

Transport Infrastructure Contract – Sole Invitation C7834.TIC.SI

**Annexure D (Special Conditions)
to the General Conditions of Contract**

November 2020



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1 Defined terms (Clause 2.1)

The definition of 'Contract' in Clause 2.1 of the General Conditions of Contract shall be deleted and replaced by the following:

(a) Contract means the agreement between the Principal and the Contractor as listed under the Letter of Acceptance (C7048).

Where the Contractor is one of the business units of the Principal, such internal agreement can not constitute a 'contract' from a legal point of view. Notwithstanding this, the agreement shall be executed as if it were a legally-binding Contract except where provisions exists within the Principal's policies to vary the agreement otherwise. In this case, arbitration and litigation are not available for dispute resolution and the provisions of Item 43A shall apply. The issues resolution process specified in the document 'Working Better Together (2008)' shall be taken into consideration.

In the case of the Contractor being a Local Government, the provisions in the document 'Partners in Government Agreement' and in the Roads and Transport Alliance - Memorandum of Agreement shall be taken into consideration.

2 Evidence of Contract (Clause 6)

Clause 6 of the General Conditions of Contract shall be deleted and replaced by the following:

6.1 Execution of Conditional Agreement

(a) *The Principal's Delegate and the Contractor shall, on reaching agreement, as soon as possible after the closing date for Offer, execute two copies of the*

Conditional Agreement (Form C7013) for performance of the Works under the Contract.

The Principal shall bear the cost of any stamp duty payable on the Contract.

6.2 Nature of conditions

This Contract is conditional upon the Principal receiving:

(a) *Financial approval to expend funds under the Financial Administration and Audit Act;*

(b) *Where, required under the Transport Infrastructure Act (1994), notification appearing in the Queensland Government Gazette, of the approval for the Principal to carry out the Works.*

These conditions are for the sole benefit of the Principal.

6.3 Notification of acceptance of Tender

Upon fulfilment of the conditions referred to in Clause 6.2 and the issue of the Letter of Acceptance, the Contract is deemed to be accepted.

If the conditions referred to in Clause 6.2(a) and (b) are not fulfilled within three months of the date of the Conditional Agreement, then the Contractor may advise the Principal that the Contract shall be at an end and the Contractor wishes to renegotiate an agreement. If the parties fail to reach agreement within 10 Business Days of receipt of such notification from the Principal, then the Contract shall be at an end. If they do reach agreement within that time then a new Conditional Agreement will be signed in accordance with this clause.

6.4 Conditions not fulfilled

Where the Principal receives advice that the conditions have not been fulfilled, the Principal shall advise the Contractor as soon as practicable that the Conditional Agreement has been discharged and that the Contractor is entitled to reimbursement of its actual costs (including labour costs, administrative overheads and fees paid to external consultants) incurred in the preparation of its Tender.

The Principal shall within 10 Business Days after receipt of a notice detailing actual costs incurred, pay to the Contractor such costs. The Principal may request clarification of details or further information before making any payment.

3 Contract documents (Clause 8)

Clause 8.1 of the General Conditions of Contract shall be deleted and replaced by the following:

8.1 Order of precedence of documents

The following order of priority shall be used in order to resolve any conflict, ambiguity or discrepancy between documents:

- (a) Letter of Acceptance*
- (b) Conditional Agreement*
- (c) notices to Offerors (if any)*
- (d) Special Conditions of Contract (Annexure D to the General Conditions of Contract)*
- (e) General Conditions of Contract, including*
 - Annexure A (Contract Details)*
 - Annexure B (Commercial Framework)*
 - Annexure C (Certification Functions of the Administrator)*
 - Clause Bank*
- (f) Project Specific Specifications*
- (g) Project Specific Drawings*
- (h) Standard Specifications*
- (i) Standard Drawings*
- (j) Conditions of Offer*
- (k) Completed Offer Forms and Offer Schedules*
- (l) Other Contract Documents.*

4 Patents, copyright and other intellectual property rights (Clause 13)

The following shall be added to Clause 13 of the General Conditions of Contract:

- 13(d) The Principal indemnifies the Contractor against any action, suits proceeding, Claim or demand in respect of letter patent, registered designs, tradework or name,*

copyright or other protected right in respect of those designs, materials, documents and methods of working.

- 13(e) *All payments for royalties and patent rights and all fees payable in connection with any land, matter, or thing supplied or used by the Contractor in the performance of the Contract, whether payable in one sum or by instalments or otherwise, shall be deemed to have been allowed for by the Contractor in the unit rates and lump sum amounts in its Offer, and shall be paid by the Contractor to those persons to whom they may be due and payable.*

5 Statutory requirements (Clause 14)

The following shall be added to Clause 14 of the General Conditions of Contract:

14.9 Complying with statutory requirements

The Contractor shall not be entitled to any reimbursement for any additional costs resulting from any change in statutory requirements made by or at the request of the Contractor.

