Engineering Policy 160

Low Value Infrastructure Procurements

June 2017
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1 Background

This document describes the application of the Housing and Public Works' Small Scale Minor Works (SSMW) Contract and Transport and Main Roads' Minor Infrastructure (MIC) Contract to infrastructure procurements.

As Engineering Policies are interim documents, in due course the contents contained in them will be incorporated into other documents such as the Transport Infrastructure Project Delivery System (TIPDS).

2 Application

This Engineering Policy applies to infrastructure procurement processes for SSMW and MIC.

Infrastructure contracts differ fundamentally from goods and services contracts in that due to the nature and value of the work within a road corridor, rail corridor, or in the water, may require additional risk mitigation measures and consideration of technical, legal and engineering matters.

3 Objectives and benefits

The goal of this Engineering Policy is to provide an overview of two types of contracts which can be used for the procurement of low value low risk transport infrastructure projects. While there are a number of other standard forms of contracts which have been previously used to deliver Transport and Main Roads projects such as, Performance Incentive Cost Reimbursable (PICR), Transport Infrastructure Contract (TIC), Early Contractor Involvement (ECI), and Alliances, this document only covers SSMW and MIC.

Contact: Director (Infrastructure Procurement) via email infrastructureproc@tmr.qld.gov.au for assistance in selecting and implementing an infrastructure procurement process.

4 Evaluation

The Executive Director (Program Management and Delivery) will review this policy annually.

Feedback on this policy is welcome at any time, by emailing infrastructureproc@tmr.qld.gov.au

5 Abbreviations

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
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<tbody>
<tr>
<td>ECI</td>
<td>Early Contractor Involvement</td>
</tr>
<tr>
<td>MIC</td>
<td>Minor Infrastructure Contract</td>
</tr>
<tr>
<td>MWPC</td>
<td>Minor Works Performance Contract</td>
</tr>
<tr>
<td>SSMW</td>
<td>Small Scale Minor Works Contract</td>
</tr>
</tbody>
</table>

6 References


7 Principal Contractor

A ‘Principal Contractor’ is required under the Work Health and Safety Regulations 2011 Section 293 for construction work. The meaning of ‘construction work’ is described in the WHS Regulations Section 289 (Figure 7).

Where infrastructure procurement activities contain ‘construction work’ and the value of the works are under $250,000 (for example, where the SSMW is used, works by Public Utility Plant such as Telstra, NBN Co, Powerlink, APA Group, Local Government, and so on), Transport and Main Roads is the ‘Principal Contractor’ under the WHS Regulations and it has a number of duties and responsibilities.

The term ‘construction project’ is defined in the WHS Regulations Section 292 as a project that involves construction work where the cost of the construction work is $250,000 or more. A construction project is commonly found in projects utilising the MIC or Transport Infrastructure Contract (TIC-C0) and the Contractor (not Transport and Main Roads) assumes the role of Principal Contractor.

Figure 7- Extract from Work Health and Safety Regulations 2011 Section 289

<table>
<thead>
<tr>
<th>Work Health and Safety Regulation 2011</th>
<th>Work Health and Safety Regulation 2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chapter 6 Construction work</td>
<td>Chapter 6 Construction work</td>
</tr>
<tr>
<td>Part 6.1 Preliminary</td>
<td>Part 6.1 Preliminary</td>
</tr>
<tr>
<td>289 Meaning of construction work</td>
<td>289 Meaning of structure</td>
</tr>
<tr>
<td>(1) In this chapter, construction work means any work carried out in connection with the construction, alteration, conversion, fitting-out, commissioning, renovation, repair, maintenance, refurbishment, demolition, decommissioning or dismantling of a structure.</td>
<td>(1) In this chapter, structure has the same meaning as it has in the Act.</td>
</tr>
<tr>
<td>(2) Without limiting subsection (1), construction work includes the following—</td>
<td>Examples—</td>
</tr>
<tr>
<td>(a) any installation or testing carried out in connection with an activity mentioned in subsection (1);</td>
<td>• a roadway or pathway</td>
</tr>
<tr>
<td>(b) the removal from the workplace of any product or waste resulting from demolition;</td>
<td>• a ship or submarine</td>
</tr>
<tr>
<td>(c) the prefabrication or testing of elements, at a place specifically established for the construction work, for use in construction work;</td>
<td>• foundations, earth moving works and other earthworks, including river works and sea defence works;</td>
</tr>
<tr>
<td>(d) the assembly of prefabricated elements to form a structure, or the disassembly of prefabricated elements forming part of a structure;</td>
<td>• formwork, falsework or any other structure designed or used to provide support, access or containment during construction work</td>
</tr>
<tr>
<td>(e) the installation, testing or maintenance of an essential service in relation to a structure;</td>
<td>• an airfield</td>
</tr>
<tr>
<td>(f) any work connected with an excavation;</td>
<td>• a dock, harbour, channel, bridge, viaduct, lagoon or dam</td>
</tr>
<tr>
<td>(g) any work connected with any preparatory work or site preparation (including landscaping as part of site preparation) carried out in connection with an activity mentioned in subsection (1);</td>
<td>• a sewer or sewerage or drainage works</td>
</tr>
</tbody>
</table>
8 Small Scale Minor Works Contract

