

# Guidelines: Ethical Supplier Threshold

Office of the Chief Advisor – Procurement

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**Guidelines: Ethical Supplier Threshold**

v1.0 July 2019

**The State of Queensland (Department of Housing and Public Works) 2019**



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This document is intended as a guide only for the internal use and benefit of government agencies. It may not be relied on by any other party. It should be read in conjunction with the Queensland Procurement Policy, your agency's procurement policies and procedures, and any other relevant documents.

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## 1 Purpose and application

This Guideline outlines the manner in which the Queensland Government will implement the Ethical Supplier Threshold (the Threshold) in clause 2.3 of the Queensland Procurement Policy (QPP).

This Threshold applies to all budget sector agencies, statutory bodies, government owned corporations and special purpose vehicles from 1 August 2019.

## 2 Ethical Supplier Threshold

Under the QPP, the Queensland Government expects suppliers to comply with the Threshold. This means that a supplier has not:

- contravened a civil remedy provision of Chapter 2 or Chapter 3 of the *Fair Work Act 2009* (Cth), or committed an offence against the Fair Work Act
- contravened a civil remedy provision of Chapter 2, 3, 4, 5, or 7 of the *Industrial Relations Act 2016*, or committed an offence against the Industrial Relations Act, or failed to pay employment related levies, or other payments, established under Queensland legislation
- failed to make superannuation contributions on behalf of employees in accordance with law
- purported to treat employees as independent contractors, where they are not
- required persons who would otherwise be employees to provide an Australian Business Number so that they could be treated as independent contractors
- engaged persons on unpaid work trials or as unpaid interns, where they should be treated as employees
- entered into an arrangement for the provision of labour hire services with a person who is not licensed under the *Labour Hire Licensing Act 2017*, or a supplier who is an unlicensed provider under the Act
- paid employees wages below those provided for in an applicable modern award.

### 2.1 Application

The Threshold applies to all suppliers engaged by any Queensland procuring agency within the scope of the Threshold.

It applies to any conduct of a supplier engaged after 1 August 2019 (e.g. supplier engages in conduct on 3 August 2019 and a civil penalty is imposed on the supplier under the Fair Work Act on 3 November 2019).

The threshold about payment of wages below those provided for in an applicable modern award applies even if an employer is paying wages in accordance with a pre-reform agreement that is continued in operation by reason of Schedule 3 of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth).

### 2.2 Involvement in tender processes

Compliance with the Threshold is a mandatory criteria in order to be considered for invitation processes.

Invitation to tender documents are required to specify that compliance with the Threshold is a mandatory criteria and suppliers are to be required to state in tender responses whether they comply with the Threshold in each respect, and have complied with the Threshold in the previous five years, noting that the requirement is not retrospective, and the five years only commences after the start date of 1 August 2019.

If a supplier answers 'yes' to any of the Threshold criteria, then its offer is non-conforming and must be treated by the evaluation panel in accordance with the Invitation to Offer (ITO) conditions.

In addition, tender documents should give evaluation panels the right to contact regulatory bodies, such as Work Health Safety Queensland, the Queensland Building and Construction Commission, the Fair Work Commission and the Australian Building and Construction Commission, to verify compliance information about a supplier and to take the information received into account when assessing the tender.

A register of suppliers found not to be complying with the Threshold is maintained by the QPP Compliance Unit. Evaluation panels will be able to contact the QPP Compliance Unit for information before doing business with a supplier.

If inquiries with a regulator or the QPP Compliance Unit reveal that the supplier does not comply with the Threshold, then its offer is non-conforming and must be treated by the evaluation panel in accordance with the ITO conditions.

## **2.3 Contracts**

From 1 August 2019, all contracts are required to include an obligation on suppliers to comply with the Threshold during the contract term.

Contracts should include a right for procuring agencies to give a Show Cause Notice where they reasonably suspect that a supplier is not complying with the Threshold. The procuring agency will consider the representations made by the supplier when deciding whether to terminate the contract for failure to comply with the Threshold.

## **2.4 Reporting**

If a procuring agency identifies a supplier that does not comply with the Threshold, then the procuring agency will advise the QPP Compliance Unit, Office of the Chief Advisor – Procurement, Department of Housing and Public Works for inclusion in the register.

## Attachment – Example clauses

**Note – this example is based on the general goods and services category**

To be a conforming offer, the offer must satisfy all mandatory requirements, under clause 1.10. If the Threshold is made a mandatory criteria, an evaluation panel would have a discretion under clause 2.2 of the ITO Conditions to accept an offer from a supplier who did not meet the Threshold, although compelling reasons would be required to accept a non-conforming offer that did not meet a mandatory criteria.

The following amendments are required for this option:

**Amend clause 1.6 of the ITO as follows:**

*The following criteria are mandatory:*

- a) *The supplier must comply with the Ethical Supplier Threshold;*
- b) *[insert]*

**Add a new paragraph [2\*] into schedule A (and re-number the following paragraphs) as follows:**

2 *Ethical Supplier Threshold*

*It is a mandatory criteria that the supplier must comply with the Ethical Supplier Threshold. Please provide the following details about the supplier:*

*After 1 August 2019, has the supplier:*

- *contravened a civil remedy provision of Chapter 2 or Chapter 3 of the Fair Work Act 2009 (Cth), or committed an offence against the Fair Work Act?*
- *contravened a civil remedy provision of Chapter 2, 3, 4, 5, or 7 of the Industrial Relations Act 2016, or committed an offence against the Industrial Relations Act, or failed to pay employment related levies, or other payments, established under Queensland legislation?*
- *failed to make superannuation contributions on behalf of employees in accordance with law?*
- *purported to treat employees as independent contractors, where they are not?*
- *required persons who would otherwise be employees to provide an Australian Business Number so that they could be treated as independent contractors?*
- *engaged persons on unpaid work trials or as unpaid interns, where they should be treated as employees?*
- *entered into an arrangement for the provision of labour hire services with a person who is not licensed under the Labour Hire Licensing Act 2017, or a supplier who is an unlicensed provider under the Act?*
- *paid employees wages below those provided for in an applicable modern award?*

\* Add this at the beginning of the response schedules so that it is a simple matter to check if a supplier has to be considered further.

**Add a new paragraph to clause 2.2 in the ITO Conditions, as follows, to enable the panel to be able to make investigations with regulators about a supplier's compliance:**

- e) *obtain information about the supplier relevant to the evaluation criteria that may be held by any Government Department or Instrumentality and take the information into account in assessing the offer.*

**Add these new definitions into the Definitions and Interpretation document:**

***Ethical Supplier Threshold*** means the *Ethical Supplier Threshold* described in paragraph 2.3 of the *Queensland Procurement Policy*.

***Government Department or Instrumentality*** means any governmental regulator, including *Work Health Safety Queensland, the Queensland Building and Construction Commission, the Fair Work Commission and the Australian Building and Construction Commission*.