



Capital Works process for Medium Works contracts

Guidance Notes – Contracts valued between \$50k-\$500k

Please note this process only applies to **Ministry-led Medium Works projects**.

These notes provide further guidance on each of the process steps outlined in 'Capital Works process for Medium Works contracts – process diagram'.

This document is not intended to replace the business processes set out by EIS and/ or Capital Works. These guidance notes only cover the process of how a **Medium Works construction contract is initiated, drafted, compiled and stored**. Sign-off procedures and additional procurement stages have been purposely excluded from this document. Accordingly, do not only refer to this document when procuring project works. For details regarding Capital Works procurement guidelines, please refer to the [School Property Procurement Framework](#) on the Education Property Website.

If you have any queries in regards to this process, please email EIS.ContractAdmin@education.govt.nz in the first instance.

If you have any queries in regards to ContractExpress, please watch the following [video tutorial](#) in the first instance.

If you have further questions, please email EIS.Legal@education.govt.nz.

Note: List of acronyms, related documents and glossary can be found on page 5.

Procurement and contract initiation stage

Step 1: The external PM (ext PM) drafts the Procurement Plan and approach to market documents (RFx documents) and sends the two draft documents to the Delivery Manager (DM) and EIS Commercial Procurement (EIS CP) for review and endorsement, followed by the Sponsor signing off the final versions.

Note:

- *Where there is no ext PM on the project, the Procurement Plan and RFx documents are drafted by the DM.*
- *If the Procurement Plan and RFx documents are drafted by the ext PM, the DM must review the two draft documents prior to EIS CP endorsement.*
- *Procurement Plan and RFx documents must always be endorsed by EIS CP and the Sponsor.*
- *EIS CP may provide guidance to the DM (or ext PM) regarding the Procurement Plan and RFx documents during drafting.*
- *The completed Liquidated Damages (LD's) calculations must be included as an appendix to the Procurement Plan and needs to be reviewed and endorsed by EIS CP and approved by the Sponsor prior to the ext PM or DM drafting the RFx documents (refer to '[Liquidated Damages Guidance Notes](#)' for assistance in calculating the appropriate level of LD's).*
- *At this stage, the DM (or ext PM) should begin working through the project information required to prepare the draft contract in ContractExpress (Step 2).*
 - *In the instance where the ext PM will be drafting the contract pre-tender, the ext PM should request the DM to give them Guest Access to the ContractExpress portal (if the DM has not done so already). Please refer to the Glossary on page 5 for further details on Guest Access.*

Step 2: The DM (or ext PM) completes the Medium Works contract questionnaire in the ContractExpress portal. Once the contract is drafted (to the extent possible), the DM requests approval to release the contract as part of the RFx documents (via the ContractExpress portal – at which point an email will be sent to EIS Legal and EIS CP).

Note:

- The DM or ext PM should begin drafting the contract at least two full working days prior to the scheduled tender release.
- The DM (or ext PM) should provide as much information as they can when completing the questionnaire in ContractExpress. Mandatory information that must be included in the initial draft will be indicated in ContractExpress by a red asterisk*.
- If a guest user (e.g. an ext PM) is drafting the contract on behalf of the DM, the DM is still responsible for reviewing the draft contract and ensuring it adheres to the project specific requirements, before requesting approval.
- Further, the LD's fixed daily sum must be (I) included in the Procurement plan, (II) endorsed by EIS CP and (III) approved by the Sponsor prior to requesting approval for the draft contract.

Step 3: EIS Legal and EIS CP review and if appropriate, approve the draft contract (via the ContractExpress portal).

Note:

- If, during the drafting of the Medium Works contract in ContractExpress, the DM (or ext PM) indicates an 'exception' to what would generally be acceptable in a Medium Works contract, an approval loop will be triggered and EIS Legal and EIS CP will review the exception and its reasoning. If the DM (or ext PM) triggers this approval loop, there will be a warning notification during the contract drafting, as well as a warning once the contract drafting is completed, that a specific approval is required.
- If no exceptions are flagged, the draft contract will be sent to EIS CP who will review and approve the contract for download and inclusion as part of the RFX documents.
- All approvals are handled via the ContractExpress portal. The DM (or ext PM) should not seek approval outside of the ContractExpress portal. I.e. via email/ phone/ in person.

Step 4: Following approval, the DM (or ext PM) downloads the draft contract and attaches it to the RFX documents for release.

