2 How to use this guide

This guide provides model clauses that Australian Government agencies, and where required, funding recipients, may include in tender, contract and funding agreement or grant documentation to assist in meeting their obligations under the Scheme.

However, these model clauses are provided as suggestions only. Australian Government agencies and funding recipients may substitute these model clauses with their own providing that the replacement clauses achieve at least an equivalent outcome.

Section 2: Model clauses for use by Australian Government for directly funded building work

2.1 Approaching the market

The procurement process typically begins with an approach to market (ATM), whereby an agency issues a notice/s inviting potential suppliers to participate in the procurement process.

An ATM will generally involve either the issuing of requests for expressions of interest (REI) or requests for tender (RFT). The Commonwealth Procurement Guidelines (2005) require all such requests to be published on AusTender (tenders.gov.au).

If an agency is approaching the market to source directly funded building work, the agency may include some or all of the following elements in the REI and RFT documentation.

Specific reference to the Scheme

The following is recommended for inclusion in REI and RFT documentation where specific reference to the Scheme is necessary.

Australian Government Building and Construction OHS Accreditation Scheme

The Australian Government is committed to improving occupational health and safety (OHS) outcomes in the building and construction industry. An important initiative to achieve this is the Australian Government Building and Construction OHS Accreditation Scheme (the Scheme). The Scheme is established by the *Building and Construction Industry Improvement Act 2005* and specified in the Building and Construction Industry Improvement (Accreditation Scheme) Regulations 2005.

The Scheme commenced in March 2006. Since that time only persons who are accredited under the Scheme have been able to contract for building work directly funded by the Australian Government where the contract is valued at \$6 million or more.

From 1 October 2007 only persons who are accredited under the Scheme are able to contract for building work directly funded by the Australian Government where the contract is valued at \$3 million or more.

Building work is considered directly funded where the Commonwealth (Australian Government) or a Commonwealth authority enters into a contract with persons who will carry out the building work or, who may arrange for the building work to be carried out. It includes building work that the Australian Government facilitates directly by agreement (for example pre-commitment lease, Build Own Operate (BOO) and Build Own Operate Transfer (BOOT) arrangements).

Contractors seeking accreditation are required to submit an application, addressing specific occupational health and safety criteria, to the Office of the Federal Safety Commissioner (OFSC). More information on the Scheme is available on the Federal Safety Commissioner (FSC) website at fsc.gov.au or by contacting the OFSC on 1800 652 500.

Advertisements

The following material is recommended for inclusion at the end of any advertisement which is issued as part of the approach to market:

It is a requirement of this project that the persons contracted to undertake the building work be accredited under the Australian Government Building and Construction OHS Accreditation Scheme, established by the *Building and Construction Industry Improvement Act 2005*, at the time of entering into the contract for the building work and while the building work is being carried out.

Essential requirement for REI and RFT documentation (tenderer is the builder)

Accreditation is not a prerequisite for tendering for building work. However, contracts for directly funded building work, which is captured by the Scheme, can only be entered into with accredited builders.

The following material will help to alert potential tenderers to the requirement that they must be accredited under the Scheme in order to enter into a contract for building work with the agency.

This material is recommended for inclusion in the REI and RFT documentation for directly funded building work where it is expected that the **tenderer will be the builder**.

The Australian Government Building and Construction OHS Accreditation Scheme

1. A successful tenderer must be accredited under the Australian Government Building and Construction OHS Accreditation Scheme (the Scheme) established by the *Building and Construction Industry Improvement Act 2005* when entering into contracts for building work, and maintain accreditation under that Scheme while the building work is being carried out.
2. A successful tenderer must comply with all conditions of Scheme accreditation.

Essential requirement for REI and RFT documentation (tenderer is *not* the builder)

As stated above, accreditation is not a prerequisite for tendering. However, contracts for directly funded building work that is captured by the Scheme can only be entered into with accredited builders.

This is also the case where the tenderer is not the builder. For instance, if an Australian Government agency enters into a pre-commitment lease agreement with a developer or building owner and building work is required as part of that agreement.

This material is recommended for inclusion in the REI and RFT documentation for directly funded building work where it is expected that the **tenderer will *not* be the builder**.

