

**Model Clauses for**

**Strategic Local Jobs First Projects with the Major Projects Skills Guarantee**

**Under the Local Jobs First Act 2003**

For further information or assistance on the Local Jobs First Policy and processes please contact:

Office of Industry Participation and Jobs

Department of Economic Development, Jobs, Transport & Resources

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Approach to Market Model Clauses (Strategic Projects with MPSG)

***Drafting note****:*

*The following draft clauses are required for inclusion in approaches to market to inform bidders of the Local Jobs First requirements.*

Local Jobs First Policy

* 1. Overview
		+ 1. The Local Jobs First Policy (**LJF Policy**) issued under the *Local Jobs First Act 2003* supports businesses and workers by ensuring that small and medium size enterprises are given a full and fair opportunity to compete for both large and small government contracts, helping to create job opportunities, including for apprentices, trainees and cadets. The LJF Policy is implemented by Victorian Government departments and agencies to help drive local industry development.
			2. The LJF Policy comprises the Victorian Industry Participation Policy (**VIPP**) and the Major Projects Skills Guarantee (**MPSG**).
				1. VIPP seeks to ensure that small and medium-sized business are given full and fair opportunity to compete for government contracts.
				2. MPSG is a policy that provides job opportunities for apprentices, trainees and cadets on high value construction projects.
			3. Local Jobs First applicable projects include but are not limited to:
				1. purchase of goods and/or services, regardless of the method of procurement (including individual project tenders, State Purchase Contracts, supplier panels);
				2. construction projects (incorporating design and construction phases and all related elements), including individual projects, Public Private Partnerships, Alliance Contracts, Market Led Proposals, supplier panels and auctions; and
				3. grant and loan projects, including grant agreements or loan arrangements to private, non-government and local government organisations for a single or group of projects.
			4. The LJF Policy applies the full range of Victorian Government projects that meet financial thresholds. A Local Jobs First Strategic Project is a project with a budget of $50 million or more or any other project declared by the Minister to be a strategic project under the *Local Jobs First Act 2003*. Individual project agreements for amounts less than $50 million may form part of a strategic project.
			5. This [Request for Tender/Expression of Interest/Request for Proposal] is for, or part of, a strategic project with MPSG. The MPSG applies to construction projects with a budget of $20m or more.

For further information, bidders should refer to the LJF Policy and Guidelines which can be found at www.localjobsfirst.vic.gov.au.

* 1. Definitions

**Agency** means [insert the name of the department or public body issuing this approach to market document]

**Apprentice** means a person whom an employer has undertaken to train under a Training Contract.

**Cadets** means those persons enrolled in a recognised tertiary level organisation and who receive structured learning opportunities as part of their engagement to a Local Jobs First project (e.g. cadets in architecture, quantity surveying, or engineering) but which is not under a Training Contract.

**Contestable Items** means goods or services in a procurement process where there are competitive international and local suppliers. 'Competitive' means the suppliers are able to offer comparable goods or services that meet the specifications provided in this [Request for Tender / Expression of Interest / Request for Proposal]. Contestable items can be goods or services at any stage of a project, including maintenance.

**Department** has the meaning given in s 3(1) the *Local Jobs First Act 2003*.

**Guidelines** means the Local Jobs First Supplier Guidelines, available at www.localjobsfirst.vic.gov.au.

**Industry Capability Network (Victoria)** means Industry Capability Network (Victoria) Limited ACN 007 058 120 of Level 11, 10 Queens Road, Melbourne VIC 3004.

**Local Content** has the meaning given in s 3(1) of the *Local Jobs First Act 2003*.

**LJF Policy** means the policy made under s 4 of the *Local Jobs First Act 2003*.

**Project** means the work as described in this [Request for Tender/Expression of Interest/Request for Proposal].

**Project Total Estimated Labour Hours** means the total estimated labour hours for the Project under the total value of the contract as determined by the Deemed Hours Formula. (See below).

