

Model Clauses for Shadow Economy – increasing the integrity of government procurement

The model clauses contained in this document can be included by Commonwealth entities in approach to market, contract or panel arrangement documentation, as relevant, to give effect to the requirements of the *Shadow economy – increasing the integrity of government procurement: Procurement connected policy guidelines* October 2024 (Shadow Economy Procurement Connected Policy).

Some of the model clauses have been drafted for the purposes of meeting the mandatory requirements for non-corporate Commonwealth entities set out in the Shadow Economy Procurement Connected Policy. The explanatory text in relation to these model clauses notes that they 'are required to be used by non-corporate Commonwealth entities' in certain circumstances. Other model clauses have been drafted to address optional matters set out in the Shadow Economy Procurement Connected Policy. The explanatory text in relation to these model clauses notes that they are 'optional clauses' and 'may be used'.

Commonwealth entities are able to modify and adapt these clauses to ensure consistency with their approach to market, contract or panel arrangement documentation, provided that the requirements of the Shadow Economy Procurement Connected Policy are met. Commonwealth entities should not otherwise modify and adapt the model clauses that have been drafted for the purposes of meeting the mandatory requirements set out in the Shadow Economy Procurement Connected Policy.

For a copy of and information about the Shadow Economy Procurement Connected Policy, including Frequently Asked Questions materials, go to: <https://treasury.gov.au/policy-topics/economy/shadow-economy/procurement-connected-policy>.

For information about how to apply for a Statement of Tax Record go to: <https://www.ato.gov.au/Business/Bus/Statement-of-tax-record/>

Commonwealth entities and tenderers should refer to the Shadow Economy Procurement Connected Policy and Frequently Asked Questions materials to ensure that all requirements of that policy are met and for further information on how the policy applies.

1. Approach to market clauses for a contract

Clauses substantially in the same form as clauses A, B, C and D below are required to be used by non-corporate Commonwealth entities for approaches to market which close on or after 1 October 2024 for procurements of all goods and/or services (including for construction services) valued at \$4 million or more (GST inclusive) in order to meet the requirements of the Shadow Economy Procurement Connected Policy.

Clauses A, B and C are designed to be used in approach to market terms and conditions. Clause D is designed to be included in a declaration that is required to be given by tenderers as part of their response.

The consequence of failing to comply with clause D.3 should also be set out in the approach to market. Clause D.4 is an example clause, setting out such a consequence. This should be reviewed to ensure it is consistent with the draft contract. Corporate Commonwealth entities and Commonwealth companies are encouraged to use these clauses in their approaches to market.

A. Definitions

Shadow Economy Procurement Connected Policy	means the <i>Shadow economy – increasing the integrity of government procurement. Procurement connected policy guidelines</i> October 2024 available at https://treasury.gov.au/publication/p2019-t369466 .
Satisfactory	means meets the conditions set out in Part 6.b of the Shadow Economy Procurement Connected Policy or, if the circumstances in Part 6.c of the Shadow Economy Procurement Connected Policy apply, the conditions set out in Part 8.b of the Shadow Economy Procurement Connected Policy.
Statement of Tax Record	means a statement of tax record issued by the Australian Taxation Office following an application made in accordance with the process set out at https://www.ato.gov.au/Business/Bus/Statement-of-tax-record/?page=1#Requesting an STR .
Valid	means valid in accordance with Part 7.e of the Shadow Economy Procurement Connected Policy.

Notes: These definitions address Parts 6.b, 7.e and 8.b of the Shadow Economy Procurement Connected Policy.

B. Conditions for participation

- B.1 The customer will exclude a response from further consideration if the tenderer does not meet the following conditions for participation:

- a. the tenderer holds all Valid and Satisfactory Statements of Tax Record required for its entity type; and
- b. the tenderer holds all Valid and Satisfactory Statements of Tax Record required for the entity type of any first tier subcontractor that it proposes, as part of its response, to engage to deliver goods or services as part of a contract resulting from a procurement with an estimated value of \$4 million or more (GST inclusive).

