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| **Subject:** | **Use of Letters of Award** |
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| **Date:** | **5 May 2016** |

1. **Commencement**
   1. The practices and procedures outlined in this Practice Note commence on 5 May 2016.
2. **Application** 
   1. This Practice Note applies to all engagements with third party contractors by the Directorate of Properties & Facilities.
3. **General** 
   1. The letter of award (LOA) is a written confirmation of an award of successful tenderer by the project manager on behalf of ACU. A *process contract* is formed when the LOA is issued or any other representation is made to the contractor and can bind both parties to various degrees. It is therefore critical that the LOA is issued in the form of the ACU template [Contractor letter of award](http://www.acu.edu.au/1116328).
   2. The LOA must state the contract sum, the commence date, date for practical completion, any previously agreed amendments to the terms of the contract, rates for liquidated damages and delay damages, and other key terms of the formal contract. The other terms of the formal contract, except for those explicitly contradicted by the LOA, are incorporated by reference.
   3. Please ensure that the contractor acknowledges and accepts the terms of the LOA by countersigning and sending the letter back to the project manager.
   4. The LOA should only be used as an intermediate device to enable the contractor to mobilise prior to the date of commencement on site, whilst the formal contract documentation is collated and finalised. Except in exceptional circumstances, the contractor must sign the formal contract within two weeks of the issue of the LOA.
4. **Authorised Delegation** 
   1. Please remember that the issue of a LOA is, in effect, an engagement by you as a staff member of ACU, whether or not an LOA is issued by an external project manager.
   2. The terms of [ACU’s template LOA](http://www.acu.edu.au/1116328) provides an intermediate agreement between ACU and the contractor for site establishment costs and preliminaries to a value of up to $50,000 (excluding GST) and is in force from the date of the letter until the earlier of the following occurrences:
      1. such time that the contractor has incurred pre-approved costs of more than $50,000 (excluding GST) in total; or
      2. two weeks from the date of the letter.
   3. However, should the contractor exceed this cap, ACU will be obliged to make progress payments under the respective security of payments statutes.[[1]](#footnote-1)
   4. Your authority to enter into an intermediate agreement is governed by clauses 4.12 and 4.13 of ACU’s [Delegations of Authority Policy and Register](http://www.acu.edu.au/policy/675829). Please also note Dr Stephen Weller’s directive that he authorise and execute all contracts exceeding $100,000 (excluding GST). This has the effect of overriding subclauses 4.12 (b) – (c) and 4.13 (b) of the Policy.
   5. If:
      1. payments made by ACU exceed the amount of $100,000, and
      2. the contractor has not signed ACU’s Amended Contract Conditions, and
      3. ACU’s Amended Contract Conditions have not be executed by Dr Weller,

then the engagement of the contractor will be in outside your delegated authority.

