



## FUNDING ENTITY EOI/Tender Process Checklist

Funding entities are obliged to ensure the requirements of the Building Code 2016 (the Building Code) are applied during procurement processes for contracts to undertake Commonwealth funded building work. The following review checklist is aimed at assisting funders in ensuring compliance obligations are met from the time of advertising an EOI or Tender through to awarding of contracts and project execution.

### Section One: EOI/Tender Advertising Requirements

Does the advertisement for EOI or tender include a statement that the Building Code applies to the work? (refer to the Model Clauses)*	
Have you notified the ABCC of the release of the EOI/Tender (using the ABCC EOI/Tender Notification form)**	
Does the request for EOI or tender include the Model Clauses (including template Declaration of Compliance and Attachment A – Mandatory Information, and an indication of whether a WRMP will be required for the project)***	

\*The Model Clauses are the typical method to ensure obligations are included in EOI and Tender documentation, and can be found on the [Funding entities page of the ABCC website](#).

\*\*Notification of EOI/tender is a requirement of the Code for projects where a WRMP would be required. It is best practice to notify all EOI/tenders subject to the Code to enable the ABCC to ensure Building Code requirements are appropriately applied for all relevant procurements.

\*\*\*The Declaration of Compliance including Attachment A Mandatory Information forms part of the Model Clauses and is the primary mechanism for funding entities to ensure all required information and confirmations are provided by respondents during EOI/tenders for Commonwealth funded building work.

### Section Two: EOI/Tender Review Requirements

Has the respondent signed the Declaration of Compliance and provided the Mandatory Information Attachment?	
Has the respondent provided an ABCC Letter of Compliance and/or Self-Declaration? #	
Have you checked the ABCC website to ensure the respondent is not currently subject to an exclusion sanction?	





Have you confirmed the respondent has not had an adverse decision, direction or order made by a court or tribunal for a breach of the Act, a designated building law, work health and safety law or competition and consumer law and failed to comply with the decision, direction or order? (refer to Declaration of Compliance)	
Has the respondent declared it will only use products in relation to the Works that comply with the relevant Australian standards published by, or on behalf of, Standards Australia? (refer to Declaration of Compliance)	
Has the respondent provided a response to all items in Attachment A Mandatory Information to the Declaration of Compliance? ##	
Has the respondent provided a WRMP for approval by the ABCC?###	
Have you provided the WRMP of the shortlisted/preferred tenderer(s) to the ABCC for approval?###	

# Funding entities are precluded from entering into contracts with building contractors or building industry participants if the eligibility criteria have not been met.

To demonstrate compliance with section 11 of the Code (one of the eligibility criteria), contractors will provide to a funding entity: an ABCC Letter of Compliance, and/or a Self-Declaration. The form of evidence required from a contractor is dependent on the type of industrial arrangement(s) they operate under, when the arrangement(s) was made, and the timing of the procurement for which they are submitting a response. A full overview of the necessary evidence for a contractor to demonstrate compliance is available on the [Eligibility to tender page of the ABCC website](#) and at Attachment A to this checklist.

## Some information items within Attachment A to the Declaration of Compliance are not required to be assessed by funding entities. This relates to items 4-12 of Attachment A to the Declaration. The extent to which a funding entity chooses to factor responses to these information items into procurement evaluation processes is up to each agency.

###For projects requiring a WRMP, ABCC approval of the shortlisted respondent(s) WRMP must be received prior to any contracts for building work being awarded. Funding entities are to submit contractor WRMPs for approval to [WRMPAssessments@abcc.gov.au](mailto:WRMPAssessments@abcc.gov.au) . For further information please refer to the [Funding entities a page of the ABCC website](#).





**Section Three: Contract Requirements**

Are you awarding the contract to a respondent who meets the eligibility requirements (see section two)?	
Have you checked the ABCC website to ensure the respondent is not currently subject to an exclusion sanction?^	
Have you confirmed with the ABCC approval to proceed with the contract where the respondent has been excluded from performing Building Work funded by a state or territory government?	
Have you received ABCC approval of the WRMP of the respondent?	
Does the contract include the Model Clauses?	

^The length of time between EOI/Tender review and contract signing can often be lengthy. As such you should check the ABCC website for sanctions and their scope prior to contract signing, even if it was checked during EOI/tender review.

**Section Four: Post Contract Requirements**

Have you notified the ABCC that a contract has been entered into using the ABCC Contract Notification Form?	
Are you aware that you are required to notify the ABCC of all allegations of breaches of the Building Code?	
Are you aware that you are required to respond to requests for information concerning matters related to the Building Code made by the ABCC?	
Are you aware that Funding Entity non-compliance with the Building Code can be referred by the ABC Commissioner to the Secretary of the Department of Finance?	

**Assistance**

For further assistance contact Manager Government Code Compliance via the ABCC hotline on 1800 003 338 or email your query to [GovernmentCodeEnquiries@abcc.gov.au](mailto:GovernmentCodeEnquiries@abcc.gov.au).