The Australian Government Building and Construction OHS Accreditation Scheme (the Scheme)

1. A successful tenderer must not contract with a builder who will carry out building work as defined in section 5 of the Building and Construction Industry Improvement Act 2005 (BCII Act) if the builder is not accredited under the Australian Government Building and Construction OHS Accreditation Scheme (established by the BCII Act) at the time the contract for building work is entered into.
2. The successful tenderer must require that the builder contracted to undertake the building work remains accredited under the Scheme while carrying out the building work.

Schedule for inclusion in the REI or RFT documentation

A schedule should be included within the REI or RFT documentation and require potential tenderers to indicate if they are accredited under the Scheme, or to provide evidence of steps taken to obtain accreditation.

This material will assist the agency to identify the tenderers accreditation status and determine if there will be any need to alert the OFSC of a need for urgent consideration of an application for accreditation.

The following schedule is recommended for inclusion:

Tender Schedule # – The Australian Government Building and Construction OHS Accreditation Scheme

Insert details of accreditation status, including the expiry date of accreditation or evidence that accreditation is being sought under the Australian Government Building and Construction OHS Accreditation Scheme.

2.2 Contracts

Contract clauses (contractor as builder)

The following clause should be included as an essential term in contracts for directly funded building work that is captured by the Scheme.

This clause is only suitable where **the contracted person is the builder**.

The clause ensures the builder maintains accreditation while carrying out the building work.

1. The builder must maintain accreditation under the Australian Government Building and Construction OHS Accreditation Scheme (the Scheme) established by the *Building and Construction Industry Improvement Act 2005*, while building work is carried out.
2. The builder must comply with all conditions of Scheme accreditation.

Contract Clauses (Contractor is not builder)

The following clause should be included as an essential term in contracts for directly funded building work that is captured by the Scheme.

This clause is only suitable where **the contracted person is *not* the builder**.

The clause ensures the contracted party only engages a Scheme accredited builder and that the builder maintains accreditation while carrying out the building work.

1. A contract must not be entered into with a builder who will carry out building work as defined in section 5 of the *Building and Construction Industry Improvement Act 2005* (BCII Act) if the builder is not accredited under the Australian Government Building and Construction OHS Accreditation Scheme (the Scheme) established by the BCII Act at the time the contract for building work is entered into.
2. Any building contract must require that the builder remains accredited under the Scheme while carrying out the building work.

Section 3: Model clauses for use by Australian Government for indirectly funded building work

3.1 Funding agreements and grants

Many Australian Government agencies provide funding to third parties. In the majority of instances these funds are provided on the basis of a shared agreement between the two parties.

For instance, AusLink programme funds are provided through a bi-lateral agreement between the Australian Government and each of the states and territories. The bi-lateral agreement sets out the responsibilities of both parties under the agreement, and includes various conditions that the recipient party must meet in regards to the funding.

The same is true for grants provided by the Australian Government, in that the grant is given on the proviso that certain conditions are met.

Funding agreements and grants are, for all intents and purposes, legally binding contracts.

Recitals

A recital is a formal statement appearing in a legal document, such as a grant or funding agreement, which is preliminary in nature and provides a detailed explanation of aspects of the document.

The following material is intended to be included as a recital (to provide Scheme background information) within funding agreement or grant documentation issued by Australian Government agencies.

Australian Government Building and Construction OHS Accreditation Scheme

From 1 October 2007 only persons who are accredited under the Australian Government Building and Construction OHS Accreditation Scheme (the Scheme) are able to contract for building work that is **indirectly** funded by the Australian Government where:

- the value of the Australian Government contribution to the project is at least \$5 million and represents at least 50 per cent of the total construction project value; or
- the Australian Government contribution to a project is \$10 million or more, irrespective of the proportion of Australian Government funding.

The Scheme is established by the *Building and Construction Industry Improvement Act 2005* and specified in the Building and Construction Industry Improvement (Accreditation Scheme) Regulations 2005.

Building work is considered **indirectly** funded where it is funded by the Commonwealth (Australian Government) or a Commonwealth authority through grants and other programmes. This includes building projects where the Australian Government provides money through a funding agreement or grants to a person, for example a state or territory government who then may contract with persons who will undertake the building work or persons who will arrange for the building work to be carried out.

