

## **Contract Administration System Manual: Procedure – CAP009M**

# **Payment Claims and Certificates**

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## 1 Introduction

### 1.1 Purpose

This procedure is intended to maintain consistency and compliance in executing the Administrator's function as a certifier under a Transport Infrastructure Contract (TIC). As a certifier, the Administrator deals with compliance of the Contractor with requirements as regards to quality, time and cost.

This procedure defines actions required by Administrator under TIC's to process payment Claims, certificates and payments.

### 1.2 Scope

The scope of this procedure has been defined from the Administrator's obligations relating to the receiving, processing and certifying the amount of payment due to the Contractor under the Contract. It also discusses the impact of the *Building Industry Fairness (Security of Payment) Act 2017 (BIF Act)* on the progress payment process.

The processing of payment amounts, as certified by the Administrator, is administered by the District offices and is the Project Manager's responsibility.

### 1.3 Definitions, Abbreviations and Acronyms

Abbreviation	Description
Administrator	The person appointed as the Administrator by the Principal
Contractor	Is the person identified as the Contractor in the contract
Date for Practical Completion	Where the Annexure provides a date for Practical Completion that date, where the Annexure provides a period of time for Practical Completion, the last day of the period.
department / departmental	Department of Transport and Main Roads
EOT	Extension of Time
GCoC	<i>General Conditions of Contract - TIC</i>
GST	Good and Services Tax, levied by the Federal Government
LD	Liquidated Damages
Payments Act	means the <i>Building Industry Fairness (Security of Payment) Act 2017 (Qld)</i> . When a Payment Claim is made by persons / firms such as the Subcontractor, Consultants the Administrator and the Principal are required to deal with the certification and payment in a specified manner and not in accordance with the GCoC of the contract
Payment Claim	A Claim for payment by the Contractor
TIC	Transport Infrastructure Contract
WHSP	Workplace Health and Safety Procedure
WHSS	Workplace Health and Safety Standard

### 1.4 General

The actions defined in this procedure are dictated by the Contract (Clause 42 of the GCoC).

For consistency of administration on a state-wide basis the Administrator is required to use and follow referenced forms, letters, checklists and procedures.

## **2 Responsibilities**

### **2.1 Preliminary**

The requirements for initiating, giving and processing of the Payment Claims, are covered by Clause 42 Certificates and Payments of the GCoC. The clause sets out rules on how, when and by whom they are initiated, given, processed, replied to, recorded and paid. It sets the responsibilities and assigns these responsibilities to the Principal, Contractor or Administrator. It defines when and within what timeframe a certain action is to be initiated and performed.

Times for payment claims are stated in Item 41A of the *Annexure A to the GCoC*.

### **2.2 Payment Claims**

#### **2.2.1 General**

Payment Claims are the means by which the Contractor maintains its cash flow. The monthly flow of funds are progress payments for the achievement of progress in accordance with the Contract. In certain circumstances (Clause 44.4 Rights of the Principal, of the GCoC) the Principal may suspend payment to the Contractor.

##### **2.2.1.1 Contract documentation**

The method of measurement and payment depends on the type of contract (schedule of rates, lump sum or part schedule of rates and part lump sum) and includes consideration of:

- Schedules of rates
- Lump sums (Schedule of Prices)
- Provisional sums
- Payment for materials
- GST
- Payment Act- Building Industry Fairness (Security of Payment) Act 2017 (BIF Act)
- Retention monies, both retained and reimbursed
- Rise and fall
- Liquidated damages, and
- Other applicable considerations.

## **3 Process**

### **3.1 General**

If the Administrator is to successfully handle Claims for payment then it is advantageous for them to understand the associated clauses, adopt good practice and be aware of potential issues.

- Clause 7 Service of Notices, of the GCoC details the way notices from the Contractor are to be served, particularly under the Payments Act. In relation to the Payments Act, Clause 23, Administrator, of the GCoC, states the Administrator is an Agent of the Principal.

