



Section C

Conditions of Contract

for

Supply and deliver a new two vehicle and passenger landing craft with trailer.

Tender no: T02-18-19

Tender Superintendent Chris Smith
0427 451 735
chris.smith@tiwiislands.nt.gov.au

Tender documents Tender documents are available for download on <https://www.tenderlink.com/tiwiislands/> or on the Tiwi Island Regional Council website www.tiwiislands.org.au/services/tenders

Tender closing information TIME: 2PM (Central Standard time)
DATE: 19 November 2018

How to submit your tender Submit your tender on <https://www.tenderlink.com/tiwiislands/>

All tenders for this Contract must be lodged through the Tiwi Islands Regional Council electronic tender portal <https://www.tenderlink.com/tiwiislands/>



Reference Schedule

Council	Tiwi Islands Regional Council
You	<Here insert name of contractor>
Council's service address and postal address	Lot 834 Puti Drive Wurrumiyanga, NT, 0822 Postal: PMB 267 Winnellie, NT, 0822
Superintendent	The person nominated in writing from time to time by (as applicable): the General Manager Infrastructure, Tiwi Islands Regional Council
Council's email address	As notified in writing from time to time by Council's superintendent
Your service address	<Here insert contractor's address>
Your email address	<Here insert contractor's email address>
Your representative	<Here insert name of contractor's representative>
Commencement date	<Here insert commencement date>
Expiry date	<Here insert commencement date, if applicable, or delete if not applicable>
Insurances	Workers compensation insurance as required by statute; Public liability insurance in the sum of not less than \$20M for each occurrence; <Here insert any other appropriate insurances>



1 Agreement

You agree to ensure that the craft and trailer supplied under this contract are of reasonable quality and fit for purpose and to perform the services for the Council for the term with reasonable care and skill and to the standard expected of a reasonably competent supplier providing such services, and otherwise on the terms of this contract. The Council agrees to pay you the contract price, for the goods supplied and for the provision of the services.

2 Superintendent

The superintendent shall be the person named in the Reference Schedule or such other person as is nominated by Council from time to time. Only the superintendent has authority to bind Council.

3 Your Representative

Your representative must have sufficient command of the English language to be able to read, converse and receive instructions in English.

4 Your General Obligations

You must:

- a. Supply the craft and trailer in accordance with the specifications set out in these tender documents;
- b. Install all components necessary for the operation for the craft and trailer, which Council is not obliged to install;
- c. From time to time Council may request attendance at the manufacturers site to review progress
- d. Before handover to Council, test the craft and trailer and ensure it is operating correctly in accordance with the Specifications and invite Council staff to attend;
- e. Successfully demonstrate all system functions and capabilities to Council staff;
- f. Provide to Council all information and documentation necessary for Council to obtain the benefit of any manufacturer warranties;
- g. Provide to Council all system start up training and training manuals.
- h. Supply the craft complete with all survey requirements suitable to near costal waters



5 Council's Obligations

As required from time to time, at its own cost, the Council will provide to you the following information, documents and records, in hard copy or electronic form:

- a. Changes to the Superintendent for the contract

6 Making a Claim for Payment

6.1 You are entitled to payment for the craft in accordance with the agreed payment schedule and at the time specified as set out in Annexure 2. Unless expressly stated otherwise in Annexure 2, all amounts are expressed exclusive of GST.

6.2 To make a claim for payment you must supply a valid tax invoice to the Council in respect of goods supplied or stage of work completed, supporting documentation would include images of the craft in each stage of manufacture

6.3 Your invoice must include the following:

- a. The Council purchase order number or Instruction to Contractor number;
- b. The amount of the payment you claim and the basis for calculation;
- c. The amount of any GST paid or payable you with respect to the payment;
- d. The date of delivery of the craft or date of completion of stages of manufacture as agreed
- e. Your address and/or bank account details for payment;

7 Responding to a Claim for Payment

7.1 Provided that the Council is reasonably satisfied that the craft or stages of manufacture in each case fit the description in the relevant purchase order and are in the quantity specified in the relevant purchase order, your tax invoice will be paid within 28 days of its receipt by the Council.

7.2 If Council is not reasonably satisfied in accordance with subclause 1 of this clause, then within 28 days of receipt of your claim for payment, Council will pay to you the amount (if any) which Council reasonably believes is due and payable to you and will provide to you a summary of why Council believes the full amount of your claim is not payable, including any necessary calculations, and including details of any setoff or counterclaim which Council maintains in respect of your claim for payment.



8 Compliance with Laws and Standards

- 8.1 Throughout the term, in supplying the craft and trailer you must comply with all laws.
- 8.2 Throughout the term, in the craft and trailer where any Australian Standard applies to the craft and trailer you must comply with the relevant Australian Standard unless the Council authorises you otherwise in writing.
- 8.3 If after the commencement date any applicable Australian Standard is amended, the superintendent may direct you to comply with such amendment, in which case that direction will be treated as a variation under this contract.

9 Subcontractors

- 9.1 You may not subcontract any part or whole of the services to any person without the consent in writing of the Council.
- 9.2 The Council may refuse consent to the appointment of a subcontractor in its absolute discretion.
- 9.3 The approval by Council of a subcontractor does not affect your liability under this contract. The Council will not be obliged to deal directly with any approved subcontractor.

10 Assignment

You shall not assign the contract, or assign, mortgage, charge or encumber any of the moneys payable under the contract or any other benefit whatsoever arising under this contract.

11 Insurances

- 11.1 You must produce to Council evidence of the currency of your insurance policies when reasonably required by Council to do so.

