



# Code of Practice

## on employment and outwork obligations for textile clothing and footwear suppliers 1998

### Model tender documentation and contract clauses

*Tender clauses are outlined in 1 to 8 inclusive. Essential terms of contract are included in 6 and 7 which are to be provided to Tenderers in invitation or request for tender.*

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#### The Code 1

Tenderers should pay particular attention to the NSW Government Code of Practice on Employment and Outwork Obligations for Textile Clothing and Footwear Suppliers ("*Code*") which is attached.

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#### Definitions 2

Tenderers should note that in this tender:

*Code* means the *NSW Government Code of Practice on employment and outwork obligations for textile clothing and footwear suppliers 1998*.

*Compliance with the Code* and *Complied with the Code* mean that:

- 1 Where goods applicable to the *Code* have been produced or are to be produced in New South Wales the Tenderer has acted in accordance with all of the requirements of the *Code*;
- 2 Where goods applicable to the *Code* have been produced or are to be produced outside New South Wales the Tenderer has acted and will continue to act in accordance with all the requirements of the equivalent to the *Code* in the place of manufacture. Where no equivalent to the *Code* exists in that place the Tenderer has complied and will continue to *Comply with the Code* to the extent possible under the laws of that place.

***Comply with the Code*** means that in respect of goods to be produced the Tenderer undertakes to act in accordance with clause 1 and clause 2 above.

**Contract**

Agreement for supply of textile articles, clothing, footwear or related goods and components, including the services necessary to be performed to supply or repair those goods.

**Contractor**

Person, corporation, supplier or their agent who contracts to manufacture or arrange the manufacture and/or the supply of textile articles, clothing, footwear or related goods and components.

**Principal**

Government agency that contracts for the supply of goods and services, including the State Contracts Control Board (or its delegate).

**Tenderers**

Parties submitting tenders.

**Tender**

Price, bid, quotation or proposal lodged in response to an invitation or request.

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## **Compliance with the Code and agreement to comply with the Code are essential requirements for a tender** 3

Past *Compliance with the Code* and the demonstrated ability of a Tenderer to *Comply with the Code* are essential conditions of this Tender. Accordingly lodgement of a Tender will itself be an acknowledgment, representation and agreement by the Tenderer that it is aware of the requirements of the *Code* and has *Complied with the Code* and will continue to *Comply with the Code* during the period of the Contract to be awarded if the Tenderer is successful.

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## **Tenderers must provide evidence of past compliance and how it will comply with the Code** 4

A Tender must include a statutory declaration by the Tenderer in the form attached (1) which requires the Tenderer to describe how it:

- 1 has *Complied with the Code* during the period 12 months preceding the Tender or the period since the Tenderer commenced business operations affected by the *Code* where that period is less than 12 months;
- 2 intends to *Comply with the Code* in performing the contract that would be awarded if its Tender is successful;
- 3 will satisfy the Principal that each of its nominated Subcontractors or Suppliers has and will comply with paragraphs 4.1 and 4.2 above.

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## **Tenders will be passed over for non compliance and failure to demonstrate commitment and ability to comply with Code** 5

The Principal at its absolute discretion may pass over any Tender where it forms the opinion that a Tenderer has not *Complied with the Code* and/or has not demonstrated that it can *Comply with the Code*.

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## Essential terms of contract

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Tenderers are advised and expressly acknowledge that the *Contract* to be awarded to the successful Tenderer includes the following essential terms:

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### Contract clauses

#### **Contractor to comply with Code C1**

In carrying out its obligations to the Principal the Contractor must *Comply with the Code* during the term of this *Contract*.

#### **Termination by Principal for failure of contractor, subcontractor or supplier to comply with Code C2**

- 1 Without prejudice to any other right to terminate the *Contract* that is expressly or impliedly provided for elsewhere, the Principal may, by giving written notice to the Contractor terminate the *Contract* in whole or part if in the opinion of the Principal:
  - (i) the Contractor fails, in any way, to *Comply with the Code* in carrying out its obligations under this *Contract*; and/or
  - (ii) any Subcontractor or Supplier of the Contractor fails to *Comply with the Code* in carrying out its obligations to the Contractor in any Subcontract.
- 2 Any such termination by the Principal under this clause is without prejudice to any other rights and remedies accruing to the Principal whether under the *Contract* or otherwise.

**Contractor to provide evidence  
of how it will comply with Code**

**C3**

- 1 The Contractor will provide to the Principal evidence of continued *Compliance with the Code* in a statutory declaration in the form attached (2) every 3 months during the term of the Contract.
- 2 To assist the Principal in forming an opinion under C2 above and so that the Government of NSW can monitor *Compliance with the Code* the Contractor will within 10 working days of a written request from the Principal provide to the Principal evidence of *Compliance with the Code* by the Contractor and the Contractor further agrees that:
  - (i) The Principal may, without incurring any liability to the Contractor, and without prejudice to the rights of the Principal under any other clause of this *Contract* have such access to the business records and premises of the Contractor as the Principal may require to form an opinion as to the Contractor's level of *Compliance with the Code*.
  - (ii) The Principal may provide its opinion as to the Contractor's *Compliance with the Code* or failure to *Comply with the Code* to the State Contracts Control Board, the Government of NSW, its agencies and any other person considered by the Principal to be relevant and the Contractor expressly agrees that any such notification may be considered and dealt with by such persons in accordance with the provisions of the *Code*.

