

Guidance Notes: Contract Details

| Guidance note # | Guidance |
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| Section 2 – General information | |
| 1 Customer name | Insert the name of the legal entity that is entering into the contract on behalf of the Queensland Government. For example, “ <i>The State of Queensland acting through the Department of...</i> ” |
| 2 Customer contact details | <p>The Supplier will use these details to contact the Customer for all communications relating to the Contract. This includes formal notices about Price reviews, notices of breach, extensions for example, as well as informal day-to-day notices.</p> <p>It is important the Customer provides a general email address and/or contact details that is accessible and monitored by staff within their service area to ensure coverage at times when the Customer may be on leave, away due to illness or general unavailability.</p> |
| 3 Cap on liability | <p>If a cap on liability is appropriate, then the Customer can nominate:</p> <ul style="list-style-type: none"> x a maximum dollar value for a liability cap (e.g. \$2 million); and/or x a cap based on a multiple amount of the price payable under the contract (e.g. three times the Contract value). <p>If more than one cap is nominated, the higher amount applies. The Customer may propose a different liability cap to the ‘default’ position as drafted in the Contract Details template (or have no liability cap at all if that is a reasonable position and Supplier agrees).</p> <p>Suppliers will generally try to keep liability caps low, so it is important that the Customer carefully considers what is an appropriate liability cap for the Goods or Services being purchased. It’s important to weigh up the risks if the Goods/Services do not meet the requirements, against the possibility that the Supplier may increase its Prices to reflect increased risk if the liability cap is inappropriately high. The Customer may propose a different liability cap if more appropriate.</p> <p>Professional Standards Schemes: Some Suppliers that provide certain professional services might be a member of a Professional Standards Scheme that is approved by the Professional Standards Council (see www.psc.gov.au for more information). Suppliers that are members of a Professional Standards Scheme will have their liability limited under the scheme. Examples of professions where a Professional Standards Scheme exists includes: accountants, valuers, surveyors, engineers, lawyers and ICT professionals.</p> <p>If your Contract is for any of these services and the Supplier is a member of the binding scheme, the Contract Details asks the Supplier to specify details of the scheme. However, the law only requires the Supplier to notify the Customer if the Supplier wants its liability to be limited as per the Scheme, so</p> |

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| | <p>the Customer should also check whether the Supplier has given this notification in another way. If the Contract is for Goods only, or any other Services not mentioned above, then the Customer can delete the text relating to Professional Standards Schemes as it won't apply to the Contract.</p> |
| 4 Insurance | <p>The Customer should consider whether other insurance is necessary. For example, professional indemnity or errors and omissions insurance, product liability insurance.</p> <p>Where the Contract is higher risk, or where there is doubt as to the Supplier's ability to meet their potential liabilities, consider whether you should include other insurance requirements. Additional provisions can be found in the Clause Bank for tender and contract documents available on Procurement Transformation GovNet.</p> <p>It is also possible to specify minimum insurance amounts on a 'per claim' basis. If this is important for your contract, then insert "Minimum insured amount per claim: \$insert" specify the amount of cover required.</p> <p>If you are not sure what insurances are necessary for the Goods and Services supplied under the Contract consult:</p> <ul style="list-style-type: none"> x your organisation's procurement advisors, legal advisors, finance or insurance advisors; x Queensland Government Insurance Fund (www.qgif.qld.gov.au) x the relevant category manager for guidance. <p>Also consider asking your suppliers what insurances they have in place. This might help inform you about industry standard practice for insurances relevant to those Goods and Services.</p> <p>There is some helpful guidance about how to determine what insurances might be required, and levels of insurance in the GITC Framework Part 5 User Guide (pages 16-19).</p> |
| 5 Site details | <p>All Site details must be set out in this item for Goods/Services. If the Contract relates only to Goods, or only to Services, delete the parts that do not apply.</p> <p>If different Services will be performed at different locations, set out clearly which Services will be performed and where. For example most consulting Services may be done from the Supplier's premises, but some training at the Customer's premises.</p> |
| 6 Delivery requirements (Goods only) | <p>If the Customer can only accept delivery at certain times of the day or certain days during the week, include those times in the Contract Details document. If there are any other special delivery requirements such as installation or unpacking, then specify them.</p> |
| 7 Authorisations | <p>The General Contract Conditions (and Comprehensive Contract Conditions) require the Supplier to have all authorisations that are required by Law for the Supplier to perform the Contract. This section allows the Customer to add other authorisations which are not required by Law, but which the Customer wants the Supplier to have, when performing the Services. For example, ISO27001 quality assurance standards and certifications from an original</p> |

