



Contracts for Construction Works

Frequently asked questions

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Help with the contracts

Is there guidance on how to use the contracts?

Guidance documents accompany each contract template.

There are also guidance notes within the contract templates (coloured blue).

Which parts of the contract templates am I supposed to amend?

The templates prompt you to complete the required parts, and there are blue guidance notes.

Do not change standard fixed terms and conditions of the contract.

Who can I ask for help?

Support for Ministry-led projects: Eis.legal@education.govt.nz

Support for Board of Trustees-led projects: Initially, contact your School Property Advisor. Any required legal advice should be requested via NZSTA, as the Ministry is unable to provide legal advice to projects led by Boards of Trustees.

Types of contracts

What do the contract templates cover?

There are three templates based on the value of the construction contract:

- Minor Works (up to \$50k)
- Medium Works (\$50k to \$500k)
- Major Works (above \$500k).

Each contract has a template tailored for use by either the Ministry or a Board of Trustees.

Why use the Ministry's standard contract documents?

The contract documents have been carefully thought through to ensure that the commercial terms are appropriate to the type and size of projects we undertake as well as ensuring that they are consistent across the Ministry.

Using anything else other than our standard terms and conditions could leave the Ministry or Board of Trustees open to unforeseen risks or issues along with the potential for legal disputes.

Do I have to use these contracts?

Yes.

The use of these standard contracts is mandatory for all capital works projects being delivered by the Ministry.

We also strongly encourage Boards of Trustees to use these contracts as they will provide the schools with better protection when embarking on the delivery of capital works projects. In addition Ministry staff, external project managers and the construction industry will be familiar with these standard terms and conditions, making it much easier to prepare and agree the contract.

Why are we not using the Government Model Contracts (GMCs) for construction contracts?

The Government Model Contracts (GMCs) are the standard default contracts to be used for low risk, low value purchases.

The GMCs are not designed to be used for complex or high risk purchases, and are therefore not suitable for the purchase of construction work.

Is there a Ministry specific Design and Construct Contract?

Yes.

In situations where the proposed works involve a design element (so a Design and Construct Contract is necessary), the Ministry has produced a contract based on the industry standard NZS 3916:2013.

Design and Construct Contracts are a highly specialised form of construction procurement. If you're considering this approach, please contact EIS Legal at Eis.legal@education.govt.nz.

Is there a specific contract for demolition?

No.

The Medium and Major Works contracts are suitable for demolition works.

Roles

Who is the Principal to the Contract?

The Principal to the Contract is the legal entity entering into the contract with the contractor (this will be the Ministry or Board of Trustees).

This is different to the "Principal" (head teacher of a school).

Who is the Engineer to the Contract?

The Engineer to the Contract administers the day-to-day running of the contract on behalf of the Principal to the Contract.

The Engineer acts as agent to the Principal, provides directions to the Contractor on behalf of the Principal, and certifies money due to the Contractor.

The Engineer has a duty to act independently of the Principal and Contractor, and must be fair and impartial when making decisions and issuing certificates. The Engineer can be a professional engineer, architect, surveyor or project manager.

An Engineer to the Contract must be appointed for Major Works contracts, but is not required for Minor or Medium Works contracts.

Contract structure and content

Can I make changes to clauses I don't like?

No.

The contracts have been drafted by specialists in construction contracts.

Even minor changes to the wording of a clause can have unintended consequences.

Changes to the standard causes are not negotiable.

Given the high volume of agreements the Ministry enters into every month, it is not possible to undertake individual negotiation on standard clauses.

If you have concerns with specific clauses please contact your Property Advisor or EIS Legal at Eis.legal@education.govt.nz.

Why is NZS 3910:2013 used as a basis for the Major Works Contract, but not the Minor or Medium Works Contracts?

NZS 3910:2013 is an industry standard contract for high value and/or high complexity projects. There is a significant degree of contract administration, and requires the appointment of an Engineer to the Contract.

The role of Engineer to the Contract is in addition to any project management function that may be required to manage the project on behalf of the Ministry or a Board of Trustees (these roles can be provided by the same company but note that the Engineer has a legal duty to act fairly and impartially in administering the Contract).

The Ministry has decided that simpler forms of contract are sensible for projects with construction values below \$500k, and has drafted Ministry-specific contracts for the Minor and Medium Works Contracts

Minor and Medium Works contracts adopt similar principles to NZS 3910:2013 (where appropriate), but do not require the appointment of an Engineer to the Contract.

The Minor and Medium Works Contracts can be administered by a suitable person nominated by the Principal to the Contract. This can include a person from an external company acting as Project Manager on behalf of the Ministry or Board of Trustees.

Why aren't the same commercial terms applied across all contracts (e.g. Retentions, Defects Notification Period, Performance Bonds, and Insurance)?

The Ministry recognises that a "one size fits all" approach to key commercial terms for a wide range of different projects is not practical. The commercial terms applied to a small, low value project are not the same as those for a high value/high complexity project.

If we applied the same terms across all projects, small projects may have too much protection (at a significant cost to the tax payer), and larger projects may not have enough protection (so the Ministry would carry too much risk).

The Ministry has aimed for balance; tailoring key commercial requirements for each contract by considering the values, risk profiles and scenarios that could apply to each.

The Ministry has provided some flexibility in the contracts by specifying minimum requirements for each, with options to consider given the specific requirements of a project.

Do the contract value thresholds include contingency fees?

No.

The value thresholds relate to the anticipated contract sum, and do not include any contingency sums that may be allowed for managing project risks.

Updates and reviews

When were the contract templates launched?

The contract templates were launched in October 2016, after a comprehensive review of existing contracts. The review was in consultation with Ministry staff and industry.

Have the contracts changed since they were launched?

Yes.

Download updates from:

<http://www.education.govt.nz/construction-contracts-for-professional-services-and-works>

Will the contracts be reviewed again?

Yes.

There will be a review in late 2017.