**Trainee** means a person (other than an Apprentice) employed under a Training Contract.

**Training Contract** has the meaning given in the *Education and Training Reform Act 2006*.

* 1. Contestable Items
		+ 1. The LJF Policy requires that government agencies consider Local Content and job commitments, particularly in respect of Contestable Items, as a key criterion in tender evaluation and other relevant procurement processes.
			2. Consideration should be given to contestable and non-contestable items in establishing local content commitments.
			3. The Contestable Items within the scope of this invitation are included in the LIDP template.
	2. Requirements for Standard Projects with MPSG

The requirements for this tender are:

* + - 1. ***local content requirement***
			2. ***10 per cent of the total number of estimated hours of work on the Project be undertaken by apprentices, trainees or cadets.***
			3. ***[XXX]***

***Drafting notes***

*The Minister may determine other requirements.*

*Set out here the specific local and other content requirements for this project, which may include achieving minimum Local Content percentage requirements to demonstrate other industry outcomes such as skills development, etc.*

*Note that the Agency Guidelines provide that an agency can determine that a Local Industry Development Plan is not necessary if certain criteria in Guideline Step 3.2(7) are met.*

* 1. Local Industry Development Plan
		+ 1. All bidders must prepare a Local Industry Development Plan (**LIDP**) in accordance with the LJF Policy and Guidelines.
			2. The assessment of the tender or proposal will consider whether and how bidders comply with the LJF Policy. This is done through assessment of bidders' LIDPs.
			3. A LIDP must be submitted to the Industry Capability Network (Victoria) and will be made available to the Agency and the Department.
			4. A LIDP must:
				1. specify how the requirements of the LJF Policy will be met;
				2. identify total content and Local Content for the Project; identify total and local jobs for the Project;
				3. identify how any other specific requirements determined by the Minister as applying to the project will be met; and
				4. include any other matter required to be included in the Plan by the LJF Policy
			5. In developing the LIDP, bidders must consult in good faith with Industry Capability Network (Victoria).
			6. The LIDP template attached to this invitation must be completed and submitted through Industry Capability Network (Victoria) Victorian Local Jobs First Management Centre at icnvic.org.au/VMC.
			7. To demonstrate that the LIDP submitted is completed correctly and includes all required information, bidders must obtain an acknowledgement letter of their LIDP from Industry Capability Network (Victoria). Contact details for ICN are provided below. A tender or proposal cannot be evaluated if an acknowledgement is not supplied. An Agency cannot accept a tender, proposal or other submission that does not include a compliant LIDP.

***Drafting notes***

*For further information refer to the LJF Agency Guidelines Step 2 - Setting Local content requirements for strategic projects.*

* 1. Use of the Local Industry Development Plan
		+ 1. Any post-bid changes in a bidder’s LIDP commitments will require further Industry Capability Network (Victoria) assessment and an acknowledgement letter. Bidders should refer to the Guidelines for further details.
			2. The contents of a successful bidder’s final LIDP will be included in the agreement to be entered into between that bidder and the Agency. Further, the bidder’s LIDP information will be recorded centrally for Industry Capability Network (Victoria) certification of the LIDP outcomes reported.
	2. Weighting of Commitments to Local Jobs First Policy
		+ 1. In evaluating a tender or proposal for an agreement for a project, the Agency will give weighting to the following parts in the specified amounts:
				1. 10 per cent for industry development, including commitments made in relation to the VIPP; and
				2. 10 per cent for job outcomes, including, if applicable, job outcomes provided by the MPSG.
			2. The commitments of a bidder's LIDP will be allocated a minimum 10 per cent weighting for industry development (including commitments made in relation to the VIPP), and 10 per cent weighting for job outcomes (including, if applicable, job outcomes provided by the MSPG), as part of the tender evaluation process.