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| | equipment manufacturer that the Supplier is appropriately trained to maintain. If this is not relevant insert 'Not applicable'. |
| 8 Security Requirements | <p>The Customer should determine whether or not any form of security will be required from the Supplier, such as performance guarantees or bank guarantees. Generally, it is not usual for the government to require security from Suppliers. Security may help to manage the Customer's financial risk, but is also likely to increase the Supplier's costs, which may affect the final price.</p> <p>If the Contract is for low risk or low value Goods/Services, security should not be required from the Supplier. If the Supplier is not required to provide security to the Customer then insert 'Not applicable'. Legal advice should be obtained before requiring a performance guarantee, bank guarantee or other form of security. If security is required, it is recommended that you use the Comprehensive Contract Conditions.</p> <p>If security is required then specify security Requirements including:</p> <ul style="list-style-type: none"> x the name of the entity to provide the guarantee x whether the Customer can review the terms x if the guarantee must be maintained after the Contract expires and for how long x the value of the bank guarantee (if applicable). <p>A separate security document will need to be signed between the parties. You will need to consult your legal advisors to ensure this is drafted properly. Any security provided must comply with the requirements of the Financial and Performance Management Standard 2009 (Qld).</p> <p>Note that the Financial and Performance Management Standard 2009 (Qld) specifies certain mandatory requirements for guarantees provided concerning contracts with the state.</p> <p>A bank guarantee gives the Customer the right to obtain money from an approved security provider for loss incurred where the Supplier defaults or fails to perform its obligations. The bank guarantee provides financial incentive for the Supplier to carry out its contractual obligations.</p> <p>A performance guarantee is a guarantee of the Supplier's performance obligations made either by the Supplier or another party (which must be an approved security provider). It is appropriate to ask for a performance guarantee in higher risk, higher value contracts where the supply of deliverables is critical and it would be difficult to substitute another supplier if the Supplier failed to perform its obligations.</p> |
| Section 3 – Terms and Conditions of the Contract | |
| 9 Base Terms | Customers cannot make changes to the General Contract Conditions or Comprehensive Contract Conditions within section 3.2, as it will make it more difficult for both parties to work out what |

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| | <p>the terms of the Contract are. Instead, make Customer changes in section 3.3 if required.</p> <p>The Customer must either attach or link to a copy of the General Contract Conditions or Comprehensive Contract Conditions located on the HPW website. Select the terms and conditions which are the most appropriate, based on your assessment of value and risk. For more information about which contract to use, see the 'When to use..' fact sheet located on the resources page on Procurement Transformation GovNet site.</p> |
| <p>10 Contract departures – Customer changes</p> | <p>In section 3.3 Customers can insert any terms and conditions that are specific to their organisation, or any additional clauses that it requires, to deal with special circumstances relevant to the Goods or Services. If any of the clauses in the applicable terms and conditions are not appropriate for the Goods or Services (i.e. if the Customer wants to delete or modify them), then the Customer is able to change them here. This ensures variations to the standard conditions can be easily identified.</p> <p>Examples of other clauses that may be required include:</p> <ul style="list-style-type: none"> (a) agency specific terms and conditions, such as compliance with specific legislation or workplace health and safety requirements; (b) terms and conditions peculiar to the Goods/Services being purchased, such as ICT purchases; (c) transition in Services; (d) transition out and/or disengagement Services (see Schedule 1 (Requirements) in Contract Details and also Guidance Note #16 listed in this document below); (e) Disaster recovery and business continuity planning. <p>If there are no special circumstances relevant to the Goods or Services and the Customer does not need to include any extra clauses, insert 'Not applicable'. To ensure that Customer changes are clear, it is suggested that Customers:</p> <ul style="list-style-type: none"> (a) number all new clauses following on from the numbering in the applicable Contract Conditions; (b) state clearly if they want to delete an entire clause; and (c) when amending clauses, either: <p>x copy and paste the clause into this section (keeping the original numbering) and show amendments by striking through words that should be deleted and underlining words that should be inserted; or x delete sentences/clauses in their entirety and "replace with ..."</p> |
| <p>11 Contract departures – Intellectual Property Rights</p> | <p>The default position under the General Contract Conditions and Comprehensive Contract Conditions is that the Customer will own any new Intellectual Property Rights created under the Contract. The Customer gives the Supplier a broad licence to use those Intellectual Property Rights ('IP') commercially.</p> <p>This clause will be appropriate for most government contracts. It is not appropriate if the Customer:</p> <ul style="list-style-type: none"> (a) intends to use the newly developed IP commercially – because the Supplier would be free to use the new IP in a competing offering; |

