

**TfNSW CONTRACT DOCUMENT C62
MINOR SUPPLY AGREEMENT (INFRASTRUCTURE)**

REVISION REGISTER

Ed/Rev Number	Clause Number	Description of Revision	Authorised By	Date
Ed 1/Rev 0		First issue	Manager, Contracts Strategy	19-01-10
Ed1/Rev 1	9.2	Supplier's Offer replaces the Form of Agreement. Rearrangement of paragraphs	Manager, Contracts Strategy	08-07-11
Ed1/Rev2		Reference to RTA changed to RMS	Manager, Contracts Strategy	01-11-11
Ed1/Rev 3		Definition of RTA and Roads and Traffic Authority added. RMS's Representative changed to RMS Representative.	Manager, Contracts Strategy	01-12-11
Ed1/Rev 4		The term "Supplier" used instead of "Contractor"	Manager, Contracts Strategy	14-05-12
Ed1/Rev 5	2 3(d) 22	Amended to match other Supply Agreements New clause New clause - chain of responsibility requirements of the Heavy Vehicle National Law	Contracts Strategy Manager	18-11-15
Ed 1/Rev 6	20 & Schedule 1 Item 10	Changed Building Code 2013 to Building Code 2016	Director Commercial Services	29-09-17
Ed 1/Rev 7		Reference to TfNSW instead of RMS	Director Commercial Services	01-12-19



Supplier's Offer

To: Transport for NSW (TfNSW)
20-44 Ennis Road, Milsons Point 2061

Attention: []

Phone:

Fax:

Email:

The Work: [*Description of work*], as more specifically described in the specifications, drawings and other information provided to the Supplier by TfNSW for the purpose of preparing this Offer, other than documents provided for information only (the “Specifications”).

Tender Closing Date: []

Supplier's details

The Supplier's

Name:

ABN

Address:

Email address:

Phone: Facsimile:

Supplier's Representative:

Offer Price GST inclusive:

[Delete A or B whichever is inapplicable]

A. \$..... [*if lump sum*].

B. Schedule of Supplier's Rates (as described below).

(i) Description of Item	(ii) Quantity	Rate (\$)	Total Rate x Quantity (\$)
			GST: \$
			Total: \$

Terms of Offer

- 1 The Supplier offers to supply the Goods on the terms set out in the Offer Documents for the above Offer Price.
- 2 The Offer Documents are:
 - (a) this offer document (including the attached Agreed Terms and Schedules),
 - (b) the Schedule of Supplier's Rates (if any) and
 - (c) all Specifications.
- 3 The Supplier warrants that the above Offer Price covers all work, materials and other things that the Supplier may be required to do or provide without adjustment to the Offer Price under the terms of the Offer Documents.
- 4 This Offer remains open for the TfNSW's acceptance for 60 days.
- 5 There is no binding contract with TfNSW until TfNSW accepts this Offer in writing.
- 6 The Supplier must comply with the NSW Government's Code of Practice for Procurement (NSW Code) and the New South Wales Government's Implementation Guidelines to the New South Wales Code of Practice for Procurement: Building and Construction (NSW Guidelines).
- 7 The Supplier warrants it :
 - (a) is not aware of any other tenderer's tender price;
 - (b) has not disclosed its tender price to any other tenderer and
 - (c) has not entered into any anti-competitive or potentially anti-competitive contract, arrangement or understanding in connection with this Offer.
- 8 The Offer Price includes GST.

(iii) Signatures

Signature of Witness

Signature of Authorised Signatory*

Print Name

Print Name

*Who warrants to TfNSW that he or she is authorised to sign this Agreement on behalf of the Supplier

Date of Offer:

Agreed terms

1. Supply of Goods

- (a) The Supplier must supply and deliver the Goods and, if relevant, perform associated services in accordance with this Agreement.
- (b) In consideration for the supply and delivery of the Goods and, if relevant, performing associated services, TfNSW will pay the Charges in accordance with the terms of this Agreement.

