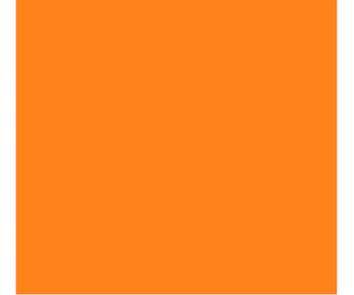


July and August 2023

New Major Works Procurement & Contract Documents





Acknowledgement of Country

- Context Setting
- Project Background
- Our Collective Aim

Contracting Suite and Changes

- The Objective
- Documentation
- Why
- The Difference – Australian Standards
- The Difference – Tasmanian Government Australian Standards
- Responding to Feedback
- What's Next
- Feedback and Timetable
- Q&A

- Infrastructure Tasmania (ITas) is working with industry to address a range of policy challenges affecting infrastructure delivery in Tasmania
- The Building Tasmania's Future MoU was signed 30 May 2022. The MoU is:
 - Forward looking joint initiative between government and industry that explores new opportunities to address the challenges facing the sector
 - Established shared goals
 - Collaboration-focused to deliver sustainable infrastructure that enables capacity, capability and career opportunities across the industry and government sector
 - 28 direct actions, established through industry working groups
 - Market capacity and supply chain solutions
 - Sustainability and digital technology
 - Asset management
 - Procurement and risk allocation

Project Background

- Infrastructure Tasmania and the Office of the Crown Solicitor have undertaken a project to review and update the full suite of procurement and contract documents used by government agencies and entities to procure construction works and services (the project)
- This is a key action of the Building and Construction Industry Roundtable
- The project has been driven, in part, by the unprecedented \$27.3 billion program of works anticipated to be completed by the Tasmanian Government and private sector that is detailed in Tasmania's 10-year Infrastructure Pipeline
- Through consultation with industry, we understand the need to refresh the currency of these documents to simplify, modernise and create consistency and greater efficiency across whole of government tendering and contracting processes
- The new documents, for major construction projects, are based on the AS 4000/AS 4902 suite of documents prepared by Standards Australia

Our Collective Aim



Aim

- To improve the quality, modernise and create consistency and greater efficiency across whole of government procurement and contracting

Result

- Fostering better outcomes for industry, government and Tasmania as a whole

The Objective



Objective:

- Modernise the documentation
- More uniformity in the documents used by government
- Efficiency and consistency
- Respond to discussions with industry
- Make contracting simpler for industry and government

The Documents



The Procurement Documents

- Request for Tender (RFT)
- Request for Quotation (RFQ)

The Contract Documents

- Major Works Contract
- Other Contracts

The User Guide

- Internal document to assist with uniformity and efficiency



The Request for Tender (RFT)

- Cleaner
- Consistent terms across documents and agencies
- Similar to the Goods and Services RFT
- Clearer and more clearly presented Conditions for Participation and Evaluation Criteria

- The current Major Works documents are built on the AS 2124
- The AS 2124
 - First published (as CA24 -1952) in 1952
 - Most recently amended (apart from some housekeeping) in 1992 (over 30 years ago)
- Replaced by the AS 4000 over 25 years ago
- In the private sector, 95% of AS usage is now the AS 4000-AS 4902
- Governments are beginning to move to the AS 4000-AS 4902
- Increasingly the industry (contractors and contract administrators) will be more familiar with the AS 4000-AS 4902 than with the AS 2124-AS 4300
- AS 2124-AS 4300 may be withdrawn from the market over the next year or so



The Australian Standard AS 2124

- Does not respond to recent legislative intervention
 - GST
 - Security of Payment
 - Moral Rights (AS 4300)
 - PPSA
- Is burdened with more complex language

The Difference – Australian Standards Documents

- The differences between the AS 4000 and the AS 2124

Style differences

- More modern language
- Simpler expression

Contractual differences

- Concurrent delays – AS 4000 apportionment vs AS 2124 disqualification
- Time Bars – AS 4000 fewer vs AS 2124 more
- Other miscellaneous process differences
- No substantial difference to risk allocation on construction issues

The Difference - Tasmanian Government Australian Standards Documents



The Tasmanian Government has used amended Australian Standards documents

- As does all Australian governments
- There was different flavours of amendments between agencies
- Now more uniformity between agencies

The Tasmanian government amendments

- Have generally been carried over
- Simplified and consistent language
- Driven by central government policy requirements

The Formal Instrument of Agreement

- Refreshed
- More consistent across all the contracts

The Australian Standards documents

- Business As Usual version
- Complex Projects version

The Annexures

- Refreshed
- More consistent across all the contracts.

Presentation of amendments



In situ presentation

- No Annexure Part B (or C) separately setting out the amendments
- Easier to read
- Easier to administer
- Fewer mistakes
- Fewer documents (although the underlying AS 4000-AS 4902 document appears longer because the full text is shown)

Presentation - Example



3. Provisional Sums

The works or items to which a Provisional Sum relates, and the relevant Provisional Sum (if any) are described at Item 14.

A Provisional Sum included in the Contract shall not itself be payable by the Principal but where pursuant to a Direction the Work or item to which the Provisional Sum relates is carried out or supplied by the Contractor, the Work or item shall be priced by the Superintendent, and the difference shall be added to or deducted from the Contract Sum.