Indirectly funded building work also includes building projects that the person, who receives Australian Government funding, facilitates by agreement (for example pre-commitment lease, Build Own Operate (BOO) and Build Own Operate Transfer (BOOT) arrangements).

If a project meets the above threshold amounts, the requirement that accredited builders carry out the building work only applies to contracts for building work that are valued at \$3 million or more as defined in the Building and Construction Industry Improvement (Accreditation Scheme) Regulations 2005.

Funding agreement and grant clauses (funding use is not known)

To ensure that only accredited builders are used on projects that are indirectly funded by the Australian Government, the following clause should be included within funding agreement or grant documentation that is issued by Australian Government agencies **where the specific use of the funding is *not* known** but building work is likely to, or could, be procured using the funding.

This clause will also ensure that building work that is captured by the Scheme is notified to the OFSC.

Australian Government Building and Construction OHS Accreditation Scheme

Subject to the exclusions specified in the Building and Construction Industry Improvement (Accreditation Scheme) Regulations 2005, construction projects that utilise funds provided under this agreement are bound by the application of the Australian Government Building and Construction OHS Accreditation Scheme (the Scheme) and the following conditions:

1. All head contracts for building work under the project that are valued at \$3 million or more must:
 - a. be notified to the Office of the Federal Safety Commissioner at the earliest possible opportunity (that is, when approaching the market).
 - b. contain a requirement that the builder:
 - i. is accredited under the Scheme;
 - ii. maintains Scheme accreditation for the life of the contract; and
 - iii. must comply with all conditions of the Scheme accreditation.

Funding agreement and grant clauses (funding use is known)

To ensure that only accredited builders are used on construction projects that are indirectly funded by the Australian Government, the following clause should be included within funding agreement or grant documentation that is issued by Australian Government agencies **where the specific use of the funding is known** and the Scheme has been determined by the agency to apply to the indirectly funded project.

This clause will also ensure that building work that is captured by the Scheme is notified to the OFSC.

Australian Government Building and Construction OHS Accreditation Scheme

This project is bound by the application of the Australian Government Building and Construction OHS Accreditation Scheme (the Scheme) and the following conditions:

1. All head contracts for building work under this project that are valued at \$3 million or more must:
 - a. be notified to the Office of the Federal Safety Commissioner at the earliest possible opportunity (that is, when approaching the market).
 - b. contain a requirement that the builder:
 - i. is accredited under the Scheme;
 - ii. maintains Scheme accreditation for the life of the contract; and
 - iii. must comply with all conditions of the Scheme accreditation.

Section 4: Model clauses for use by recipients of Australian Government funding

4.1 Approaching the market

A procurement process will typically begin with an approach to market, whereby the client issues a notice/s inviting potential suppliers to participate in the procurement process.

If a funding recipient is approaching the market to source building work, and the funding for the building work will be paid for using the Australian Government funding, the funding recipient may include some or all of the following elements in the approach to market documentation.

Specific reference to the Scheme

The following is recommended for inclusion in approach to market documentation where specific reference to the Scheme is necessary.

Australian Government Building and Construction OHS Accreditation Scheme

The Australian Government is committed to improving occupational health and safety (OHS) outcomes in the building and construction industry. An important initiative to achieve this is the Australian Government Building and Construction OHS Accreditation Scheme (the Scheme). The Scheme is established by the *Building and Construction Industry Improvement Act 2005* and specified in the Building and Construction Industry Improvement (Accreditation Scheme) Regulations 2005.

The Scheme commenced in March 2006. Since that time only persons who are accredited under the Scheme have been able to contract for building work directly funded by the Australian Government where the contract is valued at \$6 million or more.

From 1 October 2007 only persons who are accredited under the Scheme are able to contract for building work that is **directly** funded by Australian Government agencies where the contract for the building works is valued at \$3 million or more as defined in the Building and Construction Industry Improvement (Accreditation Scheme) Regulations 2005.

