

# Fair Jobs Code

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## Procurement Guidelines for Government Departments and Agencies

4 January 2023

## WHAT IS THE FAIR JOBS CODE?

The Fair Jobs Code (Code) aims to encourage and reward businesses and suppliers that comply with industrial relations and occupational health and safety laws, and to promote Fair Jobs Code Standards including:

- secure employment and job security;
- cooperative and constructive relationships between employers, employees and their representatives;
- workplace equity and diversity; and
- supply chain compliance.

All Victorian Government departments, agencies and public bodies with applicable procurement contracts have responsibilities in relation to implementing the Code.

## WHAT PROCUREMENTS ARE AFFECTED?

The Code applies to all tender and market approach processes (and subsequent procurement contracts) with a value of \$3 million or more (exclusive of GST).

## WHAT DO AGENCIES NEED TO DO?

From 1 December 2022, Agencies will be required to ensure that:

- tender documents and agreements include model clauses that give effect to the Code;
- all *Suppliers* submitting a tender for a contract valued at \$3 million or more exclusive of GST (a *threshold procurement contract*) hold a Fair Jobs Code Pre-Assessment Certificate;
- *Suppliers* for a contract valued at \$20 million or more exclusive of GST (a *high value procurement contract*) submit a Fair Jobs Code Plan to show how they will deliver on the Code Standards including secure work; and
- the Agency reports annually on Code compliance and outcomes.

## FOR MORE INFORMATION

For more information about the Code, visit:

[buyingforvic.gov.au/fair-jobs-code](https://buyingforvic.gov.au/fair-jobs-code).

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# 1. Foreword

The introduction of the *Fair Jobs Code* (Code) demonstrates the Victorian Government's commitment to ensuring that *suppliers* tendering for *threshold procurement contracts* (contracts with a value of \$3 million or more exclusive of GST) or *high value procurement contracts* (contracts with a value of \$20 million or more exclusive of GST), and *businesses* seeking to be considered for *significant business expansion grants*, are recognised for their commitment to treating workers fairly.

By introducing the Code, the Government aims to encourage suppliers and businesses who have a history of compliance with industrial relations (IR) and occupational health and safety (OHS) laws and who support Fair Jobs Code Standards (FJC Standards) including promotion of job security and secure employment.

These Guidelines are designed to assist government departments, agencies and public bodies (Agencies) to implement the Code and to ensure that their contracts with suppliers for goods and services, including construction and construction works, comply with the Code.

Separate guidelines have been issued for Agencies who provide significant business expansion grants. The *Fair Jobs Code Grant Guidelines for Government Departments and Agencies* can be found at [buyingfor.vic.gov.au/fair-jobs-code-agencies-grants](https://buyingfor.vic.gov.au/fair-jobs-code-agencies-grants).

These Guidelines are issued by the *Fair Jobs Code Unit* (FJC Unit) of the Department of Jobs, Skills, Industry and Regions (DJSIR) under the authority of the Minister for Industry and Innovation, in accordance with section 9.2 of the Code.

## 2. General information

- 2.1 The Code and these guidelines apply to all Agencies, being departments, agencies and public bodies within the meaning of the *Financial Management Act 1994*.
- 2.2 The Code does not currently apply to:
  - a. public entities as suppliers providing goods, services or works to the Victorian Government; and
  - b. funding organisations that deliver services to the community on behalf of the Department of Families, Fairness and Housing and the Department of Health under a service agreement.
- 2.3 The Code recognises the expectation that Agencies will independently consider the merit of potentially insourcing projects ahead of, and as part of, any procurement or grant process.
- 2.4 The Code includes provisions that aim to encourage compliance with IR and OHS laws and the FJC Standards.
- 2.5 These Guidelines should be read together with the Code. A copy of the Code can be found at [buyingfor.vic.gov.au/fair-jobs-code](https://buyingfor.vic.gov.au/fair-jobs-code).
- 2.6 Please contact the FJC Unit, Department of Jobs, Skills, Industry and Regions E: [fairjobscode@ecodev.vic.gov.au](mailto:fairjobscode@ecodev.vic.gov.au) or T: 13 22 15 regarding assistance with these guidelines or the application of the Code.

### 3. Key Points

- 3.1 The Code applies to all:
  - a. Agencies; and
  - b. *Suppliers* seeking to be considered for *threshold procurement contracts* and *high value procurement contracts*.
- 3.2 Agencies must apply the Code to all tender and market approach processes (and subsequent procurement contracts) released to the market or to the public on or after 1 December 2022.
- 3.3 The Code requires that:
  - a. any tender to which the Code applies will include *Fair Jobs Code Model Clauses* (FJC Model Clauses) as provided by the FJC Unit;
  - b. a Supplier entering into a threshold procurement contract – that is, a contract valued at \$3 million or more (exclusive of GST) – must hold a valid *Fair Jobs Code Pre-Assessment Certificate* (Certificate), unless one of the limited exceptions apply (see Section 11 of Guidelines); and
  - c. all *high value procurement contracts* – that is, a contract valued at \$20 million or more (exclusive of GST) – that are entered into require the Supplier to hold a Pre-Assessment Certificate and to submit a *Fair Jobs Code Plan* (FJC Plan) or *Fair Jobs Code Plan Addendum* (FJC Plan Addendum).
- 3.4 The FJC Unit will begin accepting applications for Certificates from 10 August, 2022 in readiness for Suppliers to make submissions for tenders released from 1 December 2022.
- 3.5 The Code will apply to *Standing Offer Arrangements* (including *State Purchase Contracts* and *Sole Entity Purchase Contracts*) from the date that a Standing Offer Arrangement commences, is updated or reissued after commencement of the Code.
- 3.6 Exceptions to the Code *may* apply some circumstances (see section 11 below).

