



Request For Tender

SENIORS LIVING DEVELOPMENT

Bogan Shire Council

101 Cobar Street, Nyngan, NSW

TenderLink No: AU-865257

Project Manager:



TENDER TITLE NYNGAN SENIORS LIVING DEVELOPMENT 101 COBAR STREET
TENDERLINK AU-865257
ISSUE DATE 07/06/2019

| | |
|---|--|
| Tender Closing Date: | 22/07/2019 |
| Tender Closing Time: | 5:00pm |
| Tender Lodgement: | <p>TenderLink AU-865257 (preferred)</p> <p>Bogan Shire Council by hand, facsimile or post (optional)</p> <p>Should you require assistance completing your electronic submission, please contact Mitch Scealy on 0429 420 234 or via email mitch@lyonsadvantage.com.au</p> |
| Number of Unbound Hardcopies of Tender Response Required: | One (if using lodgement method other than electronic) |
| Hardcopy Delivery Instructions (optional): | <ul style="list-style-type: none"> • 81 Cobar Street NYNGAN • Post to PO Box 221, NYNGAN NSW 2825 • Facsimile: (02) 6835 9011 |
| Tender Questions: | TenderLink system shall be utilised for electronic submissions. For alternate lodgement options tender questions should be directed to the contract as detailed below. |

| | |
|--------------------------|--|
| Contact's Name: | Mitch Scealy |
| Contact's Email Address: | mitch@lyonsadvantage.com.au |

Volume 1 – Conditions of Tendering 5

| | | |
|-----------|--|-----------|
| 1. | Introduction | 5 |
| 1.1. | Details of the Council | 5 |
| 1.2. | Summary of the Request..... | 5 |
| 1.3. | Structure and Purpose of this Request for Tender (RFT) | 5 |
| 1.4. | Contact Officers..... | 6 |
| 1.5. | Tender Briefing / Site inspection..... | 6 |
| 1.6. | Tender Timetable | 6 |
| 1.7. | Definitions | 7 |
| 2. | Conditions of Tendering | 8 |
| 2.1. | How to Prepare Your Tender Response | 8 |
| 2.2. | Amendments to the Request/Council Rights..... | 8 |
| 2.3. | Clarification of the Request..... | 9 |
| 2.4. | Respondents to inform themselves | 9 |
| 2.5. | Submission of Tenders | 10 |
| 2.6. | Lodgement of Submissions and Delivery Method | 11 |
| 2.7. | eTendering Conditions | 11 |
| 2.8. | Acceptance of Submissions..... | 12 |
| 2.9. | Rejection of Tenders | 13 |
| 2.10. | Late Tenders..... | 13 |
| 2.11. | Tender Opening..... | 13 |
| 2.12. | Evaluation Methodology..... | 13 |
| 2.13. | General Evaluation Considerations..... | 13 |
| 2.14. | Mandatory Participation Criteria | 15 |
| 2.15. | Evaluation Criteria..... | 15 |
| 2.16. | Financial Capacity..... | 16 |
| 2.17. | Alternative or Non-Conforming Submissions..... | 16 |
| 2.18. | Departures, Clarifications and Assumptions..... | 16 |
| 2.19. | Tender Validity Period..... | 17 |
| 2.20. | Variation of Tender | 17 |
| 2.21. | Identity of the Respondent | 17 |
| 2.22. | Tendered Price | 17 |
| 2.23. | Conditions of contract..... | 18 |
| 2.24. | Precedence of Documents | 18 |
| 2.25. | Ownership of Tenders | 18 |
| 2.26. | Registration or licensing of Contractors..... | 18 |
| 2.27. | WHS Obligations..... | 18 |
| 3. | Participation in the Tender Process..... | 19 |
| 3.1. | Jurisdiction | 19 |
| 3.2. | Costs of Tender | 19 |
| 3.3. | Canvassing of Officials..... | 19 |
| 3.4. | Confidentiality | 19 |
| 3.5. | Statement of Business Ethics | 19 |
| 3.6. | GIPA Requirements (where relevant) | 20 |
| 3.7. | Non Collusion | 20 |
| 3.8. | Publicity..... | 21 |

Volume 1 – Conditions of Tendering

1. Introduction

1.1.Details of the Council

Located on the Bogan River in Western NSW, Bogan Shire is one of the state's most productive agricultural areas for wool, cattle and cropping enterprises.

The Shire has an estimated population of 3,076 with the main town of Nyngan providing access to a great range of services.

1.2.Summary of the Request

Council (the Principal) is seeking submissions from appropriately qualified and experienced Tenderers for the construction of a multi dwelling development for seniors living at Nyngan.

A more detailed brief of the extent of services required by Council is set out in Volume 3 – the Specification of this Tender document.

1.3.Structure and Purpose of this Request for Tender (RFT)

This Request is intended to provide Respondents with Information on the Project requirements and Council arrangements for the submission and evaluation of Tenders. It comprises the following parts:

Volume 1: Conditions of Tendering

The purpose of this part is to provide instructions as to how to prepare a Tender and details that will be evaluated by Council. More specifically Part 1 includes:

- the timetable with regard to the Tender process;
- the requirements for the preparation and lodgement;
- an overview of the Tender evaluation method and criteria; and
- the procedures and protocols governing communication between Council and Respondents during the Tender process.

Volume 2: Conditions of Contract

A draft copy of the contract that Council proposes to enter into with the successful Proponent

Volume 3: Specification

Provides all details of the requirement, including outputs, deliverables and drawings (if applicable).

Volume 4: Response Schedules – Commercial

Contains the schedules that Respondents are required to complete when submitting a Tender with regards to pricing and commercial aspects.

Volume 5: Response Schedules – Technical

Contains the schedules that Respondents are required to complete when submitting a Tender with regards to technical aspects.

1.4.Contact Officers

Respondents should not seek information from any person(s) or rely on any information provided by any person(s) other than the Contact Officers on the front page of this document.

1.5.Tender Briefing / Site inspection

A Tender Briefing and Site Inspection will be held as per the details provided in the table below

| Date | Time | Location |
|------------|---------|--------------------------|
| 18/06/2019 | 10:00am | 101 Cobar Street, Nyngan |

Respondents are required to attend a Tender briefing and site inspection.

Please confirm with the contact person Mitch Scealy via email as detailed in this RFT your attendance at this meeting no later than 14/06/2019.

Attendance at this meeting is mandatory.

Failure to attend this briefing and site inspection will leave the Respondent ineligible to submit a response to this Tender.

1.6.Tender Timetable

The timetable below provides details of key events and dates with regards to this Tender process. Dates may vary.

| Event | Date |
|---|------------|
| Tender Release | 07/06/2019 |
| Mandatory Tender Briefing and Site Visit | 18/06/2019 |
| Clarification and Questions Close | 15/07/2019 |
| Tender Closes | 22/07/2019 |
| Evaluation of Submissions | 26/07/2019 |
| Contract Award | 02/08/2019 |

1.7.Definitions

Unless the context requires otherwise, the following terms used in this Request have the meanings ascribed to them as set out below:

Closing Time - means the closing time for the receipt of Tenders as set out on the Cover Page.

Conditions - means the Conditions of Tender set out in Part 1 of this Request.

Conforming Tender - means a Tender that complies with all sections of this Request.

Principal - means Council and/or Agency.

Cover Page - means the cover page of this Request.

Goods - means the item(s) which the Contractor is required to provide to the Principal under the contract as detailed in the Tender Document.

Late Tender - means a Tender received by the Council after the Closing Time.

Nominated Contact - means Council's "Nominated Contact Person" as set out on the Cover Page.

Non-Conforming Tender - means a Tender other than a Conforming Tender.

Period of Contract - means the contract duration as defined in Schedule 1 of Volume 2 – Conditions of Contract.

Principal's Representative - means the officer nominated by and representing the Principal for the purposes of the Contract.

Request - means the Principals documentation requesting the provision of goods/services/works from suitably qualified contractors.

Request for Tender - means the Principal's documentation requesting the provisions of goods/services/works from suitably qualified contractors.

Services - means the services which the contractor is required to provide to the Principal under the Contract as detailed in the Tender Documents.

Submission / Response – means the quotation provided by the Respondent in response to the Tender

Successful Tenderer - means the Tenderer accepted by Council to provide the Goods/Services.

Tender Evaluation Committee – means the committee responsible for evaluating responses to this Tender.

Tenderer/Respondent - means the entity replying to the Request for Tender.

Terms and Conditions of Agreement - means the contract formed by the acceptance of a Tender and governed by the Conditions of Contract.

2. Conditions of Tendering

2.1. How to Prepare Your Tender Response

- Carefully read all parts of this document.
- Ensure you understand the requirements.
- Complete and return the Tender Forms/Returnable Schedules including all attachments. The submission must be written in English.
- Make sure you have signed the Tender Forms/Returnable Schedules and responded to all of the Selection Criteria.
- Lodge your Tender before the Deadline.

2.2. Amendments to the Request/Council Rights

The Respondent must not alter or add to the Request documents unless required by these Conditions of Tendering.

Without limiting its rights at law or otherwise, Council reserves the right in its absolute discretion at any time to do one or any combination of the following prior to the closing date by notice to each Respondent:

- Defer the closing date or any other date under this Tender; or
- Vary, amend, change or modify any aspect of this Tender, in which case Council will issue an addendum to all Respondents correcting any ambiguity or mistake concerning or arising out of this Tender and any such addendum will become part of this Tender;
- Prior to or after the closing date, by notice to each Respondent, issue an addendum to all Respondents correcting any ambiguity or mistake concerning or arising out of this Tender and any such addendum will become part of this Tender;
- Evaluate Tenders as Council sees appropriate in the context of its requirements for the procurement;
- Cease to proceed with the process outlined in this Request for Tender or subsequent process;
- Accept all or part of a Tender;
- Reject any Tender;
- Accept an alternate Tender;
- Obtain further information from Respondents with respect to its Tender for the purposes of clarification or explanation of its Tender. This includes holding interviews with some or all Respondents, including any personnel nominated by the Respondent in the Tender.

All Tenders lodged will become the property of Council and on no account will they be returned to Respondents. Council is not bound to accept the lowest or any Submission.

2.3. Clarification of the Request

If the Respondent has any doubt as to the meaning of any part of this Request or the scope of the work/specification required they should seek to clarify points of doubt or difficulty with the Contact Officer before submitting a Tender.

All requests for clarification must be submitted in writing and be directed to the nominated contact. The response and the question will be circulated to all Tenders to ensure probity / equity principles are maintained. The Contact Officer will respond in writing distributing both the clarification enquiry and the response to all Tenders.

- If a Respondent considers the subject matter of a question to be, it must clearly indicate this in the correspondence. Council, in its sole discretion, shall determine whether the matter raised in the question is of a confidential nature. If Council does not consider the subject matter of the question to be of a confidential nature, it shall give the Respondent the opportunity to withdraw the question.
- Council also reserves the right to issue the responses to any questions raised by one Respondent to another Respondent. Council will ensure, however, that information proprietary or confidential to a particular Respondent remains as such.
- Council will respond in writing to questions submitted by Respondents as quickly as possible after receipt of the questions, however, the nature and extent of the questions will determine the time frame within which Council will be able to respond.

The Principal reserves the right not to answer requests for clarifying information made within seven days prior to the Deadline. Alternatively, when submitting its Tender the Respondent may include a statement of the interpretation upon which it relies and upon which the Tender has been prepared.

2.4. Respondents to inform themselves

The Information in this Request has been provided in good faith. It is intended only as an explanation of the Principal's requirements and is not intended to form the basis of a Respondent's decision on whether to enter into any contractual relationship with the Principal.

The Information provided does not purport to be all-inclusive or to contain all information that a prospective contractor may require. Respondents and their advisers must take their own steps to verify information which they use and must make an independent assessment of the opportunity described in this Request after making such investigation and taking such professional advice as they deem necessary.

Respondents will be deemed to have:

- examined the Request and any other information available in writing to Respondents for the purpose of tendering;

- examined all further information relevant to the risks, contingencies, and other circumstances having an effect on its Tender which is obtainable by the making of reasonable enquires;
- satisfied themselves as to the correctness and sufficiency of its Tenders including tendered prices which will be deemed to cover the cost of complying with this Request and of all matters and things necessary for the due and proper performance and completion of the work described therein; and
- satisfied themselves they have a full set of the Request documents and all relevant attachments which includes all pages which are numbered consecutively and that all supplements referred to are also included.

None of the Principal, the Principal's members, directors, officers, employees, agents or advisers make any representation or warranty as to the adequacy, accuracy, reasonableness or completeness of the Information.

Neither the Principal nor their professional advisers shall be liable for any loss or damage arising as a result of reliance on the Information nor for any expenses incurred by Respondents at any time.

Any advisers or agents appointed by the Principal, whether legal, financial, technical or other, will not be responsible to anyone other than the Principal for providing advice in connection with the Request.