8.1 When to Use

The Department of Housing and Public Works’ Small Scale Minor Works Contract utilises Australian Standard AS 4120 – 1994 Code of Tendering as amended by these Conditions of Contract (Refer Form C7831.SSMW Annexure A (Contract Details)). While this form of contract is commonly utilised for building-related works, it may also be used for low value low risk transport infrastructure works where payment is made on a lump sum basis and the value of the works is under $80,000 (excluding GST).

Examples where the SSMW may be used (subject to a risk analysis by a RPEQ-registered Engineer):

- fender replacement on a floating walkway
- traffic counts
- installation and removal of traffic sign
- utility location (2D or 3D)
- pavement imaging
- vegetation management
- heritage masonry works for Transport and Main Roads managed heritage-listed buildings
- railway tunnel minor remedial and safety works
- installation and removal of cattle grids on various Other State Controlled Roads
- traffic control engaged directly by Transport and Main Roads (excluding traffic control works by RoadTek)
- upgrading pedestrian facilities for example, ramps, refuge islands and so on
- minor traffic signal modifications and lighting modifications
- low value road construction, and
- installation of traffic signs, line marking and any other road furniture.

8.2 Tender Process Overview

The tender process is described in more detail in the TIPDS manual. The following section is an excerpt from the manual.

There are four phases in the tendering process which can be applied to all contract types.

Figure 8.2 - Four phases in the tendering phase (from TIPDS)

| Tender Planning Phase | Tender Development Phase | Tender Analysis Phase | Contract Formation Phase |

Figure 8.3.1 shows a list of templates for use with the SSMW.
8.2.1 Tender Planning Phase – Small Scale Minor Works

The tender planning process includes the following actions that must be taken (where appropriate) before finalising the tender documentation:

- selecting a Tendering Manager (which could be the Project Manager)
- defining the scope of work required to undertake the tender (project scope which includes risks and opportunities, timing, cost and contract type)
- before tender planning commences, the Tendering Manager should be aware of the fundamental aspects of the project. This knowledge will help identify any risks there may be in the tendering process, thereby enabling the process to operate effectively. These aspects are detailed in the business case and include:
  
i. project scope and objectives
  ii. stakeholders
  iii. estimated cost
  iv. constructability
  v. project timing
  vi. identification of impacts especially traffic, approvals, environmental and cultural heritage risks
  vii. risk analysis, including identification of constraints and critical success factors
  viii. planning activities undertaken to date, and
  ix. delivery strategy.

The role of the Tendering Manager includes representing the Principal by:

- Defining and managing the tender evaluation process
- Clarifying the project scope and project outcomes
- Assembling all relevant project files and reports.

8.2.2 Tender Development Phase – Small Scale Minor Works

The tender development phase of the tendering process lies within the pre-tender period and comes after the following outcomes from the tender planning process:

- appointment of the Tendering Manager
- completion of the Tender Evaluation Plan
- determination of Transport and Main Roads-prequalified suppliers or Transport and Main Roads-approved products
• during this phase of the tendering process, the Tendering Manager needs to consider:
  i. compilation of tender documents, including seeking approval to call tenders
  ii. advertisement of tender, and
  iii. communication with Tenderers for example correspondence, Notice to Tenderers, site inspections, request for clarifications and tender presentations.