6 Reinstatement (Clause 16.3)

Clause 16.3(a) of the General Conditions of Contract shall be deleted and replaced by the following:

If loss or damage (except loss or damage which is a direct consequence, without fault or omission on the part of the Contractor, of an Excepted Risk defined in Clause 16.4) occurs to anything while the Contractor is responsible for its care, the Contractor shall, at the Contractor's own cost, promptly make good the loss or damage, after giving notice to the Administrator indicating the nature and estimated costs of such Works.

The Principal shall indemnify the Contractor for the reasonable costs incurred by the Contractor in making good the loss or damage where the loss or damage is caused by:

- (a) third parties;*
- (b) or in the case of completed Works only, rain whether directly or indirectly; except where:
 - (i) the Contractor contributed to the damage; or*
 - (ii) a cause of the loss or damage (either wholly or in part and either directly or indirectly) was:
 - (I) a failure by the Contractor to properly protect the Works in accordance with best local practice; or*
 - (II) a breach of the terms of the Contract by the Contractor.***

For the purposes of Clause 16.3(a), 'completed work' means Works for which the Contractor has made or is entitled to make a payment Claim under Clause 42.1.

In the special case of Works associated with a pavement layer constructed under traffic, Works will only be regarded as completed Works for the purpose of this Clause when either the overlying layer has been placed to its full thickness or (as the case may be) at least one layer of bituminous surfacing has been applied.

7 Damage to persons and property other than the Works (Clause 17)

The following shall be added to the beginning of Clause 17.1 of the General Conditions of Contract:

'Except where an indemnity is provided by the Principal to the Contractor under Clause 6 of the Special Conditions of Contract,'

8 Site (Clause 27)

8.1 Clause 27.2.4 of the General Conditions of Contract shall be deleted and replaced by the following:

27.2.4 Notice of entry

Where the Contractor requires other land adjacent to the Site to carry out the Works under the Contract, the Contractor shall be responsible for and shall bear all costs relating to obtaining the right under Section 34 of the Transport Infrastructure Act 1994 or such other Act as may apply to that land to temporarily occupy that land for the purpose of executing the Works under the Contract. The Contractor shall, while in temporary occupation of land pursuant to this Clause, maintain it and, prior to ceasing the temporary occupation, shall restore the land to the condition in which it was in prior to commencement of the occupation.

Save as provided for in this Clause, the Contractor shall not interfere with the land rights of any person in executing the Works under the Contract.

8.2 The following shall be added to the beginning of Clause 27.7.1 of the General Conditions of Contract:

Where practicable, alterations to statutory utilities will have been carried out by the owner of the statutory utility ('owner') prior to the Date of Acceptance of Tender. The Contractor shall carry out all the necessary coordination with the owner to ensure that any remaining alterations are carried out with the least interruption to the Works activities of the Contractor and the owner alike.

9 Suspension of the Works (Clause 34)

9.1 The following shall be added to Clause 34.1 of the General Conditions of Contract:

(d) because of delaying events (including abnormal recurrent wet weather conditions as described in Clause 36) occurring on or before the Date for Practical Completion that are beyond the reasonable control of the parties.

9.2 Clause 34.4 of the General Conditions of Contract shall be deleted and replaced by the following:

34.4 Cost of suspension

Any reasonable cost incurred by the Contractor for demobilisation/mobilisation by reason only of a suspension under Clause 34.1 shall be borne by the Principal except where a reason for the suspension was a request, act or omission of the Contractor, a Subcontractor or an employee or agent of either.

The Contractor shall not be entitled to any delay costs during the period of a suspension of the whole or part of the Works under the Contract.

9.3 The following shall be added to Clause 34.5 of the General Conditions of Contract:

Where the Works are suspended under this Clause for a reason other than an act or omission of the Contractor, a Subcontractor or an employee or agent of either, and where the period of the suspension exceeds three months, the Contractor may terminate the Contract.

10 Delay cost (Clause 36)

Clause 36 of the General Conditions of Contract shall be deleted and replaced by the following:

36.1 Mitigation

The Contractor shall redeploy labour, plant and equipment as soon as possible after the commencement of the delaying event to mitigate any delay costs, where it is practical to do so.

36.2 Costs due to uncontrollable events

Where the Contractor has been granted an extension of time due to a cause specified in Clause 35.5(d)(i), the Principal shall pay the Contractor, in respect of extra costs incurred by him as a consequence of the delay, an amount calculated by reference to the relevant provisions in the Daywork Schedule(s) or as otherwise agreed between the parties for a period of up to two Business Days or as otherwise agreed between the parties. The Principal shall not be obliged to pay the Contractor any other amount for delay beyond that period.

