
CITY OF SWAN GENERAL CONDITIONS OF CONTRACT FOR THE ENGAGEMENT OF CONSULTANTS

(Part 3 of Request Document)

3.1 Governing Law

This Contract shall be governed by and construed according to the laws of the State of Western Australia and the parties hereby to submit to the exclusive jurisdiction of the courts of that State.

3.2 Definitions and Interpretation

3.2.1 In the Contract except where the context otherwise requires:

Brief means the document providing the written summary or outline of the Services required by the Principal.

Consultant means the person or body whose Proposal is accepted by the Principal and includes its successors and permitted assigns.

Contract means the agreement between the Principal and the Consultant for the provision of the Services.

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 Consultant for the supply of the consultant services by the Consultant and the performance of the obligations of the Consultant under the Contract;
- (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;
- (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.

Letter of Engagement means the letter from the Principal to the Consultant whereby the Consultant is engaged to provide the Services.

Principal means the City of Swan.

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

Proposal means the submission or quotation received from the Consultant in response to the Principal's request.

Services means the services, which the Consultant is required to provide to the Principal under the Contract.

3.2.2 The following prescriptions also apply to the interpretation of this document:

- (a) Words importing the singular include the plural and vice versa and words importing a gender include every gender.
- (b) Clause headings are for convenient reference only and shall not be used in the interpretation of the Contract.
- (c) Monetary references are references to Australian currency
- (d) Reference to an Act by name includes the rules, regulations and local laws for the time being in force thereunder for the period of the Contract.
- (e) Where two or more persons or bodies comprise the Consultant they shall be bound hereby jointly and severally.

3.3 General Obligations

The Consultant shall perform and carry out the Services at all times in a conscientious expeditious manner to the highest standard. Where the Consultant is required to provide or utilize equipment such equipment shall be suitable for the Services and shall be maintained by the Consultant in good and proper working condition.

3.4 Employees

3.4.1 The Consultant warrants that its employees and agents are competent and have all necessary skill training and qualifications to carry out the Services in accordance with this Contract.

3.4.2 The Principal may at any time by notice in writing to the Consultant require that the Consultant should cease to permit a particular person or persons employed by the Consultant to be engaged in carrying out the Services or any part thereof and the Consultant shall forthwith cease to employ any such person or persons in or about the performance of the Services and shall replace any such person or persons with such alternative person or

3.4.3 persons as shall be suitably qualified and skilled to perform the Services and as shall be acceptable to the Principal.

3.5 Time for Completion

The Consultant shall complete the Services within the period or by the date of completion stated in the Contract. The Consultant may apply in writing within fourteen (14) days after the occurrence of any event not attributable to the act, neglect or default of the Consultant or its servants or agents for an extension of time, stating the reasons and on receipt thereof the Principal shall determine whether an extension of time shall be granted and shall advise the Consultant accordingly.

3.6 Termination

3.6.1 Notwithstanding anything herein contained to the contrary the Principal may determine the engagement of the Consultant at any time and without prior notice upon the happening of any one or more of the following events, namely:

- (a) If the Consultant enters into a Deed of Arrangement or an order is made for it to be wound up;
- (b) If a Receiver or Receiver/Manager is appointed for the Consultant;
- (c) If the Consultant enters into voluntary administration;
- (d) If the Consultant being a natural person, or if the Consultant being a partnership a partner therein becomes bankrupt or a party, as a debtor, to a Deed of Assignment, a Deed of Agreement or a Composition under Part X of the Bankruptcy Act 1966 (Commonwealth);
- (e) If the Consultant or any of its employees or agents is guilty of any dishonesty, misconduct or neglect of duty or commits a breach of any of the terms or conditions of the Contract or refuses to comply with any reasonable instructions or directions given by the Principal's Representative.

3.7 Assignment

The Contract shall not be assigned, transferred, sublet, subcontracted, mortgaged, charged, encumbered or dealt with in any way by either party without the prior written consent of the other party.

3.8 Payments

- 3.8.1 The Principal shall pay to the Consultant the Consultancy Fee specified in the Letter of Engagement at the time or times and in the manner set out in the Letter of Engagement.
- 3.8.2 Unless otherwise provided in the Contract all payments shall be made within thirty (30) days of receipt of the Consultant's invoice or claim, less any authorised deductions for the value of work performed under the Contract, as certified by the Officer, provided that the Officer has certified that the Contract work to which the invoice relates has been satisfactorily completed.
- 3.8.3 Failure by the Principal to pay the amount payable at the due time, will not be grounds to invalidate or avoid the Contract.
- 3.8.4 The Consultant 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.

