

REQUEST FOR QUOTATION

RFQ18/41

BOGGABILLA OVAL CHANGE ROOMS CONSTRUCTION

Project Lodgement Details

Project Number	PR17/28
Request File	File18/504
Issue Date	Monday 12 November 2018
Close Date	3:00pm Monday 3 December 2018
Documents	To obtain the RFQ documents, visit MPSC's website Tenders and Expressions of Interest as follows: https://www.mpsc.nsw.gov.au/tenders-and-expressions-of-interest
Creating a VenderPanel Account	A submission must to be made via the VenderPanel system. To create a VenderPanel account for your business go to the following VenderPanel website: https://www.vendorpanel.com.au/marketplace.aspx?emcc=1CF13F591A43
Lodgement	Lodgement of a submission opens from Thursday 29 November until 3pm Monday 3 December 2018 and must be by electronic format to the VenderPanel website; https://www.vendorpanel.com.au/

Contact Officer Details

Contact Officer	John Carleton, Executive Projects Manager
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Documents Comprising this Procurement

Item No.	Document Header	Document Title
1	Attachment 1	Response Schedules
2	Attachment 2	Contract for Provision of Goods and/or Services
3	Attachment 3	Safety Management Policies
4	Attachment 4	Geotechnical Investigation Report
5	Attachment 5	Architectural Design
6	Attachment 6	Electrical Design
7	Attachment 7	Hydraulic Design
8	Attachment 8	Structural Design
9	Attachment 9	Technical Specification



Contract for the Provision of Goods and/or Services

RFQ18/41 BOGGABILLA OVAL CHANGE ROOMS CONSTRUCTION

Parties

The Council of the Shire of Moree Plains

and

XX

File:

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1 DEFINITIONS

1.1 In the Contract, except where the context otherwise requires:

Act means an Act passed by the Commonwealth Parliament or the New South Wales Parliament and includes subordinate legislation under an Act.

Authorised Officer has the meaning in clause 31.1.

Bank Guarantee means 1 or more irrevocable and unconditional written undertakings of a Licensed Bank:

- a) in a form satisfactory to The Principal; and
- b) securing payment of the Bank Guarantee Amount to The Principal:
 - i.) upon demand; and
 - ii.) without reference to the Contractor.

Bank Guarantee Amount means the Bank Guarantee Amount specified in the Special Conditions of Contract.

Bill of quantities means a document named therein as a bill of quantities issued to tenderers by or on behalf of the Principal, stating estimated quantities of work to be carried out

Certificate of practical completion has the meaning in subclause 39.6.

Clause means a clause of the Contract.

Contract means the document which constitutes or evidences or, as the case may be, all the documents which constitute or evidence the final and concluded agreement between The Principal and the Contractor.

Contract Commencement Date means the Contract Commencement Date specified in the Special Conditions of Contract.

Contract Expiry Date means the Contract Expiry Date specified in the Special Conditions of Contract.

Contract Material means New Contract Material and Existing Contract Material.

Contractor Insurance Management System (CIMS) means a system for managing Contractors' insurance records.

Contract Price means:

- a) where payment is to be made on a lump sum basis, the sum which is stated in the Contract to be payable to the Contractor for the supply of the Deliverables by the Contractor and the performance of the obligations of the Contractor under the Contract; and
- b) where payment is to be made on a schedule of rates basis, the sum ascertained by calculating the product of the rates and the corresponding quantities set out in the schedule of rates and adding to the sum thereof the total of any lump sums, provisional sums, contingency sums or other sums included in the schedule of rates; and
- c) where payment is to be made on a lump sum and a schedule of rates basis, the aggregate of the sums referred to in paragraphs (a) and (b),

but excluding any additions or deductions, which may be required to be made pursuant to the Contract.

Contractor means the successful Respondent appointed in writing by the Principal to perform the Work and that entity's executors or successors and permitted assigns.

Council means Moree Plains Shire Council.

Date for practical completion means:

- a) where Item 9(a) provides a date for practical completion, the date;
- b) where Item 9(b) provides a period of time for practical completion, the last day of the period

but if any EOT for practical completion is directed by the Superintendent or allowed in any arbitration or litigation, it means the date resulting therefrom.

Defective Deliverables see Clause 10.1.

Deliverables means the Goods and/or Services, the subject of the Contract which are more particularly described in the Specification including all variations to the Goods and/or Services, provided for by the Contract or such of them as shall be specified in a Purchase Order.

Dispute Notice see Clause 21.2.

Existing Contract Material means any material that exists at the commencement of the Contract and which is provided in connection with the Contract.

EOT (from 'extension of time') has the meaning in subclause 39.3.

Force Majeure means anything outside the control of a party, including but not limited to, acts of God, fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, war, rebellion, insurrection, sabotage, epidemic, quarantine restriction, and acts (including laws, regulations, disapprovals or failures to approve) of any statutory authority.

General Conditions of Contract mean these General Conditions of Contract.

Goods mean the Goods the subject of the Contract (if any) which are more particularly described in the Specification.

GST means the goods and services tax under the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* and includes other GST related legislation.

Intellectual Property Rights means all copyright, patents and all rights in relation to inventions, trademarks and designs or any rights to registration of such rights, whether created before, on or after the date of the Contract, but excluding Moral Rights.

Key Personnel means the representatives of the Contractor (if any) specified in the Contractor's Tender.

Letter of Acceptance means a letter from The Principal to the Contractor advising the Contractor of The Principal's acceptance of the Tender.

Licensed Bank means a bank, licensed as such under Commonwealth or New South Wales legislation regulating banking.

Local Government means a local government for a local government area described by regulation under the *Local Government Act 1993*.

Moral Rights means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, more particularly as conferred by the *Copyright Act 1968*, and rights of a similar nature anywhere in the world whether existing before commencement of the Term or which may come into existence on or after the date of the Contract.

New Contract Material means any material provided in connection with the Contract that is created, written or otherwise brought into existence by or on behalf of the Contractor in the course of performing the Contract.

Obligor means the Licensed Bank providing the Bank Guarantee the subject of Clause 37.3.

Tender means the written Tender (in the form of the Tender Response) submitted to The Principal by the Contractor to provide the Deliverables and, if applicable, as amended in writing by any post tender negotiations.

Personal Information has the meaning given in the *Privacy and Personal Protection Information Act 1998*.

Plant means items of plant, trucks and other equipment offered for the contract including attachments.

Principal means the Moree Plains Shire Council, a local government within the meaning of the *Local Government Act 1993*.

Principal's representative means the officer nominated by and representing the Principal for the purposes of the contract.

Purchase Order means an order for Deliverables which is:

- a) substantially in the form of schedule 1 or another form as specified by the Principal from time to time in writing; and
- b) placed by the Principal with the Contractor under the terms of the Contract.

PPS Act means the *Personal Property Securities Act 2009*.

Practical completion is that stage in the carrying out and completion of WUC when:

- a) the Works are complete except for minor defects:
 - i.) which do not prevent the Works from being reasonably capable of being used for their stated purpose;
 - ii.) which the Superintendent determines the Contractor has reasonable grounds for not promptly rectifying; and
 - iii.) the rectification of which will not prejudice the convenient use of the Works;
- b) those tests which are required by the Contract to be carried out and passed before the Works reach practical completion have been carried out and passed; and
- c) documents and other information required under the Contract which, in the

Superintendent's opinion, are essential for the use, operation and maintenance of the Works have been supplied.

Qualifying cause of delay means:

- a) any act, default or omission of the Superintendent, the Principal or its consultants, agents or other contractors (not being employed by the Contractor); or
- b) other than:
 - i.) a breach or omission by the Contractor; and
 - ii.) industrial conditions or inclement weather occurring after the date for practical completion; and
 - iii.) stated in Item 25.

Register means a dealing concerning a personal property security interest, means recording the interest under the PPS Act and **Registration** has a corresponding meaning.

Request for Tender means the Request for Tender given to prospective Respondents inviting offers for the supply of the Deliverables of which these General Conditions of Contract form part.

Security means:

- a) cash
- b) retention moneys
- c) bonds or inscribed stock or their equivalent issued by a national, state or territory government
- d) interest bearing deposit in a bank carrying on business at the place stated in Item 9c
- e) an approved unconditional undertaking or an approved performance undertaking given by an approved financial institution or insurance company; or
- f) other form approved by the party having the benefit of the security.

Security Account means an interest-bearing account with a Licensed Bank.

Security Deposit means the cash sum specified as the Security Deposit in the Special Conditions of Contract to be delivered by the Contractor to the Principal pursuant to Clause 36.

Separable Portions means a portion of the work under the Contract described in the Contract as a Separable Portion or which the Authorised Officer has determined.

Services mean the Services the subject of the Contract (if any) which are more particularly described in the Specification.

Special Conditions of Contract means the Special Conditions of Contract included in the Request for Tender.

Specification means the Specification which describes in detail the requirements of the Principal for the Deliverables and is included in the Request for Tender.

Superintendent means the person stated in Item 7 as the Superintendent or other person from time to time appointed in writing by the Principal to be the Superintendent and notified as such in writing to the Contractor by the Principal and, so far as concerns the functions exercisable by a Superintendent's Representative, includes a Superintendent's Representative.

Superintendent's Representative means an individual appointed in writing by the Superintendent.

Term means the period for which the Contract will be in effect as specified in Clause 3.

Works means the whole of the work (goods and/or services) to be carried out and completed in accordance with the Contract, including variations provided for by the Contract, which by the Contract is to be handed over to the Principal.