Note to tenderers: Tenderers should apply for a Statement of Tax Record and should ensure that their subcontractors apply for a Statement of Tax Record within sufficient time to meet these conditions for participation.

Depending on their entity type, some Tenderers may need to apply for multiple Statements of Tax Record. Further information about this is available at <https://www.ato.gov.au/business/bus/statement-of-tax-record/>.

Notes: This clause addresses Parts 6.a.i, 6.a.ii, 6.d, 6.e, 9.a, 13.a.i and 13.a.iv. of the Shadow Economy Procurement Connected Policy.

C. Minimum content and format requirements

- C.1 The customer will exclude a response from further consideration if the response does not include all Valid and Satisfactory Statements of Tax Record relevant to the tenderer's entity type.

Notes: This clause addresses Parts 6.a, 6.d, 6.e, 9.a, 13.a.i and 13.a.iv. of the Shadow Economy Procurement Connected Policy. Where a customer determines that a failure of a tenderer to comply with this minimum content and format requirement was an unintentional error of form and elects to provide the tenderer with an opportunity to correct that error then Part 6.j of the Shadow Economy Procurement Connected Policy will apply, including the requirement that any such error must be corrected within 10 business days of a request from the customer.

D. Tenderer declaration

- D.1 The tenderer represents that if it is the successful tenderer, it will ensure that any first tier subcontractor not included in its response that it subsequently engages to deliver goods or services as part of a contract resulting from this procurement with an estimated value of \$4 million or more (GST inclusive) provides it with all Valid and Satisfactory Statements of Tax Record required for its entity type at the time of entry into the subcontract.

Notes: Clause D.1 addresses Parts 6.a.iii and 13.a.iv of the Shadow Economy Procurement Connected Policy.

- D.2 The tenderer represents that if it is the successful tenderer and its Satisfactory Statements of Tax Record are or will be no longer be valid at the time any contract will be entered into with the customer, it will, if requested by the customer, provide the customer with renewed Valid and Satisfactory Statements of Tax Record prior to the contract being entered into.

- D.3 The tenderer acknowledges that if it is the successful tenderer it will be required to hold all Valid and Satisfactory Statements of Tax Record required for its entity type for the duration of the contract entered into with the customer and, on request by the customer, provide to the customer a copy of any such Statement of Tax Records.
- D.4 The tenderer acknowledges that if it is the successful tenderer and it does not comply with the requirements outlined in clause D.3 that it will be a breach of the contract.

Notes: Clauses D.2 to D.4 address Parts 6.d.ii, 6.f, 13.a.ii, 13.a.iii of the Shadow Economy Procurement Connected Policy.

Optional clauses for approach to market for a contract

The following clauses may be used by non-corporate Commonwealth entities, corporate Commonwealth entities and Commonwealth companies for open tender approaches to market which close on or after 1 October 2024 for procurements of all goods and/or services (including for construction services) valued at \$4 million or more (GST inclusive) for the purposes of the Shadow Economy Procurement Connected Policy. They can be included in a declaration that is required to be given by tenderers as part of their response.

These clauses can be included as part of mandatory clause D.3. If clause E.1.a is included then clause E.1.b should also be included and vice versa.

E. Tenderer declaration

- E.1 The tenderer acknowledges that if it is the successful tenderer it will be required to:
- a. ensure that any first tier subcontractor it engages to deliver goods or services as part of a contract resulting from this procurement with an estimated value of \$4 million or more (GST inclusive) holds all Valid and Satisfactory Statements of Tax Record required for its entity type for the duration of any subcontract in relation to those goods or services; and
 - b. retain a copy of all Statements of Tax Record held by any first tier subcontractor in accordance with clause E.1.a and, on request by the customer, provide to the customer a copy of any such Statement of Tax Records.

Notes: These clauses address Parts 6.a.ii, 6.a.iii, 6.f, 9 and 13.a.iv of the Shadow Economy Procurement Connected Policy.

