# The Clause Bank – Examples of Text to use in the Accessible Procurement Documents

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## Introduction

There are numerous documents in the process of ICT procurement. These include, but are not limited to:

* Procurement Policy
* documents which guide the procurement process
* Request for Information (RFI)
* Request For Proposal (RFP)
* Request For Quotation (RFQ)
* Contracts with selected vendors

Each of these is an opportunity to ensure that the requirement for digital accessibility is captured and progressed.

An institution’s ICT Risk Register is also an opportunity to ensure that digital accessibility is given due consideration and that accountability for accessibility shortfalls is maintained.

What follows are snippets of text based on examples of what other organisations have used in their procurement processes. They are organised according to the stages of the procurement process. They should be seen as a “Clause Bank” from which procurement teams can draw and tailor to their own needs. They are options to be considered, not a definitive statement that they are the most appropriate in any given situation.

In any case, any document which has legal or commercial implications for your organisation should always be checked with a legal professional.

There are also suggested clauses for inclusion in risk registers and for generic procurement policies.

This document should be read in conjunction with others in this guide, in particular **Waypoints in Accessible Procurement**.

## Procurement Policy

Some organisations write dedicated policies which describe accessible procurement requirements. These are used in addition to the main procurement policy they operate. This is an excellent strategy, and we have included links to model policies which we know work well in other organisations around the world in the Resources document in this Guide. A dedicated accessible procurement policy allows the institution to go into more detail as to what it means and expects in the procurement of ICT products and services.

However, it is also a good idea to ensure that accessibility requirements are included in the main procurement policy, albeit by necessity in less detail than a document in its own right.

This sends a clear message about the importance your institution places on accessibility: a message no vendor would be wise to ignore.

Suitable text might include:

“This institution is committed to ensuring all persons with disability have access on an equal basis to all equipment, services, websites and other written information. In order to achieve this, all Information and Communication Technologies (ICTs) provided by and maintained by, or on behalf of the institution or used by its students and staff must be accessible to and usable by persons with disability. Such requirements must be explicitly referenced in the tendering process.”

And/or:

“Where a preparatory study, testing or demonstration is conducted prior to or during a procurement exercise, it shall include accessibility laid down in recognised standards such as AS EN 301 549 or the Web Content Accessibility Guidelines (WCAG). The business need the procurement is intended to meet and the needs of all potential end users, including in particular end users with disability should be considered.”

And/or:

“The procurement team shall ensure that vendors demonstrate their conformance with accessibility standards or, where relevant, their capability to deliver accessible ICT products or services.”

## Indications of Accessibility Requirements in Requests for Information, Proposal or Quotation

An RFI/RFP/RFQ is a detailed document which provides plenty of opportunities to send a clear message to prospective vendors that you expect them to offer a product which meets your digital accessibility requirements. This section contains sample snippets of text which can be used and which range from a brief passing reference to more detailed statements. We have also included a list of questions which you may wish to ask in your tender document.

### Samples of text which state requirements

* “The institution regards the procurement of information and communication technology (ICT) which is accessible to and usable by individuals with disabilities as a mandatory requirement of any solution proposed in this RFI/RFP/RFQ.”
* “The institution is committed to using information and communications technology (ICT) that is accessible to everyone. All ICT we purchase must be accessible to and usable by individuals with disability, consistent with applicable laws, regulations and best practice, including:
  + Disability Discrimination Act 1992
  + Disability Standards for Education 2005
  + 2020 Review of the Disability Standards for Education (2005)
  + Commonwealth Procurement Rules (Clause 10.10 & 10.11 re Standards)   
    *or* State specific procurement requirements”

Note: the Commonwealth Procurement Rules are actually designed for Government, but they do provide an excellent baseline for other sectors (see Appendix 1 – Commonwealth Procurement Rules).

* “The product or service should meet the functional and performance criteria specified in Web Content Accessibility Guidelines[[1]](#footnote-1) (WCAG) 2.1 Level A and AA Success Criteria, for both administrators and end users”
* “Describe your approach to incorporating universal design principles to ensure your ICT products or services are designed to facilitate access by users with disability.”
* “The Respondent warrants that the information technology offered under this proposal

1. provides equivalent access for effective use by both visual and nonvisual means consistent with the requirements of AS EN 301 549;
2. provides a person with disability with access in a way that is fully and equally accessible to and independently usable by that person enabling them to acquire the same information, engage in the same interactions, and enjoy the same services as users without disability, with substantially equivalent ease of use;
3. will present information, including prompts used for interactive communications, in formats intended for both visual and nonvisual use;
4. if intended for use in a network, can be integrated into networks for obtaining, retrieving, and disseminating information used by people who are not blind or vision impaired; and
5. is available, whenever possible, without modification for compatibility with software and hardware which provides accessibility functionality for use by people with disability.”