3.9 Expenses

Unless otherwise provided for in the Contract the Principal shall not be liable to reimburse the Consultant for the amount of any expenses incurred by the Consultant in and about the performance of the Services, including without limitation travel expenses accommodation and subsistence expenses. All such expenses of the Consultant shall be deemed to be included in the amount of the Consultancy Fee specified in the Letter of Engagement.

3.10 Goods and Services Tax

- 3.10.1 For the purposes of this Clause:
 - (a) "GST" means goods and services tax applicable to any taxable supplies as determined under the GST Act.
 - (b) "GST Act" means A New Tax System (Goods and Services Tax) Act 1999 and (where the context permits) includes the Regulations and the Commissioner of Taxation's Goods and Services Tax Rulings and Determinations made thereunder and any other written law dealing with GST applying for the time being in the State of Western Australia.

"Supply", "taxable supply" and "tax invoice" have the same meanings as in the GST Act

3.10.2 Where the supply of the Services or any part thereof is a taxable supply under the GST Act:

- (a) The Consultancy Fee shall be inclusive of all applicable GST at the rate in force for the time being.
- (b) The obligation of the Principal to pay the Consultancy Fee, or any instalment thereof, and the right of the Consultant to recover the Consultancy Fee, or any instalment thereof, shall be subject to and conditional upon the prior issue by the Consultant and the prior receipt by the Principal of a tax invoice in respect of the Consultancy Fee, or the relevant instalment thereof, which complies in all respects with the GST Act.
- (c) This provision applies notwithstanding any other provision of these conditions or any legislation or rule of law to the contrary, but does not apply if the Consultant is not registered for GST, and is not required to be so registered, under the GST Act.
- (d) The Consultant shall at all times observe, perform and comply with all applicable provisions of the GST Act relative to the supply of the Services under these conditions and the Letter of Engagement.

3.11 Electronic Formats

Where electronic copies are required as part of the contract specification the Consultant shall provide these electronic copies on a CD or Floppy Disk (3.5" DS/HD) in a format readable by Microsoft Office XP (Microsoft Word or Excel preferred, as appropriate). If Microsoft Project is used in the tender submission then the Consultant shall save as MS Project.

3.12 Indemnity

The Consultant shall be responsible for and shall indemnify and keep indemnified the Principal against liability for all loss, damage or injury to persons or property (including death) caused by the Consultant or its employees or agents and the amount of all claims damages costs and expenses which may be paid suffered or incurred by the Principal as aforesaid in respect of any loss, damage or injury (including death) shall be made good at the Consultant's expense and may be deducted from any monies due or becoming due to the Consultant.

3.13 Insurance

- 3.13.1 The Consultant shall effect and maintain all insurance required to be effected by it by law for the duration of the Contract. Without limiting the generality hereof the Consultant shall arrange all necessary insurance with respect to its employees with respect to its employees under the provisions of the Workers' Compensation and Assistance Act 1981 and shall if required by the Principal produce evidence of such insurance at any time and from time to time.
- 3.13.2 The Consultant shall at its own expense effect and maintain for the duration of the Contract a policy of Professional Indemnity Insurance covering the Consultant's legal liability arising out of any act, neglect, default, error or omission made or done by or on behalf of the Consultant or any of its employees or agents in connection with the Services for not less than the amount specified in respect of any one claim.
- 3.13.3 The Consultant shall effect and maintain a Public Liability policy of insurance in a form and content acceptable to the Principal and for not less than the amount stated in the Request Document covering the Consultant in respect of any claim for loss or damage arising from any act or omission of the Consultant on the site of the Services.
- 3.13.4 The insurance policies shall be with an insurer and include terms and conditions reasonably acceptable to the Principal and the Consultant shall lodge certificates of currency as proof of the required insurance policies with the Principal before the commencement of the Contract, where there is any alteration to the insurance policies, when insurance policies are renewed and at such other times as the Principal may require.

3.14 Ownership

All works items materials or information whatever nature produced or developed by the Consultant or under the direction of the Consultant pursuant to or in the course of providing the Services shall be and become the sole and complete property of the Principal whether such property is tangible or is in the nature of industrial or intellectual property rights (including copyright and rights of confidential information). The Consultant shall not use any such works, items, materials or information otherwise than for the purpose of performing the Services hereunder without the prior written consent or license of the Principal first had and obtained.

3.15 Additional Work

If at the written request of the Principal the Consultant performs work additional to the Services, the Principal shall pay the Consultant in respect of such additional work at the

rate provided for in the Letter of Engagement or if no such rate is specified then at the rate agreed between the Principal and the Consultant.