Variation has the meaning in clause 12.

Work includes the provision of materials.

WUC (from 'work under the Contract') - means the work which the Contractor is or may be required to carry out and complete under the Contract as noted in Volume 3 clause 4 of the Request for Tender document. WUC includes variations, remedial work, construction plant and temporary works, and like words have a corresponding meaning.

2 CONSTRUCTION OF CONTRACT

2.1 A reference to a party to the Contract includes:

- a) in the case of a natural person, that person and his/her personal representatives and assigns (transferees); and
- b) in the case of a corporation, the corporation, its successors and assigns (transferees).

2.2 Where a party is composed of 2 or more persons, each item of agreement by the party binds:

- a) all of those persons collectively; and
- b) each of them as an individual.

2.3 A reference to:

- a) the singular includes the plural, and vice versa;
- b) a gender includes each other gender;
- c) a person includes a corporation, a firm, and a voluntary association;
- d) an Act includes an Act that amends, consolidates or replaces the Act;
- e) a section or other provision of an Act includes a section or provision that amends, consolidates or replaces the section or provision;
- f) money is a reference to Australian dollars and cents;
- g) a time of day is a reference to Australian Eastern Standard Time;
- h) a document includes, but is not limited to, any drawing, specification, material, record or other means by which information can be stored or reproduced.

2.4 Clause headings exist for convenience only and are to be disregarded when interpreting the Contract.

2.5 All information delivered as part of the Deliverables supplied under the Contract must be written in English. Where any document is a translation into English, the translation must be accurate.

2.6 Communications between the Principal, the Superintendent and the Contractor shall be in the English language.

- 2.7 Measurements of physical quantities shall be in legal units of measurement of the jurisdiction in Item 10.
- 2.8 If a provision of the Contract is void, voidable, illegal or unenforceable, the provision will be deemed deleted from the Contract.
- 2.9 unless otherwise provided, prices are in the currency in Item 11a) and payments shall be made in that currency at the place in Item 11b).
- 2.10 the law governing the Contract, its interpretation and construction and any agreement to arbitrate, is the law of the jurisdiction in Item 10.

3 TERM

- 3.1 The term of the Contract shall begin on the Contract Commencement Date and, unless terminated earlier in accordance with the terms and conditions of the Contract, continue until whichever is the earlier of:
 - a) the Deliverables have been supplied or performed in accordance with the Contract and the Authorised Officer has given a certification for the Deliverables under Clause 14.1; and
 - b) the Contract Expiry Date.

4 EVIDENCE OF CONTRACT

- 4.1 The Contract between the Principal and the Contractor is constituted by the following documents:
 - a) Purchase Order;
 - b) Letter of Acceptance;
 - c) Specification;
 - d) Special Conditions of Contract;
 - e) General Conditions of Contract;
 - f) Tender; and
 - g) correspondence passing between the Principal and the Contractor clarifying any aspect of the Request for Tender.
- 4.2 Where there arises any inconsistency or ambiguity between provisions in the different documents which constitute the Contract, the order of precedence to resolve the inconsistency or ambiguity shall be from document (a) to (g) in Clause 4.1.
- 4.3 After formation of the Contract, the Principal may deliver a completed Contract to the Contractor. Within 14 days after the date of delivery of the completed Contract to the Contractor, the Contractor must execute and return the completed Contract to the Principal for execution by the Principal. The Principal may extend the period for execution of the completed Contract by giving written notice to the Contractor.

5 SUPPLY OF DELIVERABLES BY PURCHASE ORDER

- 5.1 Where a Purchase Order is placed with the Contractor, the Contractor must supply Deliverables:
 - a) in accordance with the terms and conditions of the Purchase Order; and
 - b) that comply with the Specification.

- 5.2 The Contractor must supply all Deliverables for Purchase Orders placed by The Principal during the Term.
- 5.3 The Principal may, by Purchase Order, require the supply of:
- a) any 1 type or item of the Deliverables; and
 - b) deliverables in 1 lot or instalments or in such quantities as may be required from time to time.
- 5.4 Where the Contractor receives a Purchase Order from a person other than the Authorised Officer the Contractor must:
- a) not supply the Deliverables identified in the Purchase Order; and
 - b) refer the Purchase Order to the Authorised Officer.

6 QUALITY OF DELIVERABLES

- 6.1 The Contractor must ensure that:
- a) if a key performance indicator or performance standard for the supply of the Deliverables is specified in the Specification - the Deliverables are supplied in accordance with the key performance indicator or performance standard detailed in the Specification; and
 - b) all Deliverables comply in all respects with any applicable legislative requirement.
- 6.2 If no sample or standard for the Deliverables is stated in the Specification, the Deliverables must be:
- a) of the highest standard; and
 - b) carried out and supplied promptly and with all due skill, care and diligence; and
 - c) supplied in a competent and professional manner; and
 - d) fit for the purpose (if any) detailed in the Specification.
- 6.3 The Contractor must:
- a) engage and retain personnel who are able to competently provide the Deliverables; and
 - b) ensure that all personnel engaged in the supply of the Deliverables have all skills and qualifications necessary to supply the Deliverables; and
 - c) consult regularly during the Term with the Principal (through the Authorised Officer and the Contractor's representative).
- 6.4 The Contractor must document its compliance with its obligations under the Contract and use a Quality Assured System to assist in this compliance where relevant. The Contractor is not released or discharged from its obligations under the Contract from use of a Quality Assured System.
- 6.5 If relevant, the Contractor shall allow access to the Contractor's Quality Assured System by the Principal to enable effective monitoring of the Contractor's compliance in the supply of the Deliverables under the Contract.

7 PERFORMANCE OF THE DELIVERABLES BY KEY PERSONNEL

- 7.1 This Clause 7 applies if the Tender identifies Key Personnel of the Contractor who will be responsible for the performance of the Deliverables.

- 7.2 The Deliverables must be performed by the Key Personnel and must not be performed by a person other than the Key Personnel without the prior written consent of the Principal. If the Principal consents to the performance of the Deliverables by a person other than the Key Personnel, the other person will be considered to be Key Personnel during the performance of the Deliverables by the other person.
- 7.3 The Contractor must not, without the prior written consent of the Principal:
- a) allow any of the Key Personnel to delegate the performance of any part of the Deliverables; or
 - b) allocate to any of the Key Personnel who are engaged in the performance of the Deliverables on a full time basis, any task not connected with the performance of the Deliverables.
- 7.4 If any of the Key Personnel are unable to perform the Deliverables, or any part of a Deliverable allocated to the Key Personnel, the Contractor must:
- a) promptly notify the Principal that the Key Personnel are not available; and
 - b) subject to the prior written consent of the Principal, arrange for a replacement for the Key Personnel who is satisfactory to the Principal acting reasonably, at no cost to the Principal.
- 7.5 The Principal may give written notice requiring the Contractor to remove 1 or more Key Personnel from the performance of the Deliverables. The Principal must not give notice unreasonably. The Contractor must, promptly after receipt of notice, remove the Key Personnel from the performance of the Deliverables and arrange for the replacement of the Key Personnel with a person satisfactory to the Principal acting reasonably, at no cost to the Principal.

8 SUPPLY OF DELIVERABLES

- 8.1 The Contractor must supply the Deliverables punctually. However:
- a) if a time for the supply of part or the whole of the Deliverables is stated in a Purchase Order or the Contract, the part or the whole of the Deliverables, as the case may be, must be supplied within the time stated in the Purchase Order or the Contract, as the case may be; and
 - b) if 1 or more milestone dates for the supply of part or the whole of the Deliverables are stated in a Purchase Order or the Contract, the part or the whole of the Deliverables, as the case may be, must be supplied by the milestone dates stated in the Purchase Order or the Contract, as the case may be; and
 - c) if a Purchase Order or the Contract provides that the Deliverables are to be supplied on a periodic or recurrent basis, the Deliverables must be supplied at the times, intervals and frequency stated in the Purchase Order or the Contract, as the case may be.
- 8.2 Time shall be of the essence in all cases.
- 8.3 Upon it becoming evident to the Contractor that supply of the Deliverables is likely to be delayed, the Contractor must promptly notify the Principal in writing. Such notification shall not release the Contractor from its obligation to supply the Deliverables by the due date or from any other obligation under the Contract, unless the Principal agrees in writing. The Contractor shall not be entitled to any increase in the Contract Price or damages, costs or expenses in connection with any delay.
- 8.4 The Contractor shall not be entitled to any extension of time for supply of the Deliverables except with the prior written consent of the Principal. The Principal may in its sole discretion:

- a) grant its consent; or
 - b) refuse its consent.
- 8.5 Unless otherwise provided in the Contract, the Contractor must pay all packaging, handling, freight, insurance, and other duties, taxes and charges whatsoever, in connection with each of:
- a) the delivery of Deliverables; and
 - b) the return of Goods wrongly supplied.
- 8.6 Delivery and receipt of Deliverables shall not of itself constitute acceptance of the Deliverables by the Principal, with acceptance being subject to the giving of a certification by the Authorised Officer under Clause 14.1.
- 8.7 Where it is a term of the Contract that Deliverables must be installed or commissioned, the Principal shall not be deemed to have accepted the Deliverables unless the Deliverables are satisfactorily installed or commissioned within the period stipulated in the Contract or, if no period is stipulated, within a reasonable period.
- 8.8 The defects liability period stated in Item 28 shall commence on the date of practical completion at 4:00 pm.