### 4. Implementation for Agencies

The Code introduces **four key requirements** for Agencies to incorporate into their procurement process:

#### 4.1 Fair Jobs Code Pre-Assessment Certificate (Certificate)

Agencies must ensure that a Supplier who tenders for a threshold procurement contract (valued at \$3 million or more exclusive of GST) or high value procurement contract (valued at \$20 million or more exclusive of GST) holds a Certificate as a precondition of eligibility to tender. Where successful, the Supplier is required to hold a valid Certificate for the life of the contract (see section 5 below).

#### 4.2 Fair Jobs Code Plan (FJC Plan)

Agencies must ensure that a Supplier that tenders for a high value procurement contract submits a FJC Plan as part of their tender. The FJC Plan template is a prescribed document where the Supplier sets out how they will deliver on the Code Standards including secure work. The commitments made in the FJC Plan will form part of the contract. Agencies are required to review and monitor delivery of the FJC Plan throughout the life of the contract.

Where a construction Supplier is required to submit an Industrial Relations Plan under the Instructions for Public Construction Procurement in Victoria and Direction under Part 4 of the *Project Development and Construction Management Act 1994* (Vic) the Supplier will utilise the *Fair Jobs Code Plan Addendum* template (FJC Plan Addendum) instead of the FJC Plan template (see sections 6 and 7 below).

#### 4.3 Inclusion of Fair Jobs Code Model Clauses (FJC Model Clauses)

Agencies will be required to include specified *Fair Jobs Code Model Clauses* (FJC Model Clauses) in tender documents and contracts.

#### 4.4 Reporting on Code outcomes

Agencies will be required to:

- a. attest annually to the FJC Unit that the Agency is compliant with this Code; and
- b. upon request, provide information to the FJC Unit for reporting and education purposes (see section 9 below).

## 5. Pre-Assessment Certificate

### 5.1 What is a Pre-Assessment Certificate and how does a Supplier obtain a Certificate?

- 5.1.1 Certificates are issued by the FJC Unit. The Certificate verifies that a Supplier's compliance with IR and OHS laws was assessed by the FJC Unit and considered satisfactory for the three-year period prior to the Certificate being issued.
- 5.1.2 A Supplier can make an application for a Certificate at: [buyingfor.vic.gov.au/apply-fair-jobs-code-pre-assessment-certificate](https://buyingfor.vic.gov.au/apply-fair-jobs-code-pre-assessment-certificate). Guidelines for Suppliers can be found at [buyingfor.vic.gov.au/fair-jobs-code-guidelines-suppliers-and-businesses](https://buyingfor.vic.gov.au/fair-jobs-code-guidelines-suppliers-and-businesses).
- 5.1.3 The FJC Unit will endeavour to process applications for a Certificate and to notify the Supplier of the outcome of their application within 30 business days of receiving a completed Certificate application.
- 5.1.4 A Certificate is valid for two years from the date of issue.
- 5.1.5 A Supplier tendering for a threshold procurement or high value procurement contract must hold a valid Certificate for the life of the contract. This is a mandatory requirement unless an exception provision applies.
- 5.1.6 If a Certificate is likely to expire during the life of the contract, the Certificate must be renewed prior to expiry.
- 5.1.7 A Certificate may be revoked by the FJC Unit if the Supplier no longer meets the Certificate assessment criteria.
- 5.1.8 Failure to maintain a valid Certificate will constitute a breach of contract. This will give the Agency the right to pursue remedies provided under the terms of the contract.

### 5.2 How to check the validity of a Certificate

- 5.2.1 The Agency is required to ensure that a Supplier holds a valid Certificate as part of the assessment and procurement process.
- 5.2.2 A Supplier must provide evidence of their Certificate in any bid for a threshold procurement or high value procurement contract.
- 5.2.3 Valid Certificates are listed in a publicly accessible *Pre-Assessment Certificate Register* (Certificate Register) which is maintained by the FJC Unit. The Certificate Register includes the business details of the Certificate holder. The Certificate Register can be found at [buyingfor.vic.gov.au/fair-jobs-code-pre-assessment-certificate-register](https://buyingfor.vic.gov.au/fair-jobs-code-pre-assessment-certificate-register).

### 5.3 Agency responsibilities in relation to the Certificate

#### 5.3.1 Tender documents

Agencies must incorporate the requirement to hold a valid Certificate into approach to market and procurement documents for threshold and high value procurements. FJC Model Clauses for procurement documents can be found at [buyingfor.vic.gov.au/fair-jobs-code-tools-and-templates-agencies](https://buyingfor.vic.gov.au/fair-jobs-code-tools-and-templates-agencies).

#### 5.3.2 Tender submissions

Agencies must require that all tender submissions include a copy of the Supplier's Certificate or Certificate registration number. A Supplier that is not able to provide a valid Certificate must be excluded from the tender process (unless an exception applies).