**Attachment A: ABCC Proof of Eligibility**

The following demonstrates the required evidence of eligibility to express interest in, tender for or be awarded contracts for Commonwealth funded building work. For any questions around the validity of evidence provided, contact Manager Government Code Compliance via the ABCC hotline on 1800 003 338 or email your query to [GovernmentCodeEnquiries@abcc.gov.au](mailto:GovernmentCodeEnquiries@abcc.gov.au)

Scenario	Eligibility	Documents required to demonstrate eligibility
<p><b>Scenario 1</b>            I am covered by an enterprise agreement(s) in respect of building work that was made* or varied** (in accordance with section 207 of the <i>Fair Work Act 2009</i>) on or after 25 April 2014.</p>	<p>To be eligible to express interest in, tender for and be awarded Commonwealth funded building work, you and your related entities must not be covered by an enterprise agreement in respect of building work that does not meet the requirements of section 11 of the Building Code 2016 (subject to limited exemptions referred to in Scenarios 4-6).</p>	<p><b>ABCC Letter of Compliance for each enterprise agreement.</b></p>
<p><b>Scenario 2</b>            A Modern Award or other lawful arrangement (such as a common law contract of employment) applies to me.</p>	<p>You are eligible to express interest in, tender for and be awarded Commonwealth funded building work.</p> <p>If you or a related entity are also covered by an enterprise agreement(s) in respect of building work that was made* or varied ** (in accordance with section 207 of the Fair Work Act 2009) on or after 25 April 2014 you will need an ABCC Letter of Compliance for each enterprise agreement.</p>	<p><b>Self-Declaration A (<a href="#">Word – 150K</a>   <a href="#">PDF – 175K</a>)</b>  <i>This can be used to express interest in, tender for <b>and be awarded</b> Commonwealth funded building work at any time.</i></p>
<p><b>Scenario 3</b>            I am covered by an enterprise agreement(s) in respect of building work that was made* before 25</p>	<p>You are eligible to express interest in, tender for and be awarded Commonwealth funded building work.</p>	<p><b>Self-Declaration A (<a href="#">Word – 150K</a>   <a href="#">PDF – 175K</a>)</b></p>





<p>April 2014 that has not been varied in accordance with section 207 of the <i>Fair Work Act 2009</i>.</p>	<p>If you or a related entity are also covered by an enterprise agreement(s) in respect of building work that was made* or varied ** (in accordance with section 207 of the Fair Work Act 2009) on or after 25 April 2014 you will need an ABCC Letter of Compliance for each enterprise agreement.</p>	<p><i>This can be used to express interest in, tender for <b>and be awarded</b> Commonwealth funded building work at any time.</i></p>
<p><b>Scenario 4</b>  I submitted an expression of interest or tender between 2 December 2016 and 16 February 2017 and I am covered by an enterprise agreement(s) in respect of building work that was made on or after 25 April 2014 but before 2 December 2016.</p> <p>I am not covered by an enterprise agreement (s) in respect of building work made on or after 2 December 2016.</p>	<p><b>EOI/Tender between 2 December 2016 and 16 February 2017</b>  An exemption applies if you expressed interest in or tendered for the work between 2 December 2016 and 16 February 2017.</p> <p>You are eligible to be awarded the contract for this work before 29 November 2018, even if the enterprise agreement(s) covering the work is not compliant.</p>	<p><b>Self-Declaration C (<a href="#">Word – 150K</a>   <a href="#">PDF – 67K</a>)</b>  <i>This can only be used for work for which you expressed interest/tendered between 2 December 2016 and 16 February 2017 to demonstrate eligibility to be awarded that Commonwealth funded building work before 29 November 2018</i></p>
<p><b>Scenario 5</b>  I submitted an expression of interest or tender between 2 December 2016 and 16 February 2017 and I am covered by an enterprise agreement(s) in respect of building work that was made on or after 25 April 2014 but before 2 December 2016.</p> <p>I am also covered by an enterprise agreement(s) in respect of building work made on or after 2 December 2016.</p>	<p><b>Tendered between 2 December 2016 and 16 February 2017</b>  As you are covered by more than one enterprise agreement, the eligibility of each enterprise agreement is relevant.</p> <ol style="list-style-type: none"> <li>(1) The enterprise agreement(s) which you made on or after 2 December 2016 must be compliant, regardless of when you tender.</li> <li>(2) The enterprise agreement(s) made on or after 25 April 2014 but before 2 December 2016 does not prevent you expressing</li> </ol>	<p><b>Letter of Compliance</b>  To express interest in and tender for any Commonwealth funded building work in this scenario, you will need:</p> <ul style="list-style-type: none"> <li>• a letter of compliance for any enterprise agreement that was made on or after 2 December 2016.</li> </ul> <p>To be awarded the Commonwealth funded building work, you will also need:</p> <ul style="list-style-type: none"> <li>• <b>Self-Declaration C (<a href="#">Word – 150K</a>   <a href="#">PDF – 67K</a>)</b></li> </ul> <p><i>This can be used for work tendered between</i></p>





	interest in, tendering for and being awarded the work before 29 November 2018, noting the work was tendered for during the period 2 December 2016 and 16 February 2017.	<i>2 December 2016 and 16 February 2017 to demonstrate eligibility to be awarded that building work before 29 November 2018.</i>
<p><b>Scenario 6</b>          I am covered by an enterprise agreement that was made before 2 December 2016 that applies to me only in respect of building work relating to an expression of interest or tender lodged by me before 2 December 2016.</p>	The compliance of this enterprise agreement does not affect your eligibility to express interest in, tender for or be awarded Commonwealth funded building work.	When expressing interest or tendering for Commonwealth funded building work contractors will be required to complete a Declaration of Compliance that lists all enterprise agreements made on or after 25 April 2014 that cover them or their related entities. You should note you are covered by this exemption when listing this enterprise agreement on your Declaration of Compliance.

\*Made – under section 182 of the Fair Work Act 2009, a single enterprise agreement is made when the majority of employees covered by the agreement cast a valid vote to approve the agreement. For greenfields agreements, the relevant date would be the date that the agreement was signed by the parties. The date on which an agreement is made is separate from the date on which the Fair Work Commission approves the agreement.

\*\* Varied – A letter of compliance will not be issued until the variation to the agreement has been approved by the Fair Work Commission. A variation of an enterprise agreement operates from the day specified in the Fair Work Commission decision to approve the variation. Up to that time, the earlier agreement continues to cover the entity.