2.5.Submission of Tenders

The following documents need to be completed and submitted by the Respondent:

- Volume 4 - Commercial Response Schedule, including;
 - Schedule C1 – Tender Form
 - Schedule C2 – Schedule of Prices
 - Schedule C3 – Schedule of Financial Assessment Information
 - Schedule C4 – Schedule of Insurance Certificates
 - Schedule C5 – Departures, Clarifications and Assumptions
 - Schedule C6 – Statement of Conflict of Interests and Fair Dealings
 - Schedule C7 - Statement of Threatened or Pending Litigation
 - Schedule C8 – Statement of Compliance
- Volume 5 – Technical Response Schedules, including;
 - Schedule T1 – Schedule of Quality Management Information
 - Schedule T2 – Schedule of Work Health and Safety Management Information
 - Schedule T3 – Schedule of Environmental Management
 - Schedule T4 – Schedule of Industrial Relations Information
 - Schedule T5 – Schedule of Executive Summary of Proposal (including Capacity and Capability)
 - Schedule T6 – Schedule of Understanding of Requirement
 - Schedule T7 – Schedule of Recent Relevant Experience and Referee's
 - Schedule T8 – Schedule of Key Personnel and Experience
 - Schedule T9 – Schedule of Proposed Subcontractors and Consultants

- Schedule T10 – Schedule of Contract / Project Program Information
- Schedule T11 – Schedule of Risk Management Plan

Submit all information called for in the Tender documents.

Where applicable, refer to each Addendum and state that the Tender allows for the instructions given in the Addendum.

General information about the Respondent, such as brochures, advertising, product or company information or marketing brochures or presentations other than those expressly requested, are to be sent with the tender submission, is not required with the Tender unless expressly requested in the Response Schedules. If required the Tender Evaluation Committee will request these materials separately.

2.6.Lodgement of Submissions and Delivery Method

The Tender must be lodged by the closing date and time and by the method as outlined on the front cover page of this RFT.

Submissions in response to this RFT are preferred to be lodged electronically, in the electronic tender box / boxes as nominated via TenderLink.

Please note; hard copies delivered by hand, facsimile and post are being accepted as a lodgement method.

Should the Tenderer experience any technical difficulties in lodging its Tenders via the prescribed electronic manner, they are to avail themselves to the technical support provided by contacting –

Electronic Tender Box Technical Help Desk -

1800 233 533

2.7.eTendering Conditions

TenderLink is the electronic Tendering system used to allow the electronic publication of information regarding this RFT, including the Request for Tender documentation, online forum for clarification and questions, issue of Tender notifications and addenda and, to accommodate the electronic submission of Tender responses.

Submissions lodged electronically will be treated in accordance with the *NSW Electronic Transactions Act 2000*, and given no lesser level of confidentiality, probity and attention than Tenders lodged by other means.

Respondents electronically lodging a Tender must accept conditions shown on the electronic Tendering website which include conditions with regards to file types and file sizes acceptable. Please review the terms and conditions with regards to the eTendering system prior to uploading your Tender response.

Council may not consider Tender responses that cannot be evaluated due to being incomplete or corrupt.

Electronic lodgement must be “fully complete” by closing time. The electronic link will cut off right on closing time and if your submission is not complete, it will be deemed as a late submission and will be subject to normal considerations by Council with regards to late submissions.

Tenders received via electronic transmission other than through the Councils electronic Tendering site or the expressed electronic format as identified on the cover page (including without limitation an e-mail system, facsimile) will not be accepted.

Files must be checked by a reputable virus scanning application prior to submission and be found to be free from virus malicious code or other properties (including executable code) that may compromise Councils IT environment.

The MS files containing the Schedules provided by Council for completion and return by the Tenderer must remain in the version that they were provided in. i.e. not a different version of MS Word, Excel etc.

Any PDF files must be provided in Adobe PDF.

Microsoft Project files must be provided in MS Project.

2.8. Acceptance of Submissions

Unless otherwise stated in this Request, Submissions may be for all or part of the requirements and may be accepted by the Principal either wholly or in part. The Principal is not bound to accept the lowest Submissions and may reject any or all Submissions and may waive any irregularities therein.

Acceptance of submission with a whole of life cost in excess of \$150,000 can only be approved by the passing of a Council resolution. Once a Council Resolution has been issued accepting a tender, written notification will be provided to the successful Tenderer notifying, and detailing to the extent, that the submission has been accepted.

A Submission shall be accepted (and for all purposes shall be deemed to be accepted) when a Council resolution has been passed detailing the conditions (if any) of the acceptance of a submission and a subsequent Notice of Acceptance will be provided to the Respondent; or is delivered by prepaid post; or sent by facsimile to the facsimile number given by the Respondent; or sent by email or some other electronic means to the address furnished in the Offer Form. In the latter case, the time of posting shall be deemed to be the time of acceptance.

No legal or other obligation will arise between a Respondent and the Principal in relation to the conduct or outcome of the Tender process unless and until that Council Resolution has been issued and subsequently the Respondent has received written notification from the Principal of the acceptance of the Submission.

In the event that the whole of life cost of the contract is not estimated to exceed \$150,000, the relevant Procurement Delegate will be the body responsible for the acceptance of a submission.

Unless otherwise stated in this Request, Tenders may be for all or part of the requirements and may be accepted by the Principal either wholly or in part. The Principal is not bound to accept the lowest Tender and may reject any or all Tenders submitted and may waive any irregularities therein.

The Tender and the acceptance thereof shall constitute a binding contract between the Principal and the Respondent on and subject to the terms of the:

- Formal Instrument of Agreement;
- General Conditions of Contract and any Special Conditions of Contract;
- The Specification; and
- Respondent's Offer Form via the Response Schedules.

2.9.Rejection of Tenders

A Tender will be rejected without consideration of its merits in the event that:

- a) it is not submitted before the closing date and time; or
- b) it is not submitted at the place specified in the Request.

2.10. Late Tenders

If a Tender is to be submitted by post and is received after the deadline, the Principal will only consider a Tender received within such period after the Deadline as it decides to be reasonable in the circumstances.

Late electronic Tender submission will be subject to the terms and conditions as outlined in clause 2.7, eTendering Conditions, of Volume 1, Conditions of Tender.

2.11. Tender Opening

Tenders will be opened in the Principal's offices, following the advertised Deadline. Any Respondent and/or member of the public may attend or be represented at the opening of a Tender.

The names of the persons who submitted a Tender by the due Deadline will be recorded at Tender opening. No discussions will be entered into between Respondents and the Principal's officers present or otherwise, concerning the Tenders submitted.

The Tender opening will be held at Bogan Shire Council 81 Cobar Street, Nyngan, 2825, NSW.

2.12. Evaluation Methodology

Tender Responses will be evaluated against the evaluation criteria set out in Volume 1 of this RFT.

2.13. General Evaluation Considerations

Information provided by the Tenderer in its response to Volume 4 and Volume 5 of this RFT will be the basis of the evaluation of these criteria. Tenderers are advised to respond clearly to all of the requirements listed in Volume 3 of this RFT in its response to Volume 4 and Volume 5 of this RFT.

Those evaluation criteria designated as Mandatory Participation Criteria are evaluation criteria that **MUST** be met by the Tenderer. A Tender Response that fails to fully comply with those evaluation criteria may be excluded of the Tender Response without further consideration.

Technical and Commercial evaluation criteria are evaluation criteria which will be taken into account by the Tender Evaluation Committee when conducting an overall value for money assessment of the Tender Response. Failure to fully comply with those evaluation criteria may reduce the Tenderer's overall score but will not result in the exclusion of the Tender Response from further consideration.

Council may, in its sole discretion, seek clarification from any Tenderer regarding information contained in the Tender Response and may do so without notification to any other Tenderer.

A Tenderer may be invited to a one-on-one evaluation conference in order to review and clarify the Tender Response and to enable Council to interview key personnel identified in the Tender Response.

In general Tenders will be evaluated for:

- The capability of the Tenderer to meet the functional and technical requirements as outlined in this RFT;
- The overall value for money of the solution;
- The Tenderer's previous experience performing similar services in Australia and its demonstrated capability to provide services of comparable complexity and size;
- The additional benefits and value add the Tenderer has provided in its response;
- Overall suitability of the Tenderer and Sub-contractors, its probity, financial standing, reputation and quality assurance system in place;
- Compliance with proposed conditions of Contract;
- Industry (or SME) participation plans;
- Tenderer's ability and capacity to meet the requirements;
- Quality of Referee reports; and
- Other issues relating to the fitness for purpose of the products offered including sub-contractors, Tenderer's Quality Standard and Quality Assurance System.

Specifically, the Tender will be assessed against the Mandatory Participation Criteria detailed at 2.14 of Volume 1 and the Technical and Commercial Evaluation Criteria detailed at 2.15 of Volume 1 of this RFT.

The quality and the format of the Tender Response will be taken into account in evaluating the Tender Response.

Council is not bound or required to accept the lowest price, or any Tender Response, whether or not it is a Conforming Tender Response.

2.14. Mandatory Participation Criteria

If Mandatory Participation Criteria are to be specified, they will be detailed in this document and in the Response Schedules.

Each Submission will be assessed on a Yes/No basis (in effect, a Pass / Fail scenario) as to whether the compliance criterion is satisfactorily met. An assessment of “No” against any criterion may eliminate the Submission from consideration.

The following Mandatory Participation Criteria will be used in the evaluation of Tender submissions received for this RFT:

- Satisfaction of Insurance Requirements;
- Key Qualifications / Accreditations; and
- QMS/ WHS / Environmental Management third party ISO accreditation.
- Proposed Methodology / Program.

2.15. Evaluation Criteria

Tenders will be assessed against both Commercial (Pricing etc.) and Technical (Non-Price) Criteria.

Tenders will be assessed using a weighted scoring process based on information provided with the Tender.

The following Technical evaluation criteria will be used in the evaluation of Tenders submissions received for this RFT:

- Demonstrated Capability and Capacity;
- Demonstrated Experience and Past Performance;
- Key Personnel;
- Understanding of the Requirement;
- Product / Service Offering; and
- Proposed Methodology / Program

The following Commercial evaluation criteria will be used in the evaluation of Tenders submissions received for this RFT:

- Lump Sum Price / Total Price / Total Cost of Ownership; and
- Unit Rates / Schedule of Rates
- Licenses, memberships and accreditations etc.
- Insurances

2.16. Financial Capacity

Tenderers must have sufficient financial capacity to perform the services required under the Agreement.

As part of its response, Tenderers are to provide all financial information as requested in Schedule 3 of Volume 4, the Commercial Response Schedules for review by the Council or its nominated representative and / or give consent to the Council to complete a financial risk assessment review by its appointed credit rating agency or representative.

In submitting a Tender, the Respondent will be taken to have consented the Principal accessing this financial viability / risk assessment and information, including any personal information contained therein.

Tenderers who are identified as a financial risk as a result of these reviews may, at Council's discretion, be passed over and removed from further participation in the evaluation process.

2.17. Alternative or Non-Conforming Submissions

The Principal reserves the right to accept an Alternative or Non-Conforming Tender Submissions.

If a Respondent wishes to submit an Alternative or Non-Conforming Tender it must also:

- a) Submit a conforming Tender
- b) Submit an unmarked copy of the Alternative or Non-Conforming Tender; and
- c) Submit a copy of the non-conforming Tender in a marked up form, which identifies all departures from the conforming Tender. The detail provided must fully describe and price any conditions, qualifications, or departures from the specification for the Alternative or Non-Conforming Tender.

Council may, at its absolute discretion, consider an Alternative or Non-Conforming Tender; however it is not obliged to do so.

2.18. Departures, Clarifications and Assumptions

The Respondent is to declare and detail any Departures, Clarifications or Assumptions that have been taken into account and included in its response to the RFT in Schedule C5 of Volume 4, Commercial Response Schedules.

These Departures, Clarifications or Assumptions can address any conditions or positions in the Conditions of Contract or requirements as detailed in the Specification supplied that are material to the response.

Submissions will be accepted as accepting and complying with all terms and conditions of the Tender, the Conditions of Contract and the Specification unless expressly noted in Schedule C5 of Volume 4, Commercial Response Schedules.

2.19. Tender Validity Period

All Tenders will remain valid and open for acceptance for a minimum period of ninety (90) days from the closing date and time or forty-five (45) days from the Principal's decision for determining the Tender, whichever is the later unless extended by mutual agreement between the Principal and the Respondent(s) in writing. Respondents may withdraw its Tender at any time after the expiration of the Tender Validity Period.

2.20. Variation of Tender

- a) Before the Principal accepts any of the received Tenders to Contract, a person who has submitted a Tender may, subject to subparagraphs below, vary the Tender:
 - i. by providing the Principal with further information by way of explanation or clarification, or
 - ii. by correcting a mistake or anomaly.
- b) Such a variation may be made either:
 - i. at the request of the Principal, or
 - ii. with the consent of the Principal at the request of the Respondent, but only if, in the circumstances, it appears reasonable to the Principal to allow the Respondent to provide information or correction.
- c) If a Tender is varied in accordance with this paragraph, the Principal will notify in writing all other Respondents that have the same or similar characteristics as the varied Tender and provide them with the opportunity of varying its Tenders in a similar way.
- d) The Principal will not consider a variation of a Tender if the variation would substantially alter the original Tender.

2.21. Identity of the Respondent

The identity of the Respondent and the Contractor is fundamental to the Principal. The Respondent will be the individual, individuals, corporation or corporations named as the Respondent in whose execution appears on the Offer Form in of this Request in Schedule C1 of Volume 3, Commercial Response Schedules.

2.22. Tendered Price

The price outlined in the Tender must quote all prices inclusive of GST.

The price tendered will be net and what the Principal will be required to pay pursuant to the Contract and must include all costs associated with the Contract.