2. Approach to market clauses for a panel arrangement

Clauses substantially in the same form as clauses F, G and H below are required to be used by non-corporate Commonwealth entities for any process to establish a panel arrangement whose approach to market closes from 1 October 2024 (or to refresh a panel arrangement established after that date) when the total value of orders under the arrangement is collectively estimated to be at \$4 million or more (GST inclusive) in order to meet the requirements of the Shadow Economy Procurement Connected Policy.

The consequences of failing to comply with clause I.2 should also be set out in the approach to market. Clause I.3 is an example clause, setting out such a consequence. This should be reviewed to ensure it is consistent with the draft deed of standing offer.

Corporate Commonwealth entities and Commonwealth companies are able to use these clauses in these circumstances.

Notes: These clauses address Part 11.a of the Shadow Economy Procurement Connected Policy.

F. Definitions

Shadow Economy Procurement Connected Policy	means the <i>Shadow economy – increasing the integrity of government procurement. Procurement connected policy guidelines October 2024</i> available at https://treasury.gov.au/publication/p2019-t369466 .
Satisfactory	means meets the conditions set out in Part 6.b of the Shadow Economy Procurement Connected Policy or, if the circumstances in Part 6.c of the Shadow Economy Procurement Connected Policy apply, the conditions set out in Part 8.b of the Shadow Economy Procurement Connected Policy.
Statement of Tax Record	means a statement of tax record issued by the Australian Taxation Office following an application made in accordance with the process set out at https://www.ato.gov.au/Business/Bus/Statement-of-tax-record/?page=1#Requesting_an_STR .
Valid	means valid in accordance with Part 7.e of the Shadow Economy Procurement Connected Policy.

Notes: These definitions address Parts 6.b, 7.e and 8.b of the Shadow Economy Procurement Connected Policy.

G. Condition for participation

- G.1 The customer will exclude a response from further consideration if the tenderer does not meet the following condition for participation:
- a. the tenderer holds all Valid and Satisfactory Statements of Tax Record required for its entity type.

Note to tenderers: Tenderers should apply for a Statement of Tax Record within sufficient time to meet this condition for participation.

Depending on their entity type, some Tenderers may need to apply for multiple Statements of Tax Record. Further information about this is available at <https://www.ato.gov.au/business/bus/statement-of-tax-record/>.

Notes: This clause addresses Parts 6.a.i, 6.a.ii, 6.d, 6.e and 13.a.i of the Shadow Economy Procurement Connected Policy.

H. Minimum content and format requirements

- H.1 The customer will exclude a response from further consideration if the response does not include all Valid and Satisfactory Statements of Tax Record required for the tenderer's entity type.

Notes: This clause addresses Parts 6.a.i, 6.a.ii, 6.d, 6.e and 13.a.i of the Shadow Economy Procurement Connected Policy. Where a customer determines that a failure of a tenderer to comply with this minimum content and format requirement was an unintentional error of form and elects to provide the tenderer with an opportunity to correct that error then Part 6.j of the Shadow Economy Procurement Connected Policy will apply, including the requirement that any such error must be corrected within 10 business days of a request from the customer.

I. Tenderer declaration

- I.1 The tenderer represents that if it is successful and its Satisfactory Statements of Tax Record are or will be no longer Valid at the time any deed of standing offer will be entered into with the customer, it will, if requested by the customer, provide the customer with a renewed Valid and Satisfactory Statement of Tax Record prior to the deed of standing offer being entered into.
- I.2 The tenderer acknowledges that if it is successful it will be required to hold all Valid and Satisfactory Statements of Tax Record required for its entity type for the duration of any standing offer arrangement entered into with the customer and, on request by the customer, provide to the customer a copy of any such Statement of Tax Record.
- I.3 The tenderer acknowledges that if it is successful and it does not comply with the requirements outlined in clause I.2 that it will be a breach of the deed of standing offer.

Notes: These clauses address Parts 6.d.ii, 6.f and 13.a.ii and 13.a.iii of the Shadow Economy Procurement Connected Policy.

