Additional public sector Z clauses required to comply with the requirements of The Public Contracts Regulations 2015

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**Introductory Note**

Additional clauses have been drafted for use by public bodies who award contracts subject to The Public Contracts Regulations 2015. These clauses deal with two issues – termination and payment.

The following notes explain the reasons for the additional clauses. They are written for the Engineering and Construction forms, but apply in the same way to other forms of contract.

**Termination**

Regulation 57 specifies certain grounds for excluding an organisation from being appointed as Contractor. Regulation 73 requires that the contract must include provisions allowing for termination if it is found that the Contractor should have been excluded under regulation 57.

The additional clause provides for termination in these circumstances, and identifies the different payment and procedures on termination depending on whether or not the Contractor withheld information at the Contract Date. If the Contractor withheld information which would have led to his exclusion, then the Contractor must pay the additional costs of the Employer in replacing the Contractor. Otherwise, the event is treated as a “neutral” event – the Contractor does not recover damages for termination, nor does the employer recover the additional cost under the replacement contract.

Regulation 71 applies similar principles to subcontractors and suppliers. The additional clause places an obligation on the Contractor to exclude a subcontractor or supplier if they meet the criteria for exclusion in regulation 57.

Regulation 71 also requires that the name, contact details and legal representation of subcontractors and suppliers are notified to the Employer. This is achieved under the NEC3 main forms through the submission and acceptance of subcontractors. However, under the NEC3 short forms an additional provision is included requiring the Contractor to provide this information.

**Payment**

Regulation 113 includes mandatory provisions for payment of subcontractor accounts. These require payment within 30 days of receipt of a valid invoice, and require that this be applied throughout the supply chain.

Again, under the NEC3 main forms, payment is required to be made within such timescales and therefore no modification is needed. However, under the NEC3 short forms, payment could be delayed if the Contractor fails to submit his application for payment in time. Accordingly, an additional provision is included for the NEC3 short forms of contract.

Finally, an additional clause provides for transferring the payment deadlines through the entire supply chain.
NEC3 Engineering and Construction Contract

The Public Contracts Regulations 2015

(1) The Employer may terminate the Contractor's obligation to Provide the Works if any of the provisions of paragraph 73(1) of The Public Contracts Regulations 2015 apply.

If the Employer terminates under the provisions of paragraph 73(1)(b) of the Public Contracts Regulations 2015 as a result of information not disclosed by the Contractor at the Contract Date, the procedures and amounts due on termination are the same as if the Contractor has substantially failed to comply with his obligations.

If the Employer otherwise terminates under the provisions of paragraph 73(1) of the Public Contracts Regulations 2015, the procedures and amounts due on termination are the same as if the Parties had been released under the law from further performance of the whole of this contract.

(2) The Contractor does not appoint a Subcontractor or supplier if there are compulsory grounds for excluding the Subcontractor or supplier under regulation 57 of the Public Contracts Regulations 2015.

(3) The Contractor includes in any subcontract awarded by him provisions requiring that

- payment due to the Subcontractor or supplier under the subcontract is made no later than 30 days after receipt of a valid and undisputed invoice, unless this contract requires the Contractor to make earlier payment to the Subcontractor or supplier,
- invoices for payment submitted by the Subcontractor or supplier are considered and verified by the Contractor in a timely fashion,
- undue delay in considering and verifying invoices is not sufficient justification for failing to regard an invoice as valid and undisputed and
- any contract awarded by the Subcontractor or supplier for work included in this contract includes provisions to the same effect as these provisions.
NEC3 Engineering and Construction Short Contract

The Public Contracts Regulations 2015

(1) The Employer may terminate the Contractor's obligation to Provide the Works if any of the provisions of paragraph 73(1) of The Public Contracts Regulations 2015 apply.

If the Employer terminates under the provisions of paragraph 73(1)(b) of The Public Contracts Regulations 2015 as a result of information not disclosed by the Contractor at the date when this contract came into existence, the procedures and amounts due on termination are the same as if the Contractor has substantially failed to comply with this contract.