3.16 Compliance with Legislation etc

- 3.16.1 For as long as the Consultant shall continue to perform the Services hereunder the Consultant shall at all times at its own cost and expense observe, perform and comply with all Acts of both Federal and State Parliaments and all regulations, local laws, ordinances or orders made thereunder and the lawful requirements of any public municipal or other authority so far as the same may affect or apply to the Consultant or the Services and the Consultant shall indemnify and keep indemnified the Principal from and against all actions, suits, costs, charges, claims and demands in respect thereof.
- 3.16.2 With respect to all work done in Western Australia under the Contract, the Consultant shall observe, perform and comply in all material respects with all relevant Industrial Awards, Industrial Agreements and orders of Competent Courts or Industrial Tribunals applicable to the work to be done in the performance of the Services.

3.17 Relationship

Nothing herein contained or implied shall constitute the relationship of partnership or employment or agency between the Consultant and the Principal and it is the express intention of the parties hereto that any such relationships are denied.

3.18 Waiver

- 3.18.1 No right of the Principal hereunder shall be deemed to be waived unless such waiver is in writing signed by the Principal.
- 3.18.2 A waiver by a party hereto shall not prejudice the rights of that party in respect of any subsequent breach of these conditions by the other party.
- 3.18.3 Any failure by a party to enforce any provision of the Contract or any forbearance delay or indulgence granted by a party to the other shall not be construed as a waiver of the first mentioned party's rights under these conditions.

3.19 Entire Agreement

The Contract including the Letter of Engagement constitutes the entire agreement between the parties for the provisions of the Services by the Consultant. Any prior arrangements, agreements, representations or undertakings are superseded and any

modification or alteration of any provision of the Contract will not be valid unless made in writing and signed by the parties hereto.

3.20 Enforceability

If any provision of the Contract should be held invalid, unenforceable or illegal for any reason the Contract shall remain otherwise in full force apart from such provision, which shall be deemed, deleted.

3.21 Notices

Any notices or other communication under the Contract given by either party shall be in writing and shall be delivered by hand, by registered mail or by facsimile to the addresses of the other party as stated in the Contract.

3.22 Arbitration

Any dispute arising in connection with the Contract, which cannot be settled by negotiation between the parties, shall be submitted to arbitration in accordance with the Commercial Arbitration Act 1985.

3.23 Confidentiality

- 3.23.1 The Consultant shall treat as confidential all information disclosed or made known to the Consultant, or acquired or developed by the Consultant during the course of or for the purposes of the Contract ("the confidential information").
- 3.23.2 Without limiting the generality of the preceding sub-clause, the confidential information includes computer programs, client lists, the Principal's methods of operation and details of clientele and potential clientele of the Principal.
- 3.23.3 Immediately upon the completion of the Services or the prior termination of the Contract the Consultant shall deliver to the Principal all documents and materials relating to the confidential information which are then in the Consultant's possession.
- 3.23.4 Without limiting the generality of the foregoing, the Consultant shall not use or disclose or authorise the use of disclosure of the confidential information to any person or company without the prior consent in writing of the Principal.
- 3.23.5 The Consultant shall not be obliged to treat information as confidential in the following circumstances:
 - (a) Where it would be unconscionable to require the Consultant to treat such information confidentially as the term "unconscionable" is defined in the

section 52A of the Trade Practices Act 1974; and

- (b) Where it would be an invalid restraint of trade under the law of the State of Western Australia to require the Consultant to treat such information confidentially.

- 3.23.6 The operation of this Clause shall survive the completion or termination of the Contract.

3.24 Industrial Awards

- 3.24.1 With respect to all work done in Western Australia under the Contract, the Contractor shall observe, perform and comply in all material respects with all relevant Industrial Awards, Industrial Agreements and orders of Competent Courts or Industrial Tribunals applicable to the Services and the work to be done under the Contract.
- 3.24.2 Failure by the Contractor to comply with the preceding sub-clause hereof shall entitle the Principal by notice in writing to the Contractor to forthwith terminate the Contract, but without prejudice to any other rights or remedies of the Principal.

3.25 Disability Access and Inclusion Plan

- 3.25.1 If the Contract involves the supply of services to the public, then the successful Respondent will:
 - (a) to the extent practicable, implement the Principal's 'Disability Access and Inclusion Plan' prepared under the *Disability Services Act 1993*; and
 - (b) provide a report to the Principal by 30 June in each year of the Contract Term reporting on the extent to which the successful Respondent has implemented the Principal's Disability Access and Inclusion Plan.
 - (c) A copy of the report template may be downloaded at:
www.cityofswan.com/docs/documents/5340/30720089341.doc