

# MODERN SLAVERY TENDER CLAUSES - GUIDANCE

## OVERVIEW OF THE CLAUSES

The Australian Government has developed model modern slavery tender clauses to set out its expectations for suppliers about identification and mitigation of modern slavery risks in the delivery of goods and/or services, and support the Government's compliance with the *Modern Slavery Act 2018 (Cth)*.

The model tender clauses build on the resources available in the Toolkit of Resources, which provides a comprehensive suite of tools to support the identification and management of modern slavery risks in Commonwealth procurement. These resources can be found in the *Resources* section at [modernslaveryregister.gov.au](https://modernslaveryregister.gov.au), under the tab: *Australian Government's Response to Modern Slavery, including Procurement Toolkit*.

The model tender clauses include a number of options with graduating obligations that entities can select depending on the modern slavery risk profile of the particular procurement. To assist with determining which clauses are most appropriate for a particular procurement, officers can use the *Risk Screening Tool* (found in the Procurement Toolkit) to determine the risk profile of the procurement. This tool will ask officers to consider sector and industry risks; product and services risk; geographic risks and entity risks, which will assist officers to determine if the procurement carries low, medium or high modern slavery risks. The officer can then select the appropriate clause, as outlined below.

## USING THE MODEL CLAUSES IN YOUR PROCUREMENT

It is recommended that entities include the modern slavery model tender clauses in procurement processes to manage modern slavery risks and support the Government's compliance with the Modern Slavery Act.

Entities can select the most appropriate clause depending on the modern slavery risk profile of the particular procurement, and may also adapt them to suit the context and needs of the specific procurement.

The clauses provide some standard wording for inclusion in the approach to market documents that outlines the Government's obligations under the Modern Slavery Act and the requirements of the tenderer to identify, assess and address risks of modern slavery in the provision of goods and/or services. The level of detail that the tenderer is required to provide in their tender response will depend on the assessed level of modern slavery risk in the procurement:

- **Option A**, designed for very low/low risk procurements, requires the tenderer to identify, assess and address risks of modern slavery practices in the operations and supply chains used in the provision of the goods and/or services.
- **Option B**, designed for medium/high risk procurements, includes the same obligations as option A, but requires additional information that describes any policy/plan in place to identify modern slavery risks; screening of suppliers to assess risks; any grievance mechanisms in place; and personnel responsible for identifying and reporting modern slavery.

The choice between Option A and Option B model clauses will depend on the nature of the goods or services being tendered, including supply chain characteristics, value and risk profile.

## **Case study: Assessing which tender clause option to use**

*These hypothetical case studies provide an example of how you might assess which tender clause to use in your procurement.*

**CASE 1: Textiles procurement:** Agency X is about to conduct a large procurement for new uniforms, and is preparing to approach the market. The procurement officer has completed the risk assessment tool and looked at online resources such as the [Global Slavery Index](#) to determine that the textiles industry is considered high-risk for modern slavery. To ensure these risks are appropriately identified and addressed in this large procurement, the procurement officer includes **Option B** of the tender clauses. This enables the procurement officer to receive detailed information from potential suppliers on risk mitigation information, which the procurement officer can use to evaluate the supplier and open a dialogue on modern slavery risks.

**CASE 2: Advisory Services:** Agency X is about to conduct a procurement for management advisory services, and is preparing to approach the market. The procurement officer has completed the risk assessment tool, and considered that the services they are procuring rely on a highly skilled workforce, and is therefore very low risk. However, the tenderers may have other modern slavery risks, for example through services such as financial services they provide to other customers or in goods or services provided to them by their suppliers. In recognition of this potential risk factor the tenderers may present, the procurement officer includes **Option A** of the tender clauses. This enables the procurement official to receive information on how the tenderers identify and address their own modern slavery risks, and allows the procurement team to open a dialogue on modern slavery risks with the potential suppliers.