If the Employer otherwise terminates under the provisions of paragraph 73(1) of the Public Contracts Regulations 2015, the procedures and amounts due on termination are the same as if an event which the Parties could not reasonably prevent has substantially affected the Contractor's work for a continuous period of more than thirteen weeks.

(2) The Contractor notifies the Employer of the name, contact details and legal representatives of each Subcontractor before appointing the Subcontractor. The Contractor does not appoint a Subcontractor or supplier if there are compulsory grounds for excluding the Subcontractor or supplier under regulation 57 of the Public Contracts Regulations 2015.

(3) The Employer makes payment to the Contractor under the contract no later than 30 days after receipt of a valid and undisputed invoice, unless the contract requires the Employer to make earlier payment to the Contractor.

(4) The Contractor includes in any subcontract awarded by him provisions requiring that

- payment due to the Subcontractor or supplier under the subcontract is made no later than 30 days after receipt of a valid and undisputed invoice, unless this contract requires the Contractor to make earlier payment to the Subcontractor or supplier,
- invoices for payment submitted by the Subcontractor or supplier are considered and verified by the Contractor in a timely fashion,
- undue delay in considering and verifying invoices is not sufficient justification for failing to regard an invoice as valid and undisputed and
- any contract awarded by the Subcontractor or supplier for work included in this contract includes provisions to the same effect as these provisions.
NEC3 Engineering and Construction Subcontract

The Public Contracts Regulations 2015

(1) The Contractor may terminate the Subcontractor's obligation to Provide the Subcontract Works if the Contractor's obligation to Provide the Works under his contract with the Employer is terminated under the provisions of paragraph 73(1) of The Public Contracts Regulations 2015.

If the Employer terminates under the provisions of paragraph 73(1)(b) of the Public Contracts Regulations 2015 as a result of information not disclosed to the Contractor by the Subcontractor at the Subcontract Date, the procedures and amounts due on termination are the same as if the Subcontractor has substantially failed to comply with his obligations.

If the Employer otherwise terminates under the provisions of paragraph 73(1) of the Public Contracts Regulations 2015, the procedures and amounts due on termination are the same as if the Parties had been released under the law from further performance of the whole of this contract.

(2) The Subcontractor includes in any subcontract awarded by him provisions requiring that

- payment due to the Subsubcontractor or supplier under the subcontract is made no later than 30 days after receipt of a valid and undisputed invoice, unless this contract requires the Subcontractor to make earlier payment to the Subsubcontractor or supplier,
- invoices for payment submitted by the Subsubcontractor or supplier are considered and verified by the Subcontractor in a timely fashion,
- undue delay in considering and verifying invoices is not sufficient justification for failing to regard an invoice as valid and undisputed and
- any contract awarded by the Subsubcontractor or supplier for work included in this contract includes provisions to the same effect as these provisions.
NEC3 Engineering and Construction Short Subcontract

The Public Contracts Regulations 2015

(1) The Contractor may terminate the Subcontractor's obligation to Provide the Subcontract Works if the Contractor's obligation to Provide the Works under his contract with the Employer is terminated under the provisions of paragraph 73(1) of The Public Contracts Regulations 2015.

If the Employer terminates under the provisions of paragraph 73(1)(b) of the Public Contracts Regulations 2015 as a result of information not disclosed to the Contractor by the Subcontractor at the date when this contract came into existence, the procedures and amounts due on termination are the same as if the Subcontractor has substantially failed to comply with this subcontract.

If the Employer otherwise terminates under the provisions of paragraph 73(1) of the Public Contracts Regulations 2015, the procedures and amounts due on termination are the same as if an event which the Parties could not reasonably prevent has substantially affected the Subcontractor's work for a continuous period of more than thirteen weeks.

(2) The Contractor makes payment to the Subcontractor under the contract no later than 30 days after receipt of a valid and undisputed invoice, unless the contract requires the Contractor to make earlier payment to the Subcontractor.