The price tendered should be firm for the duration of the contract.

The Respondent must provide its Australian Business Number (ABN), or, if it does not have an ABN, the reason for not having one.

Payments between Council and the Contractor will be exclusively in Australian dollars (AUD).

2.23. Conditions of contract

Tenders will be deemed to have been made, on the basis of, and to incorporate the General Conditions of Contract and any Special Conditions of Contract as provided in the supplied contract located in Volume 2 - Conditions of Contract of this RFT.

2.24. Precedence of Documents

In the event of any conflict or inconsistency between the terms and conditions in this Request and those in the Conditions of Contract, the terms and conditions appearing in the Principal's Conditions of Contract Request will have precedence.

2.25. Ownership of Tenders

All documents, materials, articles and information submitted by the Respondent as part of or in support of a Tender will become property of the Principal and will not be returned to the Respondent at the conclusion of the Tender process. The Respondent will be entitled to retain copyright and other intellectual property rights therein, unless otherwise provided by the Contract.

The Respondent does not acquire intellectual property rights in the Request documents. Respondents shall not reproduce any of the Request documents in any material form (including photocopying or storage in any medium by electronic means) without the written permission of the Principal other than for use strictly for the purpose of preparing Tenders.

2.26. Registration or licensing of Contractors

Where an Act requires that a contractor (as defined by the Act) be registered or licensed to carry out the work described in the Request, the Respondent shall state in the appropriate Response Schedule, its registration or licence number. The Tender may not be considered if the Respondent fails to provide such registration or license number.

2.27. WHS Obligations

Lodgement of a Tender will itself be an acknowledgement and representation of requirements in relation to WHS, which the Respondent will comply with all relevant legislation and agrees to provide periodic evidence of compliance, and give access to all relevant information to demonstrate compliance for the duration of any contract that may be awarded.

3. Participation in the Tender Process

3.1. Jurisdiction

The Project, the RFT and the final Contract Documents will be governed by the law of NSW. By lodging a Tender the Respondent irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of NSW.

3.2. Costs of Tender

Respondents remain responsible for all costs incurred by them in connection with its Tender whether before or after the submission date and whether incurred directly by them or their advisers regardless of whether such costs arise as a direct or indirect consequence of amendments made to the Request by the Principal. For the avoidance of doubt, the Principal shall have no liability whatsoever to Respondents for the costs of any negotiations conducted in the event that the Principal decides not to accept any Tenders.

3.3. Canvassing of Officials

Any Respondent who solicits or attempts to solicit support for its Tender or otherwise seeks to influence the outcome of the Tender process by:

- a) offers of any inducement, fee, or reward, to any member or officer of the Principal, or any person acting as an adviser for the Principal; or
- b) canvasses any persons referred to in this document; or
- c) contacting any member or officer of the Principal about the Request or any process relating thereto, except as authorised by this Request including (but without limitation) for the purposes of discussing the possible employment transfer of the Respondent member or officer, may be disqualified from involvement in the RFT process (without prejudice to any other civil remedies available to the Principal and without prejudice to any criminal liability which such conduct by a Respondent may attract), at the Principal's discretion.

3.4. Confidentiality

The Principal makes information available on condition that it is treated as confidential by the Respondent and is not disclosed, copied, reproduced, distributed or passed to any other person at any time except for the purpose of enabling a Tender to be made, for example by disclosure by a Respondent to its insurers or professional advisers, provided they have each given an undertaking at the time of receipt of the relevant information (and for the benefit of the Principal) to keep such information confidential. Other than specified above, or as required by law, and save insofar as the information is in the public domain, Respondents shall not make any of the Information available to any other parties in any circumstances without the prior written consent of the Principal nor use it for any purpose other than that for which it is intended.

3.5. Statement of Business Ethics

Council is committed to the highest standards of honesty, fairness and integrity in all its business dealings. Council's Statement of Business Ethics sets out the standards of behaviour that Council expects from its private sector partners. These standards of behaviour relate to fair, ethical and honest dealings with Council, and ensuring that the best level of service is provided

to the community. This document is also attached to this Tender document. Breaches of this Statement may constitute grounds for termination of this contract.

3.6.GIPA Requirements (where relevant)

Where the arrangement involves the Respondent providing services on behalf of Council, s 121 of the GIPA Act requires that the following be included in any contract, and this will be part of the contract with Council:

1. The Contractor must, within seven (7) days of receiving a written request by the Agency, provide the Agency with immediate access to the following information contained in records held by the Contractor:
 - a. information that relates directly to the performance of the services provided to the Agency by the Contractor pursuant to the Contract;
 - b. information collected by the Contractor from members of the public to whom it provides, or offers to provide, the services pursuant to the Contract; and
 - c. information received by the Contractor from the Agency to enable it to provide the services pursuant to the Contract.
2. For the purposes of sub-clause (1), information does not include:
 - a. information that discloses or would tend to disclose the Contractor's financing arrangements, financial modelling, cost structure or profit margin;
 - b. information that the Contractor is prohibited from disclosing to the Agency by provision made by or under any Act, whether of any State or Territory, or of the Commonwealth; or
 - c. information that, if disclosed to the Agency, could reasonably be expected to place the Contractor at a substantial commercial disadvantage in relation to the Agency, whether at present or in the future.
3. The Contractor will provide copies of any of the information in sub-clause (1), as requested by the Agency, at the Contractor's own expense.

Any failure by the Contractor to comply with any request pursuant to sub clause (1) or (3) will be considered a breach of an essential term and will allow the Agency to terminate the Contract by providing notice in writing of its intention to do so with the termination to take effect seven (7) days after receipt of the notice. Once the Contractor receives the notice, if it fails to remedy the breach within the seven (7) day period to the satisfaction of the Agency, then the termination will take effect seven (7) days after receipt of the notice.

3.7.Non Collusion

Any Respondent who:

- a) fixes or adjusts the amount of its Tender by or in accordance with any agreement or arrangement with any other Respondents; or

- b) enters into any agreement or arrangement with any other Respondent that it shall refrain from Tendering or as to the amount of any Tender to be submitted; or
- c) causes or induces any person to enter such agreement or to inform the Respondent of the amount or approximate amount of any rival Tender for the Contract; or
- d) canvasses any of the persons previously discussed in connection with the Tender or the outcome of the Tender process; or
- e) offers, agrees, or does; pay any sum of money, inducement or valuable consideration. This being directly or indirectly to any person for doing, having done, causing, or caused to be done in relation to any other Tender or proposed Tender any act or omission; or
- f) communicates to any person other than the Principal the amount or approximate amount of its proposed Tender (except where such disclosure made in confidence in order to obtain quotations necessary for the preparation of the Tender, for insurance or contract guarantee bonds and/or performance bonds or professional advice required for the preparation of a Tender),

may, at the discretion of the Principal, be disqualified from any further involvement in this Tender process (without prejudice to any other civil remedies available to the Principal and without prejudice to any criminal liability which such conduct by a Respondent may attract).

3.8.Publicity

Respondents must obtain the written approval from the Contact Officer before any disclosures relating to the Tender or the contract are made to the press or in any other public domain. Respondents must not undertake any publicity activities with any part of the media in relation to the Tender or contract without the agreement of the Principal, including agreement on the format and content of any publicity.

END OF VOLUME 1 – CONDITIONS OF TENDERING

Volume 2 – Conditions of Contract

4. Schedule 1 - Contract Summary Information

| Contract Summary Table | |
|---|---|
| <i>Contract Details</i> | |
| Contract Name | Nyngan Seniors Living Development |
| Contract Number | AU-865257 |
| Initial Period Commencement Date | 14 days from contract award |
| Details of Possible Extensions | Not applicable |
| Maximum Allowable Contract Period | 18 weeks |
| Contract Completion Date | 20/12/2019 |
| Work / Delivery Location/s | 101 Cobar Street, Nyngan, NSW |
| <i>Parties to Contract</i> | |
| Principal's Name | Bogan Shire Council |
| Principal's Address for Notices | 81 Cobar Street, P.O. Box 221, Nyngan, 2825, New South Wales |
| Principal's Representative Name | Mitch Scealy |
| Principal's Representative Telephone | 0429 420 234 |
| Principal's Representative Email | mitch@lyonsadvantage.com.au |

5. Schedule 2 – General Conditions of Contract

MW21 General Conditions of Contract

Definitions

1.1 Authorised Person

The person stated in Contract Information - **Item 1** who is appointed by the Principal to act with its full authority in all matters relating to the Contract.

1.2 Business Day

Any day other than a Saturday, Sunday, Public Holiday in NSW or 27, 28, 29, 30 or 31 December.

1.3 Completion

The state of the work under the Contract or any Milestone when:

- (a) it is capable of use for the purpose stated in the Contract Information;
- (b) it has passed all required tests and is free from any known Defects;
- (c) the Contractor has provided all the required documents; and
- (d) the Contractor has made good the Site and surroundings.

1.4 Contract

The agreement between the parties for the carrying out of the work under the Contract, as set out in the Contract Documents and accepted in writing by the Principal.

1.5 Contractor

The entity that is to carry out the work under the Contract.

1.6 Contract Documents

- (a) the documents prepared by the Principal for the Contract and provided to the Contractor;
- (b) the tender submitted by the Contractor as accepted by the Principal; and
- (c) any variations to the documents in (a) and (b) agreed to by the parties in writing or made under the Contract.

1.7 Contract Price

- (a) where the Principal accepted only a lump sum, the lump sum; or
- (b) where the Principal accepted rates, the sum of the products of the quantity and the relevant rate for each item in the Schedule of Rates, plus any lump sums in the Schedule of Rates.

as adjusted in accordance with the Contract.

1.8 Day

A calendar day.

1.9 Defect

Any aspect of the work under the Contract that does not conform with the Contract.

1.10 Direct Costs

Costs incurred by the Contractor excluding costs of supervision, site establishment, general tools, administration, overheads, fees, delay, disruption and profit.

1.11 Milestone

A part of the work under the Contract that is specified as a Milestone in **Contract Information - Item 3**.

1.12 Parties

The Principal and the Contractor.

1.13 Post Completion Period(s)

The period(s) stated in Contract Information - **Item 4**.

1.14 Principal

The entity stated in Contract Information - **Item 5**.

1.15 Provisional Allowance

An amount included in the Contract Price for work for which payment will be made as a Provisional Sum or a Provisional Rate Amount.

1.16 Provisional Sum

An amount included in the Contract Price, which is identified as a provision for the work specified in the Contract against that Provisional Sum.

1.17 Provisional Rate Amount

An amount included in the Contract Price, based on a rate tendered for a provisional item of work.

1.18 Senior Executive

The person stated in Contract Information - **Item 6**.

1.19 Site

The lands and other places made available to the Contractor by the Principal for the purpose of the Contract.

1.20 Site Conditions

The physical conditions on, about or below the Site, excluding conditions resulting from weather.

1.21 Variation

Any change to the character, form, quality and extent of the work under the Contract instructed or accepted in writing by the Principal. A Variation shall not invalidate the Contract.

1.22 Works

The works to be designed and constructed under the Contract.

1A NSW Code of Practice for Procurement and Implementation Guidelines

Terminology

- .1 In addition to terms defined in this document, terms used in this clause have the same meaning as is attributed to them in the New South Wales Government's Implementation Guidelines to the NSW Code of Practice for the Building and Construction Industry (NSW Guidelines) (as published by the NSW Treasury July 2013). The NSW Code and NSW Guidelines are available at www.industrialrelations.nsw.gov.au.

Primary Obligation

- .2 The parties must comply with and meet any obligations imposed by the NSW Government Code of Practice for Procurement (NSW Code) and the NSW Guidelines.
- .3 The Contractor must notify the Construction Compliance Unit (CCU) and the Principal of any possible non-compliance with the NSW Code and NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- .4 Where the Contractor engages a Subcontractor or Consultant, the Contractor must ensure that that contract imposes on the Subcontractor or Consultant equivalent obligations to those in this clause (under the heading NSW Code and Implementation Guidelines), including that the Subcontractor or Consultant must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.
- .5 The Contractor must not appoint or engage another party in relation to the contract where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or NSW Guidelines.

Access and information

- .6 The Contractor must maintain adequate records of compliance with the NSW Code and NSW Guidelines by it, its Subcontractors, Consultants and related entities.
- .7 The Contractor must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:
 - .1 enter and have access to sites and premises controlled by the Contractor, including but not limited to the project site;
 - .2 inspect any work, material, machinery, appliance, article or facility;
 - .3 access information and documents;
 - .4 inspect and copy any record relevant to the project;
 - .5 have access to personnel; and
 - .6 interview any person;

as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Code and NSW Guidelines, by the Contractor, its Subcontractors, Consultants, and related entities.

- .8 The Contractor, and its related entities, must agree to, and comply with, a request from authorised personnel (including personnel of the CCU) for the production of specified documents by a certain date, whether in person, by post or electronic means.