The Contractor shall carry out rectification at times and in a manner causing as little inconvenience to the occupants or users of the Works as is reasonably possible.

As soon as possible after the date of practical completion, the Contractor shall rectify all defects existing at the date of practical completion.

During the defects liability period, the Superintendent may give the Contractor a direction to rectify a defect which:

- a) shall identify the defect and the date for completion of its rectification; and
- b) may state a date for commencement of the rectification and whether there shall be a separate defects liability period therefor (not exceeding that in Item 27, commencing at 4:00 pm on the date the rectification is completed and governed by this clause).

If the rectification is not commenced or completed by the stated dates, the Principal may have the rectification carried out by others but without prejudice to any other rights and remedies the Principal may have. The cost thereby incurred shall be certified by the Superintendent as moneys due and payable to the Principal.

- 8.9 The Principal may conduct any examination or testing of the Deliverables. If the testing shows that the Deliverables do not comply with the Specification, the Purchase Order or the Contract or are otherwise defective, the cost of the testing shall be a debt due and payable by the Contractor to The Principal.
- 8.10 The risk of any damage, deterioration, theft or loss of the Deliverables after delivery but prior to acceptance shall remain with the Contractor except where the damage, deterioration, theft or loss results from a negligent act or omission of the Principal or any agent or employee of the Principal.
- 8.11 All Deliverables supplied or delivered by the Contractor must be free of any encumbrance, charge or interest.
- 8.12 If the Goods, or any part of the Goods, is a hazardous chemical and the Goods are supplied to a workplace, the Contractor must:
- a) ensure that a current safety data sheet for the hazardous chemical is provided to The Principal with the hazardous chemical:
 - i) when the hazardous chemical is first supplied to the workplace; and

- ii) if the safety data sheet for the hazardous chemical is amended when the hazardous chemical is first supplied to the workplace after the safety data sheet is amended; and
- b) if the Contractor is a manufacturer, importer or supplier of a hazardous chemical otherwise comply with the obligations of the Contractor as a manufacturer, importer or supplier of a hazardous chemical under the *Work Health and Safety Regulation 2011*.

8.13 In Clause 8.11:

- a) the expressions “first supplied”, “hazardous chemical” and “safety data sheet” have the meaning given in the *Work Health and Safety Regulation 2011*; and
- b) the expressions “importer”, “manufacturer”, “supplier” and “workplace” have the meaning given in the *Work Health and Safety Act 2011*.

9 INSURANCE

9.1 The Contractor must have and maintain during the currency of this Contract, have insurance cover in respect of Professional Indemnity, Public Liability, Motor Vehicle Third Party Property Damage, the WUC and Statutory Workers Compensation or Accident and Sickness estimated to meet the obligations which may arise as a result of the scope of works undertaken by the Contractor from time to time.

- a) if the Special Conditions of Contract specify a *Workers Compensation Act 1987* insurance requirement — insurance under the *Workers Compensation Act 1987* to cover workers, eligible persons, self-employed contractors, directors, trustees and partners.
- b) if the Special Conditions of Contract specify a public liability insurance requirement—public liability insurance in an amount not less than \$20,000,000.00 in respect of any 1 occurrence and for an unlimited number of claims.
- c) if the Special Conditions of Contract specify a product liability insurance requirement—product liability insurance in an amount not less than \$10,000,000.00 in respect of any 1 occurrence and for an unlimited number of claims.
- d) if the Special Conditions of Contract specify a professional indemnity insurance requirement— professional indemnity insurance in an amount not less than \$1,000,000.00 in respect of any 1 occurrence and for an unlimited number of claims.
- e) if the Special Conditions of Contract specify insurance of the WUC requirement - insurance to cover the WUC shall be provided by the Contractor.
- f) in respect of Plant / Motor Vehicle Third Party Property Damage, provide the Principal with a copy of current registration for all Plant / vehicles to be used on the Project.
- g) be with an insurer who is approved by the Statewide Contractor Insurance Management System (CIMS), or for whom approval shall not be unreasonably refused.
- h) cover liability the Contractor may have to the Principal arising out of or associated with the proper performance or non-performance of the Services,

including any liability for breach of contract or in tort (including for negligence by a Contractor).

- 9.2 The Contractor shall throughout the provision of the Services be registered and insurances approved with the CIMS and throughout the liability period to which the Services relate, keep current and renew all insurance cover held by it and ensure that it has available a level of cover which is not less than the minimum specified in Clause 9.1 on which a claim can be made, and shall keep the Principal fully informed in relation to notifications and claims made by it.
- 9.3 The Contractor shall take out further or increased insurance cover (including, but not limited to, insurance cover in respect of the works, environmental, professional indemnity and public liability) ("Additional Insurance Cover"), which the Principal might require.
- 9.4 The Contractor agrees that where it takes out Additional Insurance Cover and keeps current and renews that cover for the benefit of the Principal it will hold any payment made or money received under such an insurance policy for the benefit of the Principal.
- 9.5 If the Principal directs the Contractor to take out Additional Insurance Cover, the Contractor shall pay any additional annual premium or any increase in an annual premium payable in respect of the Additional Insurance Cover ("Additional Premium").
- 9.6 The Contractor shall be deemed to have been discharged from all liability in respect of the Services, whether under the law of contract, tort or otherwise, at the expiration of the Contract or on the expiration of one year from the completion of the Services, the Principal (and persons claiming through or under the Principal) shall not be entitled to commence any action or claim whatsoever against the Contractor (or any employee of the Contractor) in respect of the Services after that date.
- 9.7 The Contractor must, upon receipt of a written request at any time from the Principal, produce evidence that the insurances required by this Clause 9 have been affected and maintained.
- 9.8 Each public liability insurance policy must either insure the Principal and the Contractor severally, for their respective entitlements and interests under the Contract, and for this purpose accept that the insured comprises at least The Principal and the Contractor as if a separate insurance policy were issued to each of them (but not so as thereby to increase the sum insured) or be endorsed to note the interest of the Principal under the Contract.
- 9.9 Each public liability insurance policy must contain a cross liability provision waiving the insurer's right of subrogation at least against the Principal save in relation to damage intentionally caused by the Principal.
- 9.10 Each insurance policy must:
 - a) limit the insurer's entitlement to avoid the policy to be available only against whichever of the insured has actually breached its obligation of disclosure or an obligation under the policy; and
 - b) cover the Contractor's liability upon the obligations it has assumed and the indemnities it has given in the Contract; and
 - c) contain no exclusions, endorsements or alterations not approved in writing by the Principal (that approval not to be unreasonably withheld); and
 - d) contain an undertaking by the insurer to notify the Principal in writing not later than 30 days before it terminates or materially alters the policy; and

- e) otherwise contain provisions acceptable to, or required by the Principal (but the Principal may not require unreasonably the inclusion, retention, modification or exclusion of a provision); and
 - f) remain current at all times during the Term.
- 9.11 If the Contractor is obliged to have and maintain professional indemnity insurance, the policy of insurance must cover the Contractor and its servants and agents for liability under the Contract for the amount specified in Clause 9.1. The Contractor must maintain the professional indemnity insurance on terms and conditions no less favourable to the Principal than those approved under this Clause 9, for the Term and, after expiry or termination of the Contract upon request in writing.
- 9.12 If an insurance policy obtained by the Contractor provides for a deductible, the Contractor indemnifies the Principal against any cost attributable to the deductible.
- 9.13 The Contractor must promptly pay all premiums, stamp duty, GST and other money entailed in maintaining any insurance required under this Clause 9.
- 9.14 The Contractor must give the Principal upon request a copy of the relevant policy document and the insurer's receipt for the last premium paid or a certificate of currency with respect to each of the insurance policies the Contractor is required to maintain under this Clause 9.
- 9.15 The Contractor must inform the Principal in writing of any claim or of the occurrence of any event that may give rise to a claim under any policy of insurance effected pursuant to this Clause 9 within 7 days thereof and must ensure that the Principal is kept fully informed of subsequent actions and developments concerning the event or claim.
- 9.16 This Clause 9 shall survive termination or expiration of the Contract.

10 DEFECTIVE DELIVERABLES

- 10.1 Where, at any time during the supply of the Deliverables or any part of the Deliverables pursuant to a Purchase Order, or after the supply of the Deliverables pursuant to a Purchase Order, an Authorised Officer determines, acting reasonably, that the Deliverables or a part of the Deliverables do not comply with the Specification, the Purchase Order or the Contract ("Defective Deliverables"), the Principal may give written notice to the Contractor of the lack of compliance, and require the Contractor to promptly supply or supply again the Deliverables or such part of the Deliverables as do not comply.
- 10.2 The Principal may, without derogating from any other right it may have on account of such unsatisfactory or defective supply, defer payment of that part of an invoice as relates to the Defective Deliverables until the Authorised Officer has certified that the resupplied Deliverables comply with the Specification, the Purchase Order or the Contract, as the case may be.
- 10.3 If the Contractor fails to comply with a requirement of a notice given under Clause 10.1, the Principal reserves the right to arrange for the supply of the Deliverables from another supplier.
- 10.4 All costs and expenses incurred by the Principal in exercising the rights of the Principal under Clause 10.3 in excess of the Contract Price, shall be a debt due and payable by the Contractor to the Principal.

11 OBLIGATIONS OF CONTRACTOR

- 11.1 The Contractor must supply all personnel and equipment necessary for the proper supply or performance of the Deliverables.

