

REGISTERED HEAVY PLANT CONTRACTORS

May 2023 Extension notice and Price indexation variation for Heavy Plant Services (Fire Work Only) Agreement

Background

The NSW RFS Heavy Plant programme is focused on ensuring NSW RFS has arrangements with contractors in place across the state to engage earthmoving plant and other heavy machinery (**Heavy Plant**), as and when required to support the suppression of bush fire operations and other non-fire activities. Heavy Plant contractors are engaged under the Heavy Plant Services (Fire Work Only) Conditions of Agreement (**Agreement**).

Plant Taskings are undertaken through the ARENA HP platform using agreed pricing that is indexed periodically. NSW RFS recognises that in addition to CPI, significant fuel price changes (up or down) may affect Contractors' costs of providing the Services.

This document is to implement a variation to price indexation under the Agreement to be more responsive to fluctuations in fuel prices. NSW RFS also gives notice exercising its option to extend the Term.

A. NSW RFS Extension notice

NSW RFS by this notice to the Contractor, extends the Initial Term of the Agreement for 12 months. For clarity, the terms of the Agreement (including any agreed variations) will apply during the Extended Term.

B. Agreement variations

Below are the terms of the Agreement that are to be varied. The variation will be effective from **1 June 2023** and will apply to Plant Taskings issued from that date.

Any clause references or words capitalised but not defined below have the same meaning as in the Agreement. Unless specified in this document, all terms of the Agreement continue to apply. Notes in this document are not intended to have legal effect and are included as general information only. New text is shown with underline and deletions are shown with strikethrough.

1. Clause 8.1 Tasking Cost

Clause 8.1(b) will be amended as shown below as indexation may occur more often than annually:

8.1 Tasking Cost

- (b) The Plant Price and Excess Travel Rate are fixed for the Agreement Period subject to ~~annual~~ indexation in accordance with clause 8.2.

Note: Amendment to Clause 8.1 shown with strikethrough.

2. Clause 8.2 Indexation of prices

Clause 8.2 will be amended as shown below to allow for price adjustments based on annual CPI and periodic fuel movements. This will include NSW RFS conducting fuel pricing monitoring and determining the sensitivity of each price (plant type or category) to CPI and fuel price changes.

8.2 Indexation of prices

CPI indexation

- (a) The Plant Price and Excess Travel Rate will be increased annually on 1 July of each year of the Agreement Period only if the percentage change in CPI between the March quarters is 1% or more. The increase to the Plant Price and Excess Travel Rate for a year will be calculated by reference to the lesser of 2.5% and the percentage change in CPI between the applicable March quarters. Notices issued by NSW RFS in accordance with clause 8.2(d) and (e) may specify that a percentage of the Plant Price and/or Excess Travel Rate will be indexed in accordance with fuel price changes and another percentage will be indexed in accordance with CPI changes. If such a notice is issued, the reference to Plant Price and Excess Travel Rate in clause 8.2(b) will be references to the parts of the Plant Price and/or Excess Travel Rate that are deemed sensitive to CPI change.
- (b) [No change]
- (c) NSW RFS will determine if the threshold is met for a variation is to occur, calculate the variation of the Plant Price and Excess Travel Rate (if any) and provide the Contractor with written notification before 1 July each year of the Agreement Period which specifies the change to price (if any) that will take effect from 1 July. This clause 8.2(c) applies to a variation of the Plant Price and Excess Travel Rate due to CPI change calculated in accordance with 8.2(a) and (b).
- ~~(d) If NSW RFS gives notice of a variation, the new Plant Price and Excess Travel Rate will be used by NSW RFS in its tasking processes from 1 July. The Contractor must update its records so any invoices for services provided after 1 July each applicable year apply the appropriate Plant Price and Excess Travel Rate as notified by NSW RFS.~~