***Drafting notes***

*1. If a figure greater than 10 per cent is to be allocated for either of the weightings of commitments to the LJF Policy component of the bid evaluation process, this figure should be inserted into the clause.*

*2. Agencies preparing Approach to Market documents for construction contracts should refer* [*https://www.dtf.vic.gov.au/public-construction-policy-and-resources/practitioners-toolkit*](https://www.dtf.vic.gov.au/public-construction-policy-and-resources/practitioners-toolkit) *for other requirements or selection criteria that may apply.*

* 1. Further information and assistance
		+ 1. The Department has prepared the Guidelines for Suppliers on the application of the LJF Policy to projects.
			2. Industry Capability Network (Victoria) provides free services to assist bidders in identifying and developing the above information. Bidders are advised that Industry Capability Network (Victoria) will be available to assist them in implementing the LJF Policy. For further information or assistance, bidders can contact Industry Capability Network (Victoria):

Level 11
10 Queens Road
Melbourne VIC 3004
(03) 9864 6700
<https://icn.org.au/vic_home>

* + - 1. Bidders must attend any briefing provided by the Agency on the LJF Policy.
	1. Deemed Hours Formula
		+ 1. The bidder must acknowledge that it has read and understood the LJF Policy and Guidelines as part of its response to this invitation.
			2. The LIDP must contain sufficient information to demonstrate to the reasonable satisfaction of the Agency that a minimum of 10 per cent of the Project Total Estimated Labour Hours will be undertaken by Apprentices, Trainees, or Cadets (either separately or in any combination).
			3. For the purposes of clause 9(b) the requisite 10 per cent of the Project Total Estimated Labour Hours is determined by the Deemed Hours Formula, and this calculation must be included in the LIDP.
			4. The Deemed Hours Formula must be applied for calculating the Project Total Estimated Labour Hours. Bidders should refer to the Guidelines for further details.
			5. Where the agreement includes significant maintenance or ongoing service components as part of the work under the agreement, the value of the maintenance or ongoing service components will be included as part of the overall agreement value for the purposes of calculating the Project Total Estimated Labour Hours to determine whether the bidder's LIDP satisfies the minimum 10 per cent requirement.

Contract Model Clauses

***Drafting Note***

*1. These model clauses are designed to form a separate Schedule to the project agreement, and the project agreement should include a clause to stipulate that the Local Jobs First Schedule is operative and forms part of the Agreement.*

*2 Include a clause in the project agreement in the appropriate place.*

***Example:*** *'Schedule X forms part of the terms and conditions of this Agreement/Contract.' The Supplier in performing its obligations under this Agreement/Contract must comply with Schedule X.*

*3. The content of this Schedule is drafted in generic language to minimise the need to align it with the language of the project agreement. Care must still be taken to ensure that any clause of the project agreement is not inconsistent which may render a clause of this Schedule inoperative by an order of precedence interpretation clause.*

*4. Remove all drafting notes from the final project agreement.*

Schedule X - Local Jobs First

* 1. Definitions

**In this Schedule:**

**Agency** means the organisation with which the Supplier has entered into this Agreement.

**Agreement** means this project agreement.

***Drafting Note (optional)***

*If the project agreement is not referred to as 'Agreement', replace 'Agreement' with the word or phrase used to describe the project agreement. Ensure that 'Agreement' is then replaced throughout this Schedule.*

**Apprentice** means a person whom an employer has undertaken to train under a Training Contract.

**Cadets** means those persons enrolled in a recognised tertiary level organisation and who receive structured learning opportunities as part of their engagement to a Local Jobs First project (e.g. cadets in architecture, quantity surveying, or engineering) but which is not under a Training Contract.

**Contract Manager** means the person (however described) appointed by the Agency as its representative for all communication and liaison with the Supplier for the purposes of this Agreement.

**Department** has the meaning given in s 3(1) the *Local Jobs First Act 2003*.

**Guidelines** means Local Jobs First Supplier Guidelines, available at www.localjobsfirst.vic.gov.au.

**ICN Analytics** is a cloud based secure online platform that enables the collection, analysis and reporting of local content and jobs data, including supply chain monitoring and reporting.

**Industry Capability Network** (**Victoria**) means Industry Capability Network (Victoria) Limited of Level 11, 10 Queens Road, Melbourne VIC 3004 ACN 007 058 120.