- 11.2 The Contractor warrants that it has the necessary skills and expertise and have obtained necessary authorisations and licences to undertake the works and will comply with all laws to be able to competently supply the Deliverables.
- 11.3 The Contractor must permit the Authorised Officer, and any other person authorised in writing by the Principal acting reasonably:
- a) to access premises occupied by the Contractor where the Deliverables are being produced or undertaken; and
 - b) to inspect any materials used, or to be used, in the supply of the Deliverables.
- 11.4 The Contractor must:
- a) hold and maintain, for the Term of the Contract, each licence, permit, permission and authority necessary for the supply of the Deliverables; and
 - b) if requested by the Principal acting reasonably, deliver to The Principal evidence of compliance with the obligations of the Contractor under Clause 11.4(a).
- 11.5 If the Deliverables or any part of the Deliverables is the subject of a manufacturers or suppliers warranty, the Contractor must ensure that the warranty is transferred to the Principal, at no cost to the Principal, on the supply of the Deliverables to the Principal.
- 11.6 If any Contract Material is produced or reproduced in an electronic format, the Contractor must deliver it to the Principal in a format approved in writing by the Principal.
- 11.7 If any Contract Material is produced or reproduced in an electronic format or stored electronically, the Contractor must not store it on a foreign computer without keeping the current version of the Contract Material on separate media (approved in writing by the Principal) and delivering it to the Principal at intervals approved in writing by the Principal.
- 11.8 The Contractor must not produce, reproduce or store Contract Material in such a way that it is mixed with, attached to or indistinguishable without the use of a computer from, material that is not the subject of the Contract.
- 11.9 For the purposes of this Clause 11, "foreign computer" means a hard disk or other similar device affixed to a computer that is not the property of the Principal.

12 VARIATION OF DELIVERABLES

- 12.1 The Principal may, by written notice given to the Contractor, require the Contractor to vary the Deliverables in nature, scope or timing.
- 12.2 Without limiting the generality of Clause 12.1, the Principal may direct the Contractor to:
- a) increase, decrease or omit any part of the Deliverables; or
 - b) change the character or content of any part of the Deliverables; or
 - c) change the direction or dimensions of any part of the Deliverables; or
 - d) perform additional work.
- 12.3 Where the Principal requires a variation to the Deliverables, the parties must negotiate in good faith a variation of the Contract Price and the time for completion of supply of the Deliverables and failing agreement, either party may invoke the dispute resolution procedure in Clause 21.
- 12.4 The Contractor must not commence work on the variation to the Deliverables unless and until the variation is agreed in writing by The Principal and the Contractor.

13 INVOICING

- 13.1 The Contractor must submit invoices to the Authorised Officer on a monthly basis, unless otherwise specified in the Special Conditions of Contract. The Principal will not have any obligation to pay the Contractor for Deliverables until the Authorised Officer has been given a correctly rendered invoice.
- 13.2 A correctly rendered invoice must:
- a) identify the Deliverables the subject of the invoice; and
 - b) specify the title of the Contract; and
 - c) specify the Contract number allocated to the Contract by the Principal (or any other number as the Principal may specify in writing to the Contractor for the purposes of the Contract) (if any); and
 - d) where Services are charged on a time basis, be supported by records of time spent by individual persons on the Services, verified by the Authorised Officer; and
 - e) specify details of the Purchase Order; and
 - f) specify details of the Contract Price requested by the Principal; and
 - g) provide sufficient detail to enable the Authorised Officer to assess progress against targets (if any) set out in the Purchase Order or the Specification; and
 - h) specify the Australian Business Number of the Contractor; and
 - i) specify the address for payment of the Contractor; and
 - j) specify the date of supply of the Deliverables identified in the invoice; and
 - k) specify the Contractor's invoice number and invoice date; and
 - l) specify the Contract Price payable by the Principal and particulars of any GST payable in respect of the Contract Price; and
 - m) otherwise comply with the requirements of a tax invoice for the purposes of the GST Act.
- 13.3 Upon receipt of an invoice, the Authorised Officer may require the Contractor to provide additional information to assist the Authorised Officer to determine whether or not an amount is payable.

14 PAYMENT

- 14.1 Subject to the Authorised Officer's certification that:
- a) the Deliverables supplied by the Contractor comply with the relevant Purchase Order, the Specification and the Contract; and
 - b) the Deliverables supplied by the Contractor are complete; and
 - c) the Contractor's invoice is in accordance with the Contract,
- Payment of the amount due to the Contractor will be made net 30 days from the month end of the date of the invoice (or such other period as may be mutually agreed in writing between the parties) or, if additional information is required by the Authorised Officer, 30 days (or such other period as may be mutually agreed in writing between the parties) after receipt of the additional information.
- 14.2 If the Principal pays an invoiced amount to the Contractor, and it is subsequently found not to have been a correctly rendered invoice, the Principal may deduct any overpaid amount owed to the Principal from the next invoiced payment or, if no other

payment is due to the Contractor pursuant to the Contract, recover the amount from the Contractor as a debt due and payable to the Principal.

14.3 Payment of money to the Contractor does not constitute an admission by the Principal that Deliverables have been supplied in accordance with the Contract.

14.4 Title in the Deliverables shall pass to the Principal:

- a) if the Deliverables are Goods – on delivery of the Goods to the Principal;
- b) otherwise – upon the giving of a certification under Clause 14.1 for the Deliverables.

14.5 Payment shall include credit by way of set off.

14.6 The Contractor shall not be entitled to any interest or charge for extending credit or allowing time for the payment of the Contract Price unless otherwise provided in the Contract.

14.7 The Principal may deduct from moneys due to the Contractor under the Contract or on any other account, any moneys due from the Contractor to the Principal under the Contract or on any other account, and if those moneys are insufficient, the Principal may have recourse to any security held by the Principal under the Contract. Nothing in this Clause shall affect the right of the Principal to recover from the Contractor any moneys due from the Contractor to the Principal or any balance that remains owing after the deduction of moneys due from the Contractor to the Principal.

15 TEMPORARY SUSPENSION OF SUPPLY

15.1 The Principal may give written notice to the Contractor requiring the Contractor to suspend the progress of the whole or any part of the supply of the Deliverables for a period specified in the notice within a reasonable time after receipt of the notice, if the suspension is required by the Principal because of any change in the nature, scope or timing of the Deliverables.

15.2 The Principal may, by giving written notice to the Contractor, require the Contractor to recommence all or any part of the supply of the Deliverables suspended by written notice given under Clause 15.1.

15.3 Where the Contractor is required to suspend the supply of the Deliverables pursuant to Clause 15.1:

- a) The Principal and the Contractor must negotiate in good faith as to reasonable compensation payable to the Contractor; and
- b) any previously agreed date for completion of the supply of the Deliverables will be postponed by a period equal to the duration of the suspension; and
- c) the Contractor must promptly take all steps necessary to minimize the loss suffered by the Contractor as a result of the suspension.

15.4 The Principal must reimburse the Contractor for any additional reasonable costs incurred by the Contractor which are directly attributable to the suspension of the supply of the Deliverables. If the Principal and the Contractor do not agree on the amount of reasonable compensation within a reasonable period, either party may invoke the dispute resolution procedure in Clause 21.

16 VARIATION OF PRICE

16.1 The Contract Price is firm and not subject to rise or fall.

17 DUTY

17.1 The Contractor must pay all duty imposed under the *Duties Act 2001* on the Contract.

18 GOODS AND SERVICES TAX

- 18.1 Words and phrases defined in the GST Act have the same meaning in this Contract unless the context indicates otherwise.
- 18.2 The Contract Price includes the Principal's liability for GST on the supply of the Deliverables. The Principal is not obliged to pay any additional amount to the Contractor on account of GST on the supply of the Deliverables.
- 18.3 The Contractor must ensure that all invoices rendered to the Principal under the Contract are in a format that identifies any GST paid, and which permits The Principal to claim an input tax credit. However, this Clause 18.3 does not apply if the supply of the Deliverables is not a taxable supply.
- 18.4 If the amount of GST collected by the Contractor under the Contract differs, for any reason, from the amount of GST paid or payable by the Contractor under the GST Act then:
- a) the Contractor must issue an appropriate GST adjustment note to the Principal; and
 - b) the difference must be paid by or to the Principal, as the case may be.

19 TERMINATION GENERALLY

- 19.1 If the Contractor:
- a) breaches any Clause of the Contract; or
 - b) suspends payment of its debts or is unable to pay its debts; or
 - c) has execution levied on any of the assets of the Contractor and the execution is not satisfied within 28 days; or
 - d) enters into an arrangement, reconstruction or compromise with its creditors or any of them; or
 - e) has a receiver appointed for all or any part of the assets of the Contractor; or
 - f) has an application made or order filed for the Contractor's administration, voluntary or compulsory liquidation, winding-up, dissolution or bankruptcy; or
 - g) ceases to carry on business,
- the Contractor will be in breach of the Contract and the Principal may give to the Contractor a written notice to remedy the breach.
- 19.2 If within 14 days of receiving a notice under Clause 19.1 the Contractor does not remedy the breach, the Principal may immediately terminate the Contract by giving written notice to the Contractor.
- 19.3 In addition, or as an alternative to termination of the Contract in accordance with Clause 19.2, the Principal may, in circumstances which would otherwise entitle The Principal to terminate the Contract in accordance with Clause 19.2:
- a) let such contracts as the Principal decides are necessary to perform that part of the obligations of the Contractor under the Contract as are yet to be performed or any of them; and
 - b) suspend or cease all payments otherwise due to the Contractor.
- 19.4 This Clause 19 shall survive termination or expiration of the Contract.
- 19.5 Upon termination of the Contract pursuant to Clause 19.2, all money which has been paid and all money to be paid for Deliverables supplied to the date of the termination will be in full and final satisfaction of all claims by the Contractor under the Contract.

