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Practice Groups:

Construction, Real Estate

A New Australian Standard (AS 11000) to Replace the General Conditions of Contract (AS 4000 and AS 2124)

Australia Construction Alert

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The AS 4000 and AS 2124 General Conditions of Contract are widely used forms of procurement in the Australian construction industry. A technical committee has recently drafted a new standard form contract (AS 11000) to supersede these previous forms.

The drafters have sought to provide a balanced approach to risk allocation and have updated the standards for certain legislative changes and case law including for GST and security of payment legislation. Despite the extensive amendments, as the AS 11000 is drafted as a national standard form contract, some State and Territory specific legislation and case law has not been included.

Changes in the AS 11000 From the AS 4000 and AS 2124

Beneficial to the Principal

- The contractor has an obligation to provide the superintendent with a notice of delay within five business days of becoming aware of anything which will probably cause the delay and advise whether it intends to claim an extension of time (EOT) for the delay.
- The superintendent has a different timeframe to make its assessment of an EOT (from 28 days in the previous versions to 20 business days in the AS 11000) and is also entitled to request further information from the contractor, which effectively extends the timeframe for another 20 business days.
- The contractor has a specific obligation to rectify any work upon becoming aware of any work that is not in compliance with the contract without the necessity of a direction to do so.
- The superintendent has the power to direct the acceleration of the works.

Beneficial to the Contractor

- The contractor is entitled to an EOT for any delay occurring prior to practical completion, if the delay is beyond its reasonable control.
- The contractor is entitled to an EOT, but not delay damages, for any overlapping delay.
- The contractor is entitled to delay costs for every working day the subject of an EOT due to a variation.
- The contractor is entitled to notify the superintendent if it believes that a direction from the superintendent may actually be a variation.
- Rates and prices for variations include an allowance for profit and overheads, unless otherwise stated in the contract.

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Other Changes

- **Good faith requirements:** the parties are required to act in good faith.
- **Early warning procedure:** the parties must follow an early warning procedure (notification, issue resolution meeting and notice of dispute) for issues that impact on time, cost, scope or quality under the contract.
- **Programs:** the requirements of the program have been set out in greater detail than in the previous versions of the contract.
- **Superintendents:** the dual roles of the superintendent are set out more clearly in the AS 11000 in an attempt to clarify the scope of the superintendent's roles.
- **Security of Payment Act:** timeframes for payment claims, payment schedules and payment in the relevant Security of Payment legislation in each State and Territory is included in the AS 11000.
- **GST:** a clause dealing with GST has been included.
- **Dispute resolution:** a more robust dispute resolution clause, with a number of alternative dispute resolution options, has been included to suit a range of different construction projects.

Next Steps

All changes and revisions are only proposed at the moment and may be subject to modification following the public comment process. We will keep you updated as further information is released by Standards Australia.

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