Sanctions

- .9 The Contractor warrants that at the time of entering into this contract, neither it, nor any of its related entities, are subject to a sanction in connection with the NSW Code or NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Code and NSW Guidelines apply.
- .10 If the Contractor does not comply with, or fails to meet any obligation imposed by, the NSW Code or NSW Guidelines, a sanction may be imposed against it in connection with the NSW Code or NSW Guidelines.
- .11 Where a sanction is imposed:
- .1 it is without prejudice to any rights that would otherwise accrue to the parties; and
 - .2 the State of NSW (through its agencies, Ministers and the CCU) is entitled to:
 - .1 record and disclose details of noncompliance with the NSW Code or NSW Guidelines and the sanction; and
 - .2 take them into account in the evaluation of future procurement processes and responses that may be submitted by the Contractor, or its related entities, in respect of work to which the NSW Code and NSW Guidelines apply.

Compliance

- .12 The Contractor bears the cost of ensuring its compliance with the NSW Code and NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Guidelines. The Contractor is not entitled to make a claim for reimbursement or an extension of time from the Principal or the State of NSW for such costs.
- .13 Compliance with the NSW Code and NSW Guidelines does not relieve the Contractor from responsibility to perform the works and any other obligation under the contract, or from liability for any defect in the works or from any other legal liability, whether or not arising from its compliance with the NSW Code and NSW Guidelines.
- .14 Where a change in the contract or works is proposed, and that change may, or may be likely to, affect compliance with the NSW Code and NSW Guidelines, the Contractor must immediately notify the Principal (or nominee) of the change, or likely change and specify:
- .1 the circumstances of the proposed change;
 - .2 the extent to which compliance with the NSW Code and NSW Guidelines will be, or is likely to be, affected by the change; and
 - .3 what steps the Contractor proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a Workplace Relations Management Plan or Work Health and Safety Management Plan);and

the Principal will direct the Contractor as to the course it must adopt within 10 Business Days of receiving notice.

The Contract

2.1 The Contract Documents are mutually explanatory and anything contained in one document but not in another shall be treated as if contained in all.

Headings, arrows and guidance notes are for convenience only and do not affect interpretation.

2.2 If the Contractor finds any error, discrepancy or ambiguity in the Contract Documents, then the Contractor is to inform the Principal before commencing the affected work and follow any instructions given by the Principal.

2.3 The Principal may give an instruction in relation to the Contract. The Contractor is to comply with the instruction within the time stated in the instruction or, if no time is stated, within a reasonable time.

2.4 The Contractor must not:

- (a) subcontract all the work under the Contract; or
- (b) enter into a single subcontract for the majority of the work under the Contract without first obtaining the Principal's written consent.

2.5 The Contractor is solely responsible for all subcontractors and for their acts and omissions.

2.6 During claim and dispute resolution procedures undertaken under **Clauses 15** and **16**, the parties must continue to perform their obligations under the Contract.

2.7 This Contract is governed by the laws of New South Wales.

Design and Construction

3.1 The Contractor is to complete the Principal's design to the extent stated in Contract Information - **Item 7**.

3.2 The Contractor is not to depart from the Principal's design unless instructed by the Principal. The Principal retains responsibility for the design carried out by the Principal.

3.3 The Contractor has sole responsibility for the Contractor's design. The Principal relies on the Contractor's care, knowledge and skill in carrying out this responsibility.

3.4 The completed design is to conform with the Contract and be fit for the purpose of the Works stated in Contract Information - **Item 2**.

3.5 The Contractor is to progressively submit the completed design, comprising drawings, specifications, calculations and any statutory certificates required, to the Principal in accordance with Contract Information - **Item 8**.

3.6 The Principal is not bound to check the completed design for errors, omissions or conformance with the Contract. No comment made by the Principal relieves the Contractor of the Contractor's obligations and liabilities under the Contract.

The Principal is not liable to the Contractor for any claim whatsoever that relates to the Principal not detecting or notifying the Contractor of any error, omission or non-conformance with the Contract in the

3.7 All intellectual property and moral rights in any design created specifically for the Contract shall vest in the Principal upon their creation.

The Contractor grants to the Principal an unconditional and irrevocable licence to use any other design provided by or for the Contractor, to the extent necessary for the Works, including any subsequent repairs, maintenance or servicing (including the supply of replacement parts) or additions or alterations to the Works.

3.8 The Contractor is to construct the Works in accordance with the completed design, and make good the Site and surroundings.

3.9 The Contractor is to provide minor items not included in the design that are needed to satisfactorily complete the Works.

3.10 The Contractor is to carry out work that is the subject of a Provisional Allowance only as instructed by the Principal and under the terms specified in the instruction.

If the Principal requests the Contractor to submit a price for work that is the subject of a Provisional Sum, then the Contractor is to comply within 14 days after the request.



Care of People, Property and the Environment

4.1 From the time access to any part of the Site is given to the Contractor until the date of Completion of the Works, the Contractor is responsible for the care of, and is to make good, at the Contractor's expense, any loss or damage which occurs to:

- (a) the Works;
- (b) construction plant; and
- (c) things entrusted to the Contractor by the Principal for the purpose of carrying out the work under the Contract.

In carrying out the work under the Contract, the Contractor is to minimise inconvenience to others.

4.2 The Contractor indemnifies the Principal against any:

- (a) legal liability for injury, death or harm to the environment;
- (b) breach of intellectual property rights in relation to material provided by or for the Contractor; and
- (c) loss of, or damage to, property of the Principal, or others,

arising out of the carrying out of the work under the Contract.

The Contractor's liability to indemnify the Principal is reduced to the extent that an act or omission of the Principal has contributed to the injury, loss or damage.

4.3 The Contractor is to set reasonable standards of conduct and ensure they are met by persons engaged in carrying out the work under the Contract.

4.4 The Principal may instruct the Contractor to remove a person from the Site and surroundings for failing to meet reasonable standards of conduct.

4.5 Nothing in **Clause 4** relieves the Principal of liability for acts and omissions of the Principal.

4.6 If:

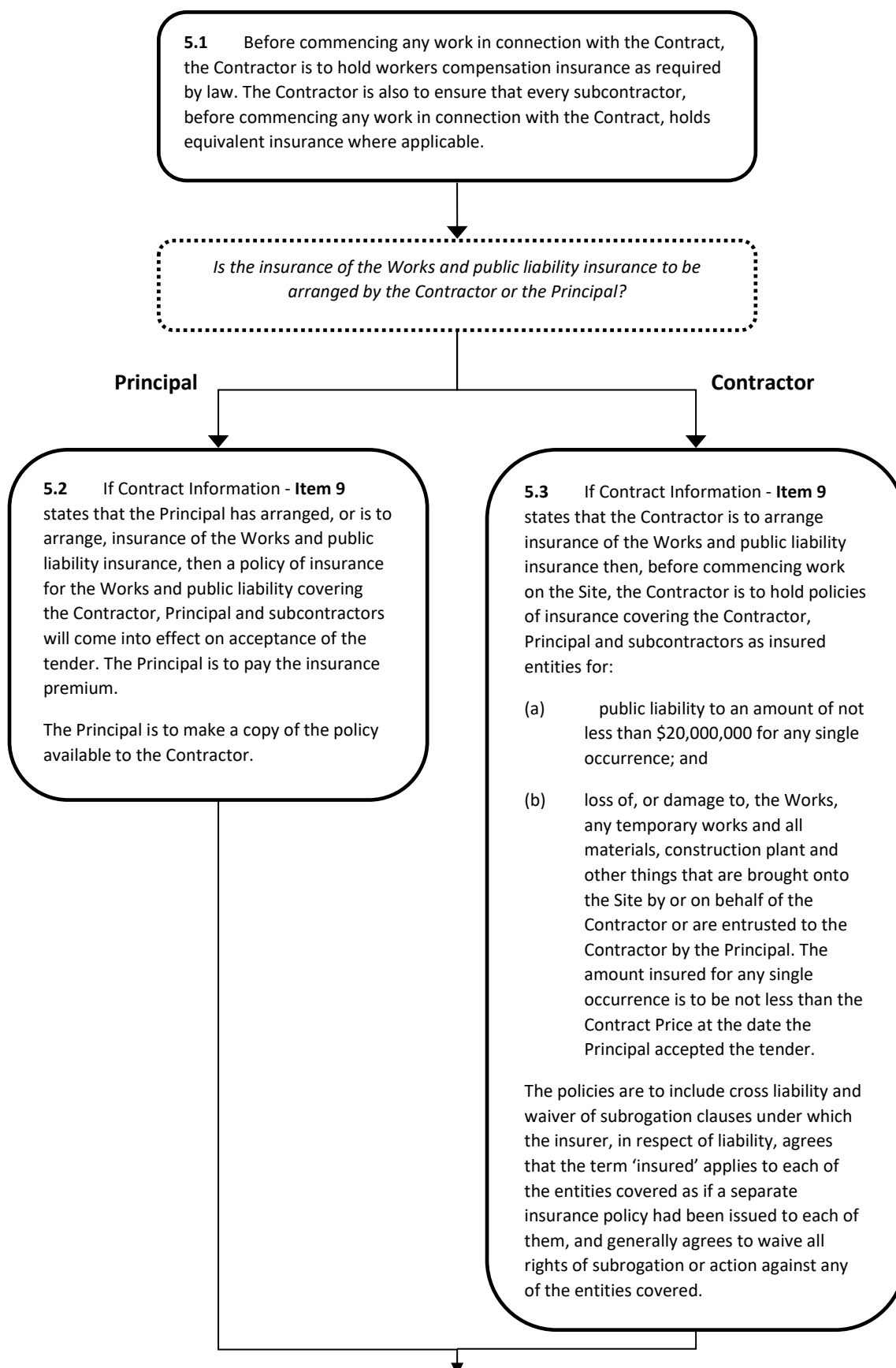
- (a) action is required to avoid injury, death, harm to the environment or loss of, or damage to, property, and the Contractor does not take the necessary action when instructed by the Principal; or

- (b) urgent action is required,

then the Principal may take the action, without relieving the Contractor of its obligations or liabilities.

The Principal's costs in relation to any such action, as certified by the Principal, are a debt due and payable by the Contractor to the Principal.

Insurance



5. Insurance (Continued)

5.4 Unless otherwise advised by the Principal, the Contractor or relevant subcontractor is to hold the following additional insurance policies:

- (a) marine liability insurance, if the work under the Contract involves the use of water-borne craft in excess of 8 metres in length; and
- (b) professional indemnity insurance, if stated in Contract Information - **Item 10**.

The policies are to be in place before commencing the relevant work.

The policy under (a) is to be:

- (i) in the name of the party responsible for procuring the insurance and cover the Contractor, Principal and subcontractors, as insured entities, for their respective rights, interests and liabilities to third parties; and
- (ii) for an amount not less than \$5,000,000 for any single occurrence and include cross-liability and waiver of subrogation clauses under which the insurer, in respect of liability, agrees that the term 'insured' applies to each of the entities covered as if a separate insurance policy had been issued to each of them, and generally agrees to waive all rights of subrogation or action against any of the entities covered.

The policy under (b) is to cover the Contractor for liability to the Principal for an amount not less than \$500,000 for loss (whether economic loss or any other loss) for any single occurrence arising from errors or omissions in the design of the Works carried out by or on behalf of the Contractor. The insurance is to be held for a period of at least one year after the work under the Contract reaches Completion.

5.5 For any insurance the Contractor is required to hold under the Contract, the Contractor is:

- (a) responsible for the payment of premiums;
- (b) to maintain all the policies, other than professional indemnity insurance, until the work under the Contract reaches Completion or the end of the Post Completion Period, whichever is later; and
- (c) to provide evidence of the currency of the policies and copies of the Works, public liability and marine liability insurance policies to the Principal before commencing the relevant work.

5.6 If the Contractor fails, within 7 days after a written request from the Principal, to provide satisfactory evidence of having paid insurance premiums and compliance with other insurance obligations under the Contract, then the Principal may effect or maintain the insurance and pay any premiums. The Contractor is to pay the Principal the amount of any premiums or deductibles paid by the Principal plus, in each and every case, \$500 to cover the Principal's costs. These amounts, once notified, are a debt due and payable by the Contractor to the Principal.

5.7 The Contractor is responsible for making and managing any claims and meeting the costs of any deductibles.

Site Access

6.1 The Principal is to give the Contractor access to sufficient of the Site to allow the Contractor to start the work under the Contract, by the time(s) stated in Contract Information - **Item 11**.

6.2 The Principal is to act reasonably for the purposes of **Clause 6.1** but is not required to give the Contractor sole or uninterrupted possession of, or access, to the Site.

6.3 The Contractor is to start work on the Site as soon as practicable after being given access to sufficient of the Site, but not before satisfying all necessary requirements.

6.4 The Contractor is to give the Principal, and any third party authorised by the Principal, reasonable access to the Site for any purpose.

Site Conditions

7.1 If the Contractor encounters Site Conditions that differ materially and adversely from what should reasonably have been expected at close of tenders, then the Contractor is to notify the Principal forthwith in writing and in any event within 7 days after encountering them.

The notification is to include details of the materially adverse Site Conditions and the additional time and cost the Contractor estimates will be required to deal with them.

7.2 The Contractor is solely responsible for dealing with Site Conditions and is to minimise any additional time and cost.

7.3 From the time the Principal receives notification complying with **Clause 7.1**, the Contractor is entitled to:

- (a) payment of the Contractor's reasonable additional Direct Costs plus a margin of 15%; and
- (b) an extension of time for delays in reaching Completion,

where the additional cost or delay are necessarily incurred as a result of the materially adverse Site Conditions.

This entitlement is reduced to the extent that the Contractor has not minimised additional time and costs.