20 DISPUTE RESOLUTION

- 20.1 The parties agree to attempt in good faith to resolve through negotiation any dispute regarding the Contract.
- 20.2 If a dispute arises between the parties regarding the Contract, a party may give written notice of the dispute to the other party (a "Dispute Notice"). A Dispute Notice must adequately identify and provide details of the dispute.
- 20.3 A Dispute Notice must be referred to a panel consisting of a representative of the Contractor who is authorised to settle the dispute and the Authorised Officer.
- 20.4 Within 7 days of the giving of the Dispute Notice, the panel must confer at least once to attempt to resolve the dispute or to agree on resolving the dispute by other means.
- 20.5 If the dispute has not been resolved within 28 days of the giving of the Dispute Notice, the dispute must be submitted to mediation in accordance with, and subject to, the Institute of Arbitrators and Mediators Australia Mediation and Conciliation Rules.
- 20.6 Notwithstanding the existence of the dispute, each party must continue to perform its obligations under the Contract.
- 20.7 Nothing in this Clause 21 shall prejudice the right of a party to institute proceedings to enforce payment due under the Contract or to seek injunctive or urgent declaratory relief in respect of a dispute under this Clause 21 or any matter arising under the Contract.

21 CLAUSES TO SURVIVE EXPIRATION OR TERMINATION

- 21.1 The following Clauses survive the expiration or termination of the Contract:
- a) Clause 19 – Termination Generally; and
 - b) Clause 23 – Intellectual Property Rights; and
 - c) Clause 24 – Release and Indemnity; and
 - d) Clause 26 – Confidentiality; and
 - e) Clause 34 – Right to Information and Disclosure; and
 - f) Clause 35 – Information Privacy; and
 - g) Clause 36 – Security (Cash Deposit); and
 - h) Clause 37 – Security (Bank Guarantee).

22 INTELLECTUAL PROPERTY RIGHTS

- 22.1 The Contractor warrants that the supply of the Deliverables by the Contractor to the Principal and the use of the Contract Material by the Principal under the Contract will not infringe the Intellectual Property Rights of any third party.
- 22.2 The Contractor must indemnify the Principal against any claim by a third party in relation to infringement of the Intellectual Property Rights of the third party of or incidental to the supply of the Deliverables by the Contractor to the Principal under the Contract.
- 22.3 In respect of the supply of the Deliverables by the Contractor under the Contract, the Contractor must at all times indemnify and keep indemnified the Principal from and against any loss or liability (including reasonable legal costs and expenses) incurred by the Principal arising from any claim, demand, suit, action or proceeding (including

a claim for a breach of a person's Intellectual Property Rights) by any person against the Principal where the loss or liability arose out of, or in connection with, or in respect of, the supply of the Deliverables by the Contractor under the Contract.

- 22.4 The indemnities in Clause 23.3 will be granted irrespective of whether legal proceedings are instituted and the means, manner or nature of any settlement, compromise or determination. The Principal may recover a payment from the Contractor under this indemnity before it makes the payment in respect of which the indemnity is given.
- 22.5 Unless otherwise specified in the Contract, title to and Intellectual Property Rights in all New Contract Material provided to the Principal, including each and every stage of design and production of it will upon its creation vest in the Principal.
- 22.6 The Contract does not affect Intellectual Property Rights in Existing Contract Material, but the Contractor grants, and will ensure that relevant third parties grant, to the Principal, a paid up non-exclusive, non-transferable licence:
- a) to use, reproduce, communicate to the public and adapt for its own use; and
 - b) to perform any other act with respect to copyright; and
 - c) to manufacture, sell, hire or otherwise exploit a product or process or to provide a service or to licence a third party to do any of those things in respect of,
- the Existing Contract Material but only as part of the Contract Material (and any further development of that material).
- 22.7 Where specified in the Special Conditions of Contract, right and title to the Intellectual Property Rights in the Contract Material so specified will vest in the Contractor and the Contractor grants to the Principal, a non-exclusive, transferable, irrevocable and paid-up licence to use, reproduce, communicate to the public and adapt the Contract Material on the terms and conditions specified in the Special Conditions of Contract.
- 22.8 Where the Contractor is an individual, the Contractor consents to any acts or omissions of the Principal in the exercise of rights or assignments granted under this Clause that might otherwise constitute an infringement of the Moral Rights of the Contractor.
- 22.9 Without limiting Clause 23.8, the Contractor consents, in relation to the Contract Material:
- a) to being attributed as author of works comprised in the Contract Material in a form and manner acceptable to the Principal; and
 - b) to the specific acts or omissions set out in the Contract.
- 22.10 Prior to an individual commencing work in respect of the Contract Material on behalf of the Contractor, the Contractor must obtain from that individual, in writing, and provide to the Principal, upon request:
- a) all consents, permissions and assignments to enable the Principal to exercise in full, without cost to the Principal and without impediment, the rights granted under this Clause 23; and
 - b) without limiting paragraph (a), a consent to any act or omission (including the specific acts or omissions set out in the Contract) which would otherwise infringe the Moral Rights of that individual. If requested by the Principal, such consent must be in a form specified by the Principal.

23 RELEASE AND INDEMNITY

- 23.1 The Contractor will be liable for loss or damage (including personal injury whether or not resulting in death) suffered by the Principal or any officer, servant or agent of the Principal arising from the unlawful or negligent acts or omissions of the Contractor, its

employees, subcontractors or agents, in the course of the supply (or attempted or purported supply) of Deliverables under the Contract.

- 23.2 The Contractor releases and indemnifies the Principal and all officers, servants and agents of the Principal from and against all actions whatsoever and howsoever arising which may be brought or made against any of them by any person, including the Contractor, arising from any of the following:
- a) any wilful or negligent act or omission of the Contractor or any person for whose conduct the Contractor is liable; and
 - b) any unlawful or negligent act or omission of the visitors, invitees or licensees of the Contractor; and
 - c) death, injury, loss or damage suffered by the Contractor, its employees, subcontractors or agents, or any of its visitors, invitees or licensees except where the death, injury, loss or damage is caused by the negligence or other wrongful act or omission of the Principal or any officer, servant or agent of the Principal.
- 23.3 In the event of any claim or action being made or brought against the Principal that arises as a consequence of an act or omission of the Contractor, the Principal may retain any money due to the Contractor in respect of Deliverables supplied under the Contract for the purpose of settling or defending the claim or action. If the money retained is not sufficient for the purpose of settling or defending the claim or action, the balance outstanding in respect of the claim or action may be recovered from the Contractor as a debt due and payable to the Principal.
- 23.4 Each of the Principal and the Contractor must use all reasonable endeavours to mitigate its loss or damage arising under, or in connection with, any:
- a) breach of the Contract; or
 - b) tort; or
 - c) other common law or legislative cause of action arising under, or in connection with, the Contract.

24 CONFLICT OF INTEREST

- 24.1 The Contractor warrants that, to the best of its knowledge, information and belief, at the commencement of the Term, no conflict of interest exists or is likely to arise in the performance of its obligations under the Contract. If, during the Term, a conflict of interest or risk of such conflict arises because of work undertaken for any person other than the Principal, the Contractor must promptly give written notice to the Authorised Officer of that conflict of interest or risk of it.
- 24.2 The Contractor must take all reasonable measures to ensure that its employees, agents and subcontractors do not, during the Term, engage in any activity or obtain any interest, which is in conflict with providing the Deliverables to the Principal. Any such activity must be disclosed in writing to the Authorised Officer immediately.
- 24.3 Where the Authorised Officer receives a notice of conflict of interest under this Clause, the Principal may give the Contractor a written notice to remedy the conflict under Clause 19.1.

25 CONFIDENTIALITY

- 25.1 The Contractor must, and must ensure that its employees, agents and subcontractors, keep confidential any information obtained in the course of performing the Contract.

- 25.2 If required by the Special Conditions of Contract, the Contractor's employees, agents and subcontractors must deliver to the Principal a confidentiality undertaking in the form required by the Principal.
- 25.3 In the event of a breach of a confidentiality undertaking entered into pursuant to Clause 26.2, the Principal may terminate the Contract by giving written notice to the Contractor.
- 25.4 However, the Contractor may disclose any information:
- a) which it is legally required or entitled to disclose; or
 - b) to its legal and accounting advisers for the purposes of obtaining advice in relation to the Contract or any matter arising from the Contract.

26 ASSIGNMENT AND SUBCONTRACTING

- 26.1 Neither party shall, without the other's prior written approval (including terms) assign the Contract or any payment or any other right, benefit or interest thereunder.
- 26.2 The Contractor shall not without the Superintendent's prior written approval (which shall not be unreasonably withheld):
- a) subcontract or allow a subcontractor to subcontract any work described in Item 17; or
 - b) allow a subcontractor to assign a subcontract or any payment or any other right, benefit or interest thereunder.

With a request for approval, the Contractor shall give the Superintendent written particulars of the work to be subcontracted and the name and address of the proposed subcontractor. The Contractor shall give the Superintendent other information which the Superintendent reasonably requests, including the proposed subcontract documents without prices.

Within 14 days of the Contractor's request for approval, the Superintendent shall give the Contractor written notice of approval or of the reasons why approval is not given.