**LIDP** means the Local Industry Development Plan set out in Attachment 1 to this Schedule.

**LIDP Monitoring Table** means the table included at Attachment 2 to this Schedule.

**Local Content** has the meaning given in s 3(1) of the *Local Jobs First Act 2003*.

**Local Jobs First Commissioner** means the person appointed under s 12 of the *Local Jobs First Act 2003*.

**Local Jobs First Policy** means the policy of the Victorian Government made under s 4 of the *Local Jobs First Act 2003*.

**Notice** means a notice given, delivered or served in accordance with this Agreement.

**Practical Completion** means:

* + - 1. Practical Completion as defined in the main body of this Agreement; or
			2. If not defined in the main body of this Agreement it means when the Supplier has completed the delivery of the goods and/or services to be provided under this Agreement (excluding administrative or regulatory obligations remaining to be fulfilled); or
			3. In any case, such other reporting dates for the purposes of clause 2.3(d) of this Schedule as notified by the Agency.

**Responsible Minister** means the Minister with responsibility for administering the *Local Jobs First Act 2003*.

**Supplier** means the person or entity (however described) providing the goods and services under this Agreement.

***Drafting Note (optional)***

*Replace with the relevant word or phrase in the Contract Precedent. Ensure that 'Supplier' is then replaced throughout this Schedule.*

**Trainee** means a person (other than an Apprentice) employed under a Training Contract.

**Training Contract** has the meaning given in the *Education and Training Reform Act 2006*.

* 1. Local Jobs First Policy
		1. Local Industry Development Plan
			1. The Supplier must, in performing its obligations under this Agreement:
				1. comply with the LIDP;
				2. perform all obligations required to be performed under the LIDP by the due date for performance; and
				3. comply with the Local Jobs First Policy.
			2. The Supplier acknowledges and agrees that its obligations as set out in the LIDP apply during the term of this Agreement, any extensions to the term and until all of its Reporting obligations as set out in clause 2.3 of this Schedule are fulfilled.
			3. The Supplier's failure to comply with this clause 2.1 will constitute a material breach of this Agreement.

***Drafting Note***

The Agency Guidelines state that an agency must determine the consequences that will apply if contractors do not deliver the local content and jobs outcomes committed to in their LIDP. Agencies may choose to build into their contracts financial and or other disincentives that apply if LJF obligations are not met. (See Part 6 'Compliance')

* + 1. Revised LIDP
			1. If at any time a variation to this Agreement is proposed which involves or effects a change in the nature of any LIDP commitments, the Supplier must prepare a revised LIDP in collaboration with and certified by Industry Capability Network (Victoria) (**Revised LIDP**).
			2. When requested by the Contract Manager, the Supplier must provide the Revised LIDP to the Agency.
			3. The Revised LIDP must be agreed by the parties before any variation to the Agreement can take effect unless the parties agree that a Revised LIDP is unnecessary.
			4. Once the Revised LIDP is agreed by the parties, the Revised LIDP replaces the LIDP and forms part of this Agreement.
		2. Reporting
			1. The Supplier must prepare and maintain records demonstrating its compliance with the LIDP.
			2. The Supplier must provide a six monthly report demonstrating its progress towards implementing the LIDP in the form of the LIDP Monitoring Table.
			3. If the Agreement is for a project valued at $20 million or more, the Supplier must use the ICN Analytics for LJF monitoring and reporting.
			4. Prior to or at Practical Completion pursuant to clause 1 of this Schedule, the Supplier must provide to the Contract Manager:
				1. the LIDP Monitoring Table identifying LIDP commitments and actual achievements. The LIDP Monitoring Table must identify and explain any departures from the LIDP Commitments and the aggregated outcomes as reported in the LIDP Monitoring Table; and
				2. a Statutory Declaration in the form set out in Attachment 3 to this Schedule to confirm that the information contained in the LIDP Monitoring Table is true and accurate. The Statutory Declaration must be made by a director of the Supplier or the Supplier's Chief Executive Officer or Chief Financial Officer.
			5. At the request of the Contract Manager, the Supplier must provide further information or explanation of any differences between expected and achieved LIDP outcomes.
			6. The reporting obligations in this Schedule are in addition to and do not derogate from any other reporting obligations as set out in this Agreement.
		3. Verification of Supplier's compliance with LIDP Plan
			1. The Supplier agrees that each of the Agency and the Department will have the right to inspect its records in order to verify compliance with the LIDP.
			2. The Supplier must:
				1. permit the Contract Manager, an accountant or auditor on behalf of the Agency or the Department, or any other person authorised by the Agency or the Department, from time to time during ordinary business hours and upon Notice, to inspect and verify all records maintained by the Supplier for the purposes of this Agreement;
				2. permit the Agency or the Department from time to time to undertake a review of the Supplier's performance in accordance with the LIDP; and
				3. ensure that its employees, agents and subcontractors give all reasonable assistance to any person authorised by the Agency or the Department to undertake such audit or inspection.
			3. The Supplier acknowledges and agrees that the Agency, the Department, the Agency's and Department's duly authorised representatives and Industry Capability Network (Victoria) are authorised to obtain information from any relevant persons, firms or corporations, including third parties, regarding the Supplier's compliance with the LIDP.
			4. The obligations set out in this clause 2.4 are in addition to and do not derogate from any other obligation under this Agreement.
		4. Use of information

