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# Conditions of Contract

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## Request for Quotation (RFQ)

<b>RFQ Title</b>	Design, Supply and Installation of Air Conditioning for Gwydir Shire
<b>RFQ Number</b>	GWY_1819_Q05
<b>Issue Date</b>	22 <sup>nd</sup> January 2018

This document contains the general conditions of contract and any special conditions of contract for the abovementioned RFQ.

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## Schedule 1 - Contract Summary Information

<b>Contract Details – Level 1 Essential Energy Works for the Warialda Truck Wash</b>	
<b>Contract Name</b>	Design, Supply and Installation of Air Conditioning for Gwydir Shire
<b>Contract Number</b>	GWY_1819_Q05
<b>Contract Commencement Date</b>	01/03/2019
<b>Contract Completion Date</b>	30/08/2019
<b>Details of Possible Extensions</b>	Not applicable
<b>Maximum Allowable Contract Period</b>	6 months
<b>Work / Delivery Location/s</b>	Warialda, NSW 2402

<b>Parties to Contract</b>	
<b>Principal's Name</b>	Gwydir Shire Council
<b>Principal's Address for Notices</b>	54 Hope Street, Warialda NSW
<b>Principal's Representative Name</b>	Colin Cuell
<b>Principal's Representative Telephone</b>	02 6729 3012
<b>Principal's Representative Email</b>	ccuell@gwydir.nsw.gov.au
<b>Insurance Requirements</b>	
<b>Public Liability Insurance Requirements</b>	Minimum \$20,000,000
<b>Product Insurance Requirements</b>	Coverage for all Vehicles, Plant, Products and Materials
<b>Workers Compensation Insurance Requirements</b>	Statutory Limit – Workers Comp
<b>Other Insurance Requirements</b>	All respondents must be registered with Statewide Mutual's Contractor Insurance Management System

(CIMS) and have all applicable insurances up to date.

## Schedule 2 – General Conditions of Contract

### 2.1 General Conditions of Contract

The General Conditions of Contract are the Australian Standard General Conditions of Contract AS 2124-1992. Although not included in the formal Contract Documents, AS 2124-1992 will be taken to be included as part of the Contract Documentation.

A copy of the General Conditions of Contract is not included in the RFQ document, but is available for inspection at the Engineering Department, Gwydir Shire Council, during normal office hours.

Respondents are required to obtain their own copy of AS 2124-1992 and can be purchased through SAI Global Infostore at - <http://infostore.saiglobal.com/>

Information required to complete the Annexure to the General Conditions of Contract are included as follows.

### 2.2 Annexure Part A to AS 2124-1992

This Annexure replaces Annexure Part A supplied with AS 2124-1992. PART A of the Annexure to the General Conditions of shall be deemed to be completed as follows.

	Clause	
1.	The law applicable is that of the State or Territory of: (Clause 1)	<b>New South Wales</b>
2	Payments under the Contract shall be made at: (Clause 1)	<b>Gwydir Shire Council</b>
3	The Principal is: (Clause 2)	<b>Gwydir Shire Council</b>
4	The address of the Principal is:	<b>Warialda Council Chambers 52 Hope Street, Warialda, NSW 2402</b>
5	The Superintendent is: (Clause 2)	<b>Colin Cuell Building Services Manager</b>
6	The address of the Superintendent is:	<b>Warialda Council Chambers 52 Hope Street, Warialda, NSW 2402</b>