The Contractor has no entitlement to additional payment or an extension of time in relation to the period prior to the date of receipt of notification under **Clause 7.1**.

The Contractor has no other entitlements due to materially adverse site conditions except under Clause 7.5.

7.4 The Contractor is to claim any additional Direct Costs and extensions of time to which it is entitled under **Clause 7.3** within 28 days after completing the relevant work.

The claim is to be made in accordance with **Clause 15.2**.

7.5 If a Variation is instructed as a result of materially adverse Site Conditions, the Contractor's entitlements under **Clause 7.3** cease from the time of the instruction and **Clause 9** applies to the Variation.

Materials and Work

8.1 The Contractor is to:

- (a) supply materials which are new (unless otherwise specified), free from defects and fit for purpose; and
- (b) use standards of workmanship (including design) and work methods,

which conform with the Contract, the Building Code of Australia, relevant Australian Standards and codes of practice, and the lawful requirements of any authority.

8.2 When instructed by the Principal, the Contractor is to:

- (a) uncover and re-cover work; and/or
- (b) carry out additional testing.

8.3 The Contractor is not entitled to additional payment or an extension of time in respect of an instruction under **Clause 8.2** unless the work uncovered or tested conforms with the Contract, in which case the instruction will be dealt with as an instruction under **Clause 9**.

8.4 The Contractor is to make good any Defect when it becomes apparent.

The Principal may, in its absolute discretion, propose to accept work under the Contract with any specified Defect not made good, on specified terms.

If the Contractor does not accept the Principal's proposal, then the Contractor is to make good the Defect.

8.5 Nothing in **Clause 8** relieves the Contractor of any obligations or liabilities under the Contract.

Variations

9.1 The Contractor is not to change the Works without an instruction from the Principal or written acceptance by the Principal of a proposal from the Contractor.

9.2 The Contractor is to take all reasonable steps to carry out any Variation concurrently with other work and to otherwise minimise any delays.

9.3 If the Contractor proposes a Variation for the Contractor's convenience the Principal may, in its absolute discretion, accept the proposal on specified terms.

9.4 If, in respect of a possible Variation, the Principal requests the Contractor to submit a proposal, including the effect on the Contract Price, the time required to reach Completion and any other implications for the Contract, the Contractor is to comply with the request within 14 days. If the Variation will involve additional work, the proposal should include a margin of no more than 15% on Direct Costs. If the Variation will involve less work, the proposal should include a margin of no less than 5% on the reduction in Direct Costs.

Does the Principal accept the Contractor's proposal?

Yes

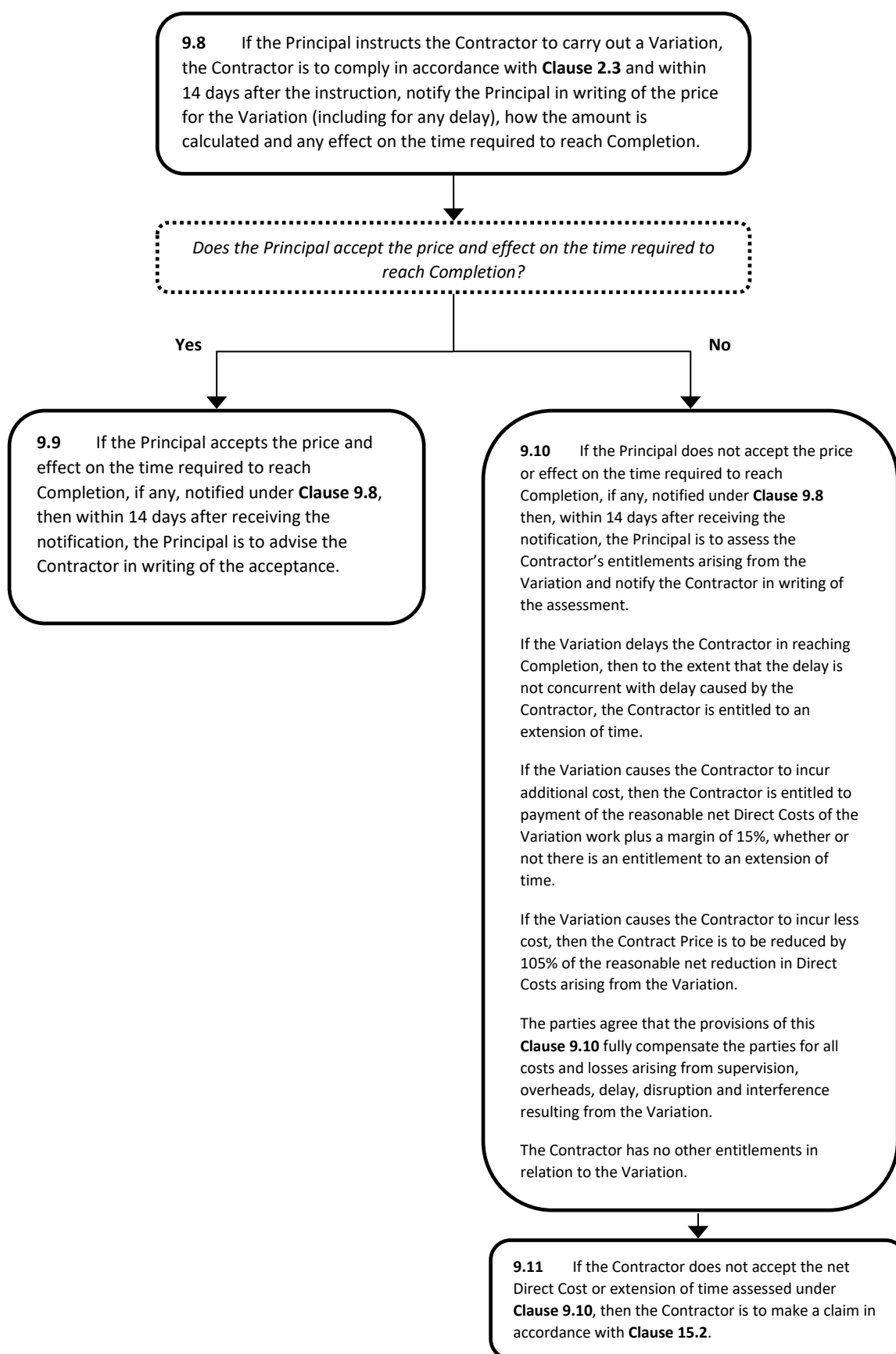
No

9.5 If the Principal accepts a proposal submitted under **Clause 9.4**, then within 14 days after receiving the proposal, the Principal is to notify the Contractor in writing that the proposal is accepted as a Variation.

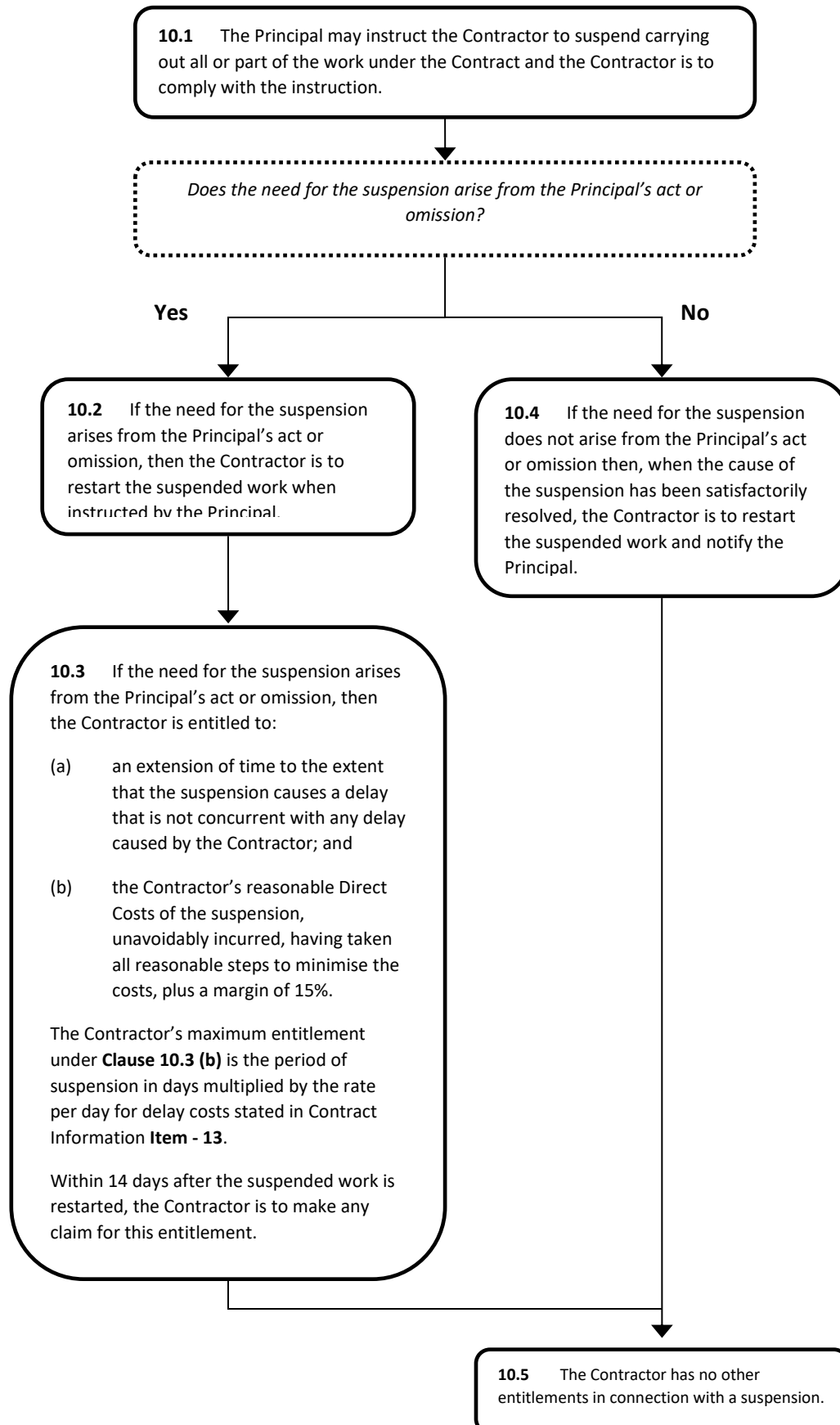
9.6 If the Principal does not accept a proposal submitted under **Clause 9.4**, then within 14 days after receiving the proposal, the Principal is to notify the Contractor in writing that the proposal is not accepted.

9.7 Nothing in **Clause 9.4** or **Clause 9.6** prevents the Principal from instructing a Variation under **Clause 9.8**.

9. Variations (Continued)



Suspension



Completion

11.1 The Contractor is to bring the work under the Contract and any Milestones to Completion within the time(s) stated in Contract Information - **Item 12**, as extended under the Contract.

11.2 The Contractor is to notify the Principal when, in the Contractor's opinion, the work under the Contract or any Milestone has reached Completion. When the Contract includes Milestones, the work under the Contract will have reached Completion when all Milestones have reached Completion.



11.3 Upon receipt of notification under **Clause 11.2**, the Principal is to:

- (a) determine if the work under the Contract or Milestone has reached Completion and, if so, the date Completion was reached; and
- (b) promptly give the Contractor written notice of the determination.

11.4 Before Completion, the Principal may use or occupy any part of the Works which is sufficiently complete, and then:

- (a) the Contractor's responsibilities are not affected, except to the extent that the Principal causes the Contractor's work to be hindered; and
- (b) the Principal becomes responsible for any additional insurance required.

The Principal is to give the Contractor not less than 7 days notice in writing that the Principal (or a third party authorised by the Principal) will be using or occupying a part of the Works and is to specify the part(s) to be used or occupied.

The Contractor is to provide to the Principal, no more than 14 days after receiving the Principal's notice, all documents and other things relevant to the part(s) of the Works specified in the notice. The Contractor is to provide full assistance and cooperation to the Principal in the use and occupation of the parts specified in the notice.

11.5 The Principal may, in its absolute discretion, notify the Contractor that the work under the Contract or any Milestone has reached Completion.

Delay to Completion

12.1 If the Contractor anticipates being delayed in reaching Completion, the Contractor is to promptly notify the Principal.

12.2 If the Contractor is delayed in reaching Completion, the Contractor is to immediately notify the Principal and, within 7 days after the delay starts, advise the Principal in writing of the cause, relevant facts and actual or expected delay.

12.3 If a delay in reaching Completion is not concurrent with delay caused by the Contractor, and is caused by:

- (a) an instruction given by the Principal, except under **Clauses 7, 8, 9 or 10**;
- (b) a breach of the Contract by the Principal; or
- (c) any event beyond the control of the Contractor to the extent the Contractor has not contributed to the delay,

then the Contractor is entitled to an extension of the time for Completion, under this **Clause 12.3**, to the extent that the instruction, breach or event caused delay.

The Contractor may also have an entitlement to an extension of the time for Completion under **Clauses 7, 8, 9 or 10**.

If an entitlement to an extension of the time for Completion arises under **Clause 12.3 (a)** or **(b)** and the Contractor is delayed in reaching Completion of the work under the Contract then the Contractor is entitled to delay costs at the rate per day stated in Contract Information - **Item 13**.

The Contractor has no entitlement to costs arising from delays due to causes that are beyond the control of the Principal.