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## Essential terms to be included in subcontracts by Contractor

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### Contractor responsible for ensuring subcontractor and supplier compliance

C4

If and to the extent that, in carrying on its obligations under this *Contract*, the Contractor is permitted by the Principal to subcontract in the manner envisaged by the *Code* the Contractor **must** include the following clauses in any subcontract or contract for supply:

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## Subcontract clauses

### Definitions

S1

*Code* means the *NSW Government Code of Practice on employment and outwork obligations for textile clothing and footwear suppliers 1998*

*Compliance with the Code* and *Complied with the Code* mean that:

- 1 Where goods applicable to the Code have been produced or are to be produced in NSW the Subcontractor or Supplier has acted in accordance with all of the requirements of the Code;
- 2 Where goods applicable to the Code have been produced or are to be produced outside NSW the Subcontractor or Supplier has acted and will continue to act in accordance with all the requirements of the equivalent to the Code in the place of manufacture. Where no equivalent to the Code exists in that place the Subcontractor or Supplier has complied and will continue to Comply with the Code to the extent possible under the laws of that place.

***Comply with the Code*** means that in respect of goods to be produced the Subcontractor undertakes to act in accordance with clause 1 and clause 2 above.

**Contract**

Agreement for supply of textile articles, clothing, footwear or related goods and components, including the services necessary to be performed to supply or repair those goods.

**Contractor**

Person, corporation, supplier or their agent who contracts to manufacture or arrange the manufacture and/or the supply of textile articles, clothing, footwear or related goods and components.

**Principal**

Government agency that contracts for the supply of goods and services, including the State Contracts Control Board (or its delegate).

**Subcontractor**

Provider or supplier of goods or services to a contractor, agent, or supplier.

**Supplier**

Service provider that agrees to manufacture or arrange to manufacture textile articles, clothing, footwear or related goods and components.

## Essential terms of subcontract

S2

The Subcontractor or Supplier expressly acknowledges that it and the Contractor without prejudice to any other provision of this Contract, are agreed that the following terms are essential terms of the Contract:

- 1 that in the carrying out of the Subcontractor's or Supplier's obligations to the Contractor, the Subcontractor or Supplier must Comply with the Code;
- 2 the Subcontractor is aware that the Contractor has contracted with the New South Wales Government that the Contractor and any Subcontractor or Supplier must comply with the Code;
- 3 that non Compliance with the Code by the Subcontractor or Supplier is a breach entitling the Contractor to terminate this Contract and that the Government may terminate its contract with the Contractor;
- 4 that non Compliance with the Code, whether by the Contractor or by the Subcontractor or Supplier, may have the effect of disqualifying the Contractor and/or the Subcontractor or Supplier from being able to obtain other Contracts from the New South Wales Government;

### **Subcontractor or supplier to provide contractor with evidence of compliance with Code**

- 5 the Subcontractor or Supplier will within 7 days of a written request from the Contractor provide to the Contractor evidence of Compliance with the Code by the Subcontractor or Supplier and further:
  - (i) the Subcontractor or Supplier agrees the Contractor may, without incurring any liability to the Contractor, and without prejudice to its or their rights under any other clause of this Contract have such access to the business records and premises of the Subcontractor or Supplier as it may

require to form an opinion as to any failure of the Subcontractor or Supplier to Comply with the Code;

- (ii) the Subcontractor or Supplier also acknowledges and agrees that the Contractor will, pursuant to the terms of its Contract with the Principal notify the Principal as to the Contractor's Compliance with the Code or failure to Comply with the Code and such information will be used by the Government of NSW, its agencies and the public. Any such notification will be considered in accordance with the provisions of the Code; and

**Termination by contractor for failure of subcontractor or supplier to comply with the Code**

- 6 without prejudice to any other right to terminate the Contract that is expressly or impliedly provided for elsewhere, the Contractor may, by giving written notice to the Subcontractor or Supplier terminate the Contract in whole or part if in the opinion of the Contractor:
- (i) the Subcontractor or Supplier fails, in any way, to Comply with the Code in carrying out its obligations under this Contract;
  - (ii) any approved Subcontractor or Supplier of the Contractor fails to Comply with the Code in carrying out its obligations to the Contractor in any approved subcontract or contract for supply;
  - (iii) any such termination by the Contractor under this clause is without prejudice to any other rights and remedies accruing to the Contractor whether under the Contract or otherwise.

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## Conformance with tender requirements 8

Tenders that do not meet all of the above requirements, including the annexure of the statutory declaration attached (1) will not be considered.

**Note:**

A standard statutory declaration in relation to:

- 1 *Statutory Declaration to be submitted with Tender*
- 2 *Statutory Declaration on Contract Work*

is included in the Implementation Guidelines to the Code.

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## Application of clauses 9

**These clauses are applicable in all contracts for the supply of textile articles, clothing, footwear and related goods and components to government agencies. The uses and meaning in these clauses do not affect the meaning and phrases used in another context elsewhere in the contract.**