- Clause 42.1 Payment Claims, Certificates, Calculations and Time for Payment, of the GCoC, details the process for allowing payment for work physically completed but for which the conformance test results are not currently available.
- Item 41A of the *Annexure to the GCoC* details the time for lodgement of payment Claims, the default provides for “During the carrying out of the Work Under the Contract on the last Business Day of each month, Once upon the issue of the certificate of Practical Completion, and Once upon the issue of the Final Certificate”.
- Clause 6.2 Certificates and payments, of the *Clause Bank* Form C7836 specifies amendments to Clause 42.1 of the GCoC when ‘building work’ as defined by the *Queensland Building and Construction Commission Act 1991* (Qld) (QBCC Act) is being carried out under the contract.

It is good practice to agree with the Contractor, at the prestart conference, a process for the streamlining of the procedures to be employed in the field for preparation of payment Claims to ensure that the submission and certification takes place in such a manner that time requirements are adhered to.

For the purposes of discussion, it is assumed that such an agreement has been reached with the Contractor, say for example, to close the books for measurement on a day nearing the end of month, agree the quantum of the payment Claim, allowing certification by the Administrator. The signed payment certificate and supporting documentation is forwarded to the Project Manager for payment by the Principal. Actual agreements may vary slightly depending on the circumstances.

The advantage of this approach is that it minimises disagreements about what is intended to be claimed and the extent of work in progress. Disagreements in Claims inevitably mean a significant increase in paperwork justifying a Claim or providing reasons why the full amount claimed is not to be paid.

The Administrator, within 10 business days of the receipt of a payment Claim shall issue to the Principal and to the Contractor a *Payment Certificate* (Form C7880) including calculations and detailed reasons for any adjustments to each and every item *Schedule of Reasons for Difference between Payment Claim and Payment Certificate* (Form C7890).

There are potentially some issues with evidence of conformance of the Work Under the Contract, particularly around the Contractor’s quality assurance:

- Cash flow is critical to the Contractor and lack of cash flow can be the cause for unwarranted Claims when evidence of non-conforming work and procedures start to appear. Without prejudicing the Principal’s position under the Contract, undertaking partnering coupled with increased surveillance may be an appropriate response.
- Test results not provided but should have been completed – field observations may assist in making a decision but discussions with the Contractor about acceptance for payment under these circumstances may be warranted.
- Subsequent test results fail – this is accepted as part of the quality assurance process (followed by NCR’s/CAR’s and rework/acceptance) but if this occurs frequently, then a risk-based process/product audit is one outcome.

- Failure of the Contractor to produce the outstanding test results – while the Principal is not obliged to pay for work where evidence of conformance is not provided to the Administrator, acceptance of work for payment can be made where there are normal delays in processing, testing, analysis and reporting (Clause 42.1, Payment Claims, Certificates, Calculations and Time for Payment, of the GCoC). Care also needs to be taken where repeat test failures occur for works included in payment Claims, if this is systemic, then the Administrator may refuse to include those works. Additionally, failure to produce test results could be a systematic failure by the Contractor of its inspection and test procedures such as the preparing of work for testing, notification to the testers, completion of testing procedures and reporting from the Contractor and/or failure by the Administrator to attend witness points or hold points.

### **3.2 Building Industry Fairness (Security of Payment) Act 2017 (BIF Act)**

The Payments Act requires that a payment schedule (same as payment certificate) must be served on the claimant within 20 business days of the Claim, otherwise the respondent is liable to pay the amount claimed on the due date. It is important for the Contract Administrator to process the Claim under the Act and issue a payment certificate within 10 business days from the date of receipt of the Claim.

### **3.3 Responsibilities of the Contractor**

The Contractor prepares a draft payment Claim, if requested by the Contract Administrator, showing calculations and supported by the evidence and delivers it to the Contract Administrator before the last day of the month for initial perusal.