12.4 Within 14 days after a delay ends, the Contractor is to make a claim in accordance with **Clause 15.2**.

The Principal is to assess the Contractor's entitlements and notify the Contractor in writing of the assessment.

If the Principal does not notify the Contractor of the assessed entitlements within 28 days after the claim is received, then the assessed entitlements will be nil.

12.5 If the Contractor does not accept the assessed entitlements, the Contractor is to proceed in accordance with **Clause 15.3**.

12.6 If the Contractor does not complete a Milestone or the work under the Contract in accordance with **Clause 11.1**, then:

- (a) if a rate is stated in Contract Information - **Item 14**, the Contractor is to pay to the Principal liquidated damages at that rate from the date immediately after the date for Completion to, and including, the date Completion is reached; or
- (b) if no rate is stated in Contract Information - **Item 14**, then common law damages will apply.

The damages, once notified, are a debt due and payable by the Contractor to the Principal.

12.7 The Principal may for any reason and at any time extend any time for Completion by written notice.

Payment and Retention

13.1 The Contractor is to give a written payment claim to the Principal at the times specified in Contract Information - **Item 15**. The claim is to identify the work carried out, the amount claimed and how the amount is calculated.

The amount the Contractor is entitled to claim is the sum of:

- (a) for work for which the Principal accepted rates, an amount calculated by applying the rates to the relevant quantities of work carried out;
- (b) for work for which the Principal accepted a lump sum, the percentage of the lump sum that reflects the value of the work carried out;
- (c) for completed work for which the Contract Price includes a Provisional Allowance, the amount calculated in accordance with **Clause 13.7**; and
- (d) for any extra entitlement claimed for which the Principal has agreed or assessed an amount in writing, or for which an amount has been finally determined by an expert under **Clause 16**, the percentage of that amount which reflects the value of the entitlement,

at the date of the payment claim, less amounts previously paid, amounts payable by the Contractor to the Principal and any amounts the Principal is entitled to deduct, including retentions, set-offs and liquidated damages.

With each payment claim, the Contractor is to give to the Principal:

- (i) the conformance records and other information required under the Contract; and
- (ii) a completed and true Combined Subcontractor's Statement and Supporting Statement in the form of Schedule 2 to these General Conditions; executed on the date of the payment claim.

13.2 Within 10 Business Days after receipt of the Contractor's payment claim, the Principal is to give to the Contractor a payment schedule identifying the payment claim to which it relates and stating the payment, if any, which the Principal will be making. If the payment is to be less than the amount claimed, the payment schedule is to state the reasons why it is less.

13.3 Payment by the Principal of the scheduled amount shown in the payment schedule is to be made within 15 Business Days after the Contractor's payment claim is served.

In accordance with the relevant legislation identified in the Combined Subcontractor's Statement and Supporting Statement, the Principal may withhold any payment to the Contractor until this Statement is provided.

13.4 Unless otherwise stated, all payments by the Principal to the Contractor are to be made by Electronic Funds Transfer to a bank, building society or credit union account nominated by the Contractor. No payment is due to the Contractor until sufficient details of the nominated account are notified in writing to the Principal. The Contractor is to give the Principal a minimum of 7 days written notice of any changes to the nominated account. The Principal is otherwise not responsible for any payments made into a previously nominated account.

13.5 Payment is not evidence of the value of work or that the work is satisfactory or an admission of liability, but is payment on account only.

13. Payment and Retention (Continued)

13.6 The Principal is entitled to withhold, deduct or set-off from any payment due to the Contractor, under or arising out of the Contract or any other contract between the parties, a sum equivalent to any debt due from the Contractor to the Principal.

13.7 If the Principal instructs the Contractor to carry out work that is the subject of a Provisional Allowance, then the Contract Price is to be adjusted as follows:

- (a) the amount of the Provisional Allowance is to be deducted from the Contract Price; and
- (b) where the Provisional Allowance is a Provisional Sum, the reasonable Direct Costs to the Contractor of work carried out in relation to the Provisional Sum plus 10%, is to be added to the Contract Price; or
- (c) where the Provisional Allowance is a Provisional Rate Amount, the amount calculated by applying the tendered rate to the measured quantity of work carried out, up to the specified limit, is to be added to the Contract Price.

If the Principal does not instruct the Contractor to carry out work which is subject to any Provisional Allowance, then the Provisional Allowance is to be deducted from the Contract Price.

13.8 The Principal is to retain 4% of the Contract Price when the amount the Contractor is entitled to be paid exceeds 50% of the Contract Price.

The Contractor may, instead of the retention, provide an undertaking in the amount of the retention in the form detailed in Schedule 1 – **Unconditional Undertaking**.

All undertakings are to be provided by a bank, building society, credit union or insurance company acceptable to the Principal.

13.9 Within 60 Business Days after:

- (a) the work under the Contract reaches Completion;
- (b) the rectification or resolution of all Defects identified prior to the end of the final Post Completion Period (if any); or
- (c) the resolution of all claims made under **Clause 15**,

whichever is the later, the Principal is to issue a final payment schedule accounting for the payment of any retention held under **Clause 13.8** and any amounts the Principal demands from the Contractor, and stating the amount payable by one party to the other.

If payment is due to the Contractor then, within the later of 15 Business Days after the date of issue of the final payment schedule or 2 Business Days after receipt of the original of a current Subcontractor's Statement, the Principal is to pay the Contractor any money due in accordance with the final payment schedule and release the balance of any undertakings.

If payment is due to the Principal from the Contractor then the payment is a debt due and payable by the Contractor to the Principal. Within 20 Business Days after the date of issue of the final payment schedule, the Contractor is to pay the Principal any money due in accordance with the final payment schedule. The Principal is to release the balance of any undertakings within 5 Business Days after receiving payment from the Contractor.

If no payment is due from either party to the other then, within 20 Business Days after the date of issue of the final payment schedule, the Principal is to release the balance of any undertakings.

After Completion

14.1 At any time after Completion is reached, the Principal may instruct the Contractor to make good a Defect within a specified time and at a time convenient to the Principal.

All costs associated with making good a Defect are payable by the Contractor.



14.2 If the Contractor does not make good the Defect within the time specified, then the Principal may have the Defect made good by others. The Contractor remains responsible for the work under the Contract.



14.3 The Principal is to assess the reasonable cost of having the Defect made good by others and the assessed cost, once notified, is a debt due and payable by the Contractor to the Principal.

Claims

15.1 Any claim, other than a claim made under **Clause 13**, is to be made in accordance with this **Clause 15**.

15.2 A claim by the Contractor on the Principal is to be in writing and contain sufficient information for the Principal to assess the claim, including:

- (a) the legal and factual basis of the claim;
- (b) how the quantum of the claim is calculated; and
- (c) evidence supporting the claim, including applicable subcontractor documentation



15.3 Within 14 days after receiving a claim that meets the requirements of **Clause 15.2**, the Authorised Person is to assess the Contractor's entitlement and notify the Contractor.

If the Contractor does not accept the Authorised Person's assessment, then the Contractor and Authorised Person are to confer to try to reach agreement.

If agreement is not reached within 28 days after the Contractor receives the Authorised Person's assessment, **Clause 16** will apply.

15.4 Unless otherwise provided for in the Contract, any claim by the Contractor on the Principal, in relation to events that occurred before the work under the Contract reached Completion, is to be received by the Principal within 28 days after the Contractor receives the Principal's written notice of Completion of the work under the Contract under **Clause 11.3**. Otherwise the claim is barred.

If the Contract includes a Post Completion Period, then any claim by the Contractor on the Principal, in relation to events that occurred during a Post Completion Period, is to be made within 28 days after the end of the final Post Completion Period. Otherwise the claim is barred.

Disputes

16.1 If the Contractor is dissatisfied with an act or omission of the Principal in connection with the Contract, including an instruction, assessment of a claim or failure to agree then, unless otherwise required by the Contract, within 14 days after the act or omission, the Contractor is to notify the Authorised Person and the Senior Executive in writing of a dispute. The notification is to include the information required under **Clause 15.2**.

If the Contractor notifies a dispute, but not within the time provided by this **Clause 16.1**, then the Contractor is not entitled to interest, in respect of that matter, prior to notification.

16.2 If the Principal is dissatisfied with an act or omission of the Contractor in connection with the Contract, including performance, compliance with an instruction or failure to agree, then within 14 days after the act or omission, the Authorised Person may notify the Senior Executive and the Contractor in writing of a dispute. The notification is to include the legal and factual basis of the dispute.

16.3 Within 14 days after notification is received under **Clause 16.1** or **16.2**, the Contractor and the Senior Executive are to confer to try to resolve the dispute.

16.4 If the dispute is not resolved within 42 days after notification is received under **Clause 16.1** or **16.2**, then the parties are to agree upon an independent expert to determine the dispute.

16.5 If the parties fail to agree upon an expert within 28 days, then either may request the Chief Executive Officer of the Australian Disputes Centre (tel. 02 9239 0700) to nominate an expert. The independent expert is not to be:

- (a) an employee of the Principal or the Contractor;
- (b) a person who has been connected with the Contract; or
- (c) a person upon whose appointment the Principal and the Contractor have previously failed to agree.

16.6 Once the expert has been agreed under **Clause 16.4** or nominated under **Clause 16.5**, the Principal, on behalf of both parties, is to appoint the expert in writing, with a copy to the Contractor, setting out:

- (a) the dispute being referred to the expert for determination;
- (b) the expert's fees;
- (c) the procedures detailed in this **Clause 16**;
- (d) the arrangements for each party to lodge \$10,000 as initial security for the expert's fees; and
- (e) any other matters relevant to the appointment.

16.7 The parties are to share equally the cost of appointing the expert, and the expert's fees and out-of-pocket expenses, including any security required for the expert's fees. Each party is to otherwise bear its own costs in relation to the determination process.

16.8 If a party defaults in providing the initial security within 28 days after the appointment of the expert, then the other party may provide the security in full and the defaulting party's share is a debt due and payable to the paying party.

16.9 Any dispute for which:

- (a) an expert has not been agreed upon under **Clause 16.4**, or nominated under **Clause 16.5** within 90 days after notification is received under **Clause 16.1** or **16.2**; or
- (b) the initial security has not been lodged in full within 56 days after the expert has been appointed.

16. Disputes (Continued)

16.10 Each party is to make written submissions to the expert and provide a copy to the other party as follows:

- (a) Within 21 days after the appointment of the expert, the notifying party is to make its submission on the matter in dispute.
- (b) Within 14 days after receiving a copy of that submission, the other party is to make its submission in response, if any, which may include cross-claims.
- (c) If a cross-claim is made, the notifying party is to make its submission on the cross claim within 14 days after receiving a copy of the submission from the other party.
- (d) The expert may request further information from either party and that party must respond within 14 days after receiving the request.
- (e) The expert must ignore any submission not made within the times given in this **Clause 16.10** and make a determination on the submissions or information provided within time, unless the parties agree otherwise in writing.

16.11 The expert must determine whether the claimed event, act or omission did occur and, if so:

- (a) when it occurred;
- (b) what term of the Contract or other obligation in law, if any, requires one party to pay the other money or otherwise act in respect of it; and
- (c) the merits in law of any defence or cross-claim raised by the other party.

The expert is then to determine the amount, if any, which one party is legally bound to pay the other on account of the event, act or omission.

The expert must also determine any other question(s) referred by the parties under **Clause 16.6**.