Approval may be conditional upon the subcontract including:

- a) provision that the subcontractor shall not assign nor subcontract without the Contractor's written consent; and
 - b) provisions which may be reasonably necessary to enable the Contractor to fulfil the Contractor's obligations to the Principal.
- 26.3 The Contractor is liable to the Principal for the acts and omissions of subcontractors and employees and agents of subcontractors as if they were the acts or omissions of the Contractor.
- Approval to subcontract shall not relieve the Contractor from any liability or obligation under the Contract.
- 26.4 When directed by the Principal, the Contractor, without being entitled to compensation, shall promptly execute a deed of novation in the form included in the invitation to tender, such deed being between the Principal, the Contractor and the subcontractor or selected subcontractor stated in Item 20 for the particular part of WUC.
- 26.5 Except where the Contract otherwise provides, the Contractor shall be liable to the Principal for the acts, defaults and omissions of subcontractors (including selected

subcontractors) and employees and agents of subcontractors as if they were those of the Contractor.

Approval to subcontract shall not relieve the Contractor from any liability or obligation under the Contract.

27 NEGATION OF EMPLOYMENT AGENCY ETC

- 27.1 The Contractor must not represent itself or allow itself to be represented as being an employee or agent of the Principal.
- 27.2 The Contractor will not, by virtue of the Contract, be or become an employee or agent of the Principal.
- 27.3 Nothing in the Contract is to be taken or construed as creating the relationship of a partnership, joint venture or principal and agent, between any of the parties to the Contract.

28 NOTICES

- 28.1 Notices under the Contract may be delivered by pre-paid postage or certified mail, by hand or by facsimile transmission. Notices are deemed given 5 days after deposit in the mail with postage pre-paid or certified, when delivered by hand, or if sent by facsimile transmission, upon completion as evidenced by a facsimile transmission record. Where a notice is given by facsimile the original document must be posted on the same day as the transmission is sent. The addresses for service of notices are:
 - a) for the Principal – the address for service and facsimile number (if any) of the Principal specified in Schedule 1 item 2;
 - b) for the Contractor – the address for service and facsimile number (if any) of the Contractor specified in Schedule 1 item 4.
- 28.2 A party may change its address for service of notices by giving written notice to every other party to the Contract.

29 FORCE MAJEURE

- 29.1 A party will not be entitled to exercise its rights or remedies upon the default of another party to the Contract (whether at common law or pursuant to the Contract) if that default:
 - a) is caused by Force Majeure; or
 - b) continues for less than 3 days.
- 29.2 Without limitation, where the event of Force Majeure continues for a period of more than 14 days, the Principal may terminate the Contract by giving written notice to the Contractor.

30 AUTHORISED OFFICER

- 30.1 The Principal must, by giving written notice to the Contractor, appoint a representative (the "Authorised Officer") who shall be responsible for administering the Contract on behalf of the Principal. The Principal may change the identity of the Authorised Officer from time to time. The Principal must give written notice to the Contractor of any change in the identity of the Authorised Officer from time to time. The appointment of an Authorised Officer does not prevent the Principal from exercising any of its rights under the Contract.
- 30.2 For the avoidance of doubt, the Principal may appoint more than one Authorised Officer. If the Principal appoints more than one Authorised Officer:

- a) each Authorised Officer must be responsible for administering a specified part of the Contract on behalf of the Principal; and
 - b) The Principal may not appoint more than one Authorised Officer to administer a specified part of the Contract; and
 - c) The Principal must give written notice to the Contractor detailing which part of the Contract is to be administered by each Authorised Officer.
- 30.3 Not later than 14 days after the Contract Commencement Date the Contractor must appoint a representative who shall be responsible for administering the Contract on behalf of the Contractor by giving written notice to the Principal. The Contractor may change the identity of the Contractor's representative from time to time. The Contractor must give written notice to the Principal of any change in the identity of the Contractor's representative from time to time.
- 30.4 The Contractor's representative must have a detailed knowledge of all activities associated with the supply and performance of the Deliverables and be authorised by the Contractor to make decisions and act on behalf of the Contractor.
- 30.5 The Contractor's representative must:
- a) liaise with and report to the Authorised Officer about the supply of the Deliverables; and
 - b) be available for discussions with, and attend briefings when reasonably requested by, the Authorised Officer; and
 - c) reply promptly to any correspondence from the Authorised Officer dealing with the Contract; and
 - d) if required, provide written reports to the Authorised Officer in a form, to a standard, and containing such information as may be required by, the Authorised Officer.

31 SECURITY AND ACCESS

- 31.1 The Contractor must, when using any premises or facilities of the Principal, comply with all reasonable directions and procedures as notified by the Principal or an Authorised Officer, including those relating to security and occupational health and safety which are in effect at the premises or facility.

32 INDUSTRIAL DISPUTES

- 32.1 The Contractor must not involve the Principal in any industrial dispute arising between the Contractor and any employee of the Contractor.

33 RIGHT TO INFORMATION AND DISCLOSURE

- 33.1 The *Government Information (Public Access) Act 2009* (GIPA Act) provides members of the public with a legally enforceable right to access documents held by New South Wales Government agencies (including local governments).
- 33.2 The GIPA Act requires that documents be disclosed upon request, unless the documents are exempt, or on balance, disclosure is contrary to the public interest.
- 33.3 Information provided by the Contractor is potentially subject to disclosure to third parties pursuant to the GIPA Act.
- 33.4 If disclosure under the GIPA Act, or general disclosure of information provided by the Contractor, would be of substantial concern to the Contractor, because it would disclose trade secrets, information of commercial value, the purpose or results of research, or other information of a confidential nature, including Personal Information,

this should be indicated by the Contractor. The Principal cannot guarantee that any information provided by the Contractor will be protected from disclosure under the GIPA Act.

34 INFORMATION PRIVACY

34.1 Where the Contractor or its subcontractors have access to or are responsible for holding Personal Information, the Contractor must:

- a) comply with parts 1 and 3 of chapter 2 of the *Privacy and Personal Protection Information Act 1998* as if the Contractor were the Principal; and
- b) ensure that the Personal Information is protected against loss, unauthorised access, use, modification or disclosure, and against other misuse; and
- c) not use the Personal Information other than for the purpose of the Contract, unless required or authorised by law; and
- d) not disclose the Personal Information without the written agreement of the Principal, unless required or authorised by law; and
- e) not transfer the Personal Information outside Australia without the consent of the Principal; and
- f) ensure that its personnel do not access, use or disclose the Personal Information other than in the performance of their duties; and
- g) immediately notify the Principal if it becomes aware that a disclosure of Personal Information is, or may be, required or authorised by law; and
- h) fully cooperate with the Principal, to enable the Principal to respond to applications for access to, or amendment of, a document containing an individual's Personal Information and to privacy complaints; and
- i) comply with such other privacy and security requirements as the Principal reasonably advises the Contractor from time to time.

34.2 Where the Principal is not reasonably satisfied, on the basis of information provided to it by the Contractor, that proper practices are in place to ensure that the privacy and disclosure of information requirements for Personal Information are being observed and maintained, the Principal may at any time require the Contractor to make its subcontractors aware of its obligations, in accordance with this clause 35 including, when requested by the Principal, requiring any subcontractor to promptly sign a privacy undertaking in a form approved by the Principal.

35 SECURITY (CASH DEPOSIT)

35.1 The Contractor must deliver the Security Deposit to the Principal not later than 14 days after the Principal delivers the Letter of Acceptance to the Contractor in accordance with Item 13 or 14.

35.2 The Principal may apply the Security Deposit to:

- a) remedy Contractor defaults under the Contract; and
- b) compensate the Principal for loss or expense resulting from Contractor defaults under the Contract.

35.3 The Principal must place the Security Deposit in a Security Account in the Principal's name with a Licensed Bank.

35.4 The Security Account must be operable by persons nominated from time to time by the Principal.

- 35.5 If the Contractor defaults under the Contract, the Principal may draw from the Security Account, without limiting or waiving an entitlement under the Contract:
- a) the money, including accrued interest (if any), owing by the Contractor (where the default is constituted by non-payment of money);
 - b) the money the Principal has expended to remedy the default, rectify the damage resulting from the default and reimburse itself money otherwise lost or expended because of the default (where the default is failure to discharge a non-money obligation).
- 35.6 The Principal must apply the money drawn from the Security Account under Clause 35.5, so far as the money will extend, to:
- a) discharging outstanding obligations of the Contractor under Contract; and
 - b) doing anything else that the Principal reasonably considers necessary to mitigate the damaging effects of incomplete or Defective Deliverables supplied by the Contractor; and
 - c) compensating itself for damages suffered as a result of the Contractor's breach of covenant.
- 35.7 The Principal must ensure that the money in the Security Account is only withdrawn and applied in accordance with this Clause 36.
- 35.8 Where the Principal lawfully withdraws and forfeits money from the Security Account, the Contractor must pay the Principal upon demand the lesser of:
- a) the amount withdrawn by the Principal; and
 - b) the Security Deposit then required to be maintained pursuant to Clause 36.1.
- 35.9 The Contractor acknowledges that:
- a) this Contract is a security agreement for the PPS Act; and
 - b) The Principal may register its security interest in the Security Deposit.
- 35.10 The Contractor undertakes to give the Principal all information the Principal requires to enable it to Register the Security Deposit.
- 35.11 The Contractor grants the Principal's security interest in the Security Deposit in priority to all other security interests in the money comprising the Security Deposit.
- 35.12 The Contractor undertakes to do everything necessary and reasonably required:
- a) to ensure that the Principal's security interest in the Security Deposit ranks ahead of all other security interests in the money comprising the Security Deposit; and
 - b) to ensure the enforceability of the security interest in priority to all other security interests in the money comprising the Security Deposit.
- 35.13 The Contractor will bear, and pay the Principal upon request, the cost the Principal reasonably incurs in documenting and registering the Principal's security interest in the Security Deposit.
- 35.14 The Contractor waives its entitlement to receive from the Principal, pursuant to PPS Act section 157, notice of the Registrar's verification statement.
- 35.15 To the extent that the parties may lawfully exclude their operation, the provisions of the PPS Act which do not apply to this Contract are each of sections 130, 132(3) (d), 132(4), 135, 142 and 143.
- 35.16 Upon the issue of the certificate of practical completion a party's entitlement to security (other than in Item 15(e)) shall be reduced by the percentage or amount in Item 15(f) or 16(d) as applicable, and the reduction shall be released and returned within 14 days to the other party.