1. **Contractor’s Documentation**
   1. Before the contractor is allowed on site, the project manager must obtain, and the Directorate of Properties & Facilities must sight and approve, the following documentation from the contractor:
      1. *For engagements on AS4905-2002 Minor Works (Superintended Administered):*
         1. Two unconditional and irrevocable bank guarantees each to the value of 2.5% of the contract sum (unless performance security is provided by way of retention moneys allowable for contract sums less than $500,000) with an expiry date of no less than two years after the date for practical completion;
         2. Occupational/Workplace Health and Safety Construction Safety Plan;
         3. A certificate of currency for the contractor’s *public liability insurance/third party liability* insurance with the following details:
            1. an insured amount of not less than $20,000,000[[2]](#footnote-2) for any one occurrence ;
            2. be in the joint names of the parties (not just note ACU as an interested party);
            3. cover the parties and all subcontractors whenever engaged in WUC for their respective rights, interest and liabilities[[3]](#footnote-3);
            4. have a policy expiry date of no less than 12 months from the date of the certificate;
            5. note the interests of the owner of the site.[[4]](#footnote-4)
         4. A certificate of currency for *Works Insurance* with the following details:
            1. an insured amount in aggregate of no less than 120% of the contract sum;
            2. be in the joint names of the parties (not just note ACU as an interested party);
            3. note the site location of the works;
            4. have a policy expiry date of no less than 12 months from the date of the certificate;
            5. cover the parties and all subcontractors whenever engaged in WUC for their respective rights, interest and liabilities[[5]](#footnote-5);
            6. if the site is not owned by ACU, then note the interests of the owner of the site.[[6]](#footnote-6)
         5. If the works contain a design component, a certificate of currency for the contractor’s professional indemnity insurance with the following details:
         6. a total aggregate cover of not less than $1,000,000.00.
      2. *For engagements on AS2124-1992 General Conditions of Contract:* 
         1. A policy of insurance for *Works Insurance* with the following details:
            1. an insured amount in aggregate of no less than 130% of the contract sum;
            2. be in the joint names of the parties (not just note ACU as an interested party);
            3. note the site location of the works;
            4. have a policy expiry date of no less than 12 months from the date of the certificate;
            5. cover the parties and all subcontractors whenever engaged in WUC for their respective rights, interest and liabilities[[7]](#footnote-7);
            6. if the site is not owned by ACU, then note the interests of the owner of the site[[8]](#footnote-8).
         2. Two unconditional and irrevocable bank guarantees each to the value of 2.5% of the contract sum (unless performance security is provided by way of retention moneys allowable for contract sums less than $500,000) with an expiry date of no less than two years after the date for practical completion;
         3. Occupational/Workplace Health and Safety Construction Safety Plan;
      3. A certificate of currency for the contractor’s *public liability insurance/third party liability* insurance with the following details:
         1. an insured amount of not less than $20,000,000[[9]](#footnote-9) for any one occurrence ;
         2. be in the joint names of the parties (not just note ACU as an interested party);
         3. cover the parties and all subcontractors whenever engaged in WUC for their respective rights, interest and liabilities[[10]](#footnote-10);
         4. have a policy expiry date of no less than 12 months from the date of the certificate;
         5. note the interests of the owner of the site[[11]](#footnote-11);
         6. contain a liability clause.
      4. A certificate of currency of adequate workers compensation insurance for liability for death of or injury to employees of the contractor and subcontractors, with an extension to indemnify the Principal for the Principal’s statutory liability.
   2. The contractor is not entitled to make a claim for a progress payment until the above documentation is provided to ACU’s satisfaction[[12]](#footnote-12), together with the contractor’s statutory declaration.[[13]](#footnote-13)
   3. Please ensure the above documentation is safely stored and that you are aware of your obligations under the contract regarding the return of both halves of the performance security.[[14]](#footnote-14)

1. Section 8 of the *Building and Construction Industry Security of Payment Act 1999* (NSW); section 10 of the *Building and Construction Industry (Security of Payment) Act 2009* (ACT); sections 9 and 12 & Schedule 2 of the *Building and Construction Industry Payments Act 2004* (Qld); section 9 of the *Building and Construction Industry Security of Payment Act 2002* (Vic)*.*  [↑](#footnote-ref-1)
2. Item 11 of ACU Amended Conditions to *AS4905-2002 Minor Works (Superintendent Administered).* [↑](#footnote-ref-2)
3. Cl 12 of *AS4905-2002 Minor Works (Superintendent Administered).* [↑](#footnote-ref-3)
4. Cl 14 of ACU Amended Conditions to *AS4905-2002 Minor Works (Superintendent Administered).*  [↑](#footnote-ref-4)
5. Cl 11 of *AS4905-2002 Minor Works (Superintendent Administered).* [↑](#footnote-ref-5)
6. Cl 14 of ACU Amended Conditions to *AS4905-2002 Minor Works (Superintendent Administered).*  [↑](#footnote-ref-6)
7. Cl 11 of *AS4905-2002 Minor Works (Superintendent Administered).* [↑](#footnote-ref-7)
8. Cl 14 of ACU Amended Conditions to *AS4905-2002 Minor Works (Superintendent Administered).*  [↑](#footnote-ref-8)
9. Item 11 of ACU Amended Conditions to *AS4905-2002 Minor Works (Superintendent Administered).* [↑](#footnote-ref-9)
10. Cl 12 of *AS4905-2002 Minor Works (Superintendent Administered).* [↑](#footnote-ref-10)
11. Cl 14 of ACU Amended Conditions to *AS4905-2002 Minor Works (Superintendent Administered).*  [↑](#footnote-ref-11)
12. *Queensland v T & M Buckley Pty Ltd* [2012] QSC 265. [↑](#footnote-ref-12)
13. Cl 23.1 of ACU Amended Conditions to *AS4905-2002 Minor Works (Superintendent Administered);* SC 43.1 of ACU Amended Conditions to *AS2124-1992 General Conditions of Contract.* [↑](#footnote-ref-13)
14. Cl 3.3 of AS4905-2002 Minor Works (Superintendent Administered); SC 5.7 of ACU Amended Conditions to *AS2124-1992 General Conditions of Contract.* [↑](#footnote-ref-14)