2. Supplier's Warranties

- (a) The Supplier warrants that the Goods, materials and workmanship supplied to TfNSW under this Agreement:
 - (i) will be free of Defects and fit for their intended purpose;
 - (ii) will meet and comply with the requirements and specifications set out in the Specification and all relevant statutory requirements, codes and Australian Standards (unless the Specification provides otherwise)
 - (iii) will comply, where relevant, with any samples of the Goods provided by the Supplier and any goods previously supplied by the Supplier; and
 - (iv) are free from all liens, charges, claims and other encumbrances upon payment being made in respect of them.

3. Compliance with Directions

- (a) The Supplier must supply the Goods in accordance with:
 - (i) the directions of the TfNSW Representative.
- (b) The Supplier must:
 - (i) liaise with the TfNSW Representative 7 days prior to the Date for Delivery to confirm progress and arrangements for the delivery of the Goods.
- (c) The TfNSW Representative may, within 3 Business Days of the original delivery date as specified in the Delivery Schedule give the Supplier a written direction changing a delivery date in the Delivery Schedule, and the Supplier must comply with this direction; and
- (d) Upon entering an TfNSW site, premises or facility, the Supplier must strictly comply with the directions of the person or entity appointed by TfNSW to discharge the responsibilities imposed on a 'principal contractor' by the applicable work health and safety legislation.

4. Packing

- (a) The Supplier must ensure that all Goods are suitably packed and prepared for shipment so as to secure the Goods against damage.
- (b) The Supplier must:
 - (i) label the Goods as directed by the TfNSW Representative;
 - (ii) supply all necessary resources for handling, loading, unloading and transporting the Goods to the Site; and
 - (iii) unload the Goods as directed.

5. Date for Completion

- (a) The Supplier must achieve Completion by the Date for Completion.

- (b) If Completion has not occurred by the Date for Completion, TfNSW will be entitled by way of a pre-estimate of its likely loss to (without limiting its other rights under this Agreement or under the common law), and the Supplier must pay TfNSW, the Liquidated Damages for each calendar week or part of a week between the Date for Completion and:
 - (i) the actual date of Completion; or
 - (ii) the effective date of termination of this Agreement (whichever is the earlier).

6. Delay

- (a) If the Supplier becomes aware of any event or circumstance which is likely to cause delay or disruption to:
 - (i) Completion by the Date for Completion,
the Supplier must:
 - (i) promptly notify the TfNSW Representative; and
 - (ii) take all practical steps as are necessary or appropriate to avoid and minimise such delay and disruption.
- (b) TfNSW may, at any time, at its sole discretion and without being obliged to do so, grant an extension of time to the Date for Completion for any reason, whether the Supplier is entitled to the extension of time.

7. Variations

- (a) The TfNSW Representative may direct the Supplier to carry out a variation to the Work under the Agreement by a written variation order or an oral instruction confirmed by a written variation order (**Variation Direction**).
- (b) The Supplier must comply with the Variation Direction.
- (c) The Charges will be adjusted for all Variations to the Supply Details by a reasonable amount as agreed between the parties.
- (d) In calculating an adjustment to the Charges under clause 7(c), the Supplier will be entitled to a percentage for profit and attendance shown in **Item 8** of the Supply Details.

8. Charges all inclusive

- (a) Subject to clause 7(c), the Charges are the maximum amount TfNSW will pay for the Goods to be supplied and (if relevant) Installed.
- (b) The Charges are inclusive of GST and all charges including, without limitation, freight, taxes, duty, packaging, insurance, delivery charges and other expenses incurred by the Supplier.

9. Invoicing and Payment

9.1 Invoice

Within 10 Business Days after the end of each calendar month (**Payment Period**), the Supplier will invoice TfNSW for the Contract Price in respect of the Goods supplied in that Payment Period. For the purposes of this Agreement, an invoice is not correctly rendered unless:

- (a) the invoice is a Tax Invoice which includes the Supplier's Australian Business Number;
- (b) the amount claimed in the invoice is due for payment;
- (c) the amount specified in the invoice is correctly calculated in accordance with this Agreement;

- (d) the invoice includes the TfNSW's reference number and is set out in a manner that identifies the Goods which the invoice covers and itemises each amount claimed to a level of detail satisfactory to TfNSW acting reasonably; and
- (e) the invoice is accompanied by documents that adequately demonstrate to TfNSW the services that were performed.