* The following was adapted from a statement suggested by SUNY Libraries Consortium[[2]](#footnote-2), which supports the campuses across SUNY. We have adapted it for relevance in Australia, but we draw attention to it for its comprehensive approach to definitions and systems covered.
* “This institution is committed to providing an accessible, usable, and integrated experience for all its students, staff and community. information & Communications Technology (“ICT”) consists of information technology and any equipment or interconnected system or subsystem of equipment that is used in the creation, conversion, or duplication of data or information that will be deployed in connection with such technology, equipment or systems. ICT includes, but is not limited to telecommunications products, information kiosks and transaction machines, Internet and Intranet websites, web-delivered content, software, electronic books and electronic book-reading systems, search engines and databases, multimedia, classroom technology, and office equipment.

By submitting a Proposal, the vendor warrants that:

(i) Web-based ICT products included in the Proposal shall conform to Web Content Accessibility Guidelines (“WCAG”) 2.1 AA

and

(ii) non-web-based ICT products included in this Proposal shall meet or exceed the applicable accessibility requirements of Australian Standard AS EN 301 549.

If successful in its proposal, the vendor agrees to provide evidence of compliance with these requirements before an Agreement becomes effective and at any other time upon reasonable request of the university.”

### Questions to ask of prospective vendors

Asking the right questions of a prospective vendor is critical if you are going to determine their ability to meet accessibility requirements. There is a separate list of questions elsewhere in this guide (see document titled “**Accessibility Procurement Questions**”) you might consider asking in your RFI/RFP/RFQ documents. It should be noted that they are designed for you to pick and choose the ones which work best in your circumstances – you would not use every one of them at one time, rather you would use combinations of them to get the optimum result. Some of the questions therefore seek the same information but in different ways.

### Consequences and penalties for not meeting RFP accessibility requirements

Beware of promises not kept or over-optimistic commitments by potential vendors, or of a complete absence of a response to your accessibility criteria.

RFPs should contain a clause which deals with the consequences or penalties if the solution is not accessible. to ensure the request for accessibility is taken seriously, consequences must be defined and should be significant enough so RFP respondents pay appropriate attention to the accessibility criteria. The penalty may be to withhold part of the payment until accessibility requirements have been satisfied. In is important to stress that this juncture that in no way does this constitute legal advice or specific guidance with respect to what you can or should do with respect to the law – these are simply suggestions based on practices in organisations around the world.

Examples would be:

* “Before final acceptance of ICT items covered by this process, including updates and replacements, if the vendor claims its products or services satisfy the applicable AS EN 301 549 Standards specified in the statement of work, and the institution determines that any supplied ICT item is not in compliance with such requirements, the institution will promptly inform the vendor in writing of the noncompliance. The vendor shall, at no cost to the institution, repair or replace the non-compliant products or services within the period specified by the institution.”
* “If the information technology procured under this RFP does not meet the digital accessibility standards set forth in this RFP, the institution will notify the vendor in writing that the vendor at its own expense, has 12 months after the date of the notification to modify the information technology in order to meet the standard. If the vendor fails to modify the information technology to meet the accessibility standard within 12 months after the date of the notification, the vendor may be subject to a penalty or a fine not exceeding $xxx.”
* “If the information technology procured under this RFP does not meet the digital accessibility standards set forth in this RFP, the institution will notify the vendor in writing that the vendor at its own expense, has 12 months after the date of the notification to modify the information technology in order to meet the standard. The institution may withhold xx% of the cost until satisfied that he accessibility requirements specified in the RFP have been met. Without limitation, if the Supplier fails to comply with clause [Insert number of clause dealing with notification of non-compliance], the University may, after the requisite remedy period (if any), exercise its right of termination pursuant to clause [Insert number of clause dealing with termination].”

**Note**: The author of the RFP should adjust the penalties or fines as needed, or alternatively, they could be prescribed in the institution’s procurement policy or similar appropriate location.

If a penalties clause is in place, it will be important to have a clearly understood means of determining whether or not the vendor has failed to meet its obligations, so thought must be given to the process of evaluating vendors’ claims.