Fuel price monitoring and indexation

- ~~(d) NSW RFS will periodically review fuel pricing to consider the impact of significant movements (up or down) in fuel pricing on the costs of contractors providing the services under this Agreement (**Fuel Price Monitoring**). NSW RFS may adjust the Plant Price and/or Excess Travel Rate as a result of its Fuel Price Monitoring, including nominating the sensitivity to fuel price or CPI changes.~~
- ~~(e) NSW RFS may issue notices to describe how it intends to perform the Fuel Price Monitoring and/or make any adjustments to the prices as a result of Fuel Price Monitoring. The notices will be issued through NSW RFS's nominated electronic platform for managing Plant Taskings or by email. NSW RFS may issue further notices changing or updating its approach to Fuel Price Monitoring and fuel price indexation.~~

Contractor to update its records

- ~~(f) If NSW RFS adjusts the Plant Price or Excess Travel rate in accordance with this clause 8.2, the new prices will apply to Plant Taskings issued after the adjustment is made. The Contractor must update its records so any invoices for Plant Taskings issued after an adjustment is made apply the appropriate prices.~~

Note: Amendments to clause 8.2 shown with underline and strikethrough.

Annexure A is a notice describing the Fuel Price Monitoring and price indexation that will be implemented initially.

Contractor's agreement to variation

This variation document will be accepted by the Contractor when the Contractor's registered Arena HP user logs into Arena HP and selects the "Accept" button on the notice issued by NSW RFS attaching this variation document or accepts a Plant Tasking on or after 1 June 2023.

NSW RFS and the Contractor agree this variation complies with the variation requirements in clause 19.14 of the Agreement.

Notice to Contractors 2 May 2023 – Fuel Price Monitoring

The following will apply to fuel price indexation under the Agreement from **1 June 2023**. NSW RFS may issue further notices changing or updating the processes in this document.

1. Fuel Price Monitoring

NSW RFS will review movements in the fuel prices to consider the impact of significant movements (up or down) on the Contractors' costs of providing the Services. This will occur no less than monthly.

The reference information used will be as follows:

- **Data source:** Australian Institute of Petroleum (AIP)
- **Fuel Index:** Average Diesel Terminal Gate Price, Sydney (inclusive of GST) which is generally collated by AIP on weekday mornings from information published by wholesale providers
- **Baseline Date:** 1 March 2021
- **Baseline Fuel Price:** \$1.20 cents per litre
- **Review Price:** The fuel price shown in the Fuel Index on the date of review by NSW RFS
- **Reference Plant Price:** The Contractor's Plant Price as most recently adjusted for CPI

2. Fuel and CPI sensitivity of Plant Price and Excess Travel Rate

NSW RFS will determine a percentage of the Plant Price for each category and type of Plant that will be adjusted as a result of changes in fuel prices or under clause 8.2 for changes in CPI. These percentages will be referred to as the **Fuel Index Sensitivity** and **CPI Sensitivity**. The corresponding dollar amounts will be the **Reference Fuel Proportion** and **Reference CPI Proportion**.

The Fuel Index Sensitivity will be determined based on typical machine performance data based on a heavy workload. The CPI Sensitivity will be the remaining percentage of the Plant Price. The percentages will be able to be viewed in ARENA HP and may be updated by NSW RFS from time to time.

Fuel Index Sensitivity does not apply to Excess Travel Rate as it will have a CPI Sensitivity of 100%.

3. Adjustments to Plant Price according to fuel price changes

If the Fuel Price Monitoring indicates significant movements (up or down) in the Fuel Index relative to the Baseline Fuel Price, then NSW RFS will adjust the Plant Price in ARENA HP according to the Fuel Index Sensitivity.

Generally, a 'significant' change will be a stable movement in the Fuel Index of 20%.

If NSW RFS determines the conditions for adjustment are met the adjustment will involve the following:

1.	Fuel price change percentage calculated NSW RFS will calculate the percentage change from the Baseline Fuel Price to the Review Price.
2.	Fuel adjustment percent identified The adjustment percent will be the nearest 20% multiple of the percent change in fuel price (rounding down).
3.	Fuel proportion adjustment calculated NSW RFS will calculate the adjustment to the fuel sensitive part of the Reference Plant Price.
4.	Plant Price adjusted by applying the updated proportion NSW RFS will update the Plant Price in ARENA HP by adding the Adjusted Fuel Proportion to the Reference CPI Proportion. Notification of a Plant Price update will occur through ARENA HP and the updated Plant Prices that will apply will be visible to each Contractor.

