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**Contracts**


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## Standardised Contractual Provisions For Victorian Public Construction

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- **Robert MacLellan, Minister for Planning and  
Local Government, Victoria.**

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Ministerial Direction No. 2, Office of Building and Development, Department of Infrastructure, Victoria.

I, Robert MacLellan, Minister for Planning and Local Government in the State of Victoria, hereby issue the following Direction pursuant to Section 30 of the *Project Development and Construction Management Act 1994* ("the Act").

In accordance with Section 31 of the Act, to the extent that this Direction is inconsistent with a provision of a supply policy within the meaning of the *Financial Management Act 1994*, this Direction is to prevail.

This Direction applies to public construction as defined in Section 3 of the Act.

The following requirements must be adhered to when entering into any contract to undertake building and construction works or for the supply of related consultancy services:

1.
  - (a) General conditions of contract standard in the industry and where possible Australian Standards are to be used.
  - (b) Special conditions of contract are to be kept to a minimum and are not to be onerous.
  - (c) Contract conditions shall, as far as practicable, allocate risks to the party best able to manage the risk.
  - (d) Where applicable, the head contract shall require the use of standard subcontract conditions, compatible with the head contract, unamended other than to reflect head contract conditions.
  - (e) General conditions of contract including special conditions must be in a form approved by the Secretary, Department of Infrastructure or a person authorised in writing by the Secretary ("the Secretary").
  - (f) A least six months notice shall be given by the Secretary for the withdrawal of approval to use a form of contract.

- (g) Contract values applicable to particular forms of contract and other matters shall be specified in the Guide to Contractual Provisions for Public Construction published from time to time by the Secretary which hereby incorporated into this Direction.

2.

- (a) Contracts must provide for:
  - fair entitlement to payment;
  - prompt payment;
  - proof of payment to subcontractors and suppliers - at a minimum, mandatory standardised statutory declarations stating payments have been made;
  - the use of bank guarantees as an alternative to cash securities;
  - alternative dispute resolution.
- (b) Contracts must prohibit the:
  - use of "pay when paid" or "pay if paid" clauses in subcontracts;
  - amendment of clauses relating to payment timing in subcontracts.

For the purposes of this Direction, a reference to an Act or subordinate instrument is a reference to that Act or subordinate instrument as amended from time to time.

## Guide To Contractual Provisions For Public Construction

- **Colin Jordan, Acting Secretary,  
Office of Building and Development.**

This Guide is incorporated into and must be read in conjunction with Ministerial Direction No. 2 "Contractual Provisions for Public Construction" which is issued under the Project Development and Construction Management Act 1994.

This Issue No. 2 of the Guide replaces Issue No. 1.

1. All current forms of:

- general conditions of contract;
- contracts for related consultancy services;
- minor works contracts,

used by departments and public bodies, together with existing special conditions, can be signed up to 31 March 1998.

2. Minor works contracts should be used for works valued between \$15,000 and \$100,000. They may also be used:

- (a) for works valued up to \$15,000 instead of a purchase order or works order;
- (b) for works valued above \$100,000 if:
  - the work is of a simple nature, for example a single trade;
  - the work is the supply and installation of equipment only;
  - the use of a major contract would be onerous;
  - the person responsible for the project is satisfied that a minor works form of contract is appropriate.

3. Approved forms of minor works contracts for signing from 1 April 1998 will include:

- Royal Australian Institute of Architects Minor Works Contract MWC-2 1994;
- Office of Building and Development Minor Works General Conditions of Contract;
- VicRoads General Conditions of Contract Quotation Contracts CS-GCC-12;
- Standards Australia Minor Works Contract Conditions AS4305-1996;
- Office of Housing General Conditions of Contract for Minor Works;

- GASCOR/Gas Transmission Corporation General Conditions of Contract for Construction Contracts (Short Form).

4. A major form of contract should be used for works valued above \$100,000 unless a minor works contract is more appropriate as described in 2(b) above.