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| | <p>(b) intends to grant an exclusive licence to a third party – because the Customer is granting a licence to the Supplier; or</p> <p>(c) has engaged the Supplier to create a bespoke deliverable that will give the Customer a market advantage – because the advantage would be lost if the Supplier licensed the same deliverable to another Customer.</p> <p>Alternative IP models can be found in the Clause Bank for new tender and Contract documents now available on GovNet. Customers may also find it useful to refer to the IP models in Schedule C2 of GITC (page 68-72). It is recommended that any significant changes to the default position regarding Intellectual Property Rights should be reviewed by your internal legal advisors.</p> |
| <p>12 Contract departures – Supplier</p> | <p>Customers should consider how they will review any Supplier changes made in this section, and insert format requirements if appropriate. For example, you may considering asking the Supplier to copy and paste the terms in this section and use revision tools such as Track Changes, strike through or underlining, if that will make it easier to review.</p> <p>If the Customer permits the Supplier to insert an alternative position without drafting an alternative clause, the Customer and Supplier will need to separately agree the drafting and update the Contract Details before the Contract can be finalised.</p> <p>Supplier change requests</p> <p>If a Supplier requests changes to the terms and conditions which are not accepted in full by the Customer, then before the Contract Details can be finalised, the Customer will need to:</p> <ul style="list-style-type: none"> x create a new version of the Contract Details which contains only the changes that have been agreed by the parties (for example, you could delete the changes requested by the Supplier that were not accepted, or you could delete the table of changes requested by the Supplier and replace it with words to describe the amendments that are agreed) x send the final version of the Contract Details to the Supplier for the Supplier to sign and return to the Customer. <p>The Customer can then finalise the agreement by signing the Contract Details or confirming in writing that it accepts the final version of the Contract Details (and all documents that form part of the Contract Details), signed by the Supplier.</p> |
| <p>13 Finalising the Contract / record keeping</p> | <p>Once you finalise negotiations it is important to keep a complete record of the contract with the Supplier for the benefit of contract managers and anybody else who may need to refer to the contract at a later date. For best practice record keeping we recommend doing the following. If you are finalising the Contract by confirming to the Supplier in writing that you accept their offer, then make sure that the letter or email has attached a copy of all the documents that make up the Contract including the:</p> <ul style="list-style-type: none"> • Contract Details (and any attachments referred to in the Contract Details) |

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| | <ul style="list-style-type: none"> • General Contract or Comprehensive Contract Conditions (current at that time) as specified in the Contract Details • Definitions and Interpretation (current at that time). <p>Make sure you save a copy of all contract documents, preferably using a contract management system like Q-Contracts. This ensures there is a complete record of the Contract with the following documents:</p> <ul style="list-style-type: none"> • a PDF version of the Definitions and Interpretation used, • a PDF version of the General Contract Conditions or Comprehensive Contract Conditions (whichever is applicable), • a PDF of the final version of the Contract Details, updated to reflect any agreed amendments, which has been signed by the Supplier (and Customer, if the Customer is signing this document), and • a copy of the letter of acceptance from the Customer to Supplier (if applicable). |
| Schedule 1 – Requirements | |
| 14 Description of Goods | <p>The Customer should insert as much detail as possible to describe the Goods that will be purchased, and the applicable Requirements. It is important this section clearly sets out specification for the Goods, all the standards, acceptance criteria and other Requirements for the Goods (including Requirements for documents the Supplier must provide), to ensure that the Supplier has a legally binding obligation to meet those Requirements.</p> <p>This section may include parts pre-completed by the Customer, such as describing the Requirements, and some sections completed by the Supplier, such as describing the Goods that will be supplied.</p> |
| 15 Description of Services | <p>The Customer should insert as much detail as possible to describe the Services that will be purchased, and the applicable Requirements. It is important that this section clearly sets out the Service specification, all the performance standards, acceptance criteria, and other Requirements for the Services (including Requirements for documents the Supplier must provide), to ensure that the Supplier has a legally binding obligation to meet those Requirements.</p> <p>This section may include parts pre-completed by the Customer, such as describing the Requirements, and some sections completed by the Supplier, such as describing the Services that will be supplied.</p> |
| 16 Transition out services | <p>Transition out services are provided for in the Comprehensive Contract Conditions. If you are using these conditions, you may use Schedule 1 (Requirements) to specify the transition out services that the Supplier must provide. The transition out clause is useful for more complex contracts where it would be difficult to substitute another supplier quickly when the Contract terminates or expires.</p> |

