
Energex Contractor Prequalification Scheme - Commercial and Industrial Construction - Supplementary Conditions



Contractor Prequalification Scheme
Supplementary Conditions
Commercial and Industrial Construction - PQS-001

Energex Contractor Prequalification Scheme - Commercial and Industrial Construction - Supplementary Conditions

1. Operation of Supplementary Conditions

These Supplementary Conditions are:

- (a) supplementary to the Australian Standard General Conditions of Contract which also comprise part of the Contract (**General Conditions**); and
- (b) override the General Conditions to the extent of any inconsistency between them.

2. Definitions in Supplementary Conditions

Words or expressions defined by the General Conditions have the same meaning when used in these Supplementary Conditions unless they are separately defined by the Supplementary Conditions.

3. Limitation of Liability

- (a) Subject to paragraph (b), the liability of the Contractor to the Principal arising out of or in connection with the Contract whether in contract, tort (including negligence) or equity, under statute or otherwise will:
 - (i) be reduced proportionately to the extent that the liability has been caused by the negligent or unlawful act or omission of the Principal;
 - (ii) be reduced proportionately to the extent that the liability has been caused by the negligent or unlawful act or omission of third parties (other than subcontractors or third parties for which the Contractor is responsible either under the Contract or the general law);
 - (iii) exclude any liability for loss of the Principal's profit, revenue, goodwill or business opportunity or damage to the Principal's reputation;
 - (iv) exclude any liability for loss of any third party's profit, revenue, goodwill or business opportunity, or damage to any third party's reputation, that may be claimed against the Principal; and
 - (v) for liability not reduced or excluded by any other subparagraph of this paragraph (a), be limited for each occurrence (or series of related occurrences giving rise to liability) to the maximum aggregate amount of the Contract Liability Limit (defined in paragraph (c)).
- (b) The parties agree that paragraph (a) will not apply to, and for the purposes of calculating whether any limitation on liability in paragraph (a) has been reached no regard will be had to, any of the following:
 - (i) liquidated damages (if any) due from the Contractor to the Principal under the Contract;

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- (ii) loss or liability that arises from or in connection with:
 - (A) the fraudulent, malicious or illegal acts or omissions of the Contractor;
 - (B) deliberate breaches of contract (including the Contract) or any duty by the Contractor;
 - (C) infringement of intellectual property rights or moral rights ;
 - (D) personal injury or death (including to any employee of the Principal);
 - (E) loss of or damage to any property (other than property owned by the Principal);
 - (F) loss of or damage to any property owned by the Principal;
 - (G) damage to or destruction of the environment; or
 - (H) breach of any confidentiality obligation;
 - (iii) loss or liability in respect of which the Contractor cannot, by law, contract out of liability;
 - (iv) liability for which the Contractor has insurance or would have had insurance had it complied with its insurance obligations under the Contract; and
 - (v) liability which the Contractor is legally entitled to recover from any third party (including any subcontractor).
- (c) For the purposes of this clause, "Contract Liability Limit" means:
- (i) where the Contract Sum is less than or equal to \$1 million, the amount of \$5 million;
 - (ii) where the Contract Sum is greater than \$1 million but less than or equal to \$10 million, the amount of \$10 million; and
 - (iii) where the Contract Sum is greater than \$10 million, the amount being the lesser of:
 - (A) the amount being the aggregate of the Contract Sum and 10 percent of the Contract Sum; and
 - (B) \$20 million.
- (d) The Principal will not in any circumstances be liable to the Contractor (whether in contract, tort (including negligence) or equity, under statute or otherwise) for any loss of profit, revenue, goodwill or business opportunity or damage to reputation whether suffered directly by the Contractor or claimed against the Contractor by any third party.

4. Queensland Code and Queensland Guidelines

Application of this clause

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- (a) This clause 4 only applies where the Contract Sum exceeds \$2,000,000 (including GST).

Definitions in Queensland Guidelines

- (b) In addition to terms defined in the General Conditions, terms which have a meaning given to them in the Queensland Government's Implementation Guidelines to the Queensland Code of Practice for the Building and Construction Industry (**Queensland Guidelines**) (as published by the Department of Justice and Attorney-General) have the same meaning when used in this clause 4. The Queensland Government's Code of Practice for the Building and Construction Industry (**Queensland Code**) and Queensland Guidelines are available at <http://www.justice.qld.gov.au/building-and-construction-industry-guidelines>.