9.2 Payment

- (a) TfNSW must pay an invoice rendered correctly in accordance with clause 9.1, within 15 Business Days after receipt of that invoice.
- (b) Where TfNSW considers that an invoice is not correctly rendered, TfNSW will issue to the Supplier within 10 Business Days after receipt of the Supplier's invoice a notice:
 - (i) setting out the reasons why TfNSW considers that the invoice is not correctly rendered; and/or
 - (ii) identifying any amounts which are in dispute and giving reasons why payment is being withheld in respect of those amounts.

10. Responsibility for the Goods

- (a) The Supplier agrees that care for and risk in the Goods remains with the Supplier until the Goods have been accepted by TfNSW.
- (b) TfNSW may reject any Goods which, in its reasonable opinion, do not conform with the requirements of this Agreement (**Rejected Goods**).
- (c) The Supplier agrees that TfNSW is not liable to pay for any Rejected Goods.
- (d) Payment of any invoice relating to particular Goods does not constitute acceptance of Goods by TfNSW.

11. Assignment

- (a) The Supplier must not:
 - (i) assign its rights under this Agreement; or
 - (ii) otherwise encumber or grant any right or interest in any of the Goods in favour of any third party,without the prior written consent of TfNSW.
- (b) TfNSW may novate this Agreement, in whole or in part, without the consent of the Supplier to any government department, to any other body created by or pursuant to a statute or ministerial direction of the State of New South Wales for the purpose of administering the functions or discharging the role of TfNSW as described in this Agreement or to any 'government sector agency' within the meaning given to that term in section 3 of the *Government Sector Employment Act 2013*. The Supplier must execute all documents necessary to give effect to such a novation.

12. Supplier Indemnity

The Supplier indemnifies TfNSW against all expense, loss, damage and cost that TfNSW may suffer or incur, whether directly or indirectly, arising out of or in connection with:

- (i) any breach of this Agreement by the Supplier (including where TfNSW exercises a right to terminate the Agreement as a result of a breach of the Agreement by the Supplier); or
- (ii) any act, error, omission or neglect of the Supplier, its personnel, agents or sub-Suppliers (of any tier).

13. Non-compliance of Goods

- (a) If any of the Goods as supplied do not comply with the Specifications, or are otherwise not in accordance with the Agreement, TfNSW may, at its election:
- (i) require that any relevant Defect be rectified by the Supplier;
 - (ii) return the Goods to the Supplier and require their immediate repair or replacement;
 - (iii) require that TfNSW be credited in respect of any Charges that TfNSW has paid for the supply and (if relevant) Installation of such Goods; or
 - (iv) return all of the Goods to the Supplier and cancel the balance of any other orders not yet supplied.
- (b) The Supplier indemnifies TfNSW for any cost, loss, damage or expense arising out of or in connection with the return or cancellation of Goods pursuant to subclauses 13(a)(ii) and 13(a)(iv), including the cost of freight and packaging.

14. Warranty Period

TfNSW acknowledges that Goods may be supplied subject to the warranties given by the manufacturer of those Goods (**Manufacturers' Warranties**). The Supplier must ensure that TfNSW obtains the full benefit of the Manufacturers' Warranties.

15. Intellectual Property Warranty

- (a) The Supplier warrants that the Supplier is the owner or valid licensee of all Intellectual Property in the Goods and that the supply of the Goods in accordance with this Agreement and the use of the Goods by TfNSW as contemplated by this Agreement, does not and will not infringe any Intellectual Property of any third party.
- (b) In the event that either party receives notice of a claim that the Goods or their supply or use in accordance with this Agreement infringes any Intellectual Property rights of any third party (**IPR Claim**), the party receiving such notice must notify the other party of the IPR Claim in writing as soon as practicable.