- Depending on the Contract, the evidence shall include:
  - A summary report sorted by lot number
  - A report sorted by schedule item number, measured quantity, diagrams or sketches (if required to explain the location of the lot), lot number, lot location, test results and analysis
  - Statement detailing evidence which is not supplied with current payment Claim but will be provided with the next month payment Claim
  - Survey results and calculation of measured quantities
  - Test requests with material results and three-dimensional lot locations
  - Statement indicating that the Claim is submitted under the *Payment Act*.
- The Contractor, under Clause 43 Payment of Workers and Subcontractors, of the GCoC, is to prepare, execute and deliver to the Administrator with each payment Claim a *Contractor's Statutory Declaration - Contractor's Payment Claim* (Form C7850) stating that all subcontractors have been paid and a Supporting Statement that provides reasons for not paying their subcontractors in full. (RoadTek is exempt from this requirement).
- The Contractor, under Clause 43 Payment of Workers and Subcontractors, of the GCoC, is to deliver to the Administrator, if requested, a *Subcontractor's Statutory Declaration - Contractor's Payment Claim* (Form C7851). This form is to be prepared and executed by a Subcontractor.

- The Contractor is to prepare and deliver to the Administrator, by the last day of each calendar month, a payment Claim (no specific form specified under the Contract) supported by the required evidence and including any outstanding evidence required from previous Claims, if applicable.
- The Contractor, when submitting evidence of conformance of work to the Administrator, shall apply the procedure specified in Clause 42.1.1(b)(ii) Evidence of Conformance of Work, of the GCoC.
- The Contractor is to promptly clarify, rectify or to provide any additional evidence to support a payment Claim if requested by the Administrator.
- The Contractor, when serving a payment Claim under the *Payment Act* shall serve such Claim simultaneously to both the Administrator and the Principal according to Clause 7 Service of Notices, of the GCoC.
- The Contractor is to provide a statement of work conformance in substitution for any test and certification results which have been performed but results are yet not available. The statement is to be attached to the monthly payment Claim.
- The Contractor, after receiving a *Payment Certificate* (Form C7880) from the Administrator and within 2 business days from the date of the *Payment Certificate* (Form C7880) to issue and deliver to the Principal, a Tax Invoice complying with GST Legislation with a copy to the Administrator.
- In case a payment is required from the Contractor to the Principal, the Contractor, within 20 business days after receipt by the Administrator of a payment Claim or within 10 business days of the issue by the Administrator of the *Payment Certificate* (Form C7880), whichever is the earlier, the Contractor shall pay to the Principal an amount not less than the amount shown in the *Payment Certificate* (Form C7880).

### **3.4 Responsibilities of the Administrator**

#### **3.4.1 General**

- The Contract Administrator shall regularly examine the Contractor's progress records for the adequacy and compliance with actual progress.
- The Contract Administrator shall receive a payment Claim from the Contractor and determine if the Claim is subject to contract specific payment terms, in all other cases the *Payment Act* applies.
- The Contract Administrator may at any time issue a further payment certificate to correct any error which has been discovered in any previous certificate, other than the *Certificate of Practical Completion* (Form C7881) or *Final Certificate* (Form C7882).
- In cases when evidence of conformance is not available due to normal processing delays, the Contractor can substitute such evidence with a statement submitted with its payment Claim. The statement shall list the relevant completed work and certify that evidence of conformance will be presented to the Contract Administrator no later than the last day of the calendar month subsequent to the month of the relevant payment Claim.



- The Contract Administrator within 10 business days after receipt of a payment Claim shall issue to the Principal and to the Contractor a *Payment Certificate* (Form C7880), including calculations and reasons for any adjustments Schedule of Reasons for Difference between Payment Claim and *Payment Certificate* (Form C7890).