The Principal's entitlement to security in Item 15(e) shall cease 14 days after incorporation into the Works of the plant and materials for which that security was provided.

A party's entitlement otherwise to security shall cease 14 days after final certificate.

Upon a party's entitlement to security ceasing, that party shall release and return forthwith the security to the other party.

35.17 All interest accrued upon the Security Deposit will belong to the Principal.

36 SECURITY (BANK GUARANTEE)

- 36.1 The Contractor must deliver the Bank Guarantee to the Principal not later than 14 days after the Principal delivers the Letter of Acceptance to the Contractor.
- 36.2 The Principal may apply the Bank Guarantee to:
- a) remedy Contractor defaults under the Contract; and
 - b) compensate the Principal for loss or expense resulting from Contractor defaults under the Contract.
- 36.3 If the Contractor defaults under the Contract, the Principal may demand from the Obligor under the Bank Guarantee:
- a) the money, including accrued interest (if any), owing by the Contractor (where the default is constituted by non-payment of money);
 - b) the money the Principal has expended to remedy the default, rectify the damage resulting from the default and reimburse itself money otherwise lost or expended because of the default (where the default is failure to discharge a non-money obligation).
- 36.4 The Principal may demand payment under the Bank Guarantee by delivering to the Obligor a notice, signed by the Principal or 1 or its Authorised Officers:
- a) certifying that the sum specified in the notice is owing by the Contractor to the Principal under the Contract; and
 - b) requesting payment of that sum without reference to the Contractor.
- 36.5 If the Principal receives payment upon a demand made under the Bank Guarantee, the Contractor must deliver to the Principal, in exchange for the Bank Guarantee under which the payment was made, a new Bank Guarantee securing payment of the whole of the Bank Guarantee Amount.
- 36.6 The Principal may exercise its entitlements under this Clause 36 against either or both of the Contractor and the Obligor.
- 36.7 The Principal must apply the money received from the Obligor in response to a notice under Clause 36.4, so far as the money will extend, to:
- a) discharging outstanding obligations of the Contractor under Contract; and
 - b) doing anything else that the Principal reasonably considers necessary to mitigate the damaging effects of incomplete or Defective Deliverables supplied by the Contractor; and
 - c) compensating itself for damages suffered as a result of the Contractor's breach of covenant.
- 36.8 If money received from the Obligor in response to a notice under Clause 36.4 is insufficient to permit full discharge of the outstanding Contractor obligation/s, the Principal may:

- a) discharge the obligation/s to the extent the money received from the Obligor permits; or
- b) discharge fully the outstanding obligations, and recover from the Contractor as a liquidated debt the difference between the money actually expended by the Principal and the money received from the Obligor.

36.9 If the requirements of this Clause 36 are met, the Principal must return to the Contractor the Bank Guarantee identified in Clause 36.1 not later than 30 days after the end of the Term.

37 SEPARABLE POTIONS

37.1 The Separable Portions of the contract are defined in the Specifications.

37.2 The Authorised Officer may identify a portion of the works as a Separable Portion.

38 TIME AND PROGRESS

38.1 The Contractor shall ensure that WUC reaches practical completion by the date for practical completion.

38.2 A party becoming aware of anything which will probably cause delay to WUC shall promptly give the Superintendent and the other party written notice of that cause and the estimated delay.

38.3 The Contractor shall be entitled to such extension of time for carrying out WUC (including reaching practical completion) as the Superintendent assesses (EOT), if:

- a) the Contractor is or will be delayed in reaching practical completion by a qualifying cause of delay; and
- b) the Contractor gives the Superintendent, within 28 days of when the Contractor should reasonably have become aware of that causation occurring, a written claim for an EOT evidencing the facts of causation and of the delay to WUC (including extent).

If further delay results from a qualifying cause of delay evidenced in a claim under paragraph (b) of this subclause, the Contractor shall claim an EOT for such delay by promptly giving the Superintendent a written claim evidencing the facts of that delay.

38.4 When both non-qualifying and qualifying causes of delay overlap, the Superintendent shall apportion the resulting delay to WUC according to the respective causes' contribution.

In assessing each EOT the Superintendent shall disregard questions of whether:

- a) WUC can nevertheless reach practical completion without an EOT; or
- b) the Contractor can accelerate

but shall have regard to what prevention and mitigation of the delay has not been effected by the Contractor.

38.5 Within 28 days after receiving the Contractor's claim for an EOT, the Superintendent shall give to the Contractor and the Principal a written direction evidencing the EOT so assessed. If the Superintendent does not do so, there shall be a deemed assessment and direction for an EOT as claimed.

Notwithstanding that the Contractor is not entitled to or has not claimed an EOT, the Superintendent may at any time and from time to time before issuing the final certificate direct an EOT.

- 38.6 The Contractor shall give the Superintendent at least 14 days written notice of the date upon which the Contractor anticipates that practical completion will be reached.

When the Contractor is of the opinion that practical completion has been reached, the Contractor shall in writing request the Superintendent to issue a certificate of practical completion. Within 14 days after receiving the request, the Superintendent shall give the Contractor and the Principal either a certificate of practical completion evidencing the date of practical completion or written reasons for not doing so.

If the Superintendent is of the opinion that practical completion has been reached, the Superintendent may issue a certificate of practical completion even though no request has been made.

- 38.7 If WUC does not reach practical completion by the date for practical completion, the Superintendent shall certify, as due and payable to the Principal, liquidated damages in Item 26 for every day after the date for practical completion to and including the earliest of the date of practical completion or termination of the Contract or the Principal taking WUC out of the hands of the Contractor.

If an EOT is directed after the Contractor has paid or the Principal has set off liquidated damages, the Principal shall forthwith repay to the Contractor such of those liquidated damages as represent the days the subject of the EOT.

39 CONTRACT DOCUMENTS

- 39.1 Figured shall prevail over scaled dimensions in a discrepancy. Otherwise, if either party discovers any inconsistency, ambiguity or discrepancy in any document prepared for the purpose of carrying out WUC, that party shall give the Superintendent written notice of it. The Superintendent, thereupon, and upon otherwise becoming aware, shall direct the Contractor as to the interpretation and construction to be followed.

If compliance with any such direction under this subclause causes the Contractor to incur more or less cost than otherwise would have been incurred had the direction not been given, the difference shall be assessed by the Superintendent and added to or deducted from the contract sum.

- 39.2 The Principal shall supply to the Contractor the documents and number of copies thereof, both stated in Item 15.

They shall:

- a) remain the Principal's property and be returned to the Principal on written demand; and
 - b) not be used, copied nor reproduced for any purpose other than WUC.
- 39.3 The Contractor shall supply to the Superintendent the documents and number of copies thereof, both stated elsewhere in the Contract.

If the Contractor submits documents to the Superintendent, then except where the Contract otherwise provides:

- a) the Superintendent shall not be required to check such documents for errors, omissions, inconsistencies, ambiguities, discrepancies or compliance with the Contract;
- b) notwithstanding clause 41, any Superintendent's acknowledgment or approval shall not prejudice the Contractor's obligations; and
- c) if the Contract requires the Contractor to obtain the Superintendent's direction about such documents, the Superintendent shall give, within the time stated in Item 16, the appropriate direction, including reasons if the documents are not suitable.

Copies of documents supplied by the Contractor shall be the Principal's property but shall not be used or copied otherwise than for the use, repair, maintenance or alteration of the Works.

39.4 The Contractor shall keep available to the Superintendent and the Principal:

- a) on site, one complete set of documents affecting WUC and supplied by a party or the Superintendent; and
- b) at the place of manufacture or assembly of any significant part of WUC off site, a set of the documents affecting that part.

39.5 The parties shall ensure that there are kept confidential such documents, samples, models, patterns and other information as are supplied and clearly identified as confidential.

If required in writing by a party, the other party shall enter into a separate agreement not to disclose to anyone else any confidential matter even after final certificate or earlier termination of the Contract. If so required by the Contractor, the Principal shall ensure that the Superintendent also enters into such an agreement.

39.6 The Contractor shall not disclose any information concerning the project for distribution through any communications media without the Principal's prior written approval (which shall not be unreasonably withheld). The Contractor shall refer to the Principal any enquiries from any media concerning the project.

40 SUPERINTENDENT

The Principal shall ensure that at all times there is a Superintendent, and that the Superintendent fulfils all aspects of the role and functions reasonably and in good faith.