From 1 October 2007, the Scheme accreditation requirement also applies to building work that is **indirectly** funded by the Australian Government where:

- the value of the Australian Government contribution to the project is at least \$5 million and represents at least 50 per cent of the total construction project value; or
- the Australian Government contribution to a project is \$10 million or more, irrespective of the proportion of Australian Government funding.

Building work is considered **indirectly** funded where it is funded by the Commonwealth (Australian Government) or a Commonwealth authority through grants and other programmes. This includes building projects where the Australian Government provides money through a funding agreement or grants to a person, for example a state or territory government who then may contract with persons who will undertake the building work or persons who will arrange for the building work to be carried out.

Indirectly funded building work also includes building projects that the person, who receives Australian Government funding, facilitates by agreement (for example pre-commitment lease, Build Own Operate (BOO) and Build Own Operate Transfer (BOOT) arrangements).

If a project meets the above threshold amounts, the requirement that accredited builders carry out the building work only applies to contracts for building work that are valued at \$3 million or more.

To be accredited, contractors are required to apply to the Office of the Federal Safety Commissioner (OFSC) providing evidence against specific occupational health and safety criteria. More information on the Scheme is available on the Federal Safety Commissioner (FSC) website at fsc.gov.au or by contacting the OFSC on 1800 652 500.

Advertisements

The following material is recommended for inclusion at the end of any advertisement which is issued as part of the approach to market:

It is a requirement of this project that any persons contracted to undertake the building work be accredited under the Australian Government Building and Construction OHS Accreditation Scheme established by the *Building and Construction Industry Improvement Act 2005*, at the time of entering into the contract for the building work and while the building work is being carried out.

Essential requirement (tenderer as builder)

Accreditation is not a prerequisite for tendering for building work. However, contracts for building work that is indirectly funded by the Australian Government and is captured by the Scheme can only be entered into with accredited builders.

The following material will help to alert potential tenderers to the requirement that they must be accredited under the Scheme in order to enter into a contract for building work with the funding recipient.

This material is recommended for inclusion in the approach to market documentation for building work that is indirectly funded by the Australian Government (see section 1.2.2) where it is expected that the **tenderer will be the builder**.

The Australian Government Building and Construction OHS Accreditation Scheme

1. A successful tenderer must be accredited under the Australian Government Building and Construction OHS Accreditation Scheme (the Scheme) established by the *Building and Construction Industry Improvement Act 2005* (BCII Act) when entering into contracts for building work as defined under section 5 of the BCII Act and maintain accreditation under that Scheme while the building work is being carried out.
2. A successful tenderer must comply with all conditions of Scheme accreditation.

Essential requirement (tenderer is not the builder)

As stated above, accreditation is not a prerequisite for tendering for building work. However, contracts for building work that are indirectly funded by the Australian Government and are captured by the Scheme can only be entered into with accredited builders.

This is also the case where the tenderer is not the builder. For instance, if a funding recipient enters into a pre-commitment lease agreement with a developer or building owner and building work is required as part of that agreement.

This material is recommended for inclusion in the approach to market documentation for building work that is indirectly funded by the Australian Government where it is expected that the **tenderer will not be the builder**.

The Australian Government Building and Construction OHS Accreditation Scheme (the Scheme)

1. The Australian Government Building and Construction OHS Accreditation Scheme, established by the *Building and Construction Industry Improvement Act 2005* (BCII Act), applies to this project.
2. Subject to the exclusions specified in the Building and Construction Industry Improvement (Accreditation Scheme) Regulations 2005, the successful tenderer must not contract with a builder who will carry out building work as defined in section 5 of the BCII Act if the builder is not accredited under the Scheme at the time the contract for building work is entered into.
3. The successful tenderer must require that the builder contracted to undertake the building work remains accredited under the Scheme while carrying out the building work.

Schedule for inclusion in the REI or RFT documentation

A schedule should be included within the approach to market documentation and require potential tenderers to indicate if they are accredited under the Scheme, or to provide evidence of steps taken to obtain accreditation.

This material will assist the funding recipient to identify the tenderers accreditation status and determine if there will be any need to alert the OFSC of a need for urgent consideration of an application for accreditation.

The following schedule is recommended for inclusion:

Tender Schedule # – The Australian Government Building and Construction OHS Accreditation Scheme

Insert details of accreditation status, including the expiry date of accreditation or evidence that accreditation is being sought under the Australian Government Building and Construction OHS Accreditation Scheme.