12 Directions, Notices and Disputes

- 12.1 You must comply with any direction either orally or in writing given or served upon you by the superintendent. Any direction given orally shall, as soon as practicable after it is given, be confirmed in writing.
- 12.2 You must observe any safety rules, regulations and procedures, which may be issued, verbally or in writing, by the superintendent, from time to time, during the performance of this contract.

13 Your Establishment

To accomplish the requirements of this contract, you must provide and maintain the following:

- a. An approved office, workshop, equipment and capabilities sufficient to carry out, as necessary work as requested under this contract;
- b. Sufficient personnel necessary to take, record or pass on any message that may be received and provide day to day information. Office will be open in line with Council opening times as a minimum;
- c. Access to e-mail facilities;
- d. An established communication system to maintain communication between your representative and the superintendent; and
- e. An approved area and/or facility for storage of goods and equipment in relation to the contract.

14 Contractor Accreditation and Industry Standards

14.1 You shall maintain the currency of your accreditation during the life of the contract.

14.2 You shall comply with all industry standards in relation to:

- a. Training/ Licences
- b. Engagement and supervision of sub-contractors
- c. Compliance measures
- d. Penalties; and
- e. Termination arrangements

15 Confidentiality

15.1 Information collected under this contract remains the property of the Council. You or your employees, agents, directors, partners, shareholders or consultants shall not disclose to any person any information or documentation relating to the Council, of the affairs of others which may have come to you or to their knowledge as a result of the contract or performance under this contract. All necessary precautions shall be taken to prevent unauthorised access to such information regarding the nature of progress of the supply of the craft and trailer or give any publicity concerning the supply of the craft and trailer except with the written consent of the superintendent.

- 15.2 You must not furnish any information or issue any document or other written or printed material concerning the supply of the craft and trailer for publication in the media without the prior written approval of the superintendent. You must refer any enquiries from the media concerning the supply of the craft and trailer to the superintendent.

16 Supplier's Warranties and Obligations

You warrant that:

- (a) you have the right and shall transfer title to the craft and trailer to the Council
- (b) the goods are of merchantable quality and fit for their purpose
- (c) the goods supplied have been manufactured or assembled at the place disclosed by you
- (d) the goods shall be new and shall comply in all respects with the requirements of this contract
- (e) the goods supplied are free from defects and conform to any legally applicable standards
- (f) the craft and trailer conform to the Specifications;
- (g) the craft and trailer conform to all current Maritime Survey requirements for the type of vessel and intended purpose

17 Delivery and Acceptance

- 17.1 You are required to deliver the goods to the place (or places) nominated by the Council and shall obtain a receipt of their delivery.
- 17.2 Delivery of goods must occur within the agreed time of an order being placed by the Council to you.
- 17.3 Property and risk in the goods passes on delivery.
- 17.4 Delivery and receipt of the goods shall not be an acceptance of the goods.
- 17.5 Receipt of delivery, acceptance or payment shall not prejudice the right of the Council to maintain an action for breach of condition or warranty should the goods prove to be of inferior quality or in any respect contrary to the requirements of the Contract.



18 Warranty Period

18.1 Without limiting any other warranty implied by statute or generally at law:

- a. shall provide a full replacement product warranty for a minimum period of <2> years from the date of the purchase invoice on a return-to-base basis;
- b. if a defect (fair wear and tear excepted) appears in the goods within the Warranty Period you shall promptly remedy such defect by either repairing or replacing the defective goods without cost to Council; and
- c. you shall obtain for Council the benefit of any manufacturer’s warranty and provide certificates.

18.2 At a minimum, the return-to-base warranty shall include the craft and trailer

19 You are to Report to Council

You will be required to provide the following reports and data in current MS Word and/or MS Excel format as directed by the superintendent:

Timing	Reporting Requirements
As required by instant communication	<u>within twenty-four (24) hours</u> notifying Council of any malfunction of supplier’s equipment, industrial situations, non-availability of materials or facilities that has the potential to interrupt supply of goods
Monthly	<ul style="list-style-type: none"> • number, and type, of goods supplied • delivery time for supplied goods from order date to supply date • warranty claims • identified defects under review
Annually upon anniversary of Commencement Date	<ul style="list-style-type: none"> • quality management plan/updates • insurances review and update

20 Default and Termination

20.1 If you fail to supply the craft and trailer specified in a particular purchase order in accordance with the requirements of this contract Council may serve a notice of default on you.

20.2 A notice of default served by the Council shall specify the default and nominate a period of time (which shall not be less than 14 days) to rectify the default.

20.3 If you fail to rectify the default within the time specified in the default notice the Council may, by further notice in writing to you, cancel that purchase order in whole or in part. In that event the Council shall not be liable to pay the whole or part of the purchase order which has been cancelled, and neither shall the Council be liable for any costs you may have incurred in attempting to fulfil the purchase order.

21 Termination on Insolvency

21.1 If you are a natural person and enter into a Part X arrangement or become bankrupt, this contract is automatically terminated.

21.2 If you are a corporation and you enter into external administration pursuant to the *Corporations Act*, this contract is automatically terminated.

22 General Provisions

22.1 This contract may only be amended in writing, signed by appropriately authorised representatives of the parties.

22.2 The laws of the Northern Territory apply to the interpretation of this contract and the parties submit to the jurisdiction of the courts of the Northern Territory.

22.3 Any uncertainty regarding the interpretation of this contract will not be determined unfavourably to the Council merely for the reason that the Council prepared this contract.

22.4 Any clause in this contract which appears to be intended to operate after the expiration or termination of this contract does not merge upon that expiration or termination, but continues to operate.

23 Interpretation

The Reference Schedule forms part of this contract. A term or phrase listed in the left hand column of the Reference Schedule has the meaning attributed to it in the right hand column of the Reference Schedule.

24 Definitions

Terms used in this contract and in the Specifications have the following meanings: