# Development guidance for Contractors

## Version 3 – 09/02/2023

Note: Conditions of Contract clause numbers referred to in this document relate to the Conditions of Contract NPWC NT Edition 3, Version 5.4. If an alternate Conditions of Contract applies, such as the Minor Works and Services, Period Contract Works and Services or other, clause numbers and specific requirements may vary. Refer to <https://nt.gov.au/industry/procurement/understanding-the-rules/conditions-contract/construction>

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| --- | --- | --- |
| Contract or Policy Clause Reference | Contractual Requirement | Interpretation of minimum requirement to be detailed in the IDP |
| General | | |
| **Conditions of Contract NPWC NT Edition, Clause 6(e)** | The Contract is comprised of… the Contractor’s tender in response to the Request for Tender. | All qualitative and quantitative commitments and targets made in the Contractor’s tender response (including the Response Schedule) must be reflected in the Indigenous or Aboriginal Development Plan (IDP).  It is strongly recommended that any departures from or changes to the tender commitments are clearly identified in the IDP.  Any departure or change from tender commitments may only be approved at the direction of the Superintendent. |
| **Conditions of Contract NPWC NT Edition, Clause 64.1** | If the Contractor defaults in the performance… of any… condition or stipulation in the Contract… the Principal may suspend payment under the Contract… | The Contractor must comply with all requirements of the Conditions of Contract and Request for Tender (RFT) in relation to the IDP, including submission timeframes, plan content and ongoing reporting requirements.  Failure by the Contractor to fulfil these requirements may result in the Principal exercising its right to suspend payment under Clause 64.1. |
| Submission – Hold Point | | |
| **Conditions of Contract NPWC NT Edition, Clause 17**  **RFT Clause x.x.1** | Within fourteen (14) days of the award of Contract, and before any work commences on site, the Contractor shall submit to the Superintendent one copy of the finalised IDP for approval. | The Contractor must submit the completed IDP to the Superintendent’s Representative for approval within 14 days of receipt of the Notice of Acceptance.  The Principal may suspend payment if the IDP is not submitted in accordance with Contract requirements. Refer to Conditions of Contract Clause 64.1 and explanation under ‘General’ section of this document. |
| **RFT Clause x.x.1** | The Superintendent approves the Indigenous or Aboriginal Development Plan. | The Principal will notify the Contractor if the submitted IDP is approved, or if amendments are required in order to meet contract requirements.  Monthly and End-of-Project reporting must reflect achievement of the targets defined in the approved IDP unless an alternate target is approved by the Superintendent. Refer ‘Monitoring/ Auditing and Reporting Protocols’ and ‘Project Reporting’ below. |
| Minimum Requirements - The IDP as a minimum must address the following topics: | | |
| **(a) General Overview** | | |
| **RFT Clause x.x.2 (a)(i)** | Provide an outline of the Indigenous or Aboriginal participation context. | The IDP must provide a short, project specific outline of the Indigenous or Aboriginal participation context. Note the response to this requirement can be combined with response to Clause x.x.2 (a)(ii). |
| **RFT Clause x.x.2 (a)(ii)** | Provide an opportunity analysis for local participation. | The IDP must provide a short, project specific analysis of the opportunities for local Indigenous or Aboriginal participation. This may include employment opportunities, training opportunities or other Indigenous or Aboriginal community involvement.  Note: The definition of the term ‘local’ will vary from contract to contract. For example, a road maintenance contract will require a different approach to ‘local’ than a community housing project. The contract should provide context regarding their interpretation of ‘local’ for the specific contract. |
| **RFT Clause x.x.2 (a)(iii)** | Nominate the Contractor’s representative with responsibility for the Plan. | The IDP must nominate an individual who is responsible for the IDP. This is typically an employee of the Contractor. |
| **(b) Employment Strategy and Targets** | | |
| **RFT Clause x.x.2 (b)(i)** | Identify sources for Indigenous or Aboriginal labour (e.g. employment agency(s)/Indigenous or Aboriginal organisation(s) etc.). | The IDP must identify potential and planned sources for Indigenous or Aboriginal labour, e.g. employment agencies, Indigenous or Aboriginal organisations or direct employment. |
