

# NCOP DECLARATION OF COMPLIANCE

## AUGUST 2009



### Declaration of Compliance with the National Code of Practice for the Construction Industry and the Australian Government Implementation Guidelines

This declaration must be completed by the Tenderer and lodged with its Tender. Any Tender in which this schedule is not completed may be regarded as Informal and not considered further in the evaluation of Tenders.

Insert Project: **New Children’s Hospital Project**

Insert Name of Tenderer.....

ABN.....,

**Please tick relevant box:** Sole Trader  Partnership  Company  Trust

1. The Tenderer confirms that it has complied with the National Code of Practice for the Construction Industry (the Code) and the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry (the Guidelines), issued August 2009 in preparing this Tender.
2. The Tenderer undertakes to comply with the Code and Guidelines in performing the Contract, should it be the successful Tenderer, and to require compliance by its related entities<sup>1</sup>.
3. The Tenderer undertakes to ensure compliance from all sub-contractors and consultants engaged on this project, should it be the successful Tenderer. All contracts must expressly require compliance with the Code and Guidelines.
4. The Tenderer agrees to require that the Tenderer and its consultants, sub-contractors and its related entities provide the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, with access to:
  - (a) inspect any work, material, machinery, appliance, article or facility;
  - (b) inspect and copy any record relevant to the Project and Works the subject of this Contract;
  - (c) interview any person; and
  - (d) request a party to this Contract to produce a specified document within a specified period in person, by fax or by post,

As is necessary to allow validation of its compliance with the Code and Guidelines.

Additionally, the Tenderer agrees that its consultants, sub-contractors and its related entities will agree to a request from the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, to produce a specified document within a specified period, in person, by fax or by post.

<sup>1</sup> **Related Entity** has the same meaning as given to that term in the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry, issued August 2009 available at [www.workplace.gov.au/building](http://www.workplace.gov.au/building)

**AUGUST 2009**

5. The Tenderer acknowledges that it is aware the Commonwealth may impose a sanction on a Tenderer or Contractor that does not comply with the Code and Guidelines.

The sanction imposed may include but is not be limited to:

- (a) the reporting of the breach to an appropriate statutory body or law enforcement agency (if there is evidence that the breach may also be a breach of a Commonwealth or State law), or industry association;
  - (b) issuing of a formal warning that future breaches may lead to more significant sanctions;
  - (c) preclusion from Tendering for any Commonwealth work for a specified period;
  - (d) communication of sanction details to all Commonwealth agencies to ensure a 'whole-of-government' approach;
  - (e) publication of details of the breach and identification of the party committing the breach; and a
  - (f) Reduction in the number of tendering opportunities that are given.
6. The Tenderer acknowledges that the Commonwealth, its agencies and Ministers, must be able to disclose information concerning the Tenderer's and its related entities' compliance with the Code and Guidelines in order to facilitate compliance with the Code and Guidelines and for the exercise of their statutory and portfolio responsibilities (the Purposes) and, to this end:

***(The Tenderer is to delete as applicable)***

The Tenderer hereby gives its consent, and confirms that its related entities give their consent, to disclosure by the Commonwealth, its agencies and Ministers, of information concerning the Tenderer's and its related entities' compliance with the Code and Guidelines and whether or not a sanction has been imposed on the Tenderer and/or related entity of the Tenderer, for the Purposes.

**OR**

The Tenderer has previously given its consent, and confirms that its related entities have previously given their consent, to disclosure by the Commonwealth, its agencies and Ministers, of information concerning the Tenderer's and its related entities' compliance with the Code and Guidelines and whether or not a sanction has been imposed on the Tenderer and/or a related entity of the Tenderer for the Purposes, and confirms that the Tenderer and its related entities have not revoked that consent.

7. The Tenderer has obtained or will obtain the consent of each sub-contractor, and consultant proposed in its Tender to disclosure by the Commonwealth, its agencies and ministers, of information concerning the proposed sub-contractors' compliance with the Code and Guidelines and whether or not a sanction has been imposed on any proposed sub-contractor, for the Purposes.
8. The Tenderer acknowledges that sanctions can be applied to sub-contractors, and consultants that form part of the contractual chain.
9. The Tenderer acknowledges that the consents provided in this undertaking are not limited to this Tender process.

**NCOP DECLARATION OF COMPLIANCE**



**AUGUST 2009**

10. The Tenderer will:

- (a) Describe how they have complied with the 2009 versions of the Code and Guidelines in the past (if the Tenderer has undertaken Australian Government funded construction work in the past)

.....  
 .....  
 .....

- (b) Describe how they intend to comply with the Code and Guidelines in performing the Contract should its Tender be successful including the cascading of Code Compliance obligations to any sub-contractors that the Tenderer proposes to engage.