7	The limits of accuracy applying to quantities for which the Principal accepted rates are: (Clause 3.3(b))	<b>Not Applicable</b>
8	Bill Quantities – the alternative applying is: (Clause 4.1)	<b>Alternative 1</b>
9	The time for lodgement of the priced copy of the Bill of Quantities is: (Clause 4.2)	<b>Not Applicable</b>
10	The contractor shall provide security in the amount: (Clause 5.2)	<b>Not Applicable</b>
11	The Principal shall provide security in the amount of: (Clause 5.2)	<b>Not Applicable</b>
12	The period of notice required of a party's intention to have recourse to retention moneys and/or to convert security: (Clause 5.5)	<b>Not Applicable</b>
13	The percentage to which entitlement to security and retention moneys is reduced to: (Clause 5.7)	<b>Not Applicable</b>
14	Interest on retention moneys and security – the alternative applying is: (Clause 5.9)	<b>Not Applicable</b>
15	The number of copies to be supplied by the Principal is: (Clause 8.3)	<b>One (1)</b>
16	The number of copies to be supplied by the Contractor is: (Clause 8.4)	<b>One (1)</b>
17	The time within which the Superintendent must give a decision and return the Contractor's copies is: (Clause 8.4)	<b>Fourteen (14) days</b>
18	Work which cannot be subcontracted without approval is: (Clause 9.2)	<b>Any work under the contract</b>
19	The percentage for profit and attendance shall: (Clause 11(b))	<b>Not Applicable</b>
20	The amount or percentage for profit and attendance shall: (Clause 11(c))	<b>Not Applicable</b>
21	Insurance of the Works – the alternative applying is: (Clause 18)	<b>Alternative 1</b>
22	The assessment for insurance purposes of the costs of demolition and removal of debris is: (Clause 18(ii))	<b>Fifty Thousand Dollars (\$50,000)</b>
23	The assessment for insurance purposes of consultant's fees is: (Clause 18(iii))	<b>One percent (1%) of Contract Sum</b>
24	The value of materials to be supplied by the Principal is: (Clause 18(iv))	<b>\$nil</b>
25	The additional amount of percentage for insurance cover shall be: (Clause 18(v))	<b>Five percent (5%) of Contract Sum</b>
26	Public Liability Insurance – alternative applying is: (Clause 19)	<b>Alternative 1</b>

27	The amount of Public Liability Insurance shall be not less than: (Clause 19)	<b>\$20 million for any single occurrence</b>
28	The time given for possession of Site is: (Clause 27.1)	<b>1 January 2019</b>
29	The Date for Practical Completion: (Clause 35.2)	<b>30 December 2019</b>
30	Liquidated Damages per day: (Clause 35.6)	<b>Not Applicable</b>
31	Limit of Liquidated Damages: (Clause 35.7)	<b>Not Applicable</b>
32	Bonus per day for early Practical Completion: (Clause 35.8)	<b>Not Applicable</b>
33	Limit of bonus: (Clause 35.8)	<b>Not Applicable</b>
34	Extra costs for Delay or Disruption: (Clause 36)	<b>Not Applicable</b>
35	The Defects Liability Period: (Clause 37)	<b>Fifty Two (52) weeks</b>
36	The charge for overheads, profit, etc for Day work: (Clause 41(f))	<b>Not Applicable</b>
37	Times for payment Claims: (Clause 42.1)	<b>Shall be within 30 days after the date of acceptance of Tender for the first payment claim and then at monthly intervals</b>
37	Unfixed plant and materials for which payment claims may be made notwithstanding that they are not incorporated in the Works: (Clause 42.1(ii))	<b>Not Applicable</b>
38	Retention Moneys: (Clause 42.3) a) work incorporated in the Works and any work or items for which a different amount of retention is not provided b) items on site but not yet incorporated in the works c) items off Site but in Australia d) items not in Australia e) disbursements incurred by the contractor for customs duties, freight, marine insurance, primage, landing and transport in respect of the work under the Contract	<b>a) Nil% b) Nil% c) Nil% d) Nil% Nil%</b>
39	Unfixed plant and materials – the alternative applying is: (Clause 42.4)	<b>Not Applicable</b>
40	The rate of interest on overdue payments shall be: (Clause 42.9)	<b>The rate from time to time prescribed for judgement debts under the NSW Supreme Court Rules</b>
41	The delay in giving possession of the Site which shall be a substantial breach is: (Clause 44.7)	<b>Thirty (30) days</b>

42	The alternative required in proceeding with dispute resolution: (Clause 47.2)	Alternate 1
43	The person to nominate an arbitrator shall be: (Clause 47.3)	General Manager Gwydir Shire Council
44	Location of arbitration: (Clause 47.3)	Warialda, NSW

### 2.3 Annexure Part E to AS 2124-1992

PART B of the Annexure to the General Conditions of shall be deemed to be completed as follows.