#### 5.3.3 Confirm validity of the Certificate

Agencies must check that a Supplier's Certificate is valid by checking the Certificate Register at [buyingfor.vic.gov.au/fair-jobs-code-pre-assessment-certificate-register](https://buyingfor.vic.gov.au/fair-jobs-code-pre-assessment-certificate-register).

Agencies must check that a Supplier's Certificate remains valid for the life of the contract, and if not, that the Supplier intends to re-apply for a Certificate prior to expiry. Agencies may wish to implement a system or process for reviewing validity of Certificates where the Certificate is due to expire within a contract period.

#### 5.3.4 Contract

The FJC Model Clauses ([buyingfor.vic.gov.au/fair-jobs-code-tools-and-templates-agencies](https://buyingfor.vic.gov.au/fair-jobs-code-tools-and-templates-agencies)) must be incorporated into all threshold procurement and high value procurement contracts. Suppliers should be made aware that if a Certificate expires at any time during the term of the contract, they risk a breach of the contract and the Agency will have the option of seeking remedies under the terms of the contract.

#### 5.3.5 Continuous Disclosure

Agencies must ensure that the Supplier is made aware of their obligations to:

- a. notify the Agency and the FJC Unit of any adverse rulings or enforceable undertaking against the Supplier;
- b. cooperate with reasonable requests from the FJC Unit, the Agency or the Local Jobs First Commissioner relating to the performance of its functions under the Code;
- c. notify the Agency within 10 business days of changes to the validity of its Certificate including if its Certificate has expired or is revoked during the term of the contract.

#### 5.3.6 Notify the FJC Unit

If an Agency is notified by a Supplier or becomes aware that a Supplier with whom the Agency has a contract, is subject to an adverse ruling/enforceable undertaking or if the Certificate has expired, the Agency must notify the FJC Unit.

### 5.4 Summary of Certificate Requirements

Appendix 2 of these Guidelines provides a table summarising Agency responsibilities in relation to the management of Certificates.

## 6. Fair Jobs Code Plan and Fair Jobs Code Plan Addendum

### 6.1 What is a FJC Plan?

- 6.1.1 Suppliers who tender for high value procurement contracts must submit a FJC Plan as part of their tender.
- 6.1.2 The FJC Plan addresses IR and OHS standards as required by the Code:
- Standard 1:** Comply with all applicable employment, industrial relations and workplace health and safety obligations.
  - Standard 2:** Promote secure employment and job security.
  - Standard 3:** Foster cooperative and constructive relationships between employers, employees and their representatives.
  - Standard 4:** Foster workplace equity and diversity.
  - Standard 5:** Promote supply chain compliance.
- For details on each Standard see Section 6 of the Code.
- 6.1.3 The FJC Plan must be completed using the *Prescribed FJC Plan Template* (Prescribed Template) available at [buyingfor.vic.gov.au/prepare-fair-jobs-code-plan](http://buyingfor.vic.gov.au/prepare-fair-jobs-code-plan).
- 6.1.4 Each section of the Prescribed Template requires the Supplier to provide:
- a. information on how Code standards will be met; and
  - b. quantitative and measurable commitments focused on real and positive job outcomes that are consistent with the Code's aims and objectives.
- 6.1.5 Commitments made under the FJC Plan are binding and will form part of the contract. It is the Agency's responsibility to monitor the Supplier's delivery of the FJC Plan and to ensure that the commitments and undertakings are fulfilled.

### 6.2 The FJC Plan Addendum

- 6.2.1 Where a construction Supplier is required to submit an Industrial Relations Plan under the Instructions for Public Construction Procurement in Victoria and Directions under Part 4 of the *Project Development and Construction Management Act 1994* (Vic) (PD & CM Act) the Supplier:
- a. is not required to submit a FJC Plan; but
  - b. is required to submit a FJC Plan Addendum.
- 6.2.2 The FJC Plan Addendum, in accordance with the prescribed *FJC Plan Addendum Template*, sets out matters required by the FJC Plan which are not addressed by the PD & CM Act.
- 6.2.3 The *FJC Plan Addendum Template* for the construction category of procurement contracts, can be found at [buyingfor.vic.gov.au/fair-jobs-code-tools-and-templates-suppliers-and-businesses](http://buyingfor.vic.gov.au/fair-jobs-code-tools-and-templates-suppliers-and-businesses).



## 7. Agency Responsibilities in relation to the FJC Plan/FJC Plan Addendum

### 7.1 Incorporate FJC Model Clauses into tender documentation

Agencies must ensure that tender documents incorporate the FJC Model Clauses, including a requirement that Suppliers submit a FJC Plan or FJC Plan Addendum for high value procurement contracts. FJC Model Clauses for procurement documents can be found at [buyingfor.vic.gov.au/fair-jobs-code-tools-and-templates-agencies](http://buyingfor.vic.gov.au/fair-jobs-code-tools-and-templates-agencies).

### 7.2 Review and Verify FJC Plan/FJC Plan Addendum

- 7.2.1 The Agency is required to verify that the FJC Plan or FJC Plan Addendum (as relevant) has been completed on the relevant prescribed template.
- 7.2.2 The Agency will review the FJC Plan/FJC Plan Addendum to ensure the information provided addresses all the requirements of Standards 1-5 of the Code.
- 7.2.3 The Agency will ensure that a Supplier that does not provide a complete FJC Plan/FJC Plan Addendum is excluded from the tender process.
- 7.2.4 The Agency will review the FJC Plan/FJC Plan Addendum for each shortlisted Supplier to ensure it addresses all the requirements of Standards 1-5 of the Code.