.....  
 .....  
 .....

- (c) Where the Tenderer proposes to subcontract an element of the Work, the Tender is either to:

- (i) provide the information detailed at (a) and (b) in relation to each sub-contractor, material supplier and consultant; or
- (ii) detail how the Tenderer intends to ensure compliance with the Code and Guidelines by each sub-contractor(s) and/or consultant(s).

*Attach relevant information*

**Privately Funded Projects:**

11. The Tenderer declares that, in respect to privately funded projects:

- (a) The Tenderer and its related entities will comply with the Code and Guidelines on all the Tenderer's and its related entities' future privately funded projects.
- (b) The Tenderer must maintain adequate records of compliance with the Code and Guidelines by the Tenderer, its subcontractors and related entities.
- (c) The Tenderer agrees that it and any of its related entities will provide the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, with access to:
  - (i) inspect any work, material, machinery, appliance, article or facility;
  - (ii) inspect and copy any record relevant to the Project the subject of this Contract; and
  - (iii) interview any person,

as is necessary to allow validation of its compliance with the Code and Guidelines.

- (d) The Tenderer agrees that the Tenderer and its related entities will agree to a request from the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, to produce a specified document within a specified period, in person, by fax or by post.
- (e) The Tenderer will ensure that the Tenderer and its related entities permit the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, to have access to records and to the related entities' and subcontractors' premises (to inspect and copy records), as is necessary to ensure that the subcontractors and related entities are complying with the Code and Guidelines.

**NCOP DECLARATION OF COMPLIANCE**



**AUGUST 2009**

**Name of Tenderer**

.....

**Name of Authorised Representative of Tenderer**

.....

**Signature of Authorised Representative**

.....

**Date of Signing**

.....

I have completed and returned the attached self assessment Questionnaire **Y / N**

I have provided details of the industrial instrument that applies to my business **Y / N**

I have provided a copy of the relevant industrial instrument **Y / N**

I have provided a copy of the DEEWR assessment of my industrial instrument **Y / N**

Notes to Tenderer

1. *In the case of Enterprise Agreements please only list and provide those Enterprise Agreements applicable to this project.*
2. *Award clauses that operate in conjunction with Agreements must meet the requirements of the National Code and Implementation Guidelines 2009. There may be non-compliant clauses in these awards which the Tenderer will need to address in order to ensure its practices are consistent with the National Code and Implementation Guidelines.*
3. *All questions must be answered in this declaration. Failure to answer all questions may be viewed as non compliance with your NCOP obligations.*
4. *The Tender confirms that it will comply with John Holland's policies and procedures pertaining to Industrial Relations, including NCOP compliance.*

**NCOP Self Assessment Questionnaire**

	<b>Checklist Items</b>	<b>Yes</b>	<b>No</b>	<b>Comments/Details</b>
	<b>ENGAGEMENT</b>			
1	Does the Tenderer in the normal course of its business employ employees?			
2	Does the Tenderer in the normal course of its business engage independent contractors?			
3	Does the Tenderer (Contractor**/Sub-Contractor/Consultant) Intend to employ or engage personnel specifically for this Project?  ** <b>Note:</b> A reference in the remainder of this document to "Contractor" includes any sub-contractor, consultant or related entity.			
4	Has the Tenderer had a sanction applied to it by the Commonwealth or any other State or Territory Government or any of their agencies, as contemplated in the section of the Code which precludes the Tenderer from tendering for or otherwise performing:  (a) any government work (whether directly for a government or for a Contractor of a government) and the sanction is still in force; or  (b) a particular class of government work (including work over a certain value) (whether directly for a government or for a Contractor of a government), and:  (i) the work the subject of this project falls within the class of work the subject of the sanction; and  (ii) is the sanction still in force?  <input type="checkbox"/> No Sanction/s applied			



	Checklist Items	Yes	No	Comments/Details
	<input type="checkbox"/> Yes Sanction/s applied Please supply the enactment and removal dates of each sanction, where applicable, and the subject of each sanction applied: Enactment Date: ..... Removal Date: ..... Sanction description: .....  (Leave blank if not applicable)  (c) the Tender should identify any related entity, whether incorporated or unincorporated, "connected" with the Tenderer to which sanctions apply or have applied (as that term is defined by section 3.5.4 of the Guidelines)?			
	<b>WORKPLACE ARRANGEMENTS</b>			
5	<b>Please identify the industrial Agreement(s) which the Tenderer will be applying to this project, including the name of the Industrial Instrument and registration code (if registered), and attach a copy with this completed Questionnaire.</b>  Enterprise Agreement(s) Modern Award Other (Please provide details)			<u>Full name of the Industrial Agreement(s)</u>
6	Does any Enterprise Agreement referred to in Question 5 above operate in conjunction with any type of award?  If "Yes", please provide names of all relevant Awards.			<u>Full name of the relevant award(s)</u>
7	Does the Tenderer have Industrial Agreement(s), policies or practices that <b>ENCOURAGES</b> employees on the project to join or maintain financial membership with a relevant union or any industrial association?  If "Yes", please provide details.			
8	Does the Tenderer have Industrial Agreement(s), policies or practices that <b>DISCOURAGES</b> employees on the project to join or maintain financial membership with a relevant union or any industrial association?  If "Yes", please provide details.			
9	Are there any requirements or practices that encourage, suggest or pressure sub-contractors to adopt or require any form of industrial Agreement(s) or to adopt any particular terms and conditions of employment?			