Except where the Contract otherwise provides, the Superintendent may give a direction orally but shall as soon as practicable confirm it in writing. If the Contractor in writing requests the Superintendent to confirm an oral direction, the Contractor shall not be bound to comply with the direction until the Superintendent does so.

41 SUPERINTENDENT'S REPRESENTATIVE

The Superintendent may from time to time appoint individuals to exercise delegated Superintendent's functions, provided that:

- a) no aspect of any function shall at any one time be the subject of delegation to more than one Superintendent's Representative;
- b) delegation shall not prevent the Superintendent exercising any function;
- c) the Superintendent forthwith gives the Contractor written notice of respectively:
 - i) the appointment, including the Superintendent's Representative's name and delegated functions; and
 - ii) the termination of each appointment; and
- d) if the Contractor makes a reasonable objection to the appointment of a Superintendent's Representative, the Superintendent shall terminate the appointment.

42 LEGISLATIVE REQUIREMENTS

42.1 The Contractor shall satisfy all legislative requirements except those in Item 19(a) or directed by the Superintendent to be satisfied by or on behalf of the Principal.

The Contractor, upon finding that a legislative requirement is at variance with the Contract, shall promptly give the Superintendent written notice thereof.

42.2 If a legislative requirement:

- a) necessitates a change:
 - i) to the Works;
 - ii) to so much of WUC as is identified in Item 21b);
 - iii) being the provision of services by a municipal, public or other statutory authority in connection with WUC; or
 - iv) in a fee or charge or payment of a new fee or charge;
- b) comes into effect after the 14th day before the closing of tenders but could not reasonably then have been anticipated by a competent Contractor; and
- c) causes the Contractor to incur more or less cost than otherwise would have been incurred, the difference shall be assessed by the Superintendent and added to or deducted from the contract sum.

43 CONTRACTOR'S LIAISON OFFICER

43.1 The Contractor must nominate a senior person to liaise directly with the Principle in all matters relating to the Contract. The Contractor's designated liaison Officer will be expected to represent the Contractor at regular performance review meetings and matters relating to the Contract.

44 PAYMENT OF WAGES AND ALLOWANCES

The Contractor must ensure that all persons employed by it, in or in connection with the services are paid wages and allowances of any kind required to be paid under any relevant award, determination, order or industrial agreement of the State of New South

Wales. The Contractor must also ensure all persons employed under the conditions contained in the relevant award, determination, order or industrial agreement.

45 WORK HEALTH AND SAFETY

- 45.1 The Contractor is responsible for ensuring compliance with all requirements of the relevant *Work Health and Safety Act 2011* and the Principal's Work Health and Safety Policies. The contractor shall be responsible for the wellbeing and fitness of its entire staff and shall ensure that they are fit to perform their duties and present no danger to others.
- 45.2 The Contractor shall notify the Principal immediately in writing if a charge of non-compliance with the *Work Health and Safety Act 2011* has been filed against the Contractor in connection with the services, the subject of this contract.

46 MISCELLANEOUS

- 46.1 The Contractor must comply with all relevant laws and the requirements of any relevant statutory authority in supplying the Deliverables.
- 46.2 The Contract is governed by and construed in accordance with the laws of the State of New South Wales, and the parties submit to the jurisdiction of the Courts of that State and all Courts competent to hear appeals therefrom.
- 46.3 No agreement or understanding that varies or amends the Contract will bind any party unless and until agreed to in writing by all parties.
- 46.4 None of the conditions of the Contract will be waived or deemed waived, except by notice in writing signed by the party waiving the right.
- 46.5 The Contract constitutes the entire agreement between the parties and supersedes all communications, negotiations, arrangements and agreements either oral or written between the parties with respect to the subject matter referred to in the Contract.
- 47.6 The parties to the Contract are independent contractors and nothing in the Contract will appoint the Contractor as an agent or employee of the Principal.

SPECIAL CONDITIONS OF CONTRACT

1 Definitions

For the purposes of Clause 2.1 of the General Conditions of Contract:

Bank Guarantee Amount means – a Bank Guarantee is not required.

Contract Commencement Date means – date specified in the letter of acceptance.

Contract Expiry Date means – 12 months from date of letter of acceptance.

Security Deposit means – a Security Deposit is not required.

2 Supply of Deliverables

For purposes of Clause 8.7 of the General Conditions of Contract, the Defects Liability Period is twelve (12) months from the date of Practical Completion applicable individually to each allocated subproject or package of completed work.

3 Insurance

For the purposes of Clause 9.1 of the General Conditions of Contract, the Contractor must have and maintain:

- a) *Workers Compensation Act 1987* insurance; and
- b) public liability insurance

4 Invoicing

For the purposes of Clause 13.1 of the General Conditions of Contract, the Contractor must submit invoices at least on a monthly basis. Each invoice must include a relevant Moree Plains Shire Council purchase order reference and is to be forwarded directly to accounts.payable@mpsc.nsw.gov.au.

5 Variation of Price

This is a Fixed Price, Lump Sum contract.

6 Intellectual Property Rights

For the purposes of Clause 23.7 of the General Conditions of Contract, right and title to intellectual property rights in the contract material is not applicable.

7 Confidentiality

For the purposes of Clause 26.2 of the General Conditions of Contract, Confidentiality is not required by the Contractors Employees, Agents and Subcontractors in the form of a duly executed Confidentiality and Disclosure Agreement – Third Party.

8 Inconsistencies with Information Provided

In the instances of any inconsistencies with information provided with this document, the General Conditions of Contract will prevail.

9 Whole agreement

This Contract and the documents referenced in it are the whole agreement between the parties and supersede previous discussions on the subject matter.

PART A – CONTRACT DETAILS

Item

1	Principal (clause 1)	Moree Plains Shire Council
2	Principal's address	Level 2 30 Heber Street PO Box 420 Moree NSW 2400 council@mpsc.nsw.gov.au
3	Contractor (clause 1)	ACN:
4	Contractor's address	
5	Contractor's Contract Person	
6	Contractor's Contact Person Details	
7	Superintendent (clause 1)	
8	Superintendent's address	Moree Plains Shire Council PO Box 420 Moree NSW 2400
9	a) Date for practical completion (clause 1) Or	n/a
	b) Period of time for practical completion (clause 1)	
10	Governing law (clause 1)	New South Wales
11	a) Currency (clause 1)	Australian
	b) Place for payments (clause 1)	30 Heber Street Moree NSW 2400
	c) Place of business bank	If nothing stated, the place nearest to where the site is located
12	Bill of quantities (subclause 1)	n/a
13	Quantities in schedule of rates, limits of accuracy	n/a
14	Provisional sum, percentage for profit and attendance	n/a
15	Contractor's security	
	a) Form (clause 36 and 37)	Letter of Acceptance
	b) Amount or maximum percentage of contract sum (clause 36 and 37)	5% of contract sum
	c) If retention moneys, percentage of each progress certificate (clause 36)	10% until 5% maximum is reached
	d) Time for provision (except for retention moneys) (clause 36)	Prior to commencement of the works.
	e) Additional security for unfixed plant and materials (clause 36)	n/a
	f) Contractor's security upon certificate of practical completion is reduced by (subclause 36)	50% of amount held
16	Principal's security	n/a

17	Principal-supplied documents (clause 40)	Request for Tender 17/01 Volumes 1, 2, 3, 4
18	Time for Superintendent's direction about documents (clause 40)	14 days
19	Subcontract work requiring Approval (clause 27)	All works
20	Novation (clause 27)	n/a
21	Legislative requirements	
	a) Those excepted (clause 43)	n/a
	b) Identified WUC (clause 43)	n/a
22	Insurance of the Works (clause 9)	n/a
23	Public liability insurance (clause 9)	Contractor to insure per occurrence shall be not less than \$20,000,000.00
24	Time for giving possession	Within 28 days of date of acceptance of tender
25	Qualifying causes of delay for which EOTs will not be granted (clause 1 and clause 38)	Inclement weather: <ul style="list-style-type: none"> Total monthly rainfall less than or equal to the average monthly rainfall for the given month. Storm event with intensity less than or equal to the peak 1AEP storm of 30 minute duration.
26	Liquidated damages, rate (clause 39)	n/a
27	Delay damages, other compensable causes (clause 39)	n/a
28	Defects liability period (clause 8)	12 months after date of practical completion
29	Progress Claims (clause 13)	14 th day of each month for WUC done to the 30 th day of the previous month
30	Unfixed plant and materials for which payment claims may be made	n/a
31	Interest rate on overdue payments (clause 14.7)	n/a
32	Arbitration (subclause 21)	President of the Institute of Arbitrators & Mediators Australia
	a) Person to nominate an arbitrator	
	b) Rules for arbitration	Rules 5-18 of the Rules of The Institute of Arbitrators, Australia for the Conduct of Commercial Arbitrations
	c) Appointing Authority under UNCITRAL Arbitration Rules	President of the Institute of Arbitrators & Mediators Australia
33	Price (clause 16)	Separable Portion 1 General \$
		Separable Portion 1 General
		Separable Portion 8 -
		Total Price (excluding GST) \$

PART B – SCHEDULE OF RATES

Schedule of Rates

For the avoidance of doubt, any Schedule of Rates included is for the purposes of pricing variations only.

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PART C – CONTRACTOR’S TENDER CLARIFICATION

Contractor’s Tender Clarifications

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PART D - PROGRAM

Program

See attached program.

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PART E – PRINCIPAL SUPPLIED DOCUMENTS

Documents

See attached documents.

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