Agencies may use their discretion to determine the relevance of information provided in the FJC Plan/FJC Plan Addendum to the tender bid, recognising each contract may have a different context and focus. For example, an Agency may have a particular interest in supply chain compliance (Standard 5) if the contract is with a head Supplier that will engage multiple subcontractors.

All Agencies are encouraged to consider each Supplier's commitment to the provision of secure work in Victoria (Standard 2) including whether a Supplier will engage employees directly on a permanent or (in the case of a time-based project) fixed-term basis rather than rely upon casual or labour hire arrangements.

- 7.2.5 The FJC Unit is available for additional information and guidance on how to review FJC Plans and FJC Plan Addendums.

### 7.3 Ensure significant subcontractors of \$10 million or more have a Certificate

- 7.3.1 Standard 5 of the Code – *Promote supply chain compliance* requires that Suppliers with a high value procurement contract must only enter into a subcontracting arrangement for the value of \$10 million or more excluding GST with sub-contractors (Significant Subcontractors) that have a Certificate.
- 7.3.2 The Agency is required to check that the Supplier's FJC Plan/FJC Plan Addendum includes a copy of all Significant Subcontractor Certificates, or their Certificate registration numbers.
- 7.3.3 The Agency must check that Certificates for any Significant Subcontractors are valid by checking the Certificate Register.

### 7.4 Incorporate FJC Model Clauses into contracts

- 7.4.1 FJC Model Clauses are to be included in all contracts.
- 7.4.2 Agencies should ensure that the terms and conditions of a contract with a Supplier include: regular reporting on implementation of FJC Plan/FJC Plan Addendum commitments over the life of the contract; and responding to reasonable information requests related to reviews or audits as required.

- 7.4.3 Suppliers should be made aware that: the FJC Plan/FJC Plan Addendum will form part of their contracted deliverables; failure to deliver the commitments outlined in the FJC Plan/FJC Plan Addendum may breach the contract; and that the Agency will have the option to seek remedies under the terms of the contract.
- 7.4.4 FJC Model Clauses for contracts can be found at [buyingfor.vic.gov.au/fair-jobs-code-tools-and-templates-agencies](https://buyingfor.vic.gov.au/fair-jobs-code-tools-and-templates-agencies).

**7.5 Monitor the implementation of the FJC Plan or FJC Plan Addendum**

- 7.5.1 Agencies must monitor the Supplier’s implementation of their FJC Plan/FJC Plan Addendum throughout the term of the contract.
- 7.5.2 The Supplier must provide the Agency with:
  - a. reports on progress with implementation;
  - b. updates or amendments to the FJC Plan/FJC Plan Addendum particularly changes relating to the number and composition of the workforce or adding Significant Subcontractors; and
  - c. an end-of-contract report on outcomes from the FJC Plan/FJC Plan Addendum.
- 7.5.3 The Supplier should provide a report to Agencies at least annually, but more frequent reports can be requested at the Agency’s discretion.

**7.6 Summary of FJC Plan or FJC Plan Addendum Requirements**

Appendix 3 of these Guidelines provides a table summarising Agency responsibilities in relation to the management of FJC Plans and FJC Plan Addendums.

## 8. Standing Offer Arrangements and Registers

- 8.1 The Code will apply to Standing Offer Arrangements (including a State Purchase Contract or Sole Entity Purchase Contract) that commence or are reissued after commencement of the Code.
- 8.2 A Supplier applying for any Standing Offer Arrangement must hold a valid Certificate.
- 8.3 A Supplier under a Standing Offer Arrangement must submit a FJC Plan in the following circumstances:
  - a. where a Supplier tenders for an individual contract with a dollar value of \$20 million or more (exclusive of GST). In this case, the tendering Agency should provide the FJC Plan/FJC Plan Addendum of the successful Supplier to the Category Manager of the Standing Offer Arrangement;
  - b. where a Supplier is engaged to provide goods or services totalling \$20 million or more (exclusive of GST) in aggregate contracts under a Standing Offer Arrangement. In this case the Supplier must submit a FJC Plan/FJC Plan Addendum to the Category Manager of the Standing Offer Arrangement.
- 8.4 Agencies are required to incorporate these requirements into contracts from the date that the Standing Offer Arrangement commences or is reissued after commencement of the Code.
- 8.5 The FJC Model Clauses can be found at [buyingfor.vic.gov.au/fair-jobs-code-tools-and-templates-agencies](https://buyingfor.vic.gov.au/fair-jobs-code-tools-and-templates-agencies).
- 8.6 The Code applies to suppliers under a Register from 1 December 2022.
- 8.7 The Pre-Assessment Certificate will be phased in as a precondition for Registers by 1 December 2023.

