

UPDATE SUMMARY

19 CHIEF ENGINEER WORKS

medium works Contract (AUSTRALIA)

February 2023

1. TENDER DOCUMENTS

| Topic/Subject | Reference (if applicable) | Description |
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| Building Code 2016 | Various | Amendments to reflect the repeal of the *Code for the Tendering and Performance of Building Work 2016* (Cth) (Building Code), including to delete the Building Code clause (and corresponding Tender Particular) and Tender Schedule and renumbering of subsequent clauses and Tender Schedules accordingly.  Amendments to replace references to the *“Building and Construction Industry (Improving Productivity) Act* *2016* (Cth)” with the “*Federal Safety Commissioner Act 2022* (Cth)*”*. |
| Interpretation | Clause 2.1 | * Amendment to existing definition of "Strategic Interest Issue"; and * Deletion of definitions of "Australian Government Information Security Manual", "Australian Government Protective Security Policy Framework" and "Defence Security Principles Framework". |
| Shadow Economy Procurement Connected Policy | Clause 27 and Tender Schedule L – Statement of Tax Record | Amendments to update references to ‘Black Economy Procurement Policy’ to ‘Shadow Economy Procurement Policy’. |
| Defence Industry Security Program | Tender Form and Statutory Declaration, Item 7 | Amendment to remove the requirement for Tenderers to be "Defence-ready", and to require the successful Tenderer to obtain and thereafter maintain the level of DISP membership specified in the Contract Particulars (if any). |
| Financial Viability | Tender Form and Statutory Declaration, Item 8 | Amendment to include a new item 8 requesting the Tenderer to declare (subject to any disclosures) that it has the necessary financial viability to perform the Contractor’s Activities and that is not subject any current or impending legal proceedings and dispute resolution processes. |
| Modern Slavery | Tender Form and Statutory Declaration, Item 9 | Amendment to include a new item 9 requesting the Tenderer to provide details of procedures or policies (if any) it has in place, or what it is doing or plans to do, to assess and manage the risks of modern slavery. |
| Payment Times Procurement Connected Policy | Tender Form and Statutory Declaration, Item 10 | Amendment to include a new item 10 requesting the Tenderer to identify whether or not it is a Reporting Entity for the purposes of the PT PCP. |
| Veteran Participation in the Carrying out of the Contractor’s Activities | Tender Form and Statutory Declaration, Item 11 | Amendment to include a new item 11 requesting the Tenderer to describe its approach to employing and engaging Australian veterans in connection with the carrying out of the Contractor’s Activities, whether directly or through the engagement of subcontractors. |
| Pandemic Adjustment Event | Tender Schedule H – Contract Price | Minor amendments to item (b) to reflect the amendments to the Conditions of Contract in respect of the Pandemic. |

1. CONTRACT

| Topic/Subject | Reference (if applicable) | Description |
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| Building Code 2016 | Various | Amendments to reflect the repeal of the *Code for the Tendering and Performance of Building Work 2016* (Cth) (Building Code), including to delete the Building Code clause (and associated definitions) and renumbering of subsequent clauses accordingly.  Amendments to replace references to the *“Building and Construction Industry (Improving Productivity) Act* *2016* (Cth)” with the “*Federal Safety Commissioner Act 2022* (Cth)*”*. |
| Pandemic Adjustment Event (and Project Plans) | Clauses 7.6, 8.7 and Contract Particulars | Amendments to the Pandemic Relief Event (now called Pandemic Adjustment Event) regime, whereby the Contractor will be required to prepare and comply with a Pandemic Management Plan as a Project Plan (removing the requirement to prepare the "Contractor's Pandemic Relief Plan" upon the occurrence of a Pandemic Relief Event), to provide for the Contract Price to be increased or decreased (as the case may be) and setting out revisions to the notification and assessment processes regarding Pandemic Adjustment Events. |
| Work Health and Safety – Main Contractor | Clause 8.9 | Deletion of previous clause 8.9(c) regarding the Contractor being the Main Contractor to reflect that *Occupational Safety and Health Act 1984* (WA) has been repealed. |
| Causes of delay entitling Contractor to claim an extension of time | Clause 9.4(k) | Amendment to include a new cause of delay entitling the Contractor to claim an extension of time, namely *“a bushfire, a flood, an earthquake or a cyclone which directly impacts the carrying out of the Contractor’s Activities.”* |
| Payment Times Procurement Connected Policy | Clauses 11.18 to 11.23, 23.1 and Contract Particulars | Inclusion of new clauses 11.18 to 11.23 to capture the operation of the PT PCP, which requires Reporting Entities:   * to pay PT PCP Subcontractors within 20 calendar days (and pay interest on unpaid amounts); * to include certain provisions in PT PCP Subcontracts; and * to include certain pass through obligations to be included in Reporting Entity Subcontracts,   and sets out a complaints/reporting regime on the operation of the same. |
| Defence Industry Security Program | Clauses 14.2 and 17.15 Contract Particulars | Amendments to the DISP requirements, including removing the requirement for the Contractor to be "Defence-ready" and to require the Contractor to obtain and thereafter maintain the level of DISP membership specified in the Contract Particulars (if any). Inclusion of certain acknowledgements by the Consultant and consequential amendments to clause 14.2 for failures to comply with the DISP requirements. |
| Shadow Economy Procurement Connected Policy | Clauses 17.14, 23.1 and Contract Particulars | Amendments to update references to ‘Black Economy Procurement Policy’ to ‘Shadow Economy Procurement Policy’. |
| Modern Slavery | Clause 17.16 | A new clause 17.16 has been inserted to require the Contractor to:   * take reasonable steps to identify, assess and address risks of Modern Slavery practices arising in connection with the Contract; * ensure the Contractor's key people have undertaken suitable training to be able to identify and report Modern Slavery; and * if the Contractor becomes aware of Modern Slavery practices, the Contractor must notify the Contract Administrator and take all reasonable action to address to remove these practices. |
| Glossary of Terms | Clause 22.1 and Contract Particulars | * Insertion of new definitions of "Information Security Requirements", "Pandemic Adjustment Event" (and deleting the definition of "Pandemic Relief Event"), "Pandemic Management Plan" and definitions required for the operation of the PT PCP; * Amendment to existing definition of "Project Plans", "Security of Payment Legislation", "Sensitive and Classified Information", "Statutory Requirements" and "Strategic Interest Issue"; and * Deletion of definitions of "ASD Certified Cloud Services List", "Australian Government Information Security Manual", "Australian Government Personnel Security Management Protocol", "Australian Government Physical Security Management Protocol", "Australian Government Protective Security Policy Framework" and those associated with the Building Code 2016. |
| Indexation of Portion of Contract Price | Special Condition 2 | Insertion of a new Special Condition to provide for specified components of the Contract Price (the Labour Component and the Materials Component) to be adjusted on and from the Initial Adjustment Date by reference to specified indices using a formula. |

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