### **3.4.2 Schedule of Rates**

Assessment of the amounts due to the Contractor is based on the conforming works being submitted for payment from the Contractor. The Administrator will also independently assess the conformity of the lots to determine the quantities of works to be certified for the payment certificate. The Contractor will usually minimise the number of lots to reduce the quality assurance paperwork. However, fewer large lots can often mean significant quantities of completed work cannot be conformed if the whole lot is not ready and tested. And of course, if any part of the lot fails this will mean all the large lot fails. The issue for the Administrator is one of balancing the desirability for maintaining cash flow for the Contractor and the quality and payment requirements of the Contract. The size of the lot is the real issue, and this belongs to the Contractor. The Clause 42.1.1(b)(ii) Payment Claims, Certificates, Calculations and Time for Payment, of the *GCoC* need to be considered in assessing payment Claims.

### **3.4.3 Lump Sums**

For some lump sum items, pro-rata payment is specified, and this principle can be agreed at the pre-start conference to minimise the Administrator's and Contractor's paperwork without compromising the Contract requirements or the Principal's position under the Contract (for example, over-paying early in the Contract without keeping in perspective the totality of the lump sum works which may include long-term maintenance requirements).

### **3.4.4 Provisional Sums**

Under Clause 11 Provisional Sums, of the *GCoC*, a provisional sum included within the Contract shall not be payable by the Principal unless a direction is issued by the Administrator to the Contractor that requires work or an item (related to the provisional sum) to be performed or supplied. The Contractor shall be paid as follows:

- The value of the work or item as determined under Clause 40.5 Valuation, of the *GCoC*;
- The amount owing from the Contractor to the Subcontractor plus the amount or profit and attendance as stated in Item 40A of the *Annexure A of the GCoC*, and
- The amount owing from the Contractor to the Nominated Subcontractor plus the amount or profit and attendance as stated in Item 40A of the *Annexure A of the GCoC* (where the Contractor has accepted an assignment of the benefit of a prior contract made between the Principal and a Nominated Subcontractor).

The definition of a 'provisional sum' includes monetary sum, contingency sum and prime cost item, but does not include any amounts in a Schedule of Rates for items described or marked "provisional", "provisional quantity" or "if ordered, provisional quantity" (or similar) or any amounts for numbered items in a Schedule of Rates which include the suffix "P" or "PS".

### **3.4.5 Retention**

Retention moneys and retention security are, subject to the provisions of Clause 5 Security and Retention Moneys, of the *GCoC*, for the purpose of ensuring the due and proper performance of the Contract by the Contractor (including, but not limited to, the satisfaction of any debts due from the Contractor to the Principal and any Claims which the Principal may have against the Contractor); and satisfying Claims of charge as provided in Clause 5.7 Notice of Claim of Charge Received, of the *GCoC*.

Under Clause 42.3 Retention Moneys, of the *GCoC*, retention moneys are withheld by the Principal. The Principal may deduct retention moneys from moneys otherwise due to the Contractor as stated in Item 41B of the *Annexure A, of the GCoC*.

On issue of the *Certificate of Practical Completion* (Form C7881), the Principal's entitlement to the Retention Moneys shall be reduced to the percentage thereof stated in Item 11B of the *Annexure A of the GCoC* (by default this is 20% thereof).

It is one of the Administrator's functions to determine the amount of retention moneys held by the Principal. Within 10 business days of the Administrator's decision the Principal must release any retention moneys in excess of the amount determined by the Administrator.

### **3.4.6 Rise and Fall**

Due to the occasional volatile nature of the cost of items under the Contract and the time gap between tendering and construction the department has determined it is beneficial to offset risk to the Contractor by using appropriate "CPI" adjustments provided by the Australian Bureau of Statistics and industry. Clause 5 Rise and Fall of the *GCoC, Annexure B* (Commercial Framework) is used to calculate rise and fall on different items under the Contract if the contract period is over 365 days.

The most common application of the rise and fall is associated with bitumen. Clause 5.2 Bitumen, of the Commercial Framework specifically outlines the calculation for rise and fall in this circumstance.