	<b>Checklist Items</b>	<b>Yes</b>	<b>No</b>	<b>Comments/Details</b>
10	Does/has the Tenderer been directed, required, coerced to make payments in excess of its Industrial Agreement(s) or legislation (for e.g. payments for industry superannuation, redundancy, sick leave funds and/or "top up" insurance schemes or training levies)?			
11	If question 10 is marked 'yes', is there any requirement by the Tenderer that its sub-contractors make these or similar payments?			
12	Do the Industrial Agreement(s) of the Tenderer include provisions that require the approval of a union of the number, source, type or payment of labour required by the Tenderer?			
13	Does the Tenderer intend to put in place any arrangements for the employment of a non-working shop steward or job delegate, or other such person, on the project?			
14	Does the Tenderer have arrangements or intends to have arrangements in place to ensure that payment is not made for any time spent engaged in industrial action unless legally required or authorised?			
15	If the Tenderer proposes to put in place new Industrial Agreement(s), please indicate the timeframes for implementing these arrangements.  <i>(Leave blank if not applicable)</i>			
	<b>FREEDOM OF ASSOCIATION</b>			
16	Does the Tenderer use induction forms that require employees to identify their union status or require sub-contractors to identify the union status of employees?			
17	Does the Tenderer have policies in place that ensure:			
	(i) Employee records are securely stored and not provided to a third party other than as requested by legislation?; and			
	(ii) The site is free from posters, signs and other promotional material implying compulsory union membership?; and			
	(iii) There is no requirement to display union logos on clothing and property?; and			
	(iv) Site induction processes are only undertaken by site management?; and			
	(v) Employees are not required to identify their union status in any way?			
18	Do the Tenderer's employees have freedom of choice as to who represents them?			



	Checklist Items	Yes	No	Comments/Details
19	Does the Tenderer intend to have union delegates undertake or administer any part of the site induction process, or be given access to the names of new staff, job applicants, sub-contractors or suppliers?			
	<b>RIGHT OF ENTRY</b>			
20	Does the Tenderer have systems in place that ensure union officials:			
	(i) Hold a valid federal right of entry permit?; and			
	(ii) Where required by legislation, provide at least 24 hours written notice of entry; and			
	(iii) Provide details of any alleged breach they are investigating?; and			
	(iv) Only visit during working hours and hold discussions during designated meal times or other breaks?; and			
	(v) Show their valid permit and notice of entry upon request?; and			
	(vi) Comply with your reasonable request about the rooms/areas on site they can use for holding discussions or interviews?; and			
	(vii) Comply with your reasonable request about the route they should take to access particular rooms/areas?			
21	Do the Industrial Agreement(s) to which the Tenderer is a party grant access to a site to a representative of an industrial association other than in strict compliance with the procedures governing entry and inspection under the <i>Fair Work Act 2009</i> or relevant State legislation?			
	<b>RECORD KEEPING</b>			
22	Does the Tenderer keep records and documents that demonstrate compliance with <b>2009 versions of the Code and Guidelines</b> ? This includes contracts, tender documents, industrial Agreement(s) and right of entry records.			
	<b>REPORTING OBLIGATIONS</b>			
23	Does the Tenderer have systems in place to record and report to John Holland and any relevant authority:			
	(i) Alleged or suspected breaches of the Code, Guidelines and Fair Work Act 2009 within 21 days?; and			
	(ii) Industrial and OHS disputes at the earliest opportunity?; and			
	(iii) Right of entry by union officials?; and			



**NCOP DECLARATION OF COMPLIANCE****AUGUST 2009**

	<b>Checklist Items</b>	<b>Yes</b>	<b>No</b>	<b>Comments/Details</b>
	(iv) Freedom of association (provisions of the Code) within 21 days (to ABCC)?; and			
	(v) Any details of any court applications under <i>Building and Construction Industry Improvement Act 2005</i> , <i>Fair Work Act 2009</i> or section 34 of the <i>Independent Contractors Act 2006</i> and of the outcome?			
24	The Tenderer confirms that it intends to do all things necessary to remain Code compliant on privately funded work			