(3) The Subcontractor includes in any subcontract awarded by him provisions requiring that

- payment due to the Subsubcontractor or supplier under the subcontract is made no later than 30 days after receipt of a valid and undisputed invoice, unless this contract requires the Subcontractor to make earlier payment to the Subcontractor or supplier,
- invoices for payment submitted by the Subsubcontractor or supplier are considered and verified by the Subcontractor in a timely fashion,
- undue delay in considering and verifying invoices is not sufficient justification for failing to regard an invoice as valid and undisputed and
- any contract awarded by the Subsubcontractor or supplier for work included in this contract includes provisions to the same effect as these provisions.
NEC3 Professional Services Contract

The Public Contracts Regulations 2015

(1) The Employer may terminate the Consultant’s obligation to Provide the Services if any of the provisions of paragraph 73(1) of The Public Contracts Regulations 2015 apply.

If the Employer terminates under the provisions of paragraph 73(1)(b) of the Public Contracts Regulations 2015 as a result of information not disclosed by the Consultant at the Contract Date, the procedures and amounts due on termination are the same as if the Consultant has substantially failed to comply with his obligations.

If the Employer otherwise terminates under the provisions of paragraph 73(1) of the Public Contracts Regulations 2015, the procedures and amounts due on termination are the same as if the Employer no longer requires the services.

(2) The Consultant does not appoint a Subconsultant or supplier if there are compulsory grounds for excluding the Subconsultant or supplier under regulation 57 of the Public Contracts Regulations 2015.

(3) The Consultant includes in any subcontract awarded by him provisions requiring that

- payment due to the Subconsultant or supplier under the subcontract is made no later than 30 days after receipt of a valid and undisputed invoice, unless this contract requires the Consultant to make earlier payment to the Subconsultant or supplier,
- invoices for payment submitted by the Subconsultant or supplier are considered and verified by the Consultant in a timely fashion,
- undue delay in considering and verifying invoices is not sufficient justification for failing to regard an invoice as valid and undisputed and
- any contract awarded by the Subconsultant or supplier for work included in this contract includes provisions to the same effect as these provisions.
The Public Contracts Regulations 2015

(1) The Client may terminate the Consultant's obligation to Provide the Services if any of the provisions of paragraph 73(1) of The Public Contracts Regulations 2015 apply.

If the Client terminates under the provisions of paragraph 73(1)(b) of the Public Contracts Regulations 2015 as a result of information not disclosed by the Consultant at the Contract Date, the procedures and amounts due on termination are the same as for a default by the Consultant.

If the Client otherwise terminates under the provisions of paragraph 73(1) of the Public Contracts Regulations 2015, the procedures and amounts due on termination are the same as if the Client no longer requires the services.

(2) The Consultant notifies the Client of the name, contact details and legal representatives of each subconsultant before appointing the subconsultant. The Consultant does not appoint a subconsultant if there are compulsory grounds for excluding the subconsultant under regulation 57 of the Public Contracts Regulations 2015.

(3) The Client makes payment to the Consultant under the contract no later than 30 days after receipt of a valid and undisputed invoice, unless the contract requires the Client to make earlier payment to the Consultant.

(4) The Consultant includes in any subcontract awarded by him provisions requiring that

- payment due to the subconsultant under the subcontract is made no later than 30 days after receipt of a valid and undisputed invoice, unless this contract requires the Consultant to make earlier payment to the subconsultant or supplier,
- invoices for payment submitted by the subconsultant or supplier are considered and verified by the Consultant in a timely fashion,
- undue delay in considering and verifying invoices is not sufficient justification for failing to regard an invoice as valid and undisputed and
- any contract awarded by the subconsultant or supplier for work included in this contract includes provisions to the same effect as these provisions.
NEC3 Term Service Contract

The Public Contracts Regulations 2015

(1) The Employer may terminate the Contractor’s obligation to Provide the Service if any of the provisions of paragraph 73(1) of The Public Contracts Regulations 2015 apply.

If the Employer terminates under the provisions of paragraph 73(1)(b) of the Public Contracts Regulations 2015 as a result of information not disclosed by the Contractor at the Contract Date, the procedures and amounts due on termination are the same as if the Contractor has substantially failed to Provide the Service.

If the Employer otherwise terminates under the provisions of paragraph 73(1) of the Public Contracts Regulations 2015, the procedures and amounts due on termination are the same as if the Parties had been released under the law from further performance of the whole of this contract.