The Supplier acknowledges and agrees that:

* + - 1. Industry Capability Network (Victoria) will assess the Supplier's performance against the LIDP;
			2. the statistical information contained in the LIDP and the measures of the Supplier's compliance with the LIDP as reported in the LIDP Monitoring Table will be:
				1. included in the Agency's report of operations under Part 7 of the *Financial Management Act 1994* in respect of the Agency's compliance with the Local Jobs First Policy in the financial year to which the report of operations relates;
				2. provided to the Responsible Minister for inclusion in the Responsible Minister's report to the Parliament for each financial year on the compliance and performance of the LIDP during that year; and
				3. may be disclosed in the circumstances authorised or permitted under the terms of this Agreement or as otherwise required by Law.
	1. Subcontracting
		+ 1. The Supplier must ensure that any subcontracts entered into by the Supplier in relation to work under this Agreement contain clauses requiring subcontractors:
				1. to comply with the Local Jobs First Policy and the LIDP to the extent that it applies to work performed under the subcontract,
				2. to provide necessary information that allows the Supplier to comply with its reporting obligations under clause 2.3 of this Schedule, and
				3. to permit the Agency and the Department to exercise their inspection and verification rights under clause 2.4 of this Schedule.
			2. The subcontracting obligations set out in this clause 3 are in addition to and do not derogate from any other obligations under this Agreement.
			3. The Supplier's failure to comply with this clause 3 will constitute a material breach of this Agreement.
	2. Local Jobs First Commissioner
		+ 1. The Supplier acknowledges that:
				1. it is required to comply with any information notice issued to it by the Local Jobs First Commissioner in accordance with s 24 of the *Local Jobs First Act 2003*;
				2. it is required to comply with any compliance notice issued to it by the Local Jobs First Commissioner in accordance with s 26 of the *Local Jobs First Act 2003*;
				3. its failure to comply with the compliance notice referred to in this clause 4(a) may result in the issue of an adverse publicity notice by the Responsible Minister under s 29 of the *Local Jobs First Act 2003*; and
				4. the Local Jobs First Commissioner may:

monitor and report on compliance with the Local Jobs First Policy and LIDP; and

request the Agency to conduct an audit in relation to the Supplier's compliance with the Local Jobs First Policy and the LIDP.

* + - 1. The Supplier acknowledges that the Commissioner may recommend that the Agency take enforcement proceedings against the Supplier if the Supplier has failed to comply with the Local Jobs First Policy or the LIDP by:
				1. applying to a court to obtain an injunction; or
				2. taking action available under this Agreement.

Attachment 1 - Local Industry Development Plan

[***insert LIDP***]

Attachment 2 - LIDP Monitoring Table *[Insert the Monitoring Table from the LIDP]*

Attachment 3 - Statutory Declaration *[Insert a copy of the Statutory Declaration from the Guidelines.]*