## 9. Code Reporting Obligations

- 9.1 No later than 30 March 2023 Agencies will be required to attest that:
- steps have been taken to implement the Code requirements;
  - Suppliers that submit bids on or after 1 December 2022 have obtained a Certificate in all cases required; and
  - Suppliers that submit bids on or after 1 December 2022 have submitted a FJC Plan/FJC Plan Addendum in all cases required.
- 9.2 On 30 September 2023 and thereafter, Agencies will be required to attest annually to activities in relation to implementation of the Code. Reports from Suppliers will most likely inform annual attestations on implementation of the Code.
- 9.3 The FJC Unit will provide Agencies with a template for reporting.
- 9.4 The attestation will require that the Agency attests that it has complied with the Code by:
- ensuring that Suppliers have obtained a Certificate in all cases required;
  - ensuring that Suppliers have submitted a FJC Plan/FJC Plan Addendum in all cases required; and
  - any exceptions to 9.4(a) have been carried out in accordance with section 11 of these guidelines.
- 9.5 Agency attestations will form part of the FJC Unit's annual report on implementation of the Code by Agencies.
- 9.6 In addition to an attestation, Agencies will be required to report annually on Code activities. Specifically:
- the number of contracts signed in that financial year where a Supplier held a Certificate;
  - the number of contracts signed in that financial year where a Supplier was required to hold a Certificate but did not, and the reasons for this (i.e., exception applied);
  - the number of contracts signed in that financial year where a Supplier submitted a FJC Plan or FJC Plan Addendum;
  - the number of contracts signed in that financial year where a Supplier was required to submit a FJC Plan or Plan Addendum but did not, and the reason for this;
  - the number of workers that were engaged on a permanent, fixed term, casual or labour hire basis as committed in the FJC Plan/FJC Plan Addendum for applicable contracts in that financial year;
  - the number of Significant Contractors utilised in that financial year where a Significant Subcontractor was required to hold a Certificate; and
  - the number of Significant Subcontractors utilised in that financial year where a Significant Subcontractor was required to hold a Certificate but did not, and the reason for this.

## 10. Ongoing Agency monitoring obligations

- 10.1 A Supplier that holds a Certificate has an ongoing duty of disclosure to the Agency it has contracted with and the FJC Unit regarding any actions that may compromise the Certificate validity, such as an adverse ruling or an enforceable undertaking made against it.
- 10.2 It is important for an Agency to monitor compliance with contractual obligations and compliance with the Code. Verifying the validity of each Suppliers' Certificate should form part of the Agency's general monitoring of the performance of the Supplier and their adherence to contractual obligations.
- 10.3 A Supplier must also cooperate with reasonable requests to provide information made by the Agency, FJC Unit or Local Jobs First Commissioner. The Agency will be responsible for facilitating cooperation to enable responses to enquiries to be received in a timely manner.

## 11. Exceptions to the Code

Note: Exceptions to Certificate requirements should be relied upon only when necessary.

### 11.1 Exception to Certificate Requirements – Emergency Procurement

- 11.1.1 An Agency may enter into a threshold procurement contract or high value procurement contract with a Supplier that does not have a Certificate, if the procurement is for:
- a. emergency goods, services or works provided to protect the essential security interests, or avoid the loss of critical services or prevent critical services from being disrupted; or
  - b. goods, services or works required to prevent a risk to health and safety or to avoid life-threatening situations.
- 11.1.2 The Agency should consider whether the procurement activity is an emergency prior to accepting applications from Suppliers that do not hold a Certificate.
- 11.1.3 Significant Subcontractors may be included in any emergency procurement exception, however any exception for a head contractor must include a list of potential Significant Subcontractors.
- 11.1.4 Where the Agency proposes to enter into a contract under these emergency provisions of the Code, the Agency:
- a. should contact the FJC Unit for initial advice as the FJC Unit is authorised to receive these reports on behalf of the Minister; and
  - b. must report such emergency procurement contracts to the Minister within 20 business days of entering into such a contract. The report should:
    - i. be addressed to the Minister;
    - ii. inform the Minister of the precise reasons for the procurement including:
      - the goods, services or works being procured;
      - which Supplier or Suppliers including any potential Significant Subcontractors are to be used;
      - information on why the procurement was necessary;
      - the basis for procurement urgency; and
      - reasons that it was not possible to make the procurement from a Supplier that holds a Certificate.

- 11.1.5 The FJC Unit can provide a recommended format for the report.
- 11.1.6 The completed report should be sent to the FJC Unit at [fairjobscode@ecodev.vic.gov.au](mailto:fairjobscode@ecodev.vic.gov.au). The FJC Unit will contact the Agency if the report is incomplete, or the Minister requires clarification or additional information.

## **11.2 Exception to Certificate Requirements – Procurement Critical Interest of the State**

- 11.2.1 An Agency may enter into a threshold procurement contract or high value procurement contract with a Supplier that does not have a Certificate, if the Minister is satisfied that:
  - a. the procurement is critical to the State’s interest; and
  - b. no other Supplier that holds a Certificate is considered suitable to meet the requirements of the procurement.
- 11.2.2 Procurements that are critical to State interests must not proceed without the formal and written approval of the Minister or the Minister’s delegate.
- 11.2.3 The Minister will only approve projects that are demonstrably critical to the State’s interest and if there is no other Supplier that is suitable and holds a Certificate.
- 11.2.4 Where an Agency proposes to seek an exception on the basis that the procurement is critical to the interests of the State, the Agency may contact the FJC Unit for initial advice.
- 11.2.5 The request for an exception should:
  - a. be addressed to the Minister;
  - b. provide sufficient detail to inform the Minister (or delegate) of the precise reasons for the procurement including:
    - i. the goods, services or works being procured,
    - ii. which Supplier or Suppliers, including any potential Significant Subcontractors are proposed to be used;
    - iii. an explanation as to why the procurement is necessary;
    - iv. the basis for procurement urgency; and
    - v. reasons as to why it is not possible to engage a Supplier that holds a Certificate.