| **RFT Clause x.x.2 (b)(ii)** | Nominate employment targets and conditions of employment to be offered (compliance with Fair Work Act requirements). | There are two parts to this clause which must be detailed in the IDP:  **1)** The IDP must provide detail regarding their Indigenous or Aboriginal employment target. To provide a specific and measurable target, it is recommended the Indigenous or Aboriginal employment target is based on Indigenous or Aboriginal hours/days worked as a percentage of total project hours/days worked (as relevant to the Response Schedule). The Contractor should specify a percentage target in the IDP. If a percentage is not specified, DIPL may calculate a percentage based on other employment targets / estimates provided in the Tender Response or the IDP.  It is recommended that the Contractor completes and includes the attached **Appendix A – Indigenous or Aboriginal Employment Rate Calculator** within their IDP to provide clarity regarding employment rate.  Note:   * Hours spent at relevant training **do** count towards employment targets * Indigenous or Aboriginal employees must be directly engaged on the Works to be counted towards employment targets. NPWC Conditions of Contract define "Works" as meaning the whole of the work to be executed in accordance with the Contract, including all variations provided by the Contract, which by the Contract are to be handed over to the Principal. Therefore, off-site support such as yard work, administrative workers, supervisory staff who are not engaged in the performance of the physical works, and mobilisation of equipment and materials to site **do not** count towards employment targets.   **2)** The IDP must specify the employment conditions to be offered to Indigenous or Aboriginal employees. This may include the specific award(s) offered, or a statement confirming that Indigenous or Aboriginal employees are offered the same employment conditions as non-Indigenous employees, which comply with relevant legislation (*Fair Work Act 2009*, etc.). Any differences between employment conditions offered to Indigenous or Aboriginal and non-Indigenous should be explained with justification. |
| **Contract specific RFT clause requirement(s) regarding Indigenous or Aboriginal employment rate.** | Refer specific clause(s). | **Note: This requirement is not applicable to all Contracts. Refer to the RFT to confirm if applicable.**  The IDP must demonstrate compliance with these requirements. It is strongly recommended that the Contractor completes and includes the attached **Appendix A – Indigenous or Aboriginal Employment Rate Calculator** within their IDP to provide clarity regarding employment rate. Refer to above item. |
| **RFT Clause x.x.2 (b)(iii)** | Nominate the intended balance of skilled and unskilled Indigenous or Aboriginal labour to be achieved. | The IDP must provide an estimate of the balance of skilled and unskilled Indigenous or Aboriginal labour. It is recommended this is provided as a percentage of the total estimated Indigenous or Aboriginal labour hours.  It is recommended that the Contractor completes and includes the attached **Appendix B – Indigenous or Aboriginal Employees Register** within their IDP to provide clarity of skilled and unskilled Indigenous or Aboriginal employees.  Note: Skilled labour includes apprentices, trainees and qualified persons (trade certificate or professional qualification). |
| **RFT Clause x.x.2 (b)(iv)** | Numbers of apprentices and trainees to be employed. | The IDP must detail the number of Indigenous or Aboriginal apprentices and trainees that will be directly engaged in relation to the Contract works. This includes apprentices and trainees engaged by sub-contractors. Apprentice and trainee numbers must align with the Local Content section of the Response Schedule.  Acceptable apprentice and trainee courses are included at: <https://nt.gov.au/employ/apprenticeships-and-traineeships/become-an-apprentice-or-trainee/nt-apprenticeships-and-traineeships-database>  It is recommended that the Contractor completes and includes the attached **Appendix C – Indigenous or Aboriginal Apprentices and Trainees Register** within their IDP to provide clarity. |
| **RFT Clause x.x.2 (b)(v)** | Career management strategies. | The IDP must provide an outline of the career management strategies, i.e. professional development opportunities that will be implemented for Indigenous or Aboriginal employees. |
| **RFT Clause x.x.2 (b)(vi)** | Mentoring strategies. | The IDP must provide an outline of the mentoring strategies, i.e. pastoral and professional guidance that will be implemented to Indigenous or Aboriginal employees. This may include formal, informal or group mentoring strategies. |
| **RFT Clause x.x.2 (b)(vii)** | Strategies to sustain Indigenous or Aboriginal employment through the entire period of the Contract. | The IDP must provide an outline of the strategies that will be implemented to sustain Indigenous or Aboriginal employment through the entire period of the Contract. In addition to training, career management and mentoring strategies required by other clauses, strategies may address cultural and/or community considerations, competitive wages, induction processes, flexible work arrangements etc. |
