*Extenuating Circumstances Notice* template

Ethical Supplier Mandate and Ethical Supplier Threshold

# *Extenuating Circumstances Notice*

This *Extenuating Circumstances Notice* is issued by the Department of Energy and Public Works to suppliers where a breach of the Ethical Supplier Mandate (the Mandate) or Ethical Supplier Threshold (the Threshold) has been submitted by a procuring agency.

<Day Month Year>

<Supplier Name>

<Supplier Contact>

<Contact Position>

<Street Address or GPO/PO Box>

<Suburb, State, Postcode>

REF#<insert>: Ethical Supplier <Mandate or Threshold> Extenuating Circumstances Notice

Dear <salutation> <insert surname>,

On <insert date> the <insert procuring agency> submitted a suspected breach of the Ethical Supplier <Mandate or Threshold> (the Mandate/Threshold) by <insert supplier name> to the Queensland Government Procurement (QGP) Compliance Branch within the Department of Energy and Public Works for escalation under the policy.

**ALLEGATION**

it is alleged that:

*<insert summary of the type of non-compliance and alleged conduct. Include direct reference to policy requirements, and related contract/clauses (if applicable)>*

**SHOW CAUSE PROCESS**

On <insert date> a *Show Cause Notice* was issued in relation to this matter. <select next sentence>

* The response received from <insert supplier name> on <insert date> was assessed in line with the requirements of the <Mandate/Threshold>, and the <insert procuring agency> determined the non-compliance matter was capable of being progressed.
* No response was received from <Insert supplier name> within ten (10) business days from issue of the Notice and the matter was automatically referred to the QGP Compliance Branch for progression to the Tripartite Procurement Advisory Panel (the Panel).

**EXTENUATING CIRCUMSTANCES PROCESS**

A meeting of the Panel will be convened to consider case details and associated evidence as referred by the <insert procuring agency>, along with any supplier submission in response to this *Extenuating Circumstances Notice*. The Panel will make a recommendation about the alleged breach and appropriate penalty for consideration by the decision maker.

The extenuating circumstances process allows an opportunity for <insert supplier name> to provide any extenuating details regarding how the alleged breach may have occurred or any extenuating circumstances that it would like to have considered in relation to the breach and possible imposition of demerits. Any response submitted should be supported by evidence or proof of the supplier’s position with regards to the detailed claim made by the procuring agency which referred the matter. You may refer to the Mandate for more information about this process.

**PROVIDING A RESPONSE**

You are invited to make written representations about any extenuating circumstances that you would like to have considered in relation to the alleged breach and possible imposition of demerits under the Mandate.

This Notice is the second formal opportunity for you to respond to the allegation(s) outlined. Any reply to this Notice is required in writing and should outline any extenuating circumstances that may have led to the non-compliance occurring and attach any information that you consider relevant.

Any response you wish to provide should be received by the QGP Compliance Branch within ten (10) business days of issue of this Notice. Please issue all responses to:

Name: <insert name>

Postal Address: Level 15, Mineral House

 41 George Street

 Brisbane City, 4000

Email: ethicalsupply@epw.qld.gov.au

You may request an extension beyond the ten (10) day timeframe to respond if required. Sound reasons must be provided for the extension. The QGP Compliance Branch will provide communication confirming whether this extension has been granted.

**NO RESPONSE**

The decision maker will consider any written representations that you make on or before the submission due date.

If no response is received within the allocated timeframe, the Panel will proceed to make a recommendation for consideration by the decision maker (the Director-General within the <insert procuring agency> in making a determination under the Mandate.

**POSSIBLE DEMERIT APPLICATION**

If the alleged conduct outlined in this Notice is found to be a breach of the <Mandate/Threshold> <insert supplier name> may be issued with demerits under the policy.

Demerits expire twelve (12) months from the date they are issued, unless applied to a sanction. All demerits applied to a sanction determination will be retired and will not contribute to future non-compliance decisions.

**POSSIBLE SANCTION APPLICATION**

In the event that twenty (20) demerits are accumulated in the same 12-month period, a sanction under the <Mandate/Threshold> will be considered.

Sanctions are determined by the decision maker and include:

* suspending a supplier’s prequalification for a defined period up to 12 months; and
* making a supplier ineligible for contract award for a defined period up to 12 months; and
* suspending a supplier from any Queensland Government panel or contracting framework for a defined period; and/or
* precluding a supplier’s existing contract from being extended; or
* a suspended sanctions penalty, pending successful implementation of any recommended corrective actions.

If the decision maker proposes to impose a sanction on <insert supplier name>, you will be given an opportunity to make written submissions about the proposed sanction.

**COMPLIANCE RECORD UNDER THE POLICY**

All confirmed breaches of the <Mandate/Threshold> (or Ethical Supplier Threshold/Mandate) will be collated to form your compliance record under these policies. Procuring agencies will have access to this record when assessing the risk profile of future procurement.

The Queensland Government takes all matters of compliance seriously. The <Mandate/Threshold> will impact suppliers that negligently, deliberately and/or repeatedly breach contractual obligations, policies or laws. It is not intended to penalise honest mistakes or oversights that are found and corrected. Non-compliance with the <Mandate/Threshold> is assessed on a case-by-case basis by the Panel and the decision maker (the Director-General within the <insert procuring agency>), allowing for discretionary assessment (e.g., evidence of honest error, systems and/or process improvement, and reparation).

If you have any questions regarding this Notice, please contact me at ethicalsupply@epw.qld.gov.au

Yours sincerely,