## **11.3 Exemption for Public Entities**

- 11.3.1 The Code defines a Supplier as any entity that supplies or proposes to supply goods, services or works, including construction works and services, to a Victorian Government Agency, except for public entities providing goods, services or works for essential services related to the supply of electricity, natural gas, water, wastewater or telecommunications.
- 11.3.2 The Code does not currently apply to procurement between an Agency and public entities providing goods, services or works.
- 11.3.3 The current exemption for public entities that supply goods, services or works to the Victorian Government is subject to a 12-month review.

## **11.4 Exemption for Service Agreements**

- 11.4.1 While not specified in the Code, funded organisations that deliver services in the community on behalf of the Department of Health and Department of Families, Fairness and Housing under a Service Agreement are currently exempt from the Code.
- 11.4.2 The current exemption is subject to a 12-month review.

## 12. Fair Jobs Code Unit and Locals Jobs First Commissioner

### 12.1 Role of the FJC Unit

The FJC Unit will:

- a. issue Certificates;
- b. maintain the publicly accessible Certificate Register with details of suppliers and businesses holding a valid Certificate;
- c. support Agencies with implementation of the Code, and provide guidance relating to Certificates, FJC Plans and FJC Plan Addendums;
- d. undertake audits, investigations and reviews;
- e. maintain a register of breaches by, and complaints about, Suppliers that hold or held a Certificate including any reported non-compliances, their source and any advice given, or action taken;
- f. obtain attestations from Agencies on implementation of the Code;
- g. monitor, evaluate and report on Code outcomes;
- h. provide advice and support to the Minister; and
- i. develop materials under the direction of the Minister including procedures, guidance material, model clauses, forms, and templates to support the implementation of the Code.

### 12.2 Role of the Local Jobs First Commissioner

12.2.1 The Local Jobs First Commissioner (Commissioner) will engage with Agencies and industry to educate and promote the Code. This may mean that Agencies will be asked to provide data and information from time to time for specific activities or for general purposes associated with implementation of the Code.

12.2.2 It is important that any requests from the Commissioner are responded to in a timely manner.

12.2.3 The powers and functions of the Commissioner are detailed in Part 3, Division 2 of the *Local Jobs First Act 2003*.

12.2.4 Without in any way limiting the powers and functions of the Commissioner, the Commissioner's role in relation to the Code and governance arrangements, is summarised in section 9.5 of the Code.

## 13. Complaints management

13.1 The FJC Unit will have authority to receive, investigate and resolve complaints in relation to the suitability of a Supplier to hold a Certificate.

13.2 Complaints will be managed in accordance with the Department of Jobs, Precincts and Regions policies and procedures (with any necessary modifications) and in line with the *Victorian Ombudsman's Complaint Good Practice Guide for Public Sector Agencies*.

## 14. Information sharing

- 14.1 The FJC Unit will maintain the publicly accessible Certificate Register database which will provide details of those Suppliers holding a valid Certificate.
- 14.2 Information provided by suppliers and businesses in their Certificate applications may be shared with the Local Jobs First Commissioner and other Agencies.
- 14.3 Guidelines, policies, procedures, forms, templates, instructions, or other material supporting the implementation of the Code can be found at [buyingfor.vic.gov.au/fair-jobs-code-departments-and-agencies](https://buyingfor.vic.gov.au/fair-jobs-code-departments-and-agencies).
- 14.4 Further information, advice and support will be provided by the FJC by email at [fairjobscode@ecodev.vic.gov.au](mailto:fairjobscode@ecodev.vic.gov.au) or by telephone at 13 22 15.

## 15. Relationship between Code, Guidelines and Commonwealth and State Laws and Policies

- 15.1 If there is any inconsistency between these Guidelines and the Code, the Code will prevail.
- 15.2 In the event of a conflict between the Code (including these Guidelines) and any Commonwealth or State laws (including subordinate instruments made pursuant to those laws), those laws prevail.
- 15.3 The Code or the granting of a Certificate does not remove the requirements for Suppliers to undergo assessments for other mandatory government pre-qualification schemes and approved registers.
- 15.4 The FJC Unit will not duplicate the legislated responsibility of regulators, such as the Fair Work Ombudsman, the Fair Work Commission and WorkSafe Victoria, nor will they replace the function of Victorian Government agencies and their contract managers.
- 15.5 There are several other Victorian Government Codes and Policies that relate to industrial relations and occupational health and safety laws and standards. Examples of complementary Victorian Government policies include:
  - a. The *Supplier Code of Conduct*
  - b. The *Local Jobs First Policy*
  - c. The *Social Procurement Framework*
  - d. The *Building Equality Policy*
  - e. The *Victorian Government Call Centre Code*
- 15.6 The FJC Unit is actively working with Agencies and industry to review how policies complement each other, and how any duplication can be removed.