Optional clauses for approach to market for a panel arrangement

The following clauses may be used by non-corporate Commonwealth entities, corporate Commonwealth entities and Commonwealth companies for any process to establish a panel arrangement whose approach to market closes on or after 1 October 2024 (or to refresh a panel arrangement established after that date) when the total value of orders under the arrangement is collectively estimated to be at \$4 million or more (GST inclusive) for the purposes of the Shadow Economy Procurement Connected Policy. They can be included in a declaration that is required to be given by tenderers as part of their response.

These clauses can be included as part of mandatory clause I.2.

If clause J.1.a is included then clause J.1.b should also be included and vice versa.

J. Tenderer declaration

- J.1 The tenderer acknowledges that if it is successful it will be required to:
- a. ensure that any first tier subcontractor it engages to deliver goods or services as part of a contract resulting from this procurement with an estimated value of \$4 million or more (GST inclusive) holds all Valid and Satisfactory Statements of Tax Record required for its entity type for the duration of any subcontract in relation to those goods or services; and
 - b. retain a copy of all Statements of Tax Records held by any first tier subcontractor in accordance with clause J.1.a and, on request by the customer, provide to the customer a copy of any such Statement of Tax Record.

Notes: These clauses address Parts 6.a.ii, 6.a.iii, 6.f, 9 and 13.a.iv of the Shadow Economy Procurement Connected Policy.

3. Contract clauses

A clause substantially in the same form as clause K below is required to be used by non-corporate Commonwealth entities for contracts entered into following an approach to market which closes on or after 1 October 2024 for goods and/or services (including for construction services) valued at \$4 million or more (GST inclusive) in order to meet the requirements of the Shadow Economy Procurement Connected Policy.

Clause K.2 is only required to be included to the extent the supplier is a partnership.

The consequences of failing to comply with clauses K.3 and K.4 should also be set out in the approach to market. Clause K.5 is an example clause, setting out the consequences of the failure to comply with clauses K.3 and K.4. It should be amended as appropriate to link with the other clauses in the contract that deal with default, rectification and termination.

Corporate Commonwealth entities and Commonwealth companies are encouraged to use these clauses for contracts entered into following their approaches to market.

K. Shadow economy

Shadow Economy Procurement Connected Policy means the *Shadow economy – increasing the integrity of government procurement. Procurement connected policy guidelines October 2024* available at <https://treasury.gov.au/publication/p2019-t369466>.

Satisfactory means meets the conditions set out in Part 6.b of the Shadow Economy Procurement Connected Policy or, if the circumstances in Part 6.c of the Shadow Economy Procurement Connected Policy apply, the conditions set out in Part 8.b of the Shadow Economy Procurement Connected Policy.

Statement of Tax Record means a statement of tax record issued by the Australian Taxation Office following an application made in accordance with the process set out at https://www.ato.gov.au/Business/Bus/Statement-of-tax-record/?page=1#Requesting_an_STR.

Valid means valid in accordance with Part 7.e of the Shadow Economy Procurement Connected Policy.

K.1 The supplier warrants in relation to any first tier Subcontractor that delivers goods and/or services as part of a contract resulting from a procurement with an estimated value of \$4 million or more, (GST inclusive) that the supplier either:

- a. at the time of responding to the approach to market that resulted in the entry of this contract, obtained all Valid and Satisfactory Statements of Tax

Record required for the Subcontractor's entity type under Part 10 of the Shadow Economy Procurement Connected Policy; or

- b. obtained at the time of entry into the subcontract, all Valid and Satisfactory Statements of Tax Record required for the Subcontractor's entity type under Part 10 of the Shadow Economy Procurement Connected Policy.

The supplier must, on request by the customer, provide to the customer a copy of any such Statement of Tax Record.

- K.2 If the supplier is a partnership, the supplier will ensure that if a new partner joins the partnership that a Valid and Satisfactory Statement of Tax Record for the partner is provided to the customer as soon as possible after they become a partner to the partnership.
- K.3 The supplier warrants that at the contract start date it holds all Valid and Satisfactory Statements of Tax Record required for its entity type under Part 10 of the Shadow Economy Procurement Connected Policy.
- K.4 The supplier must hold all Valid and Satisfactory Statements of Tax Record required for its entity type under Part 10 of the Shadow Economy Procurement Connected Policy at all times during the contract term (including any extension) and, on request by the customer, provide to the customer a copy of any such Statement of Tax Record.
- K.5 Without limiting its other rights under this contract or at law, any failure by the supplier to comply with the requirements outlined in clauses K.4 and K.5 will be a breach of this contract.