Step 5: For open tenders (\$100k +) EIS CP reviews, endorses and releases the RFX documents (via GETS or Panel). For closed tenders (under \$100k), the DM would typically release the RFX documents.

Note:

- The tender will not be released unless the contract has been drafted in ContractExpress and approved in accordance with step 3.
- No contractual tags to the MoE standard terms in our new Medium Works construction contracts will be accepted.
- Any Notice to Tenderers that will materially impact the drafted contract must be sent to EIS Legal (cc EIS CP) for review. If required, EIS Legal will advise that the contract be amended and re-issued with Tenderer documents. If the DM (or ext PM) is unsure as to whether or not the Notice to Tenderers will affect the draft contract, EIS CP must be contacted.

Step 6: Tenderers submit their responses.

Step 7: Submitted responses are evaluated and a preferred Supplier or a short list of Suppliers is selected.

Note:

- The evaluation of the responses is completed by a tender evaluation team, typically consisting of the DM, ext PM and other project consultants or stakeholders.
- For open tenders (\$100k +), pricing is typically evaluated by the Quantity Surveyor (QS).
- Once a short list of Suppliers has been established, the DM must check with EIS CP if any of the shortlisted Suppliers are currently in litigation and/ or dispute with the Ministry.

Step 8: Preferred Supplier is selected.

Step 9: The DM (or ext PM) updates the draft contract in the ContractExpress portal to reflect the finalised project details.

Note: Once the preferred Supplier has been selected and the Ministry and Supplier have agreed the scope and price, the DM (or ext PM) must update the draft contract in ContractExpress.

Step 10: The DM submits the Recommendation Report to select the preferred Supplier to EIS CP and the Sponsor.

Step 11: Respondents are notified of tender outcome.

Note:

- *For open tenders (\$100k +) EIS CP will notify Respondents of the tender outcome, however for closed tenders (under \$100k) notification will be sent by DM and/ or the ext PM.*
- *A debrief to respondents should be offered to explain why they were unsuccessful.*

Step 12: Once finalised, the DM requests approval to release the contract for printing, compilation and execution.

Step 13: EIS Legal and EIS CP review and approve the final draft contract (via the ContractExpress portal) before it can be released.

Contract compilation and execution stage

Step 14: The DM (or ext PM) downloads the approved, execution version of the contract (locked PDF format), in preparation for printing and compiling the contract.

Note:

- *There can be no changes (including any hand written amendments) made to the contract following final approval in step 13. This will be monitored by EIS Legal and EIS CP. The execution version of the contract will be identifiable by a watermark. If the version of the contract presented for Ministry execution does not have this watermark or has any handwritten amendments, it will not be processed for signing.*
- *It is the responsibility of the DM to obtain Contract Works Insurance prior to compiling the contracts. If there is an ext PM on the project, the DM may delegate this task.*

Step 15: The DM (or ext PM) prints and compiles two copies of the contract.

Note: *Where there is an ext PM on the project, the ext PM may compile the contracts on behalf of the DM (two copies). If the ext PM does compile the contracts, the compiled contracts must then be sent to the DM for review and endorsement. If there are any discrepancies found with the compilation of the contracts, it will be raised directly with the DM.*

Step 16: The DM completes the Medium Works Contract Execution Request form (available from the Education Property Website).

Note: *The regional Contract Administrator (CA) will review and confirm that the Medium Works Contract Execution Request form has been completed (step 20); however the responsibility for accurately completing the form sits with the DM. The CA should not be asked and/or expected to complete this form.*

Step 17: Once the contracts (two copies) have been compiled, the DM (or ext PM) couriers both copies of the compiled contract to the Supplier for execution.

Note:

- *The Document Transfer Record sheet must be included in the courier if the contracts are couriered to the Supplier for execution (Document Transfer Record sheet can be found in the Capital Works template and guidance folder on FileNet).*
- *The DM (or ext PM) is responsible for notifying the Supplier that they are required to initial every page of the contract (excluding the schedules) confirming that they agree to each clause in the contract; and they must not date the contract. The Ministry (as the last party to sign the contract) is responsible for dating the contract.*

Step 18: The Supplier reviews, signs and initials both copies of the contract and returns both Supplier-executed contracts back to the DM (or ext PM).

Note: *No hand written amendments are to be made to the contract. If the contract has any hand written amendments, it will not be processed for Ministry execution.*

Step 19: Once the Supplier has signed (and initialled) both copies of the contract, the DM (or ext PM) couriers (or hand delivers) the two Supplier-executed contracts and completed Contract Execution Request Form to the CA who will review the contracts and arrange for Ministry execution.