16.12 In making the determination, the expert acts as an expert and not as an arbitrator and is:

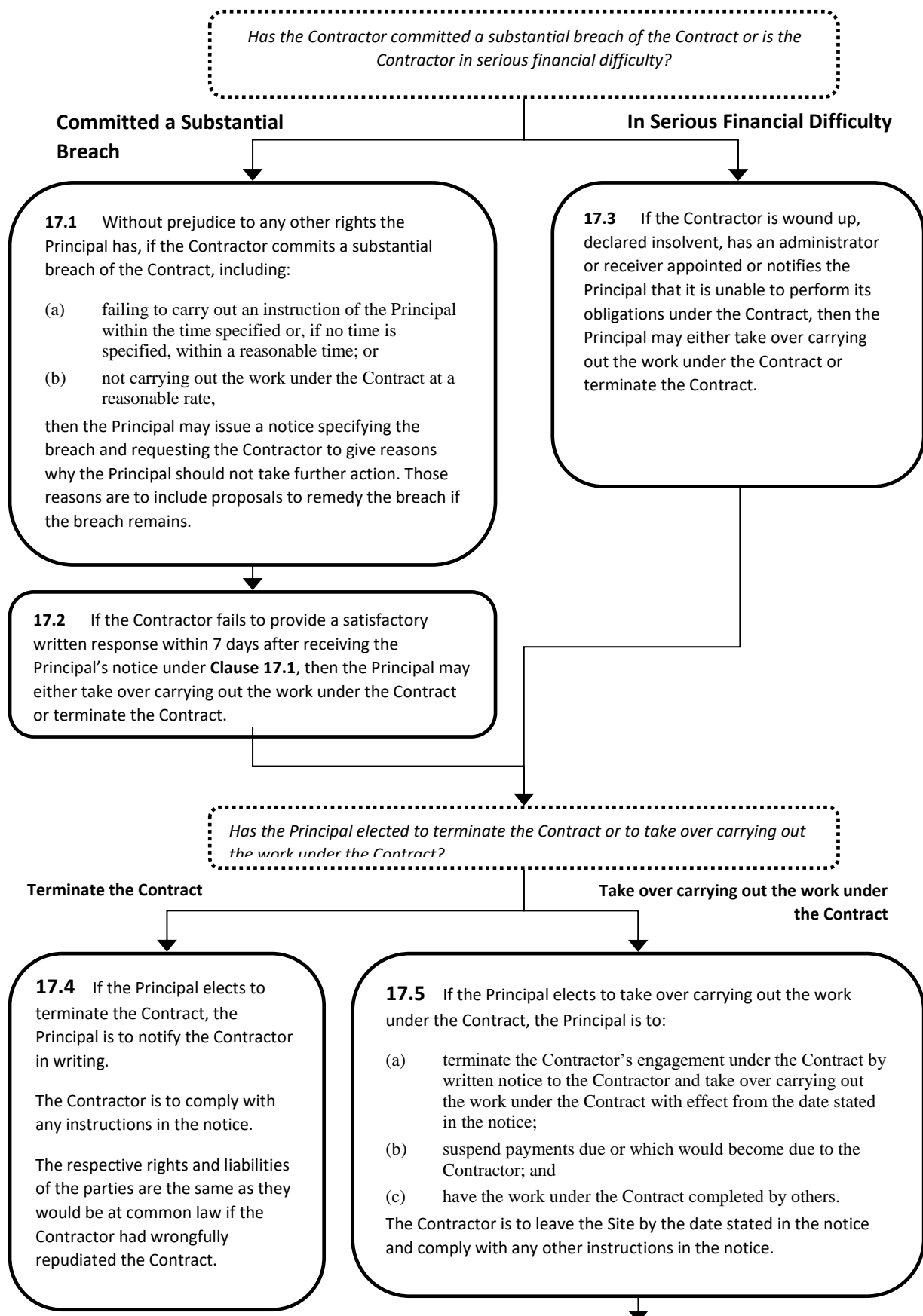
- (a) not liable for acts, omissions or negligence;
- (b) to make the determination on the basis of the Contract and written submissions from the parties without formalities such as a hearing;
- (c) not to incur costs until the initial security has been lodged in full; and
- (d) required to give the determination in writing, with brief reasons, to each party within 28 days after the submissions from the parties have been received or the initial security has been lodged in full, whichever is the later.

16.13 If the expert determines that one party is to pay the other an amount exceeding \$250,000 (excluding interest) and within 14 days after receiving the determination, either party gives written notice to the other that it is dissatisfied, then the determination is of no effect and either party may commence litigation.

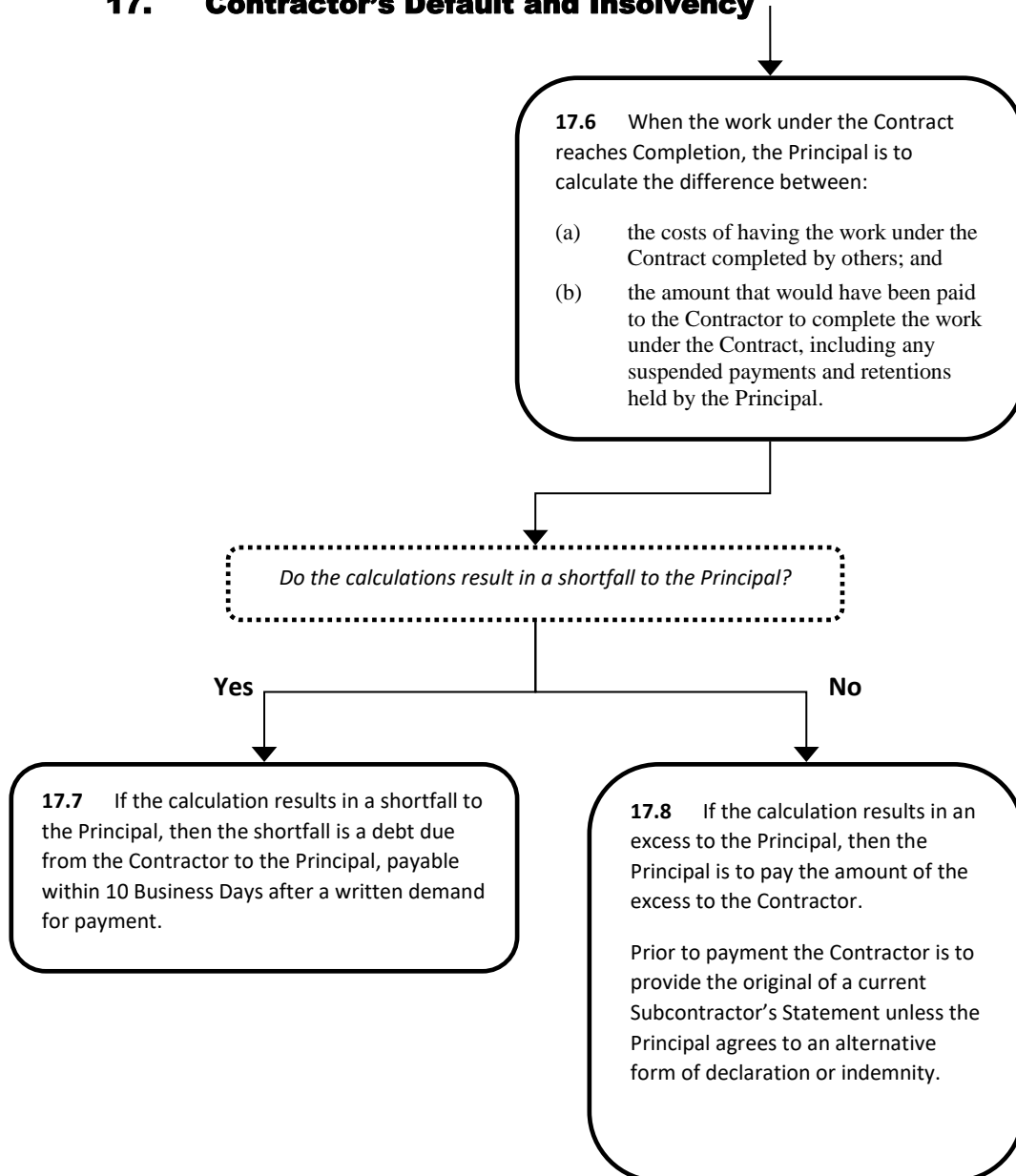
16.14 Unless a party has a right to commence litigation under **Clause 16.13**:

- (a) the parties are to treat each determination of the expert as final and binding and give effect to it; and
- (b) if the expert determines that the Contractor owes money to the Principal, the amount determined is a debt due and payable by the Contractor to the Principal and the Contractor is to pay the money within 20 Business Days after receiving the determination; or
- (c) if the expert determines that the Principal owes money to the Contractor, the Principal is to pay the money within 20 Business Days after receiving the expert determination, or 5 Business Days after receiving the original of a current Subcontractor's Statement, whichever is the later.

Contractor's Default and Insolvency



17. Contractor's Default and Insolvency



Termination for the Principal's Convenience

18.1 The Principal may terminate the Contract for convenience and without giving reasons by giving written notice to the Contractor, with effect from the date stated in the notice. The Contractor is to leave the Site by the date stated and comply with any other instructions in the notice.

If the Contract is terminated for the Principal's convenience, then the Contractor's total entitlement in respect of the Contract is the sum of:

- (a) the value of all work carried out up to the date stated in the notice, determined in accordance with **Clauses 13 and 16**; plus
- (b) 2% of the difference between the Contract Price and the total of all amounts paid and payable to the Contractor under (a).

The payments referred to in this **Clause 18** are full compensation for termination under this **Clause 18**, and the Contractor has no claim for damages or other entitlement whether under the Contract or otherwise.

18.2 Wherever possible, the Contractor is to include a provision equivalent to this **Clause 18** in all subcontracts, including supply agreements.

Termination for the Principal's Default

19.1 If the Principal fails to pay the Contractor any amount that is in accordance with the Contract, and not in dispute, or commits a fundamental breach of the Contract, then the Contractor may give notice requiring the Principal to remedy the default within 28 days after



19.2 If, within 28 days after receiving the Contractor's notice under **Clause 19.1**, the Principal fails to remedy the default, or fails to propose steps reasonably acceptable to the Contractor to do so, the Contractor may issue a notice terminating the Contract.

19.3 The Contractor's total entitlement in respect of the Contract is the sum of:

- (a) the value of all work carried out up to the date of the termination notice, determined in accordance with **Clauses 13** and **16**; plus
- (b) 4% of the difference between the Contract Price and the total of all amounts paid and payable to the Contractor under (a).

The payments referred to in this **Clause 19** are full compensation for termination under this **Clause 19**, and the Contractor has no claim for damages or other entitlements whether under the Contract or otherwise.

19.4 The Contractor has no other right to terminate the Contract, under common law or otherwise.

19.5 Wherever possible, the Contractor is to include a provision equivalent to this **Clause 19** in all subcontracts, including supply agreements.

6. Schedule 3 – Special Conditions of Contract

Not Applicable.

7. Schedule 4 – Formal Instrument of Agreement

MW21 Contract Information

Authorised Person

Mentioned in Clause 1.1

| | |
|---|--|
| The Authorised Person is: | Mitch Scealy |
| Title: | Project Manager |
| Office address: (for delivery by hand) | 98 Torryburn Way Dubbo 2830 NSW |
| Telephone number: | 0429 420 234 |
| e-mail address: | mitch@lyonsadvantage.com.au |

Purpose of the Works

Mentioned in Clause 3.4

| | |
|------------------------------|---|
| The purpose of the Works is: | Construction and commissioning of Nyngan Seniors Living development project as outlined in the RFT scope of works. |
|------------------------------|---|

If no purpose is stated, then the purpose of the Works is as reasonably inferred from the Contract Documents.

Milestones

Mentioned in Clause 1.11

| | |
|---------------------|--|
| The Milestones are: | |
| Milestone 1: | Completion of all of the Works and obligations under the Contract |

Post Completion Period

Mentioned in Clause 1.13

The Post Completion Period, which starts when Milestone 3 reaches Completion, is: 52 calendar weeks.

Principal

Mentioned in Clause 1.14

The Principal is: Bogan Shire Council

All correspondence to the Principal is to go to the address of the Authorised Person.

Senior Executive

Mentioned in Clause 1.18

The Senior Executive is: General Manager

Where specified, documents must be copied to the Principal's senior executive at the address or number shown here.

Office address:
(for delivery by hand) 81 Cobar Street
Nyngan
2825
NSW

Postal address:
(for delivery by post) Bogan Shire Council
Nyngan
PO Box 221
NSW

Telephone number: (02) 6835 9013

Facsimile number: (02) 68359011

e-mail address: admin@bogan.nsw.gov.au

Extent of Design

The Contractor is to complete the Principal's design to the extent of:

Mentioned in Clause 3.1
design that is necessary to comply with Clause 3.4 including the design of minor items and shop detailing.

Design Documents

The time to submit the completed design is:

Mentioned in Clause 3.5
not applicable. The Contractor need not submit the completed design.

Works and Public Liability Insurance

Insurance of the Works and public liability insurance are to be arranged by:

Mentioned in Clause 5.2
The Contractor.

The insurance policies are available on the ProcurePoint website at <https://www.procurepoint.nsw.gov.au/insurance-policies>.

Insurance of the Works and public liability insurance are to be arranged by:

Mentioned in Clause 5.3
the Contractor.

Mentioned in Clause 5.2

Professional Indemnity Insurance

Is a professional indemnity insurance policy to be held by the Contractor and/or relevant subcontractors?

Mentioned in Clause 5.4
No

Site Access

The time to give access to the Site is:

14 days after the date of acceptance of the tender.

Mentioned in Clause 6.1

Time for Completion

The time for Completion is:

20 calendar weeks from the date of acceptance of the tender.

Mentioned in Clause 11.1

Delay Costs

The rate per day for delay costs is:

NIL

Mentioned in Clause 12.3

Liquidated Damages

The rate per day for liquidated damages is:

NIL

Mentioned in Clause 12.6

Payment Claims

Payment claims are to be made:

monthly, on the 25th day of each calendar month for the value of the works completed up to and including that date.

Mentioned in Clause 13.1

Schedule 1 – Unconditional Undertaking

Refer to Clause 13.8 of the MW21 General Conditions of Contract.

Name of Financial Institution:

The Principal: »

The Contractor:
ABN

Security Amount \$

The Contract: The Contract between the Principal and the Contractor

Contract Name: »

Contract Number: »

Other words and phrases in this Undertaking have the meaning given in the MW21 General Conditions of Contract.

Undertaking

- .1 At the request of the Contractor and the Financial Institution, and in consideration of the Principal accepting this Undertaking from the Financial Institution in connection with the Contract, the Financial Institution unconditionally undertakes to pay on demand any amount or amounts demanded by the Principal to the maximum aggregate sum of the Security Amount.
- .2 The Financial Institution unconditionally agrees that, if notified in writing by the Principal (or someone authorised by the Principal) that it requires all or some of the Security Amount, the Financial Institution will pay the Principal at once, without reference to the Contractor and despite any notice from the Contractor not to pay.
- .3 The Principal must not assign this Undertaking without the prior written agreement of the Financial Institution, which must not be unreasonably withheld.
- .4 This Undertaking continues until one of the following occurs:
 - .1 the Principal notifies the Financial Institution in writing that the Security Amount is no longer required;
 - .2 this Undertaking is returned to the Financial Institution; or
 - .3 the Financial Institution pays the Principal the whole of the Security Amount, or as much as the Principal may require overall.
- .5 At any time, without being required to, the Financial Institution may pay the Principal the Security Amount less any amounts previously paid under this Undertaking (or a lesser sum specified by the Principal), and the liability of the Financial Institution will then immediately end.