Notes: These clauses address Parts 6.a.ii, 6.a.iii, 6.d.ii, 6.f, 7.e, 8.b, 9, 10.b, 13.a.ii, 13.a.iii and 13.a.iv of the Shadow Economy Procurement Connected Policy.

Optional clauses

The following clauses may be used, together with the above mandatory clauses, by non-corporate Commonwealth entities, corporate Commonwealth entities and Commonwealth companies for contracts following an open tender approach to market which closes on or after 1 October 2024 for a procurement of goods and/or services (including for construction services) valued at \$4 million or more (GST inclusive) for the purposes of the Shadow Economy Procurement Connected Policy.

If clauses E.1.a and E.1.b of the approach to market clauses are included in the approach to market then clauses L.6 and L.7 should also be included in the subsequent contract, together with the above mandatory clauses.

L. Shadow Economy

- L.6 The supplier must ensure that any first tier subcontractor engaged under this contract that delivers goods and/or services with an estimated value of \$4

million or more (GST inclusive) holds all Valid and Satisfactory Statements of Tax Record required for its entity type under Part 10 of the Shadow Economy Procurement Connected Policy at all times during the term of the relevant subcontract.

- L.7 The supplier must retain a copy of any Statement of Tax Record held by any first tier subcontractor in accordance with clause L.7 and must, on request by the customer, provide to the customer a copy of any such Statement of Tax Record.

Notes: These clauses address Parts 6.a.iii, 6.f, 9 and 13.a.iv of the Shadow Economy Procurement Connected Policy.

4. Panel arrangement clauses

A clause substantially in the same form as clause M below is required to be used by non-corporate Commonwealth entities for contracts entered into under a panel arrangement whose approach to market closes on or after 1 October 2024 (or under a panel arrangement established after that date that is subsequently refreshed) where the supplier has engaged a first tier subcontractor to deliver goods and/or services (including construction services) as part of the contract resulting from a procurement with an estimated value of \$4 million or more (GST inclusive) in order to meet the requirements of the Shadow Economy Procurement Connected Policy. Corporate Commonwealth entities and Commonwealth companies are encouraged to use these clauses in these circumstances.

Notes: These clauses address Part 11.a of the Shadow Economy Procurement Connected Policy.

M. Shadow economy

Shadow Economy Procurement Connected Policy	means the <i>Shadow economy – increasing the integrity of government procurement: Procurement connected policy guidelines XXX 2024</i> available at https://treasury.gov.au/publication/p2019-t369466 .
Satisfactory	means meets the conditions set out in Part 6.b of the Shadow Economy Procurement Connected Policy or, if the circumstances in Part 6.c of the Shadow Economy Procurement Connected Policy apply, the conditions set out in Part 8.b of the Shadow Economy Procurement Connected Policy.
Statement of Tax Record	means a statement of tax record issued by the Australian Taxation Office following an application made in accordance with the process set out at https://www.ato.gov.au/Business/Bus/Statement-of-tax-record/?page=1#Requesting_an_STR .
Valid	means valid in accordance with Part 7.e of the Shadow Economy Procurement Connected Policy.

M.1 The supplier warrants in relation to any first tier Subcontractor it has engaged to deliver goods and/or services as part of this contract resulting from a procurement with an estimated value of \$4 million or more (GST inclusive) that, at the time of entry into the subcontract, the supplier obtained all Valid and Satisfactory Statements of Tax Record required for the Subcontractor's entity type under Part 10 of the Shadow Economy Procurement Connected Policy. The supplier must, on request by the customer, provide to the customer a copy of any such Statement of Tax Record.

Notes: These clauses address Parts 6.a.iii, 6.b, 6.f, 7.e, 8.b, 9 and 13.a.iv of the Shadow Economy Procurement Connected Policy.