This is another reason for vendors to supply an up-to-date Accessibility Conformance Report[[3]](#footnote-3) (ACR) for the product in question. Typically, an ACR can be produced based on the Voluntary Product Accessibility Template (VPAT), one version of which has been prepared with the requirements of AS EN 301 549 in mind. Some examples of language for conformance are:

* “Before acceptance, the vendor shall provide an Accessibility Conformance Report (ACR) for each ICT item that is developed, updated, configured for the institution, and when product substitutions are offered. The ACR should be based on the latest version of the Voluntary Product Accessibility Template (VPAT) provided by the Information Technology Industry Council (ITIC)”.
* “Before final acceptance, the preferred vendor will be expected to provide a fully working demonstration of the completed ICT Item to validate conformance to the institution’s accessibility requirements. The demonstration shall expose where such conformance is and is not achieved.”
* “Before acceptance, the institution reserves the right to perform independent testing to validate that the ICT solution provided by the preferred vendor conforms to the applicable AS EN 301549 Standard.”

### Accessibility Roadmap

The following text could be included in the tender document.

“Within x days of the Effective Date of the Agreement, Vendor shall complete and return an Accessibility Roadmap document which addresses all accessibility gaps.

The roadmap will identify gaps, describe the timelines by which these accessibility gaps will be remediated, as well as recommendations regarding interim workarounds. If the product has been the subject of a VPAT or ACR, any criteria which was not fully met should be included in the template. The vendor will provide revised Accessibility Roadmaps whenever revised VPATs are submitted.”

### Final Agreement and Contracts

The following text would be useful in a final contract between your institution and the successful vendor. Note how the first part echoes one of the proposed wordings in the RFP/RFQ section.

* “This institution is committed to providing an accessible, usable, and integrated experience for all its students, staff and community. information & Communications Technology (“ICT”) consists of information technology and any equipment or interconnected system or subsystem of equipment that is used in the creation, conversion, or duplication of data or information that will be deployed in connection with such technology, equipment or systems. ICT includes, but is not limited to, telecommunications products, information kiosks and transaction machines, Internet and Intranet websites, web-delivered content, software, electronic books and electronic book reading systems, search engines and databases, multimedia, classroom technology, and office equipment.
* The Contractor warrants that Web-based ICT products provided under this Agreement shall conform to Web Content Accessibility Guidelines (“WCAG”) 2.0 AA and (ii) non-web-based ICT products provided under this Agreement shall meet or exceed the applicable accessibility requirements of AS EN 301 549.
* The Contractor agrees to provide evidence of compliance with these requirements before this Agreement becomes effective and any other time upon reasonable request of this institution.
* The Contractor will provide accessibility testing results and written documentation verifying accessibility, and will promptly respond to and resolve accessibility complaints and defects.
* In the event the supplied product provided under this Agreement does not fully conform to the standards set forth above, the Contractor will promptly advise the institution in writing of the non-conformance and provide detailed information regarding the plans to achieve conformance, including but not limited to an intended timeline.
* If the information technology procured under this RFP does not meet the digital accessibility standards set forth in this RFP, the institution will notify the vendor in writing that the vendor at its own expense, has xx [Insert rectification period] after the date of the notification to modify the information technology in order to meet the standard. The institution may withhold xx [Insert percentage of the total cost or penalty to be withheld] until satisfied that he accessibility requirements specified in the RFP have been met. Without limitation, if the Supplier fails to comply with clause xx [Insert number of the clause dealing with notification of non-compliance], the University may, after the requisite remedy period (if any), exercise its right of termination pursuant to clause xx [Insert number of the clause dealing with termination].
* Failure to comply with the above shall constitute a breach of this Agreement, and the Contractor agrees to indemnify and hold harmless the institution from any claims arising out of its failure to comply with the foregoing.”

If the vendor has supplied a roadmap to make good accessibility shortfalls earlier in the procurement process, use the timings in that roadmap in the contract.

## Appendix 1 – Commonwealth Procurement Rules

Contract management/Standard verification

7.26 For procurements valued at or above the relevant procurement threshold, where applying a standard for goods or services, relevant entities must make reasonable enquiries to determine compliance with that standard, including:

1. gathering evidence of relevant certifications; and
2. periodic auditing of compliance by an independent assessor.

10.10 In prescribing specifications for goods and services, a relevant entity must, where appropriate:

1. set out the specifications in terms of performance and functional requirements; and
2. base technical specifications on international standards, when they exist and apply to the relevant procurement, except when the use of international standards would fail to meet the relevant entity’s requirements.

10.11 Where an Australian standard is applicable for goods or services being procured, tender responses must demonstrate the capability to meet the Australian standard, and contracts must contain evidence of the applicable standards (see paragraph 7.26).

Source: <https://www.finance.gov.au/government/procurement/commonwealth-procurement-rules>

1. [www.w3.org/WAI/intro/wcag.php](http://www.w3.org/WAI/intro/wcag.php) [↑](#footnote-ref-1)
2. <https://slcny.libguides.com/slc> [↑](#footnote-ref-2)
3. <https://www.itic.org/policy/accessibility/vpat> [↑](#footnote-ref-3)