8.2.3 Tender Analysis Phase – Small Scale Minor Works

Before commencing the tender analysis, the Tendering Manager should ensure:

• specialist resources are identified to aid the evaluation
• the tender assessment process is defined (including timing, work distribution, and so on), and
• the Tender Evaluation Plan is signed and completed.

Once the tenders are received, it is critical the tender assessment process is followed as per the Tender Evaluation Plan, or alternatively a standard assessment process must be used.

8.3 Contract Formation Phase

In the Contract formation phase the ‘best tender’ is approved by the Principal’s Delegate, financial approval processes are completed, culminating in the issue of the Letter of Acceptance and purchase order.

An Infrastructure Procurement Plan is used to:

• Define resources to be engaged on a project together with a procurement timeline.
• Provide a commentary on the market and how the procurement of each resource was determined.
• For small projects where one “element” is being purchased, an Infrastructure Procurement Plan is not required.
8.3.1 Tender Development Phase – Small Scale Minor Works

Figure 8.3.1 - Documents for Small Scale Minor Works Contract

<table>
<thead>
<tr>
<th>Phase</th>
<th>Document</th>
<th>Required for SSMW?</th>
<th>Form No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tender Phase</td>
<td>Probit Plan</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Infrastructure Procurement Plan</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Tender Evaluation Plan (TEP)</td>
<td>Yes</td>
<td>Refer TIPDS Volume 2, Appendix B</td>
</tr>
<tr>
<td></td>
<td>Invitation to Submit Tenders</td>
<td>Yes</td>
<td>SSMW Tender Form</td>
</tr>
<tr>
<td></td>
<td>Conditions of Tender and Condition of Contract</td>
<td>Yes</td>
<td>SSMW</td>
</tr>
<tr>
<td></td>
<td>Annexure A to Conditions of Contract</td>
<td>Yes</td>
<td>Transport and Main Roads Form C7831.SSWM</td>
</tr>
<tr>
<td></td>
<td>Specifications and drawings</td>
<td>As required</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Addenda</td>
<td>As required</td>
<td></td>
</tr>
<tr>
<td>Tender Award</td>
<td>Tender Assessment Report (TAR)</td>
<td>Yes</td>
<td>Refer TIPDS Volume 2, Appendix J.</td>
</tr>
<tr>
<td></td>
<td>Formal Instrument of Agreement</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Post Tender Correspondence (to be incorporated in the Letter of Acceptance)</td>
<td>As required</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Letter of Acceptance</td>
<td>Yes</td>
<td>C6995</td>
</tr>
</tbody>
</table>

9 Minor Infrastructure Contract

9.1 When to Use

The MIC may be used instead of the TIC-CO Contract for simple minor works including small capital works (minor intersection works including traffic signal installation, installation of noise amelioration devices, installation of guardrail, line marking, and landscaping), combined capital and maintenance projects, rehabilitation and programmed maintenance under $1M\(^1\). Determining when to use MIC or MWPC documents depends, amongst other things, on the extent of risk involved in the project. Risks vary due to estimated cost/duration as well as variability in the type, scale, complexity and number of construction activities.

9.2 Tender Process Overview

Refer to Figure 8.2.

Figure 9.3 shows a list of templates for use with the MIC.

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\(^1\) Refer to Table 2 of Engineering Policy EP150 *Procurement of Infrastructure Project Thresholds*. The threshold is $1M for works undertaken by non-prequalified contractors and $5M for works undertaken by prequalified contractors, provided that low risk of work is justified.
9.2.1 Tender Planning Phase
Refer to Section 8.2.1.

9.2.2 Tender Development Phase
Refer to Section 8.2.2.

9.2.3 Tender Analysis Phase
Refer to Section 8.2.3.

9.3 Contract Formation Phase
In the Contract formation phase the ‘best tender’ is approved by the Principal’s Delegate, financial approval processes are completed, culminating in the issue of the Letter of Acceptance and purchase order. The documents which form a MIC contain a number of parts and utilise templates from the Transport and Main Roads web site.