5. The following major forms of contract are approved for use on projects commencing from 1 April 1998:

- (a) for building and construction works:
  - Standards Australia General Conditions of Contract AS2124-1992;
  - Public Transport Corporation Conditions of Contract - Amended AS2124-1992;
  - Standards Australia General Conditions of Contract for Design and Construct AS4300-1995;
  - VicRoads General Conditions of Contract for Design and Construct AS4300-1995-VR;
  - GASCOR/Gas Transmission Corporation General Conditions of Contract for Construction Contracts (Long Form).
- (b) for the supply of related consultancy services:
  - Standards Australia General Conditions of Contract for Engagement of Consultants AS 4122 (Int)-1993;
  - VicRoads Consultancy Agreement;
  - VicRoads Short Form Consultancy Agreement (for Consultancies under \$15,000);
  - Department of Human Services Consultancy Agreement;
  - Office of Housing Conditions of Engagement for External Consultancies;
  - Education Victoria School Council Consultant Agreement.

Other approved forms may be added, as appropriate, by the Contracts Advisory Panel.

6. Where a subcontract value exceeds \$20,000 and the form of contract is AS2124-1992, the subcontract AS2545-1993 must be used unamended, except to match conditions in the head contract.
7. Where a subcontract value exceeds \$20,000 and the form of contract is AS4300-1995, the subcontract AS4303-1995 must be used unamended, except to match conditions in the head contract.
8. Special conditions of contract approved for use from 1 April 1998 include:
  - Office of Building and Development Annexure Part B to AS2124-1992;
  - Department of Human Services Annexure Part B to AS2124-1992.

Other special conditions will be approved, as appropriate, by the Contracts Advisory Panel.

9. On exceptional projects, as identified and agreed between the Secretary, Department of Infrastructure and the Secretary of the relevant department or authority responsible for the works, where standard procurement processes are inappropriate, the use of alternative forms of contract will be acceptable. In these cases, attention should be given to the principles of risk allocation and security of payment raised in Ministerial Direction No. 2.
10. The Executive Director, Office of Building and Development, as delegate for the Secretary, Department of Infrastructure, is responsible for managing the processes of the Contracts Advisory Panel established under Issue 1 of this Guide, and for ensuring that departmental and project processes are not unduly delayed. If a conflict of interest arises or if requested by a departmental Secretary, this delegation will be withdrawn in relation to the specific matter under consideration.
11. The Contracts Advisory Panel has been established to advise on standard contract conditions as part of the ongoing implementation of Ministerial Direction No. 2.

**Terms of Reference**

The Panel is to provide advice and make recommendations to the Secretary, Department of infrastructure, or his delegate on the following matters:

- (a) the general conditions of contract that should be approved for use in the Victorian public sector;
- (b) special conditions of contract that are approved for use by individual agencies;

- (c) appropriate minimum notice periods to be given for the withdrawal of approval to use existing forms of contract;
- (d) "project specific" conditions of contract which may be exempted from the approval process;
- (e) special circumstances and projects where alternative forms of contract may be acceptable;
- (f) identification of financial ranges within which particular forms of contract are to be used;
- (g) types of related consultancy services covered by Ministerial Direction No. 2;
- (h) conflict of interest matters relating to the Executive Director, Office of Building and Development;
- (i) identification of best practice opportunities;
- (j) any other relevant matter.

**Membership**

The Panel will be chaired by the Office of Building and Development and will be drawn from the following:

- (a) Department of Infrastructure
  - Office of Building and Development
  - VicRoads
  - Office of Major Projects
  - Urban Land Authority
  - Public Transport Corporation
- (b) Department of Justice
- (c) Department of Human Services
  - Health
  - Housing
- (d) Department of Education
- (e) Department of State Development
- (f) Department of Natural Resources and Environment
- (g) Department of Premier and Cabinet
- (h) Department of Treasury and Finance
- (i) GASCOR/Gas Transmission Corporation
- (j) Industry.

**Administration**

The Panel will be administered on the following basis:

- (a) executive support will be provided by the Office of Building and Development;
- (b) the Panel will operate by consensus;
- (c) frequency of meetings will be determined by the Panel;
- (d) in relation to specific matters or projects requiring urgent consideration a subset of the Panel may be established and would include representatives from the affected agency, Department of Infrastructure, and a third party.