Primary obligation

- (c) The Contractor must comply with, and meet any obligations imposed by, the Queensland Code and Queensland Guidelines.
- (d) The Contractor must notify the BCCB (or nominee) and the Principal of any alleged breaches of the Queensland Code and Queensland Guidelines and of voluntary remedial action taken, within 24 hours of becoming aware of the alleged breach.
- (e) Where the Contractor is authorised to engage a subcontractor or consultant, and it does so, the Contractor must ensure that any secondary contract imposes on the subcontractor or consultant equivalent obligations to those in this clause 4, including that the subcontractor or consultant must comply with, and meet any obligations imposed by, the Queensland Code and the Queensland Guidelines.
- (f) The Contractor must not appoint or engage another party in relation to the Works where that appointment or engagement would breach a Sanction imposed on the other party in relation to the Queensland Code or Queensland Guidelines.

Access and information

- (g) The Contractor must maintain adequate records of compliance with the Queensland Code and Queensland Guidelines by it, its subcontractors, consultants and Related Entities.
- (h) The Contractor must allow, and take reasonable steps to facilitate, Queensland Government Authorised Personnel (including personnel of the BCCB) to:
- (i) enter and have access to sites and premises controlled by the Contractor, including the Site;
 - (ii) inspect any work, material, machinery, appliance, article or facility;
 - (iii) access information and documents;
 - (iv) inspect and copy any record relevant to the Works;
 - (v) have access to personnel; and
 - (vi) interview any person,

as is necessary for the Queensland Government Authorised Personnel to monitor and investigate compliance with the Queensland Code and Queensland Guidelines, by the Contractor, its subcontractors, consultants and Related Entities.

- (i) The Contractor, and its Related Entities, must agree to, and comply with, a request from Queensland Government Authorised Personnel (including personnel of the BCCB) for the production of specified documents by a certain date, whether in person, by post or electronic means.
- (j) The Principal may, without the consent of or notice to the Contractor, disclose to any of the Queensland Government, an agency of the State of Queensland, a Minister, the Department of Justice and Attorney, the BCCB, a Client agency and any Queensland Government Authorised Personnel, any information or records relating to the Contract and the performance of the work under the Contract including, but not limited to any record copied or provided to the Principal by the Contractor under the Contract.

Sanctions

- (k) The Contractor warrants that at the time of entering into the Contract, neither it, nor any of its Related Entities, are subject to a Sanction in connection with the Queensland Code or Queensland Guidelines that would have precluded it from tendering for work to which the Queensland Code and Queensland Guidelines apply.
- (l) If the Contractor does not comply with, or fails to meet any obligation imposed by, the Queensland Code or Queensland Guidelines, a Sanction may be imposed against it in connection with the Queensland Code or Queensland Guidelines.
- (m) Where a Sanction is imposed:
 - (i) it is without prejudice to any rights that would otherwise accrue to the parties; and
 - (ii) the State of Queensland (through its agencies, Ministers and the BCCB) is entitled to:
 - (A) record and disclose details of non-compliance with the Queensland Code or Queensland Guidelines and the Sanction; and
 - (B) take them into account in the evaluation of future expressions of interest or tender responses that may be lodged by the Contractor, or its Related Entities, in respect of work to which the Queensland Code and Queensland Guidelines apply.

Compliance

- (n) The Contractor bears the cost of ensuring its compliance with the Queensland Code and Queensland Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the Queensland Guidelines. The Contractor is not entitled to make a claim for reimbursement or an extension of

time from the Superintendent, the Principal or the State of Queensland for such costs.

- (o) Compliance with the Queensland Code and Queensland Guidelines does not relieve the Contractor from responsibility to perform the Works and any other obligation under the Contract, or from liability for any defect in the Works or from any other legal liability, whether or not arising from its compliance with the Queensland Code and Queensland Guidelines.
- (p) Where a change in the Contract or Works is proposed, and that change would, or would be likely to, affect compliance with the Queensland Code and Queensland Guidelines, the Contractor must immediately notify the Superintendent (or nominee) of the change, or likely change and specify:
 - (i) the circumstances of the proposed change;
 - (ii) the extent to which compliance with the Queensland Code and Queensland Guidelines will, or is likely to be, affected by the change; and
 - (iii) what steps the Contractor proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a Workplace Relations Management Plan),

and the Superintendent will direct the Contractor as to the course it must adopt within 5 business days of receiving notice.

Definitions

- (q) In this clause 4:
 - (i) **'Queensland Government Authorised Personnel'** means personnel authorised by any of the Queensland Government, an agency of the State of Queensland, a Minister, the Department of Justice and Attorney, the BCCB, the Principal and a Client agency;
 - (ii) **'GST'** has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
 - (iii) **'Related Entity'** means a related entity a related entity as identified, described or defined in the Queensland Code or Queensland Guidelines; and
 - (iv) **'Sanction'** means a sanction identified, described or defined in the Queensland Code or Queensland Guidelines.