Dated at

Execution by the Financial Institution:

Schedule 2 – Combined Subcontractor’s Statement and Supporting Statement

Refer to clause 13.1 of the MW21 General Conditions of Contract.

For the purposes of this Statement the terms “principal”, “head contractor”, “subcontractor”, and “construction contract” have the meanings given in section 4 of the *Building and Construction Industry Security of Payment Act 1999*.

The Contractor is both a “head contractor” in terms of the *Building and Construction Industry Security of Payment Act 1999*, and a “subcontractor” in terms of the *Workers Compensation Act 1987*, *Payroll Tax Act 2007* and *Industrial Relations Act 1996*, and makes relevant statements below accordingly.

This Statement must be signed by the Contractor (or by a person who is authorised, or held out as being authorised, by the Contractor to sign the statement).

Relevant legislation includes *Workers Compensation Act 1987*, s175B; *Payroll Tax Act 2007*, Schedule 2 Part 5; *Industrial Relations Act 1996* s127; and *Building and Construction Industry Security of Payment Regulation 2008* cl 19.

Information, including Notes, Statement Retention and Offences under various Acts, is included at the end of this Schedule.

Main Contract

Contractor:

ABN:

(Business name of the Contractor)

of

(Address of the Contractor)

has entered into a

ABN:

(Note 2)

contract with

(Business name of the Principal)

Contract number/identifier

(Note 3)

Subcontracts

The Contractor has entered into a contract with the subcontractors listed in the attachment to this Statement.

Period

This Statement applies for work between:

and

(Note 4)
inclusive,

subject of the payment claim dated:

(Note 5)

I, _____ a director or a person authorised by the Contractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters that are contained in this statement and declare that, to the best of my knowledge and belief:

- (a) The abovementioned Contractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick ☐ if true and comply with (b) to (h) below, as applicable. If it is not the case that workers or subcontractors are involved or you are an employer for workers compensation purposes tick ☐ and only complete (e) to (h) below. You must mark one box. **(Note 6)**
- (b) All workers compensation insurance premiums payable by the Contractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated . **(Note 7)**
- (c) All remuneration payable to relevant employees for work under the contract for the above period has been paid. **(Note 8)**
- (d) Where the Contractor is required to be registered as an employer under the *Payroll Tax Act 2007*, the Contractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this statement. **(Note 9)**
- (e) Where the Contractor is also a principal contractor to subcontracts in connection with the work, the Contractor has in its capacity of principal contractor been given a written Subcontractor's Statement by its subcontractor(s) in connection with that work for the period stated above. **(Note 10)**
- (f) All amounts due and payable to subcontractors have been paid (not including any amount identified in the attachment as in dispute).

(g) Signature

Full name

(h) Position/Title

Date

NOTE: Where required above, this Statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the *Workers Compensation Act 1987*.

Attachment

| Schedule of subcontractors paid all amounts due and payable | | | | |
|---|-----|----------------------------|------------------------|---|
| Subcontractor | ABN | Contract number/identifier | Date of works (period) | Payment claim dated (head contractor claim) |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

| Schedule of subcontractors for which an amount is in dispute and has not been paid | | | | |
|--|-----|----------------------------|------------------------|---|
| Subcontractor | ABN | Contract number/identifier | Date of works (period) | Payment claim dated (head contractor claim) |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

Notes

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987*, Schedule 2 Part 5 of the *Payroll Tax Act 2007*, section 127 of the *Industrial Relations Act 1996* and sections 13(7) and 13(9) of the *Building and Construction Industry Security of Payment Act 1999*. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.

A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called **the subcontractor**) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor's business.

2. For the purpose of this Subcontractor's Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.
3. Provide the unique contract number, title, or other information that identifies the contract.
4. In order to meet the requirements of s127 of the *Industrial Relations Act 1996*, a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.

Section 127(6) of the *Industrial Relations Act 1996* defines remuneration 'as remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.'

Section 127(11) of the *Industrial Relations Act 1996* states 'to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.'

5. Provide the date of the most recent payment claim.
6. For Workers Compensation purposes an exempt employer is an employer who pays less than \$7500 annually, who does not employ an apprentice or trainee and is not a member of a group.
7. In completing the Subcontractor's Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.
8. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.
9. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.

10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor's Statements from your subcontractors.

Statement Retention

The principal contractor receiving a Subcontractor's Statement must keep a copy of the Statement for the periods stated in the respective legislation. This is currently up to seven years.

Offences in respect of a false Statement

In terms of s127(8) of the *Industrial Relations Act 1996*, a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence if:

- (a) the person is the subcontractor;
- (b) the person is authorised by the subcontractor to give the statement on behalf of the subcontractor; or
- (c) the person holds out or represents that the person is authorised by the subcontractor to give the statement on behalf of the subcontractor.

In terms of s175B of the *Workers Compensation Act 1987* and clause 18 of Schedule 2 of the *Payroll Tax Act 2007* a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence.

In terms of s 13(8) of the *Building and Construction Industry Security of Payment Act 1999* a head contractor who serves a payment claim accompanied by a supporting statement knowing that the statement is false or misleading in a material particular in the particular circumstances is guilty of an offence.

Further Information

For more information, visit the WorkCover website www.workcover.nsw.gov.au, Office of State Revenue website <http://www.osr.nsw.gov.au>, or NSW Industrial Relations, <http://www.industrialrelations.nsw.gov.au>. Copies of relevant legislation can be found at www.legislation.nsw.gov.au.

END OF VOLUME 2

Volume 3 – Specification

1. Introduction

The Bogan Shire Council (BCS) has received funding to breathe new life into community and local sporting facilities across the Bogan Shire, under the NSW government's Stronger Country Communities fund. The funding will be spread across four projects including affordable seniors living in the Bogan Shire.

BSC are planning to construct four units in Nyngan to accommodate seniors within the community. The units will comprise of 3 x 2 bedroom units and 1 x 1 bedroom unit with adequate car parking spaces and driveways.

2. Objectives / Outcomes

The scope of work conditions are set out in this document and capture the known BSC requirements and needs for the project. These requirements have been collected from previous site consultation meetings, BSC design documentation and briefing notes and by other consultation methods.

Contractors pricing the works are to include for any travel, accommodation or other requirements of the scope of works considered to be foreseeable at the time of their pricing.

No variations will be considered for items that are clearly required and not excluded by the contractor. This scope of works sets out to assist in defining project exclusions, fair assumptions made at the time and known constraints to define clear boundaries for contractors. The scope of work shall maintain clear traceability to the project objectives listed above throughout its life cycle.

3. Scope of Works

The following requirements are to be met before deliverables are accepted at Practical Completion & Handover stage;

- Construction of unit buildings, interior appliances, exterior features and driveways as per design drawings (as per document transmittals).
- Soil formation and slab construction as per Barnson Geotechnical design. Structural Engineering report and certifications for formation compactions, slab reinforcement and concrete finishes.
- Material installation as per the material supplier list, and colour specifications as per the finishes schedule.
- Electrical layout, plumbing, air-conditioning, kitchen and cabinetry as per builder's/subcontractor's minor design drawings and specifications agreed with BSC.
- Cleaning and detailing.
- Commissioning of utility services.
- Survey certificate confirming the floor levels are in accordance with BSC's flood level requirements.
- Site meeting or handover with client and other key project representatives as nominated.
- Defects and corrections listing liability period and agreed rectification plan.
- Certificate of Occupancy and Builders Maintenance Period tasks.
- Provide all operation and maintenance manuals, compliance certificates, warranties, workshop drawings and as executed drawings.
- Appropriate material disposal methods are to be undertaken at licenced waste facilities and in accordance with environmental legislative requirements.
- Works must be carried out safely with consideration of the public, building occupants and their own workers in accordance with all current WHS legislation.
- Works are to be completed in accordance with NCC2019, Construction Certificate and the conditions of the Development Application (DA).

Exclusions

Explicit exclusions to this scope of work include;

- Demolition of existing building and surrounding outdoor structures and appropriate disposal of asbestos materials. The site shall be levelled and clear of debris prior to the contractor commencing works.
- Design management, investigation reports and documents with the exception of as built drawings.
- Guttering and roadworks to be completed by Bogan Shire Council and no fees for driveway access and establishment.

Planning and assumptions

- No rock (Monolithic material with volume greater than 0.5m³) was encountered during the geotechnical investigations and is assumed to not be present.
- Cadastral/IDENT survey determines that the design does not protrude the land boundary. This statement is assumed based off previous site meetings and initial survey design.
- Fencing at adjacent neighbouring properties will need to be replaced and is an unsatisfactory condition for new development.

Constraints and limiting factors

- Milestone targets for the project are critical given the government funding availability and arrangements under the Stronger Country Communities scheme.
- Existing boundary fencing will require replacement

4. Detailed Specification and Requirements of the Contract

Design Specifications and requirements of the Contract are set out in the Design Specifications Document detailed on the document transmittals.

5. Contractor Resource Requirements, Qualifications and Accreditations

As outlined in tender volume 5 schedules T1-11.

6. Insurance Requirements

| Insurance Type | Insurance Amount Required | Specific Insurance Requirements |
|---|---------------------------|--|
| Public/Product Liability | \$20,000,000 | Bogan Shire Council to be nominated as Principal |
| Professional Indemnity & Liability | Not required | |
| Workers Compensation | As per Legislation | Per employee |
| Motor Vehicle – Comprehensive | As required | |
| Motor Vehicle – CTP | As required | |
| Contract Works Insurance | Certificate of Currency | Certificate of Currency |

7. Project Timelines

| Event / Task / Milestone | Details | Commencement Date | Completion Date |
|--------------------------|---|-------------------|-----------------|
| Tender Issue | Sign contracts with preferred tenderer | 07/06/2019 | 22/07/2019 |
| Tender Meeting | On site Nyngan | 18/06/2019 | 18/06/2019 |
| Tender RFI close | Preparation for Tender Award and RFI closed | 07/06/2019 | 15/07/2019 |
| Tender Close | Tenders Close and due by date | 22/07/2019 | 22/07/2019 |
| Tender Award | Sign contracts with preferred tenderer | 22/07/2019 | 02/08/2019 |
| Completion | Defects Free Period | 02/08/2019 | 20/12/2019 |

8. Service Levels & Key Performance Indicators (KPI's)

| Issue | Target |
|----------------|--|
| <i>Safety</i> | <ul style="list-style-type: none"> • Nil class 1 incidents • LTI frequency rate <1 • MTI frequency rate <1 |
| <i>Quality</i> | <ul style="list-style-type: none"> • Nil product non-conformances • Nil construction omissions detailed in final designs • Limited defects identified at handover stage i.e. Nil major defects and <5 minor defects less than 1 week to rectify • Appropriate management of RFI and |

| | |
|----------------------------|--|
| <i>Environment</i> | <ul style="list-style-type: none"> • <i>Nil environmental non-conformances through audit and handovers.</i> |
| <i>Community Relations</i> | <ul style="list-style-type: none"> • <i>Nil community complaints from noise, dust or vibration.</i> |
| <i>Financial</i> | <ul style="list-style-type: none"> • <i>Nil contract variations</i> |

9. Reporting Requirements

A brief monthly report must contain the following prior to processing any progress claims:

- An updated schedule is to be submitted. This must show actual progress against planned progress. It must identify areas of lag and concern clearly. This can be a Gantt chart or other format
- A list of all inspections carried out on site and their status
- Updated insurances (if required)
- Subcontractors Statutory Declaration
- Monthly Project Control Group (PCG) meetings shall be conducted to report on progress and table outstanding issues.
- Monthly WHS meetings shall be conducted to inspect/audit WHS risks, controls and compliance.

10. Table of Attachments

The attached documents are provided to be read in conjunction with Volume 3 to provide Tenders with complete detail relating to the requirements of the Tender.

| Attachment No. | Attachment Title |
|----------------|--|
| 17031 | Bogan Council DACC – Issue 2-SH 1 – COVER SHEET |
| | Bogan Council DACC – Issue 2-SH 2 – SITE-FLOOR PLAN |
| | Bogan Council DACC – Issue 2-SH 3 – FLOOR PLAN |
| | Bogan Council DACC – Issue 2-SH 4 – SLAB PLAN |
| | Bogan Council DACC – Issue 2-SH 5 – ELEVATIONS |
| | Bogan Council DACC – Issue 2-SH 6 – SECTIONS |
| | Bogan Council DACC – Issue 2-SH 7 – SITE PLAN |
| | Bogan Council DACC – Issue 2-SH 8 – ACCESSIBLE DETAILS |
| | Kim Gerrish Building Design PTY LTD – Specification |
| | Bogan Council – NOTIFICATION PLAN |
| 27369-GR01a | Barnson Geotechnical Investigation Report |
| 12158 | Assessor Certificate |
| 12158 | BASIX Certificate |
| | 101 Cobar Street Site Location Plan |

END OF VOLUME 3