Links:
- Minor Infrastructure Contract – Construct Only (MIC-CO) Contract documents (Figure 9.3)
- Administrative forms
10 Overview of Infrastructure Contracts

The following is a short description of the contract documents commonly used in an infrastructure tender process.

10.1 Contract documents

Contract documentation (depending on the contract utilised) may include:

- **Tender Phase**
  
  i. **Infrastructure Procurement Plan** – describes the resources and timelines required to procure multiple resources for a project (applies to TIC-CO)
  
  ii. **Tender Evaluation Plan (TEP)** – describes the tender process, timing, assessment criteria and weightings
  
  iii. **Invitation to Tender** – describes the scope of work, timing, standards and contract (contains the pricing schedules)
  
  iv. **Conditions of Tender** – sets out the tendering requirements
  
  v. **(General) Conditions of Contract** (and Annexures or Appendices) – sets out the contractual terms
vi. **Contract Documents** E.g. Specifications and drawings

vii. **Addenda or Notice to Tenders (NTT)** – is issued prior to close of tenders to respond to questions raised by tenderers or to issue new documentation or to clarify aspects of the tender. Addenda is the term used by the Small Scale Minor Works Contract.

- **Tender Award**
  
  i. **Tender Assessment Report (TAR)** – describes the tender process, number on offers received, the assessment and recommendation of “best tenderer”

  ii. **Formal Instrument of Agreement** – sets out all of the documents which comprise the contract (applies to TIC-CO)

  iii. **Document List** – lists documents which form part of the contract. Commonly included as part of the Formal Instrument of Agreement.

  iv. **Post Tender Correspondence** (to be incorporated) – agreements or clarifications conducted after close of tenders which are to be bound into the contract. Commonly included as part of the Formal Instrument of Agreement.

  v. **Letter of Acceptance** – is the letter advising the successful Tenderer that their tender has been accepted. It includes the contract name and number, contract value, Time for Practical Completion (referred to as the Time for Practical Completion in TIC-CO contracts) and name and address of the Principal’s Representative.

### 10.2 Common contractual terms

#### 10.2.1 Parties to the contract

The parties to the SSMW are the Principal and the Contractor.

#### 10.2.2 Administrator or Superintendent

TIC-CO and other Transport and Main Roads contracts both use the term ‘Administrator’ while the SSMW uses the term ‘Superintendent’. The Administrator / Superintendent is not a party to the contract and has a number of important roles including assessment of: payments and claims, quality of materials and workmanship in accordance with the contract document and extension of time. All which may require engineering skills, knowledge of the law of the contract and in particular the contract documents.

#### 10.2.3 Time under the contract

- ‘Commencement Date’ – is the date when the contract starts

- ‘Time for Practical Completion’ (referred to Date for Completion in a TIC-CO contract) – means the date when the work must be completed.

- ‘Practical Completion’ means the Works are complete except for minor omissions and defects.

- ‘Defect Liability Period’ – is the period stated in the contract commencing at Practical Completion where the Contractor is responsible for rectifying defects and omissions.

#### 10.2.4 Payment under the contract

The Contractor is usually paid every month for the work completed based on information provided to the Superintendent. The time for payment is stated in the contract.
10.2.5 Quality

The Works under the contract are described in the Contract Documents. The Contractor shall use the materials and standards of workmanship required by the Contract. In the absence of any requirement to the contrary, the Contractor shall use suitable new materials.

The SSMW does not require the contractor to implement and maintain a quality system.

10.2.6 Insurance

Before work commences work the Contractor must produce evidence that insurances are effected and maintained. The Contractor must provide Public Liability Insurance and insurance of its employees.

10.2.7 Security and Retention Money

For the SSMW, no security or retention money is required.

10.2.8 Default / Termination

Default is a failure of a Party to perform specific terms of a contract obligation.

10.2.9 Dispute

A dispute can be a single issue or a number of issues within it, arising between the Parties which has not been resolved between the two parties within a period of time.

10.2.10 Variations

A variation is a change to any part of the Work under the Contract. An Administrator may direct a variation in writing.

11 Scheme Preparation and Checking

The Project Manager and Procurement Officer must check the contract documents to ensure that all sections are completed and relevant to the contract.