1. The following Clauses have been deleted from the General Conditions in AS 2124-1992:

**a) Clause 35.7**

**b) Clause 35.8**

2. The following Clauses have been amended and differ from the corresponding Clause in AS 2124-1992:

**Not Applicable.**

3. The following Clauses have been added to those of AS 2124-1992:

**Clause 14 - Statutory Requirements**

Insert the following new clauses after clause 14.4:

‘Clause 14.6 – Compliance with Laws

The Contractor must:

- a) Comply with all applicable Laws relating to its obligations under this Contract (including without limitation occupational health and safety or work health and safety, environmental, chain of responsibility, electrical safety and other industry specific safety laws) and ensure that each of its Personnel does the same; and
- b) In relation to the provision of the scope of work under the contract, at its cost:
  - (i) obtain all necessary notices, licenses, permits, etc;
  - (ii) give all necessary notices; and
  - (iii) pay all necessary fees, deposits and Taxes, and
  - (iv) if requested by The Principal, provide evidence of the matters referred to above.

**Clause 14.7 - Consequences of Breach**

Notwithstanding any other clause of this Contract, in the event of any breach of this Clause 14, The Principal may:

- a) give a notice to the Contractor specifying the breach and requiring the Contractor to immediately remedy such breach;
- b) require the Contractor, the Contractor's Personnel, and/or any other person to leave the Site immediately; and
- c) require the Contractor and/or any of its Personnel to remove any material or substance from the Site at the Contractor's cost,
- d) and the Contractor must, at its cost, ensure that such request is immediately complied with and take all possible action to ensure the safety of all Personnel. Where any of the Contractor's Personnel have breached any applicable Laws in performing the Transportation Services under this Contract, the Contractor may not allow such person to continue performing the work under this Contract without the prior written approval of the Principal.

**Clause 14.8 - Work Health and Safety**

The contractor must ensure the health, safety and welfare of all its employees, sub-contractors and consultants in accordance with all legislative requirements and is responsible for and must comply with the requirements of the contract and all legislative requirements in relation to safety management, in connection with work under this contract. The contractor:

- a) Acknowledges and agrees that it is not entitled to claim any additional cost or expense or extension of time to the date for practical completion or to make a claim otherwise at law arising out of or in connection with its safety management obligations under the contract; and
- b) Indemnifies the principal against any claim, action, damage, loss, liability, cost, charge or expense (including legal costs on a solicitor/client basis) which the principal pays, suffers, incurs or is liable for in connection with a breach by the contractor of its safety management obligations under the contract, except to the extent that such claim, action, damage, loss, liability, cost, charge or expense is caused by the principal.

**Clause 14.9 – Right to Audit Contractor Performance**



The Contractor and its Personnel must permit the Principal to have access to the Contractor's premises, equipment, any of its documentation and data (including documents stored in electronic form) and to interview the Contractor's Personnel in connection with the electrical work, as necessary for The Principal's Personnel to verify, monitor and audit the Contractor's compliance with Workplace Health and Safety.

**Clause 14.10 - Action by Contractor**

Without limiting any other rights or remedies available to The Principal, if deficiencies are identified by an audit undertaken under Clause 14.9 – Right of Audit of Contractor Performance, the Contractor must take prompt corrective action and notify The Principal of such action.'

**Clause 16.3 – Excepted Risks**

Insert at the end of clause (f);

'In the event of an installed air conditioning system being deemed by the Principal, as inadequate for the thermal load of the building, it shall be determined as a defect and be remedy as per clause 30.3.

**Clause 32 - Working Hours**

Insert at the end of the clause;

'Where the contractor requires to operate outside these hours, it must meet all costs including the costs of the principal's supervision.

Where the reason to operate outside these hours is in the interest of safety of the WUC or to protect persons or property, the contractor must notify the superintendent of the circumstances as early as possible. All costs of supervision by or on behalf of the principal shall be borne by principal.'

**Clause 42.1 – Payment Claims, Certificates, Calculations and Time for Payment**

Insert the following new paragraph at the end of the clause:

‘The superintendent may request further information from the contractor in relation to any progress claim. The contractor must provide the information within the time and in the form requested by the superintendent.’