# Appendices

## Appendix 1: Glossary

Term	Definition
<b>adverse ruling</b>	a ruling by any court, tribunal, board, commission or other entity with jurisdiction or legal authority to determine the matter, that the supplier or business has breached an applicable employment, industrial relations or workplace health and safety law.
<b>agency</b>	a department or public body within the meaning of the <i>Financial Management Act 1994</i> .
<b>agencies</b>	the plural of ' <b>agency</b> '
<b>business</b>	any entity that applies for a significant business expansion grant from a Victorian Government agency.
<b>contracts</b>	in this document shall refer to a threshold procurement contract or a high value procedure contract.
<b>enforceable undertaking</b>	a promise or agreement made by a supplier or business with a regulator, Court, or other body (including the Fair Work Ombudsman, WorkSafe Victoria and Wage Inspectorate Victoria) in respect of a breach or alleged/suspected breach of an applicable employment, industrial relations or workplace health and safety law.
<b>FJC Plan</b>	a business' or supplier's Fair Jobs Code Industrial Relations and Occupational Health and Safety Plan, which addresses industrial relations, occupational health and safety requirements and commitments and standards required by the Code.
<b>'FJC Plan Addendum</b>	a business' or supplier's Fair Jobs Code industrial relations and occupational health and safety Addendum as required under section 5.18(b)(ii) of the Victorian Fair Jobs Code.
<b>FJC Unit</b>	the Fair Jobs Code Unit, an administrative group within the Department of Jobs, Precincts and Regions with responsibilities in relation to the Code.
<b>high value procurement contract</b>	a contract between a supplier and a Victorian Government agency with a value of \$20 million or more (exclusive of GST).
<b>including</b>	including but not limited to.
<b>Minister</b>	the Minister for Industry and Innovation.
<b>significant business expansion grant</b>	a grant from a Victorian Government agency with a value of \$500,000 or more (exclusive of GST) and where the key milestones under the grant agreement specify that the business will deliver new jobs.
<b>significant subcontractor</b>	an entity engaged, or to be engaged, under a subcontract directly with a supplier, where the value of that subcontract is \$10 million or more (exclusive of GST).



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<b>Term</b>	<b>Definition</b>
<b>Standing Offer Arrangement</b>	means an agreement with a supplier or group of suppliers engaged under contract to provide goods or services in a defined future period.
<b>State Purchase Contract</b>	means a standing offer arrangement for the whole of the Victorian government for commonly used goods and services, which are established when value for money can best be achieved through aggregating demand.
<b>subcontractor</b>	an entity engaged, or to be engaged by a supplier, under a subcontract.
<b>supplier</b>	any entity that supplies or proposes to supply goods, services or works, including construction works and services, to a Victorian Government agency, with the exception of public entities providing goods, services or works for essential services related to the supply of electricity, natural gas, water, wastewater or telecommunications.
<b>threshold procurement contract</b>	a contract between a supplier and a Victorian Government agency with a value of \$3 million or more (exclusive of GST).

## Appendix 2:

# Fair Jobs Code Pre-Assessment Certificate: Quick Reference Checklist for Agencies – Procurement

A Pre-Assessment Certificate (Certificate) is required for all threshold procurement contracts and high value procurement contracts unless an exception applies.

This checklist outlines the basic responsibilities for Agencies where a Certificate is required.

<b>Before tender submission</b>	
1. The procurement contract will be subject to the Code if it is a: <ul style="list-style-type: none"> <li>• threshold procurement contract – i.e. valued at \$3 million or more (exclusive of GST); or</li> <li>• high value procurement contract – i.e. valued at \$20 million or more (exclusive of GST).</li> </ul>	<input type="checkbox"/>
2. Incorporate FJC Model Clauses into approach to market and procurement documents including the requirement for potential Suppliers to hold a Certificate at the time of tender submission.	<input type="checkbox"/>
3. Information on how to apply for a Certificate has been included in approach to market and procurement documents.	<input type="checkbox"/>
<b>Tender submission</b>	
4. Tender submissions all include a copy of the Supplier's Certificate or their Certificate identifier. Suppliers that do not hold a Certificate must be excluded from the tender process unless an exception applies.	<input type="checkbox"/>
5. The Certificate identifiers in tender submissions have been checked as current on the Certificate Register at <a href="http://buyingfor.vic.gov.au/fair-jobs-code-pre-assessment-certificate-register">buyingfor.vic.gov.au/fair-jobs-code-pre-assessment-certificate-register</a>	<input type="checkbox"/>
<b>Tender submission is successful</b>	
6. FJC Model Clauses are incorporated in the contract.	<input type="checkbox"/>
7. Suppliers are aware that if a Certificate expires or is revoked at any time during the contract term they may be in breach of the contract and remedy may be sought.	<input type="checkbox"/>
8. Mechanisms are in place to review the validity of the Supplier's Certificate over the life of the contract.	<input type="checkbox"/>
<b>Additional responsibilities</b>	
9. Notify the FJC Unit if a Supplier discloses, or if the Agency become aware, that a contracted Supplier is subject to an adverse ruling or an enforceable undertaking. Notify the FJC Unit via the FJC portal: <a href="http://buyingfor.vic.gov.au/complaints-under-fair-jobs-code">buyingfor.vic.gov.au/complaints-under-fair-jobs-code</a> .	<input type="checkbox"/>
<i>This checklist is intended to be a quick reference only. For details, please consult the main body of the guidelines and the Code or contact the FJC Unit.</i>	

**Appendix 3:**

# Fair Jobs Code Plan/Fair Jobs Code Plan Addendum: Quick Reference Checklist for Agencies – Procurement

A Fair Jobs Code Plan (FJC Plan) must be submitted for all high value procurement contracts unless the Supplier is required to submit PD&CM Act Plans.

A Fair Jobs Code Plan Addendum (FJC Plan Addendum) must be submitted where the Supplier is required to submit PD&CM Act Plans.

This checklist outlines the basic responsibilities for Agencies where a FJC Plan/FJC Plan Addendum is required. This is in addition to Certificate requirements.

<b>Before tender submission</b>	
1. The procurement contract will be subject to the Code if it is a high value procurement contract – i.e. valued at \$20 million or more (exclusive of GST).	<input type="checkbox"/>
2. Incorporate FJC Model Clauses into approach to market and procurement documents including the requirement for potential Suppliers to submit a FJC Plan/FJC Plan Addendum at the time of submitting a tender.	<input type="checkbox"/>
3. Information on how to submit a FJC Plan/FJC Plan Addendum has been included in approach to market and procurement documents.	<input type="checkbox"/>
<b>Tender submission</b>	
4. Tender submissions include a copy of the Supplier's FJC Plan/FJC Plan Addendum. Suppliers who do not provide a FJC Plan/FJC Plan Addendum must be excluded from the tender process.	<input type="checkbox"/>
5. Where the bidder will be a head supplier, ensure that the FJC Plan/ FJC Plan Addendum includes the Certificate identifiers for all significant subcontractors to be engaged by the Supplier during the contract.	<input type="checkbox"/>
6. Mechanisms are in place for the Agency to review the FJC Plan/FJC Plan Addendum for shortlisted Suppliers to ensure the information provided addresses all the requirements and sets measurable/quantifiable obligations in relation of Standards 1–5 of the Code.	<input type="checkbox"/>
<b>Tender submission is successful</b>	
7. FJC Model Clauses are incorporated in the contract.	<input type="checkbox"/>
8. Mechanisms are in place to monitor the delivery/implementation of the FJC Plan/FJC Plan Addendum over the life of the contract.	<input type="checkbox"/>
9. Mechanisms are in place to facilitate regular reporting and/or respond to reasonable requests for information regarding the FJC Plan/FJC Plan Addendum.	<input type="checkbox"/>

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<b>Additional responsibilities</b>	
10. Notify the FJC Unit if a Supplier discloses, or if the Agency become aware that, a contracted Supplier is not meeting their commitments under the FJC Plan/FJC Plan Addendum. Notify the FJC Unit via the FJC portal: <a href="https://buyingfor.vic.gov.au/complaints-under-fair-jobs-code">buyingfor.vic.gov.au/complaints-under-fair-jobs-code</a> .	<input type="checkbox"/>
<i>This checklist is intended to be a quick reference only. For details, please consult the main body of the guidelines and the Code or contact the FJC Unit.</i>	

## Appendix 4: Related Information

Fair Jobs Code	<a href="http://buyingfor.vic.gov.au/fair-jobs-code">buyingfor.vic.gov.au/fair-jobs-code</a>
Guidelines for Businesses and Suppliers	<a href="http://buyingfor.vic.gov.au/fair-jobs-code-guidelines-suppliers-and-businesses">buyingfor.vic.gov.au/fair-jobs-code-guidelines-suppliers-and-businesses</a>
Pre-Assessment Certificate Application	<a href="http://buyingfor.vic.gov.au/apply-fair-jobs-code-pre-assessment-certificate">buyingfor.vic.gov.au/apply-fair-jobs-code-pre-assessment-certificate</a>
Certificate Register	<a href="http://buyingfor.vic.gov.au/fair-jobs-code-pre-assessment-certificate-register">buyingfor.vic.gov.au/fair-jobs-code-pre-assessment-certificate-register</a>
Code Complaints	<a href="http://buyingfor.vic.gov.au/complaints-under-fair-jobs-code">buyingfor.vic.gov.au/complaints-under-fair-jobs-code</a>
FJC Unit	Email: <a href="mailto:fairjobscode@ecodev.vic.gov.au">fairjobscode@ecodev.vic.gov.au</a> Telephone at 13 22 15
Fair Jobs Code Grants Guidelines for Departments and Agencies	<a href="http://buyingfor.vic.gov.au/fair-jobs-code-agencies-grants">buyingfor.vic.gov.au/fair-jobs-code-agencies-grants</a>
FJC Model Clauses for Procurement	<a href="http://buyingfor.vic.gov.au/fair-jobs-code-tools-and-templates-agencies">buyingfor.vic.gov.au/fair-jobs-code-tools-and-templates-agencies</a>
Prescribed FJC Plan Template	<a href="http://buyingfor.vic.gov.au/fair-jobs-code-tools-and-templates-agencies">buyingfor.vic.gov.au/fair-jobs-code-tools-and-templates-agencies</a>
FJC Plan Addendum Template	<a href="http://buyingfor.vic.gov.au/fair-jobs-code-tools-and-templates-suppliers-and-businesses">buyingfor.vic.gov.au/fair-jobs-code-tools-and-templates-suppliers-and-businesses</a>

# Fair Jobs Code

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