16. Termination for default or insolvency

Without limiting its other rights under this Agreement and at law, TfNSW may terminate the Supplier's employment under this Agreement, by written notice if:

- (i) the Supplier breaches this Agreement and fails to remedy such breach within the time period reasonably specified (and in any case no later than 10 Business Days) by written notice from TfNSW requiring remedy of the breach;
- (ii) any item of the Goods is rejected by TfNSW under clause 13; or
- (iii) if any of the following occur:
 - (A) the Supplier becomes insolvent or bankrupt;
 - (B) the Supplier has a receiver or liquidator appointed;
 - (C) an application is made to a court for the appointment of a receiver or liquidator to the Supplier;
 - (D) the Supplier ceases or threatens to cease carrying on business in the Goods; or
 - (E) the Supplier's business is sold or otherwise comes under the control of any other person and TfNSW has not provided its prior written consent in accordance with clause 11.

17. Termination for convenience

TfNSW may terminate the Supplier's employment under this Agreement, at any time by issuing the Supplier with 10 Business Days prior written notice of its intention to do so.

18. Consequences of Termination

- (a) If TfNSW terminates the Supplier's employment under this Agreement in accordance with clause 16:
 - (i) TfNSW will not be obliged to make any further payments to the Supplier; and
 - (ii) TfNSW will be entitled to recover from the Supplier all cost, loss, damage or expense which TfNSW suffers or incurs arising out of or in connection with, such termination.
- (b) If TfNSW terminates the Supplier's employment under this Agreement in accordance with clause 17, TfNSW will pay the Supplier:
 - (i) the cost of the Goods delivered in accordance with the Agreement prior to the date of termination;
 - (ii) the reasonable cost of materials and goods reasonably ordered prior to the date of termination by the Supplier for the Work under the Agreement, provided that:
 - (A) such materials and goods are:
 - (I) delivered to a place directed by the TfNSW Representative;
 - (II) labelled as directed by the TfNSW Representative; and
 - (III) free from any liens, charges, claims and other encumbrances, and
 - (B) ownership of the materials and goods passes to TfNSW upon their delivery to and acceptance by TfNSW.
 - (iii) TfNSW may require the Supplier:
 - (A) to novate to TfNSW or the TfNSW's nominee, any or all subcontracts between the Supplier and its subcontractors relating to the Goods and the Work under the Agreement;
 - (B) to provide all reasonable assistance to TfNSW in dealing with such subcontractors to ensure supply of the Goods to TfNSW or the TfNSW's nominee; and
 - (C) to deliver promptly to TfNSW:
 - (I) all confidential information of TfNSW in the Supplier's possession;
 - (II) all Documentation relevant to the Goods already supplied at the date of termination; and
 - (III) all Goods in their then current state of completion.

19. GST

- (a) All prices in this Agreement will be inclusive of GST unless otherwise expressly stated.
- (b) The Supplier warrants to TfNSW that, if required under Australian law, it is registered for GST purposes.
- (c) In respect of any supply of Goods under this Agreement in respect of which GST is payable (**Affected Supplies**):
 - (i) the Supplier must, within the time required by law (and in any event within 20 Business Days of a request by TfNSW), issue a tax invoice in respect of such GST which will enable

TfNSW, where entitled under the GST law, to claim an input tax credit in respect of such GST; and

- (ii) TfNSW will pay to you the amount shown on such tax invoice at the same time and in the same manner as the amounts otherwise payable under this Agreement for the affected supplies, provided however that, if the Supplier fails to issue a tax invoice as required by law in respect of the Affected Supplies, the Supplier agrees that TfNSW is entitled to deduct from any payment an amount required to be deducted by law for remitting to the Australian Taxation Office on your account.

20. Building Code 2016 Compliance

The Supplier acknowledges and agrees that, if it is indicated at **Item 10** of the Supply Details that the Project has received, is receiving or will receive funding from the Australian Government, the Supplier must ensure that it complies with the Building Code 2016 in undertaking the Work under the Agreement.