Note: The above process will result in an update to the Plant Price. The Reference Plant Price and reference proportions will not be impacted. Only CPI indexation in accordance with clause 8.2 will result in a new Reference Plant Price and a subsequent update to the Reference Fuel Proportion and Reference CPI Proportion.

Example

This example is intended to show how the Plant Price for a Contractor will be impacted by increases or decreases in fuel prices and the annual CPI indexation.

In the example:

- Terry has a D8 Bulldozer with a Reference Plant Price of \$400/hr ex GST as of last CPI update.
- D8 Bulldozers have a Fuel Index Sensitivity of 15% and a CPI Sensitivity of 85%.
- This translates to a Reference Fuel Proportion of \$60 and Reference CPI Proportion of \$340.
- The Baseline Fuel Price is \$1.20/L incl. GST.
- 4 adjustments are shown: March with fuel prices at \$1.932/L, April with fuel prices at \$1.632/L, July for the annual 2.5% CPI increase and October with fuel prices at \$2.25/L.

	March – fuel price increase	April – fuel price decrease from March	July – annual 2.5% CPI increase	October – fuel price increase
BEFORE ADJUSTMENT				
Reference Plant Price¹ <i>(Reference Proportions)²</i>	\$400.00 ex GST <i>(Fuel: \$60, CPI: \$340)</i>	\$400.00 ex GST <i>(Fuel: \$60, CPI: \$340)</i>	\$400.00 ex GST <i>(Fuel: \$60, CPI: \$340)</i>	\$408.50 ex GST <i>(Fuel: \$61.28, CPI: \$347.22)</i>
FUEL PROPORTION ADJUSTMENT				
Fuel price change <i>(Review Price – Baseline Fuel Price)/Baseline Fuel Price)</i>	61% <i>Calculation: (\$1.932/L - \$1.20/L) / \$1.20/L</i>	36% <i>Calculation: (\$1.632/L - \$1.20/L) / \$1.20/L</i>		87.5% <i>Calculation: (\$2.25/L - \$1.20/L) / \$1.20/L</i>
Fuel adjustment percent <i>Multiple of 20% rounding down</i>	60%	20%		80%
Adjusted Fuel Proportion <i>(Reference Fuel Proportion² x adjustment percent) + Reference Fuel Proportion</i>	\$96.00 ex GST <i>Calculation: (\$60 x 0.60) + \$60</i>	\$72.00 ex GST <i>Calculation: (\$60 x 0.2) + \$60</i>		\$110.30 ex GST <i>Calculation: (\$61.28 x 0.8) + \$61.28</i>
CPI PROPORTION ADJUSTMENT				
Adjusted CPI Proportion <i>(Reference CPI Proportion) x (1+ CPI increase %)</i>			\$348.50 ex GST <i>Calculation: \$340 x (1 + 0.025)</i>	
AFTER ADJUSTMENT				
Plant Price <i>Where adjusted for Fuel: Adjusted Fuel Proportion + Reference CPI Proportion</i> <i>Where adjusted for CPI: Reference Fuel Proportion + Adjusted CPI Proportion</i>	\$436.00 ex GST <i>Calculation: \$96 + \$340</i>	\$412.00 ex GST <i>Calculation: \$72 + \$340</i>	\$408.50 ex GST <i>Calculation: \$60 + \$348.50</i>	\$457.52 ex GST <i>Calculation: \$110.30 + \$347.22</i>
Proportions³ <i>Reference Plant Price x the relevant Fuel Index Sensitivity % or CPI Sensitivity %</i>			Fuel: \$61.28 CPI: \$347.22 <i>Calculations: Fuel: \$408.50 x 0.15 CPI: \$408.50 x 0.85</i>	

1. **Reference Plant Price:** Contractor's initially submitted Plant Price as most recently adjusted for CPI uplift

2. **Reference Fuel Proportion:** The Reference Plant Price x Fuel Index Sensitivity%

3. Only the CPI indexation results in update to the Reference Plant Price, Reference Fuel Proportion and Reference CPI Proportion.