

Contract Clauses

Construction Procurement Guidelines

October 2019



Agencies must adopt the guidance of the contract clauses quick reference guide.

Collaboration	<ul style="list-style-type: none"> Where collaborative principles are to be adopted, include obligations in the relevant contracts for all project parties.
Confidentiality	<ul style="list-style-type: none"> Define confidentiality provisions in the contract, appropriate to the needs of the project.
Cost adjustment	<ul style="list-style-type: none"> Consider the inclusion of cost adjustment provisions where relevant to the contract and its duration.
Defects liability	<ul style="list-style-type: none"> Set the defects liability appropriate to the delivery model, scope, complexity, and value of the contracted works.
Dispute resolution	<ul style="list-style-type: none"> Include alternative dispute resolution procedures in the contract.
Electronic notices	<ul style="list-style-type: none"> Use electronic documentation and notices where practical. Consider implementing an electronic contract management system.
Indemnities	<ul style="list-style-type: none"> Do not require the contractor to indemnify the client for the client's (including its employees and agents) negligent actions.
Innovation	<ul style="list-style-type: none"> Include provision in contracts to encourage innovation.
Insurances	<ul style="list-style-type: none"> Apply a risk-based approach to determining insurance types and levels appropriate to the contract. Reference full details of insurance that benefits other parties in the contract and/or make this information available to the contractor.
Intellectual property	<ul style="list-style-type: none"> The contractor retains ownership of pre-existing intellectual property, and an irrevocable licence to use this property is provided to the client for the project. Where the client owns intellectual property that is created during the term of a contract, consider granting contractors the right to use it under licence.

<p>Key personnel</p>	<ul style="list-style-type: none"> • Key personnel nominated by the contractor for the project at time of tender are available for the project after the contract is awarded. • Ensure contractor personnel have skills and experience appropriate for their nominated roles. • Permission must be sought from the client to change key personnel (not to be unreasonably withheld). • Any changes to key personnel must be based on replacement with personnel of the same seniority and level of experience.
<p>Limitation of liability</p>	<ul style="list-style-type: none"> • When considering liability capping, ensure the cap on liability is based on a rigorous risk assessment and appropriately reflects the risk profile of the project. • Consider limiting indirect or consequential losses of both parties, where these can be appropriately defined.
<p>Novation</p>	<ul style="list-style-type: none"> • Novation is a process by which contractual rights and obligations are transferred from one party to another. • If design consultants contracts are to be novated to the contractor (eg design and build delivery model with novation): <ul style="list-style-type: none"> ○ this intent must be indicated to consultants in their tender documents and they must accept this as part of their appointment ○ details of the design consultants to be novated are to be included in the tender documents as well as their original terms of appointment and scope of services ○ tenderers shall be given access to the design consultants at tender stage to discuss and agree if there are to be additions to the original scope of services to cover their specific project needs, and any additional fees negotiated incorporated as part of the tender price ○ tenderers will be required to confirm in their tender response that they are prepared to enter into a novation agreement in respect of the novated contract(s).
<p>Overheads and profit</p>	<ul style="list-style-type: none"> • Define what is covered by payments for overheads and profit, where such payments apply. • Overheads cover head office or administrative costs and might include property costs, finance charges on loans, insurances, staff, taxes, external advisors, marketing and tendering activities. • Overheads are often priced proportionately against a project and are the calculated costs of running the company contracted to carry out a project.
<p>Procurement method</p>	<ul style="list-style-type: none"> • Select the form of contract and tendering process to suit the delivery model for the project. • Use standard form contracts wherever possible.
<p>Risk allocation</p>	<ul style="list-style-type: none"> • Allocate risk to the party best able to manage the risk. • Clearly define roles and responsibilities of the parties, and identify the responsibility for management of each key risk.

Security	<ul style="list-style-type: none"> • Security is permitted in the form of unconditional undertakings from various security providers that are acceptable to the client. • Unless specifically required to manage identified risks, clients should consider including a provision for the release of part of the security after practical completion (or equivalent).
Site conditions	<ul style="list-style-type: none"> • Detail which party is responsible for which site conditions in the contract.
Sub-contracting	<ul style="list-style-type: none"> • Contractors should not sub-contract the whole of the works. • Clearly document any requirements for client involvement in the selection of sub-contractors.
Sub-contractor conditions	<ul style="list-style-type: none"> • Sub-contract conditions are to align with the contracting principles included in the head contract.
Time management	<ul style="list-style-type: none"> • Include provisions for management of extensions of time in the contract. • Unless otherwise specified in the contract, where the contractor builds in a time margin between the construction programme completion date and contract completion date, this margin belongs to the contractor. This is often referred to as 'total float'.
Warranties	<ul style="list-style-type: none"> • Limit warranties to the work and services to be provided by the contractor, including sub-contractors, consultants and suppliers. • Fitness-for-purpose warranties should be included. • Warranties should not be used to avoid having to undertake preventative maintenance.