| **(c) Training Strategies and Programs** | | |
| **RFT Clause x.x.2 (c)(i)** | Training needs analysis, identifying skill gaps and work-skill development pathways. | The Contractor must complete, or commit to completing, a Training Needs Analysis (TNA) for each Indigenous or Aboriginal employee and document the outcomes in the IDP.  Strategies must align with the Local Content section of the Response Schedule.  It is recommended that a table or matrix is developed and provided in the IDP.  If individual employees are yet to be recruited at the time of submission of the IDP, a template must be provided and a commitment must be made to complete the TNA during the contract. This document may be reviewed during DIPL audits. |
| **RFT Clause x.x.2 (c)(ii)** | Nominate the intended RTO and accredited courses to be delivered. | The IDP must confirm all accredited courses to be delivered to Indigenous or Aboriginal employees and the corresponding Registered Training Organisation(s) (RTO) who will deliver each training course.  A completed template at **Appendix C – Indigenous or Aboriginal Apprentices and Trainees Register** will satisfy this requirement for Apprentices and Trainees, however other courses such as First Aid training, Working at Heights training etc. must also be documented in the IDP. |
| **RFT Clause x.x.2 (c)(iii)** | Proposed training schedule, including mix of classroom and on-the-job training, demonstrating total hours expected. | The IDP must provide a proposed training schedule that provides an estimate of the total hours of training expected to be delivered to Indigenous or Aboriginal employees.  Strategies must align with the Local Content section of the Response Schedule.  It is recommended this information is provided in table, timeline or matrix format. |
| **RFT Clause x.x.2 (c)(iv)** | Identify any external funding to be sourced from DEEWR or DET to supplement delivery costs. | The IDP must confirm if any external funding is to be sourced from the Australian Government Department of Employment and Workplace Relations (formerly DEEWR) or Northern Territory Government Department of Industry, Tourism and Trade (formerly DET) to supplement delivery costs. If no funding is being sourced, the IDP must provide a statement confirming this. |
| **(d) Local Development Capacity and Opportunities** | | |
| **RFT Clause x.x.2 (d)** | Generally | Note:   * All items under clause x.x.2(d) relate specifically to development, capacity and opportunities within the Indigenous or Aboriginal community, e.g. locally sourced Indigenous or Aboriginal labour or engagement of an Aboriginal Business Enterprise (ABE). * An ABE is defined as a business or community organisation that meets all of the following criteria: * 51% or more Aboriginal owned * Is operating as a business, including companies, incorporated associations, sole traders, partnerships, trusts and social enterprises or registered charities if they are operating as a business * Can demonstrate that the Aboriginal and Torres Strait Islander people are involved in the daily operation of the enterprise and have effective control at least equal to the degree of ownership * Is registered with a certifying authority as meeting the definition. * This section must reflect any commitments made in the Local Content section of the Response Schedule to the use of ABEs. * The definition of the term ‘local’ will vary from contract to contract. For example, a road maintenance contract will require a different approach to ‘local’ than a community housing project. The contract should provide context regarding their interpretation of ‘local’ for the specific contract. |
| **RFT Clause x.x.2 (d)(i)** | Identification of opportunities for local Community participation. | The IDP must provide a short, project specific analysis of the opportunities for local Community participation. This may include employment opportunities, training opportunities or other community involvement. |
| **RFT Clause x.x.2 (d)(ii)** | Specific proposals to maximise local Community involvement. | Further to the opportunities identified at Clause (a) and (d)(i), the IDP must provide details of project specific proposals to maximise local community involvement. |
| **RFT Clause x.x.2 (d)(iii)** | Goods, services and materials that will be locally sourced. | Further to the opportunities identified at Clause (a) and (d)(i), the IDP must provide details of goods, services and materials that are confirmed to be sourced locally. |
| **RFT Clause x.x.2 (d)(iv)** | Use of sub-contractors that also use strategies that maximise Indigenous or Aboriginal employment. | The IDP must confirm if any sub-contractors will be engaged who use strategies that maximise Indigenous or Aboriginal employment. If such contractors will be engaged the IDP must provide a short summary or description of these strategies. |