A clause substantially in the same form as clause N below is required to be used by non-corporate Commonwealth entities for deeds of standing offer with a supplier that is a partnership entered into under a panel arrangement whose approach to market closes on or after 1 October 2024 (or under a panel arrangement established after that date that is subsequently refreshed) when the total value of orders under the arrangement is collectively estimated to be \$4 million or more (GST inclusive) in order to meet the requirements of the Shadow Economy Procurement Connected Policy.

The consequences of failing to comply with clause N.2 and N.3 should also be set out in the contract. Clause N.4 is an example clause. It should be amended as appropriate to link with the other clauses in the deed of standing offer that deal with default, rectification and termination.

Corporate Commonwealth entities and Commonwealth companies are encouraged to use these clauses in these circumstances.

N. Shadow economy

Shadow Economy Procurement Connected Policy	means the <i>Shadow economy – increasing the integrity of government procurement. Procurement connected policy guidelines October 2024</i> available at https://treasury.gov.au/publication/p2019-t369466 .
Satisfactory	means meets the conditions set out in Part 6.b of the Shadow Economy Procurement Connected Policy or, if the circumstances in Part 6.c of the Shadow Economy Procurement Connected Policy apply, the conditions set out in Part 8.b of the Shadow Economy Procurement Connected Policy.
Statement of Tax Record	means a statement of tax record issued by the Australian Taxation Office following an application made in accordance with the process set out at https://www.ato.gov.au/Business/Bus/Statement-of-tax-record/?page=1#Requesting_an_STR .
Valid	means valid in accordance with Part 7.e of the Shadow Economy Procurement Connected Policy.

N.1 If the supplier is a partnership, the supplier will ensure that if a new partner joins the partnership that a Valid and Satisfactory Statement of Tax Record for the

partner is provided to the customer as soon as possible after they become a partner to the partnership.

- N.2 The supplier warrants that at the commencement of the deed of standing offer it holds all Valid and Satisfactory Statements of Tax Record required for its entity type under Part 10 of the Shadow Economy Procurement Connected Policy.
- N.3 The supplier must hold all Valid and Satisfactory Statements of Tax Record required for its entity type under Part 10 of the Shadow Economy Procurement Connected Policy at all times during the term of the standing offer arrangement (including any extension) and, on request by the customer, provide to the customer a copy of any such Statement of Tax Record.
- N.4 Without limiting its other rights under this standing offer arrangement or at law, any failure by the supplier to comply with the requirements outlined in clauses N.2 and N.3 will be a breach of the deed of standing offer.

Notes: These clauses address Parts 6.b, 7.e, 8.b 10.b, and 13.a.ii of the Shadow Economy Procurement Connected Policy.

Optional clauses

The following clauses may be used, together with the above mandatory clause, by non-corporate Commonwealth entities, corporate Commonwealth entities and Commonwealth companies for deeds of standing offer whose approach to market closes on or after 1 October 2024 (or under a panel arrangement established after that date that is subsequently refreshed) when the total value of orders under the arrangement is collectively estimated to be \$4 million or more (GST inclusive) for the purposes of the Shadow Economy Procurement Connected Policy.

If clauses J.1.a and J.1.b of the approach to market clauses are included in the approach to market then clauses O.6 and O.7 should also be included in the subsequent deed of standing offer, together with the above mandatory clauses.

O. Shadow Economy

- O.6 The supplier must ensure that any first tier Subcontractor engaged to deliver goods and/or services as part of a contract resulting from a procurement with an estimated value of \$4 million or more (GST inclusive) holds all Valid and Satisfactory Statements of Tax Record required for its entity type under Part 10 of the Shadow Economy Procurement Connected Policy at all times during the term of the relevant subcontract.
- O.7 The supplier must retain a copy of any Statements of Tax Record held by any first tier Subcontractor in accordance with clause O.6 and must, on request by the customer, provide to the customer a copy of any such Statement of Tax Record.

Notes: These clauses address Parts 6.a.iii, 6.f, 9 and 13.a.iv of the Shadow Economy Procurement Connected Policy.
