



Section C Conditions of Contract

Contract for Civil Works in Milikapiti, Melville Islands Extension to oval

TENDER NO: T01-20-21

CONTACT INFORMATION:

Superintendent: CHRIS SMITH
Telephone: 0427451735
Email: tenders@tiwiislands.nt.gov.au

TENDER CLOSING INFORMATION:

Date: Friday, 28 August 2020
Time: 2:00 pm Central Standard Time

**All tenders for this Contract must be lodged through the
Tiwi Islands Regional Council electronic tender portal
<https://www.tenderlink.com/tiwiislands/>
All queries regarding the tender to be directed through the forum
available on the Tenderlink site**



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>
worksite	<Delete if inapplicable>



1 Agreement

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

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. Finish the works in accordance with the specifications set out in Annexure 1;

5 Making a Claim for Payment

5.1 You are entitled to payment for the civil works in accordance with 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.

5.2 To make a claim for payment you must supply a valid tax invoice to the Council in respect of works completed.

5.3 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. A brief description and the date of completion of works;
- e. Your address and/or bank account details for payment;

6 Responding to a Claim for Payment

- 6.1 Provided that the Council is reasonably satisfied that the works completed 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.
- 6.2 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.

7 Supplier Security

- 7.1 You must provide to the Council security for the performance of your obligations under this contract.
- 7.2 The security must be in the form of an unconditional bank guarantee from a bank approved by the Council, in the sum specified in the Reference Schedule and with an **<unspecified expiration date>** or **<expiration date no earlier than 12 months after the expiration of the term or to the expiration of the defects liability period, if any>**.
- 7.3 If you default in performing your obligations under this contract, the Council may call upon this bank guarantee to pay, in whole or in part, for expenses incurred by the Council making good your default.
- 7.4 If the Council does not call upon the bank guarantee, it will be returned to you within 12 months of the expiration of the term.

8 Contract Term



The contract term shall be from the commencement date to the expiry date, unless extended in accordance with the terms of this contract.

9 Intellectual Property and Information

- 9.1 Any intellectual property rights in connection with the project or this contract, whether existing at the commencement date or arising during the term, are the property of the Council.
- 9.2 Any information regarding the project provided to you by the Council for the purposes of this contract remains confidential to the Council.
- 9.3 Any information regarding the project which is accumulated during the term, whether by the Council or by you, is confidential to the Council.
- 9.4 You may not use the Council confidential information, unless required by law or an order of a court of competent jurisdiction, without the express written approval of the Council.
- 9.5 You must assist the Council or its appointed agents in connection with any aspect of the project or related matters, by promptly providing information or records reasonably requested by the Council, at no cost to the Council.

10 Compliance with Laws and Standards

- 10.1 Throughout the term, in carrying out the work you must comply with all laws.
- 10.2 Throughout the term, in carrying out the work, where any Australian Standard applies to the work, you must comply with the relevant Australian Standard unless the Council authorises you otherwise in writing.
- 10.3 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.

11 Power to Remove Personnel

The superintendent may require the immediate removal, from the work site any agent or any other person employed by you. You shall immediately comply with that requirement.

12 Subcontractors



- 12.1 You may not subcontract any part or whole of the services to any person without the consent in writing of the Council.
- 12.2 The Council may refuse consent to the appointment of a subcontractor in its absolute discretion.
- 12.3 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.

13 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.

14 Insurances

- 14.1 By no later than the commencement date you must take out and maintain for the term the insurance specified in the Reference Schedule.
- 14.2 You must take out insurance with an insurer approved of by Council.
- 14.3 You must produce to Council evidence of the currency of these insurance policies when reasonably required by Council to do so.

15 Damage to Third Party or Property

- 15.1 If you cause any damage to a third party's person or property in the performance of this contract, you must give immediate notification to the superintendent and inform the owner or representative. Any such damage caused should be replaced or made good at your expense.
- 15.2 You shall exercise extreme care when driving vehicles and machinery within the work site. During wet conditions, you must ensure that the ground is firm enough to prevent wheel ruts, damage to lawn/garden irrigation, installations etc. Any damage caused will be made good at your expense, or, if you fail to make good the damage the Council may employ others to rectify the damage and deduct the cost from moneys due to you under this contract.



16 Your Responsibility for Safety of the Public

- 16.1 You must ensure that all areas under the contract that are accessible to the public are in a safe condition before, during and after the performance of this contract.
- 16.2 You must notify the superintendent immediately of any safety concerns within the scope of this contract, which may cause injury to the public or damage to property

17 Directions, Notices and Disputes

- 17.1 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.
- 17.2 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.

18 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.

19 Screening

- 19.1 You will submit to the superintendent at least seven (7) days prior to commencement of the service and annually thereafter, a list of names and addresses of all persons

who will be performing the services associated with the contract and/or who will require access to the work area.

- 19.2 At least seven (7) days before any additional person/s is/are to perform any service and/or requires access to the area or commences duty, you must submit to the superintendent the name and address of such person/s.
- 19.3 The superintendent may at any time during the currency of the contract and without being bound to give any reason, by notice in writing direct that certain person/s shall not be used for the purposes of the contract and you must comply with that direction immediately.
- 19.4 The Council shall not be liable to you or to any person claiming through you for any claim for damage or otherwise arising out of the withholding or any/or withdrawal of approval.
- 19.5 No persons (including children) other than those engaged and/or employed within the terms of this contract shall be permitted access to the work area.
- 19.6 No animals belonging to persons engaged and/or employed within the terms of this contract shall be permitted in the work area.

20 Performance Review

Your performance review will be undertaken every month between you and the superintendent. Notice of not less than 7 days will be given prior to the review.

21 Contractor Accreditation and Industry Standards

- 21.1 You shall maintain the currency of your accreditation during the life of the contract.
- 21.2 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

22 Confidentiality

- 22.1 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 works or give any publicity concerning the works except with the written consent of the superintendent.

22.2 You must not furnish any information or issue any document or other written or printed material concerning the works for publication in the media without the prior written approval of the superintendent. You must refer any enquiries from the media concerning the works to the superintendent.

23 Emergency Callout

23.1 You must have at least one nominated staff member and one alternative contact that have access to sufficient resources, on call at all times 24/7 and shall supply the superintendent with the names, addresses and telephone numbers of staff on call.

23.2 In emergency circumstances, you may be directed by the superintendent to perform the services immediately (**emergency works**). All emergency works undertaken within Council’s normal spread of hours of work for contractors – Monday to Saturday from 6.30 am to 6.30 pm will be paid in accordance with the relevant **<Schedule of Rates items 2.1a and 2.1b>**. Emergency works undertaken outside of these hours shall be paid call out fee in accordance with **<Schedule of Rates Item 5.1>** plus, any additional hours to the hourly rates for the supply of plants and equipment requested.

24 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 the work
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
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25 Default and Termination

- 25.1 If you fail to complete the works specified in a particular purchase order in accordance with the requirements of this contract Council may serve a notice of default on you.
- 25.2 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.
- 25.3 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.

26 Termination on Insolvency

- 26.1 If you are a natural person and enter into a Part X arrangement or become bankrupt, this contract is automatically terminated.
- 26.2 If you are a corporation and you enter into external administration pursuant to the *Corporations Act*, this contract is automatically terminated.

27 General Provisions

- 27.1 This contract may only be amended in writing, signed by appropriately authorised representatives of the parties.
- 27.2 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.
- 27.3 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.
- 27.4 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.



28 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.

29 Definitions

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