If a tenderer's responses to information sought in the tender clauses do not seem satisfactory, this does not necessarily mean that the tenderer should be excluded from further consideration under the approach to market, however these risks should be considered in the evaluation process. Entities should address how the tenderers responses will be considered in the evaluation as part of the approach to market documentation (such as by including the tenderer's proposed approach to modern slavery risks as part of an existing evaluation criterion or as a separate evaluation criteria).

Agencies are encouraged to work with potential or current suppliers to support their modern slavery risk management approach and may wish to seek specific additional information from tenderers to assess the modern slavery risks. Once the tender has progressed to contract signature stage, entities should reassess the risk and make any necessary updates to the clauses included in the contract prior to signature.

For further advice on how modern slavery should be considered in the context of your procurement, contact your agency's central procurement team.

## TENDER CLAUSES

**Note to Tenderers:** The Agency may require the successful Tenderer to comply with one of the modern slavery model contract clauses available at <https://modernslaveryregister.gov.au/resources/> depending on the Agency's risk assessment of modern slavery. The Agency will determine the appropriate clause to include in the contract based on the assessed level of modern slavery risk.

- i) Under the *Modern Slavery Act 2018* (Cth), the Australian Government is required to report annually on modern slavery risks across whole-of-government procurement and investments. The Australian Government is committed to ensuring its supply chains are not linked to modern slavery and to address and mitigate risks that are identified. More information on the Australian Government's response to modern slavery risks is available at <https://modernslaveryregister.gov.au/statements/file/dba35028-74c5-4324-8b41-4cd553a66f2e/>.
- ii) Tenderers must provide details of how they will identify, assess and address risks of Modern Slavery practices in the operations and supply chains that will be used in the provision of Goods and/or Services by completing **Attachment [A]**. This is a minimum content and format requirement.
- iii) In performing any contract, the successful Tenderer may be required to comply with one of the modern slavery model contract clause options available at <https://modernslaveryregister.gov.au/resources/> which may require the Tenderer to:
  - (a) take reasonable steps to identify, assess and address risks of Modern Slavery practices in the operations and supply chains used in the provision of the Goods and/or Services;
  - (b) ensure the Tenderer's personnel responsible for managing the operations and supply chains used in the performance of the contract have undertaken suitable training to be able to identify and report on Modern Slavery;
  - (c) manage specific risks of Modern Slavery as well as address or remove Modern Slavery practices identified in the Tenderer's supply chain and operations; and
  - (d) prepare, implement and comply with a Modern Slavery Risk Management Plan.
- iv) In this clause:

<b>Modern Slavery</b>	has the same meaning as it has in <i>the Modern Slavery Act 2018</i> (Cth).
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## ATTACHMENT [A]: MODERN SLAVERY

**Note to Drafters:** Drafters should determine whether to include either Option A or Option B below based on the Agency's assessed level of modern slavery risk. Option B requests more information from the Tenderer if the risk is medium or high. The information requested may vary depending on the nature and value of the Goods and/or Services and the Agency may wish to seek specific information.

[https://modernslaveryregister.gov.au/resources/Modern\\_Slavery\\_Toolkit\\_of\\_Resources.PDF](https://modernslaveryregister.gov.au/resources/Modern_Slavery_Toolkit_of_Resources.PDF) should also be referred to by drafters.

### **Option A** (very low/low risk)

Provide details of how you (as Tenderer) identify, assess and address risks of Modern Slavery practices in the operations and supply chains used in the provision of the Goods and/or Services.

OR

### **Option B** (medium/high risk)

Provide details of how you (as Tenderer) identify, assess and address risks of Modern Slavery practices in the operations and supply chains used in the provision of the Goods and/or Services.

You should also provide information on the following:

- a) Any policy/plan you have in place to identify and address Modern Slavery risks including information on whether you have a system to monitor compliance with the policy/plan;
- b) How you perform screening of suppliers to identify, assess and address the risks of Modern Slavery that may occur in your operations and supply chains;
- c) Any grievance mechanism available to staff in your organisation for complaints or grievances about Modern Slavery practices; and
- d) Any personnel responsible for managing the operations and supply chains used in provision of the Goods and/or Services and what training programs you have in place to ensure they are able to identify and report Modern Slavery.