### **3.4.7 Liquidated Damages**

Liquidated damages apply when the Contractor has not completed either the whole works and/or a nominated separable portion of the works by the Date for Practical Completion. The original Date for Practical Completion will vary if Extensions of Time for Practical Completion are awarded.

The impact of applying liquidated damages can be quite profound on the Contractor and surprisingly is not always related to the monetary value of the damages. Contractors often see liquidated damages as having a negative impact on their reputation within the contracting business and also to their prequalification level for future departmental work. The Contractor's responses to a letter notifying liquidated damages are to be applied are often very contractual.

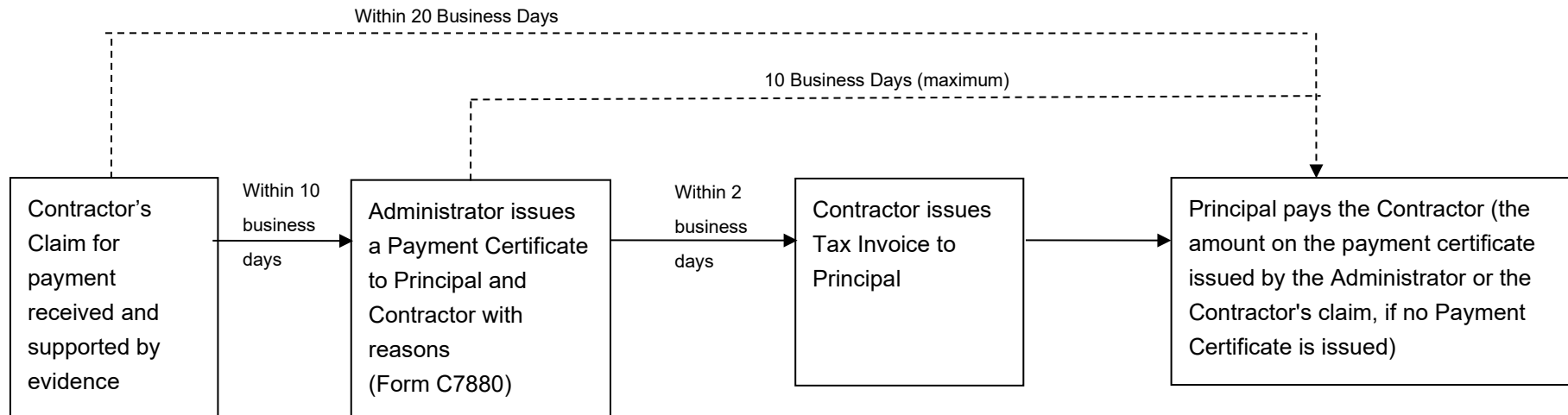
The prescribed rate per day for liquidated damages is deducted from the amount due to the Contractor in accordance with the *Payment Certificate* (Form 7880). Separate cumulative amounts for liquidated damages may apply to the Contract due to separable portions and the complete works.

The Administrator should discuss with the Principal whether they want liquidated damages to be applied, as it may affect the Principal's relationship with the Contractor.

### **3.5 Responsibilities of the Principal**

- If the Principal or Contractor owes money to the other party under the Contract they shall issue a Tax Invoice complying with GST Legislation within 2 business days of the issue of the *Payment Certificate* (Form C7880).
- Within 20 business days after receipt by the Administrator of a payment claim or within 2 business days of the receipt by the Administrator of the *Contractor's Tax Invoice*, whichever is the earlier, the Principal shall pay to the Contractor an amount not less than the amount shown in the *Payment Certificate* (Form C7880).
- *Payment Act*, the Principal must execute a payment to the Contractor to meet the requirement of the relevant legislation in addition to the requirement of the Contract.

### Appendix A: Payment Claims, Certificates, Calculations and Time for Payment (GCoC Clause 42.1)



**Note:**

1. Within 20 business days after receipt by the Contract Administrator of a claim for payment or within 10 business days of issue by the Contract Administrator of the payment certificate, whichever is the earlier, the Principal shall pay the Contractor (GCoC Clause 42.1).