4.2 Contracts

Contract clauses (contractor as builder)

The following clause should be included as an essential term in contracts for building work that is indirectly funded by the Australian Government and is captured by the Scheme.

This clause is only suitable where **the contracted person is the builder** and the head contract is valued \$3 million or more.

The clause ensures the builder maintains accreditation while carrying out the building work.

1. Subject to the exclusions specified in the Building and Construction Industry Improvement (Accreditation Scheme) Regulations 2005, the builder must maintain accreditation under the Australian Government Building and Construction OHS Accreditation Scheme (the Scheme) established by the *Building and Construction Industry Improvement Act 2005* (BCII Act) while building work (as defined in section 5 of the BCII Act) is carried out.
2. The builder must comply with all conditions of Scheme accreditation

Contract clauses (contractor is not builder)

The following clause should be included as an essential term in contracts for building work that is indirectly funded by the Australian Government and is captured by the Scheme.

This clause is only suitable where **the contracted person is *not* the builder** and the head contract is valued \$3 million or more.

The clause ensures the contracted party only engages a Scheme accredited builder and that the builder maintains accreditation while carrying out the building work.

1. Subject to the exclusions specified in the Building and Construction Industry Improvement (Accreditation Scheme) Regulations 2005, a contract must not be entered into with a builder who will carry out building work as defined in section 5 of the *Building and Construction Industry Improvement Act 2005* (BCII Act) if the builder is not accredited under the Australian Government Building and Construction OHS Accreditation Scheme (the Scheme) established by the BCII Act, at the time the contract for building work is entered into.
2. Any building contract must require that the builder remains accredited under the Scheme while carrying out the building work.

Further information

If you have any queries regarding the application of the Scheme or require further clarification or information on any element of the Scheme please contact the Office of the Federal Safety Commissioner.

FSC Assist Line 1800 652 500

Internet: fsc.gov.au

Email: ofsc@dewr.gov.au

Definitions

BCII Act means the *Building and Construction Industry Improvement Act 2005* as amended from time to time.

Builder, in relation to building work, means a person who carries out building work, but does not include subcontractors.

Building work is defined by the *Building and Construction Industry Improvement Act 2005* as:

- the construction, alteration, extension, restoration, repair, demolition or dismantling of buildings, structures or works that form, or are to form, part of land or land beneath water, whether or not the buildings, structures or works are permanent;
- the construction, alteration, extension, restoration, repair, demolition or dismantling of railways (not including rolling stock) or docks;
- the installation in any building, structure or works of fittings forming, or to form, part of land or land beneath water, including heating, lighting, air-conditioning, ventilation, power supply, drainage, sanitation, water supply, fire protection, security and communications systems;
- any operation that is part of, or is preparatory to, or is for rendering complete, work covered above, for example:
 - site clearance, earth-moving, excavation, tunnelling and boring;
 - the laying of foundations;
 - the erection, maintenance or dismantling of scaffolding;
 - the prefabrication of made-to-order components to form part of any building, structure or works, whether carried out on-site or off-site;
 - site restoration, landscaping and the provision of roadways and other access works;

but does **not** include any of the following:

- the drilling for, or extraction of, oil or natural gas;
- the extraction (whether by underground or surface working) of minerals, including tunnelling or boring, or constructing underground works, for that purpose;
- any work that is part of a project for:
 - the construction, repair or restoration of a single-dwelling house; or
 - the construction, repair or restoration of any building, structure or work associated with a single-dwelling house; or
 - the alteration or extension of a single-dwelling house, if it remains a single-dwelling house after the alteration or extension;

- any multi-dwelling development that consists of, or includes, the construction of at least five single-dwelling houses.

Client means the person for whom the building work is being carried out or who has requested the building work to be carried out.

Construction project means a project on which building work is being carried out.

Funding recipient means a person, not an individual, who obtains funding from the Australian Government through a grant, funding agreement or other programme.

Subcontractor means a builder who carries out some or all of the building work, under a contract with another builder who:

- carries out some of the building work; or
- arranges for the building work to be carried out.