| **RFT Clause x.x.2 (d)(v)** | What recognised quality assurance/project control certification will be required of local sub-contractors? | The IDP must provide confirmation of any quality assurance or project control certification that will be required of local sub-contractors. The IDP should confirm if sub-contractors will be required to adhere to the Contractor’s management systems. |
| **(e) Consultation and Communication Protocols** | | |
| **RFT Clause x.x.2 (e)(i)** | Extent of community engagement to ascertain the availability of potential Indigenous or Aboriginal workers, including sub-contractors, labourers, cadets and apprentices/trainees etc. | The IDP must provide project specific details of any planned or conducted communication processes or strategies that will be used to ascertain the availability of potential Indigenous or Aboriginal workers and businesses. |
| **RFT Clause x.x.2 (e)(ii)** | How the Contractor will communicate such opportunities (employment/ training/ supplies/ sub-contractors) available during the Contract. | The IDP must provide project specific details of any planned or conducted communication processes that will be used communicate employment, training, supply or sub-contractor opportunities available to Indigenous or Aboriginal persons or businesses. |
| **(f) Monitoring/ Auditing and Reporting Protocols** | | |
| **RFT Clause x.x.2 (f)(i)** | Maintain a system for recording and reporting. Monthly reports will be required however the Superintendent may seek reports on a more frequent basis during the Contract period. | The IDP must provide a statement(s) confirming that:   * A system for recording and reporting will be implemented which will provide the information required by clause (f)(ii); and * Reports on the information required by clause (f)(ii) will be provided to the Superintendent on a monthly basis, or as requested by the Superintendent. |
| **RFT Clause x.x.2 (f)(ii)** | Adopt the following:   * A system of recording Indigenous or Aboriginal employment hours worked signed by the participants weekly. * A system of recording Indigenous or Aboriginal training hours. * A system detailing training courses / modules scheduled and completed. * A system that will provide for timesheets with employment (hours worked) and training records for all identified Indigenous or Aboriginal people engaged on the Works, with all Progress Claims for Payment. | The IDP must provide a statement confirming that a system will be adopted which will record each of the items required by Clause (f)(ii). |
| **Conditions of Contract NPWC NT Edition, Clause 18** | The Contractor shall provide timesheets with employment (hours worked) and training records for all Indigenous or Aboriginal people engaged on the works with all progress claims for payment. | It is recommended the Contractor confirms in the IDP that that this contract requirement will be fulfilled. |
| **Project Reporting** | | |
| **Clause x.x (a)** | A report at the completion of Works is to be provided to the Superintendent. The report should address as a minimum:   * General compliance with endorsed IDP objectives. * Employment compliance (achievements against objectives/goals). * Training compliance (achievements against objectives/goals). * Lessons learned. | It is recommended that the IDP includes a short statement acknowledging this requirement and commit to completing the end of Project report. Dot points confirming each requirements is acceptable. |
| **Confirmation of Aboriginality** | | |
| **Conditions of Contract - Interpretation** | **Indigenous** with reference to a person,is a person of Australian Aboriginal or Torres Strait Islander descent who identifies as Indigenous and is accepted in the community in which the person lives as an Indigenous person. | It is recommended the IDP describes the process used to confirm employees self-identify as Indigenous or Aboriginal and are recognised in their community as an Indigenous or Aboriginal person. |
| **Aboriginal Participation on Construction Projects Policy - Definitions** | **Aboriginal Person** is a person of Australian Aboriginal or Torres Strait Islander decent who identifies themselves as Indigenous or Aboriginal and is accepted in the community in which the person lives as an Indigenous or Aboriginal person. |  |
| **Aboriginal Economic Participation Framework 2022 – 2032 - Definitions** | The NT Government reserves the right to ask employers to verify the Aboriginality of its employees. The eligibility criteria for Aboriginal and/or Torres Strait Islander employees is:   * being Aboriginal and/or Torres Strait Islander; and * identifying as Aboriginal and/or Torres Strait Islander and being accepted as Aboriginal and/or Torres Strait Islander in the community in which the employee lives or formerly lived.   The proof required to satisfy this criteria is a Certificate of Aboriginality from a recognised Aboriginal organisation. | The NT Indigenous Business Network is recognised by the NT Government as the provider of advice on which organisations are recognised Aboriginal organisations for the purposes of providing a valid Certificate of Aboriginality. |