Where any part of such Work or item is carried out or supplied by a subcontractor, the Superintendent shall allow the amount payable by the Contractor to the subcontractor for the Work or item, disregarding:

- (a) any damages payable by the Contractor to the subcontractor or vice versa; and
- (b) any deduction of cash discount for prompt payment,

plus an amount for profit and attendance.

The pricing of the work or item and the assessment of the amount for profit and attendance shall be determined by the Superintendent in accordance with the Valuation Rules.

~~plus an amount for profit and attendance calculated by using the percentage thereon stated in Item 28 or elsewhere in the Contract, or, if not so stated, as assessed by the Superintendent.~~

Arrangement of Documents



Objective

- Have all the legal and commercial content gathered together in as few documents as possible
- Keep technical content separate

How implemented

- Include typical 'Preliminaries' content in the Conditions of Contract
- Amend the base AS 4000-AS 4902 to reflect typical 'Preliminaries' content
- Provide guidance to those drafting Specification and Preliminary documents as to expected and undesirable content

Responding to Feedback



Early Warning Procedure

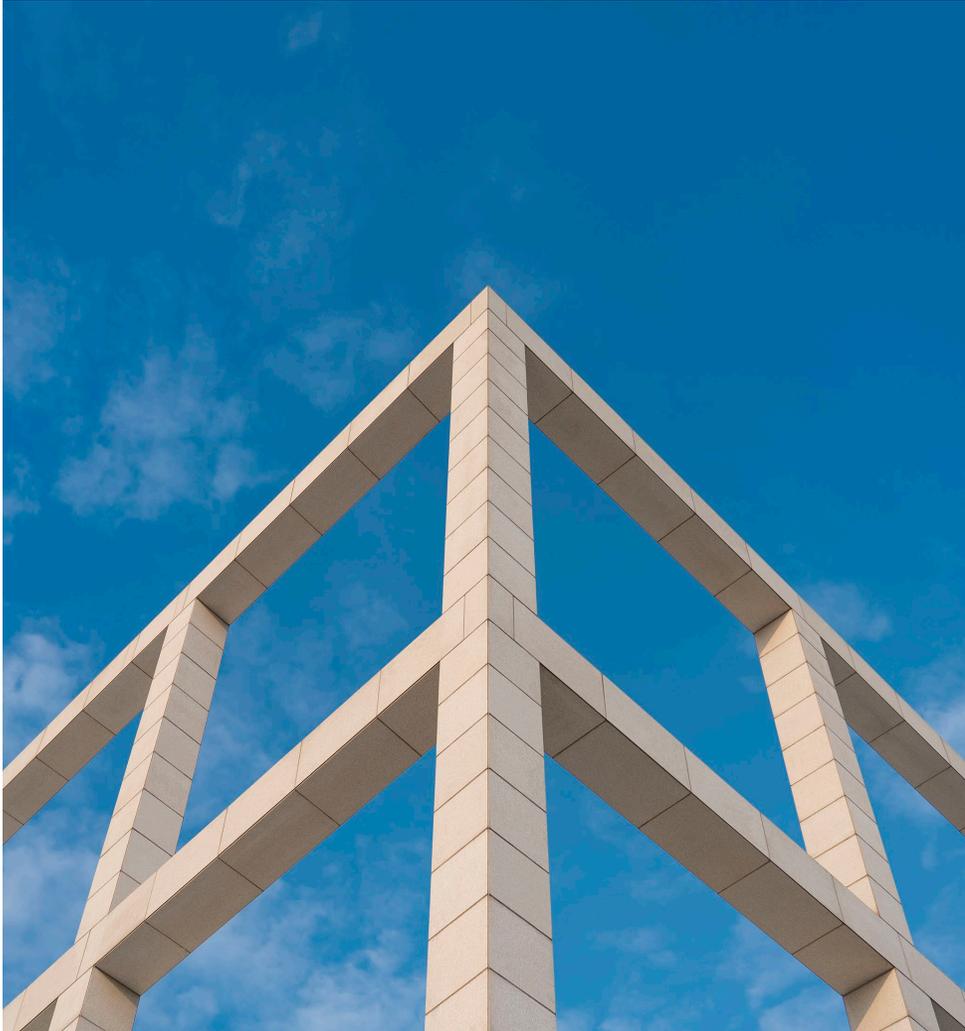
- Parties must advise each other of issues
 - Seek to resolve them early
 - Borrows from the ASI 1000 (not published) and the NEC
-
- Headworks and Utilities
 - Superintendent to act reasonably and independently in relation to Certifying Functions
 - Conditional Practical Completion

What's Next



- Training
 - Staff Training (New Documentation)
 - Contract Administrator Training
- Complementary Initiatives
 - The Treasurer has approved a change to the threshold above which an open tender process must be used in relation to building and construction works, increasing from \$250,000 to \$500,000, with effect from 1 September 2023
 - Additional guidance to assist Tasmanian Government agencies in undertaking early market engagement activities with industry and suppliers

- Feedback and timeline



- Obtaining a copy of the New Contracting Documents and RFT material
- Feedback portal via our website (Infrastructure Tasmania)
 - <https://www.stategrowth.tas.gov.au>
- Consolidated Q&A's (post Industry Briefing Sessions)
- Industry Briefing Sessions (Online) 4:30pm Thursday, 3 August and 10am Friday, 11 August 2023
- Go Live Target Date - 1 September 2023

Questions?