(2) The Contractor does not appoint a Subcontractor or supplier if there are compulsory grounds for excluding the Subcontractor or supplier under regulation 57 of the Public Contracts Regulations 2015.

(3) The Contractor includes in any subcontract awarded by him provisions requiring that

- payment due to the Subcontractor or supplier under the subcontract is made no later than 30 days after receipt of a valid and undisputed invoice, unless this contract requires the Contractor to make earlier payment to the Subcontractor,
- invoices for payment submitted by the Subcontractor are considered and verified by the Contractor in a timely fashion,
- undue delay in considering and verifying invoices is not sufficient justification for failing to regard an invoice as valid and undisputed and
- any contract awarded by the Subcontractor for work included in this contract includes provisions to the same effect as these provisions.
NEC3 Term Service Short Contract

The Public Contracts Regulations 2015

(1) The Employer may terminate the Contractor's obligation to Provide the Service if any of the provisions of paragraph 73(1) of The Public Contracts Regulations 2015 apply.

If the Employer terminates under the provisions of paragraph 73(1)(b) of the Public Contracts Regulations 2015 as a result of information not disclosed to the Employer by the Contractor at the date when this contract came into existence, the procedures and amounts due on termination are the same as if the Contractor has substantially failed to comply with this contract.

If the Employer otherwise terminates under the provisions of paragraph 73(1) of the Public Contracts Regulations 2015, the procedures and amounts due on termination are the same as if an event which the Parties could not reasonably prevent has substantially affected the Contractor's work for a continuous period of more than thirteen weeks.

(2) The Contractor notifies the Employer of the name, contact details and legal representatives of each Subcontractor before appointing the Subcontractor. The Contractor does not appoint a Subcontractor or supplier if there are compulsory grounds for excluding the Subcontractor or supplier under regulation 57 of the Public Contracts Regulations 2015.

(3) The Employer makes payment to the Contractor under the contract no later than 30 days after receipt of a valid and undisputed invoice, unless the contract requires the Employer to make earlier payment to the Contractor.

(4) The Contractor includes in any subcontract awarded by him provisions requiring that

- payment due to the Subcontractor or supplier under the subcontract is made no later than 30 days after receipt of a valid and undisputed invoice, unless this contract requires the Contractor to make earlier payment to the Subcontractor or supplier,
- invoices for payment submitted by the Subcontractor or supplier are considered and verified by the Contractor in a timely fashion,
- undue delay in considering and verifying invoices is not sufficient justification for failing to regard an invoice as valid and undisputed and
- any contract awarded by the Subcontractor or supplier for work included in this contract includes provisions to the same effect as these provisions.
NEC3 Supply Contract

The Public Contracts Regulations 2015

(1) The Purchaser may terminate the Supplier's obligation to Provide the Goods and Services if any of the provisions of paragraph 73(1) of The Public Contracts Regulations 2015 apply.

If the Purchaser terminates under the provisions of paragraph 73(1)(b) of the Public Contracts Regulations 2015 as a result of information not disclosed by the Supplier at the Contract Date, the procedures and amounts due on termination are the same as if the Supplier has substantially failed to comply with his obligations.

If the Purchaser otherwise terminates under the provisions of paragraph 73(1) of the Public Contracts Regulations 2015, the procedures and amounts due on termination are the same as if the Parties had been released under the law from further performance of the whole of this contract.

(2) The Supplier does not appoint a Subcontractor if there are compulsory grounds for excluding the Subcontractor or supplier under regulation 57 of the Public Contracts Regulations 2015.

(3) The Supplier includes in any subcontract awarded by him provisions requiring that

- payment due to the Subcontractor under the subcontract is made no later than 30 days after receipt of a valid and undisputed invoice, unless this contract requires the Supplier to make earlier payment to the Subcontractor or supplier,
- invoices for payment submitted by the Subcontractor are considered and verified by the Supplier in a timely fashion,
- undue delay in considering and verifying invoices is not sufficient justification for failing to regard an invoice as valid and undisputed and
- any contract awarded by the Subcontractor for work included in this contract includes provisions to the same effect as these provisions.
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