# Appendix A – Indigenous or Aboriginal Employment Rate Calculator

|  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | IDP Commitment\* | | | | | | Actual Recorded Employment Hours\*\* | | | | | |
| **Contractor** | | **Sub-contractor** | | **Total** | | **Contractor** | | **Sub-contractor** | | **Total** | |
| **Employees** | **No.** | **Hours** | **No.** | **Hours** | **No.** | **Hours** | **No.** | **Hours** | **No.** | **Hours** | **No.** | **Hours** | |
| A: Non-Indigenous/Aboriginal Employees (excluding apprentices) | 1 | 100 | 1 | 100 | 2 | 200 | 1 | 100 | 1 | 100 | 2 | 200 | |
| B: Indigenous\*\*\* or Aboriginal employees (excluding apprentices) | 1 | 100 | 1 | 100 | 2 | 200 | 1 | 100 | 1 | 100 | 2 | 200 | |
| C: Non-Indigenous/Aboriginal apprentices | 1 | 100 | 1 | 100 | 2 | 200 | 1 | 100 | 1 | 100 | 2 | 200 | |
| D: Indigenous\*\*\* or Aboriginal apprentices | 1 | 100 | 1 | 100 | 2 | 200 | 1 | 100 | 1 | 100 | 2 | 200 | |
| E: Total | 4 | 400 | 4 | 400 | 8 | 800 | 4 | 400 | 4 | 400 | 8 | 800 | |
|  | Indigenous or Aboriginal Employment Percentage | | | | | 50% | Indigenous or Aboriginal Employment Percentage | | | | | 50% |

# Appendix B – Indigenous or Aboriginal Employees Register

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Employee Name\* | Position | Employer | Estimated hours labour | Skilled | Unskilled |
| Firstname Lastname | Apprentice Carpenter | Principal Contractor | 100 | X |  |
| Firstname Lastname | Labourer | Principal Contractor | 100 |  | X |
| Firstname Lastname | Electrician | Sub-contractor A | 100 | X |  |
| Firstname Lastname | Apprentice Electrician | Sub-contractor A | 100 | X |  |
| Firstname Lastname | Labourer | Sub-contractor B | 100 |  | X |
| **Total** | | | | 3 | 2 |

\* If employees are yet to be recruited, vacant positions can be nominated as ‘TBA’.

### Appendix C – Indigenous or Aboriginal Apprentices and Trainees Register

|  |  |  |
| --- | --- | --- |
| Employee Name | Accredited Course\* and Course Provider | Employer |
| Firstname Lastname | Certificate IV in Building and Construction (Site Management), Charles Darwin University | Principal Contractor |
| Firstname Lastname | Certificate III in Carpentry, Charles Darwin University | Sub-contractor A |
| Firstname Lastname | Certificate III in Wall and Floor Tiling, Charles Darwin University | Sub-contractor B |

\* Refer to <https://nt.gov.au/employ/apprenticeships-and-traineeships/become-an-apprentice-or-trainee/nt-apprenticeships-and-traineeships-database> to confirm if apprentice and trainee.