36.3 Costs due to specified events

Where the Contractor has been granted an extension of time due to a cause specified in Clause 35.5(d)(ii)(b) or where payments for delay is otherwise provided under the Contract, the Principal shall pay the Contractor such extra costs as determined from the Daywork Schedules or otherwise agreed between the parties.

36.4 Abnormal recurrent wet weather

Where the Contractor's production rates for Works under the Contract are reduced due to abnormal recurrent wet weather, after the Administrator and the Contractor have agreed that such Works should continue, the Principal shall pay the Contractor during the period of such reduced productivity, amounts as determined from the Daywork Schedules or as agreed between the Contractor and the Principal. The quantum of such Works shall be deducted from the Schedule.

Abnormal recurrent wet weather conditions are those involving a frequency of rainfall events that cause Works to be disrupted soon after each resumption of Works over a period of time such that the Administrator determines that such conditions are abnormal.

An extension of time based on the difference between the normal production rate and the reduced production rate for the period of abnormal recurrent wet weather may apply.

Nothing in Clause 36 shall:

- (a) oblige the Principal to pay extra costs for delay or disruption which have already been included in the value of a variation or any other payment under the Contract; or*
- (b) limit the Principal's liability for damages for breach of the Contract.*

Notwithstanding the foregoing provisions of this Clause, in the case of delay caused by a Latent Condition, the Contractor shall not be entitled to any payment under this

Clause for delay occurring more than 10 Business Days before the date on which the Contractor gives the written notice required by Clause 12.2.

36.5 Special requirements

Payment for additional costs under Clause 36 shall be limited to labour and plant operator costs, and onsite overheads, for delays up to two days or as otherwise agreed between the parties. Plant costs (other than hutments) and offsite overheads shall be excluded as delay costs.

The stand-down rate (for labour and plant operators) listed on the Daywork Schedule: Plant and Equipment Form (C7810.M7B) at the time of negotiation shall be used. In the absence of such Information, the Administrator shall request the stand-down rate from the Contractor at the time of the delaying event. The Administrator shall assess the rate and compare with industry practice.

11 Variations (Clause 40)

11.1 The following shall be added to Clause 40.1(a) of the General Conditions of Contract:

(vi) *execute part of the Works under the Contract outside the Working Hours.*

11.2 The following shall be added to Clause 40.2 of the General Conditions of Contract:

(c) *Where the Contractor is of the view that a direction given by the Administrator:*

(i) *is a direction to vary the Works made orally;*

(ii) *fails to state that the Works the subject of the direction is a variation to the Works under the Contract when that Works is a variation to the Works under the Contract; or*

(iii) *where a price for the variation is nominated in the variation notice, nominates an unreasonable price,*

the Contractor shall give written notice to that effect to the Administrator before commencement of the Works where practicable but in any case within two Business Days after the commencement of the Works the subject of the direction. Failure to give such written notice within that time shall mean that the Contractor will be barred from making any Claim that the Works the subject of the direction was a variation to the Works under the Contract, or that the price nominated in the notice was unreasonable.

12 Payment of workers and Subcontractors (Clause 43)

Clause 43 of the General Conditions of Contract shall be deleted.

13 Default or insolvency (Clause 44)

13.1 The following from Clause 44.2 (Default by the Contractor) of the General Conditions of Contract shall be deleted:

- *44.2(b)(i) security*
- *44.2(b)(ii) deed of guarantee*
- *44.2(b)(iv) subcontracting*
- *44.2(b)(ix) presence on Site*

- 44.2(b)(x) key personnel
- 44.2(b)(xvi) Subcontractors and suppliers
- 44.2(b)(xvii) statutory declaration.

13.2 Clause 44.6(c) shall be deleted and replaced by the following:

If the Contractor is indebted to the Principal, the Principal may, without payment of compensation, take possession of the Construction Plant and other things on or in the vicinity of the Site owned by the Contractor that are reasonably required by the Principal to facilitate the completion of the Works. The Principal shall maintain the Construction Plant and, on completion of the Works, the Principal shall return to the Contractor the Construction Plant and anything taken under this Clause which are surplus.

13.3 Clause 44.11 of the General Conditions of Contract shall be deleted.

14 Time for notification of Claims and disputing Administrator's directions (Clause 46)

Clause 46.2 of the General Conditions of Contract shall be deleted.

15 Dispute resolution (Clause 47)

15.1 Clause 47.1(c) of the General Conditions of Contract shall be deleted.

15.2 Clause 47.4 of the General Conditions of Contract shall be deleted.

16 Dispute Resolution Board (DRB) (Clause 48)

Clause 48 of the General Conditions of Contract shall be deleted.

17 Issues Resolution Advisor (IRA) (Clause 49)

Clause 49 of the General Conditions of Contract shall be deleted.