21. Notices and other communications

21.1 Service of notices

A notice, demand, consent, approval or communication under this Agreement (**Notice**) must be:

- (a) in writing; and
- (b) hand delivered or sent by prepaid post, facsimile or e-mail to the recipient's address for Notices specified on the cover page of this Agreement, as varied by any Notice given by the recipient to the sender.

21.2 Waiver

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

21.3 Confidentiality

The Supplier may only use confidential information of TfNSW for the purposes of this Agreement, and must keep the existence and the terms of this Agreement and any confidential information of TfNSW confidential except where TfNSW consents to such disclosure.

21.4 Governing law and jurisdiction

This agreement is governed by the law of New South Wales and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales.

22. Compliance with Heavy Vehicle National Law – Chain of Responsibility

The Supplier must:

- (a) comply with the chain of responsibility provisions of the *Heavy Vehicle National Law (NSW) (2013)*.
- (b) ensure that every subcontract between the Supplier and its subcontractors relating to the Goods and the Work under the Agreement, regardless of the subcontract value, includes provisions of clause 20(a) and a clause to the same effect as this clause 20(b) which is binding on the Subcontractor, and provide evidence of this to TfNSW when requested by the TfNSW Representative.

Schedule 1 – Supply details

Item	Issue	Details
1.	Charges (Clause 1(b))	<i>[Insert amounts payable for supply and installation of goods or if relevant how such Charges will be calculated.]</i> Charges shown are inclusive of GST.
2.	Date for Completion (Clause 5(a))	<i>[Insert]</i>
3.	Goods (Clause 1(a))	<i>[Insert details of all Goods to be provided under this Agreement.]</i>
4.	Liquidated Damages (Clauses 5(b))	[\$ <i>[Insert]</i>]/week or part thereof. (If Liquidated Damages are not to apply insert 'N/A')
5.	Project	<i>[Insert general description of the overall project to which this Agreement relates.]</i>
6.	Site (Clause 4(b)(ii))	<i>[Insert site or sites nominated where Goods are to be delivered and (if relevant) Installed]</i>
7.	Works	<i>[If the Supplier is required to supply the Goods in accordance with specifications for the overall Works of the Project, insert general description of the works form part of the Project in relation to which the Goods are being supplied.]</i> (If specifications for the Works are not to relevant to this Agreement insert 'N/A')
8.	Variations (Clause 7(d))	Percentage for profit and attendance: <i>[Insert]</i> (If no percentage is inserted, the percentage is 5%)
9.	Warranty Period (Clauses 2 and 14)	The warranty period is: <i>[Insert]</i> days (If no period is inserted the warranty period is 12 months.)
10	Building Code 2016 Compliance (Clause 20)	Project has/will receive funding from the Australian Government: <i>[Insert]</i> (Insert 'Yes' or 'No'. If 'Yes' is inserted or the item is left blank the Project is deemed to have Federal Government funding for the purpose of clause 20)
11.	TfNSW Representative (Clause 3)	Name: <i>[Insert]</i> Address: <i>[Insert]</i> Fax: <i>[Insert]</i>

Schedule 2 – Specifications

[Include detailed description of the Goods and any related services (for example, any related training or other services) that may be ordered by TfNSW. Include details on quality and quantity to be supplied.]

Provide details of the sites or locations to which the Goods may be required to be delivered, if ordered, and who will be responsible for each aspect of transport, including loading and unloading.

If there is a particular methodology to be used for the delivery of the goods (for example, a requirement to use only a particular size or type of vehicle for deliveries), also insert those details here.

Include a broad description of the purpose for which the Goods and any related services are required to ensure that TfNSW obtains the benefit of the Supplier's fitness for purpose warranty.]

The Supplier will provide the following Training: ***[Insert]*** (If no Training is required insert 'N/A')

Schedule 3 – Delivery Schedule

[Include:

- *details of delivery timetable*
- *detail of the Sites to which particular goods/deliverables are to be delivered.*
- *if there is a particular methodology for the delivery of the Goods, also insert details here.*

Where TfNSW has responsibility for the delivery of the Goods, or aspects of the delivery, this should be stated here.]