**Clause 42.8 – Final Certificate**

At the end of the clause, insert the following:

‘Any failure to issue a final certificate within the time prescribed in this sub-clause 42.7 will not invalidate the later issue of a final certificate but will entitle the contractor or the principal, as the case may be, to interest on the amount certified as payable at the rate in Item 34.’

**Clause 49 – No Minimum Purchase and No Exclusivity**

In regards to the supply of Air Conditioning, nothing in this Contract obliges the Principal to request a minimum volume from the Contractor. This Contract is not evidence of, nor does it create, an exclusive relationship between the Principal and the Contractor in respect of the supply and delivery of concrete and associated materials (or any aspect of them).

**Clause 50 – Security of Payments Act**

**50.1 Service and Reference Dates**

To the extent that a Security of Payment Act is applicable to the work under contract, the contractor agrees that:

- a) It will serve on the superintendent, on the day on which it is received, a copy of any notice given to the contractor, or to any sub-contractor (which in this clause includes any supplier or secondary sub-contractor) under the Security of Payment Act;
- b) A payment schedule under the Security of Payment Act may be provided by the superintendent as agent for the principal; and
- c) The dates referred to in the first paragraph of sub-clause 42.1 are, to the extent permitted by and for the purposes of the Security of Payment Act, ‘reference dates’.

**50.2 Progress Certificate Not Conclusive**

Failure by the superintendent to set out in a progress certificate an amount which the principal is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the contractor by the principal will not prejudice the superintendent's ability to set out in a subsequent progress certificate an amount which the principal is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the contractor by the principal.

**50.3 Nominating Authority**

Pursuant to section 17(3) of the Security of Payment Act, the contractor irrevocably chooses The Institute of Arbitrators & Mediators, Australia, as the authorised nominating authority.

**50.4 Indemnity**

The contractor indemnifies the principal against any claim, action, damage, loss, liability, cost, charge or expense (including legal costs on a solicitor/client basis) which the principal pays, suffers, incurs or is liable for in connection with any suspension by a sub-contractor under the Security of Payment Act or a failure by the contractor to comply with its obligations under this clause 50.

**Clause 51 - Proportionate Liability**

The parties agree that, to the extent permitted by legislative requirements, Part 4 of the Civil Liability Act 2002 (NSW) (and any equivalent statutory provision in any other State or Territory) is excluded in relation to all and any rights, obligations and liabilities of the parties under or in relation to the contract, whether they are sought to be enforced as a breach of contract or a claim in tort or otherwise.'

**Clause 52 - Government Information (Public Access) Act**

The contractor must, within 7 days of receiving a written request by the agency, provide the agency with immediate access to the following information contained in records held by the contractor:

- a) Information that relates directly to the performance of the services provided to the agency by the contractor pursuant to the contract;
- b) Information collected by the contractor from members of the public to whom it provides, or offers to provide, the services pursuant to the contract; and

c) Information received by the contractor from the agency to enable it to provide the services pursuant to the contract.

52.1 For the purposes of sub-clause 52.1, information does not include:

- a) Information that discloses or would tend to disclose the contractor's financing arrangements, financial modelling, cost structure or profit margin;
- b) Information that the contractor is prohibited from disclosing to the agency by provision made by or under any Act, whether of any State or Territory, or of the Commonwealth; or
- c) Information that, if disclosed to the agency, could reasonably be expected to place the contractor at a substantial commercial disadvantage in relation to the agency, whether at present or in the future.

52.2 The contractor will provide copies of any of the information in sub-clause 52.1, as requested by the agency, at the contractor's own expense.

52.3 Any failure by the contractor to comply with any request pursuant to sub-clauses 52.1 or 52.3 may be considered a breach of an essential term and will allow the principal to terminate the contract by providing notice in writing of its intention to do so with the termination to take effect 7 days after receipt of the notice. Once the contractor receives the notice, if it fails to remedy the breach within the 7 day period to the satisfaction of the principal, then the termination will take effect 7 days after receipt of the notice."

## **Schedule 3 – Special Conditions of Contract**

There are no Special Conditions of Contract for this RFQ. All other conditions have been listed under Schedule 2 – General Conditions of Contract within Part 2 of this RFQ.

*END OF PART 2*