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| | <p>Some of the basic types of transition out services that might be required are listed in the transition out clause in the Comprehensive Contract Conditions, such as:</p> <ul style="list-style-type: none"> (a) transferring data and documentation to the Customer or a third party as the Customer directs; (b) continued provision of the Deliverables after the Contract ends; and (c) any other services agreed in writing between the Supplier and the Customer. <p>Other transition out services that might be added in a particular case include:</p> <ul style="list-style-type: none"> (d) selling to the Customer or a nominated third party, equipment needed to produce the Deliverables; (e) providing expertise to the Customer or a third party to assist in the transition; (f) ensuring technology used is in good condition and up to date in the ongoing provision of Services which the Customer is to acquire as part of transition out; and (g) arranging for the procurement of personnel as required by the Customer for the ongoing provision of Services. <p>You should seek legal advice when you are preparing the transition out Requirements. If your Contract is for ICT then there may also be other useful provisions to consider – for example, transition in Services and step in rights. Please seek legal advice in this case.</p> |
| <p>17 Key Personnel</p> | <p>Key Personnel are named individuals who must perform the Supplier’s obligations. The Supplier is not allowed to replace the Key Personnel except in limited circumstances where they become seriously ill or they resign for example. Where Key Personnel need to be replaced, the Customer has a right to veto the replacement.</p> <p>If there are any individuals who are so important to the Contract that they should be named and committed to the Contract, include their details here.</p> <p>The concept of Key Personnel is not appropriate where the Customer is only concerned that the Supplier meet the Requirements described in the previous section, and is not concerned that the Supplier use particular individuals to do this. In many Contracts for Services there will not be any Key Personnel.</p> |
| <p>Schedule 2 – Price and Payment Terms</p> | |
| <p>18 Price</p> | <p>If the Customer wants Suppliers to submit Pricing in a specific way such as a table or a Price template in Excel, then attach the Price schedule or insert the table template the Supplier is to complete. The Customer should be careful to ensure that the alternative Price format addresses all of the Price elements referred to in this section.</p> <p>The Customer should amend this section to set out any other Price requirements not already addressed.</p> |

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| 19 Payment milestones | <p>The Customer should consider whether payment should be tied to satisfactory achievement of milestones such as delivery of Goods or completion of Services.</p> <p>This will not be appropriate for payment of ongoing Service fees where it is agreed that payment will be made in advance.</p> |
| Schedule 3 – Performance Measurement | |
| 20 Performance Measurement Requirements | <p>If the Supplier's performance will be measured against Key Performance Indicators (KPIs), acceptance criteria, Service levels or other measures, insert details of the performance measurement here (e.g. describe the KPIs or minimum Service levels). We recommend that KPIs are kept to a minimum and are outcome focused and measurable to ensure effective Contract management.</p> <p>Insert details of required reporting against service measures. Insert consequences if the performance is unsatisfactory such as service credits, rebates, escalation within the Supplier's organisation.</p> <p>The Customer should ensure that all measures are clear, measurable and have consequences if they are not met. The measures should identify whether the Customer's objectives have been met and if not, give the Supplier an incentive to correct performance so that the objectives are met.</p> <p>An example KPI table is set out in the Contract Details template. Customers should adapt or replace the table with details relevant to the measures being applied. For example, if the main output of the Services is a report, the measures may include that the document is easy to read and contains the necessary information.</p> |

More information

If you have any questions please contact betterprocurement@hpw.qld.gov.au