Note:

- *The Document Transfer Record sheet must be included in the courier if the contracts are couriered to the CA.*

- For contracts requiring sign off from a CW Northern DFA, contracts must be delivered to the Auckland CA.
- For contracts requiring sign off from a CW Central South DFA, contracts must be delivered to the Wellington CA.
- For contracts requiring sign off from a CW Southern (CSR) DFA, contracts must be delivered to the Christchurch Project Coordinators who will act in the place of a CA.
- If the DM and/ or ext PM is unsure which CA should arrange for Ministry execution, please email EIS.ContractAdmin@education.govt.nz in the first instance.

Step 20: The CA undertakes a quality assurance review of the Supplier-executed contracts and confirms that the:

1. Supplier has correctly executed the contracts.
2. Contracts have been correctly compiled with all schedules completed and in the right order; and
3. Contract Execution Request (CER) form is complete.

Note:

- *The CA will not approve the contract if there are any hand-written amendments.*
- *If the DM has not completed the CER form and/ or has not compiled the contracts correctly, the CA will return the documents to the DM and will not proceed until the compilation and CER form is correctly completed.*

Step 21: The CA couriers (or hand delivers) both Supplier-executed contracts to the DFA for Ministry execution and includes the completed Contract Execution Request form and supporting information.

Step 22: The DFA reviews and counter signs both Supplier-executed contracts. The DFA then couriers (or delivers) both fully executed contracts back to the CA.

Note:

- *The DFA must date the contract when signing it on behalf of the Ministry.*
- *The DFA must initial every page of the contract when signing the contract (excluding the schedules).*

Filing and Helios setup

Step 23: The CA:

1. Retains one fully executed contract on behalf of the Ministry; and
2. Couriers one fully executed contract to the Supplier.
3. Notifies the DM (via email) that the contract has been executed and that the Supplier can now be onsite to commence the contracted works.

Note:

- *When couriering the Supplier contract, the Document Transfer Record sheet must be included in the courier.*
- *Under no circumstances should the Supplier be onsite prior to the contract being executed by the Ministry.*

Step 24: The CA facilitates the third party scanning partner's collection of the retained contract (Ministry copy).

Note: Following collection of the contract, the third party scanning partner will:

1. Scan the Ministry's copy of the fully executed contract (drawings and all additional documents),
2. Barcode, index and prepare the contract for archiving,
3. Courier the boxed contract to the Ministry Archive for archiving, and
4. Send the CA the scanned copy of the contract and its extracted metadata via a secureFTP.

Step 25: The CA:

1. Downloads the scanned contract file (PDF format) and extracted contract metadata,
2. Saves the downloaded contract file in FileNet,
3. Uploads the FileNet link of the uploaded contract to the corresponding contract in Helios; and
4. Updates the Capital Works Master Document Registry with the extract contract metadata.

Acronyms used in this document:

EIS Legal	Education Infrastructure Service Legal team
EIS CP	Education Infrastructure Service Commercial Procurement team, and more specifically the team members working on the procurement of Capital Works projects.
DM	Capital Works Delivery Manager
Ext PM	External Project Manager
Tenderer/Supplier	Tenderer/ Respondent/ Supplier
CA	Education Infrastructure Service Contract Administrator (Regional)
DFA	Ministry of Education Delegated Financial Authority
QS	Quantity Surveyor
RFx documents	Approach to market documents/ Request For Tender (RFT)/ Request For Proposal (RFP)/ Request For Quote (RFQ)

Related documents:

The following related documents can be found on the [Education Property Website](#).

Capital Works process for Medium Works contracts - process diagram
Medium Works Contract Execution Request form

Glossary:

ContractExpress	<p>ContractExpress is a web-based document automation solution designed for fast and accurate document drafting and client collaboration. The implementation of ContractExpress within the Capital Works programme is led by EIS Legal, EIS Commercial Procurement and Chapman Tripp.</p> <p>EIS Legal and EIS Commercial Procurement are working to have all construction contract drafting completed in ContractExpress by the end of 2019.</p>
MoE Business user	<p>MoE Business users are a limited number of selected DMs who have been assigned login credentials to ContractExpress. These MoE Business Users (DMs) are able to initiate contract drafting as well as invite guest users.</p>
Guest Access	<p>Guest access gives MoE Business users the ability to invite guests by email to initiate a new contract.</p> <p>If a MoE Business User (DM) elects to outsource the contract drafting to another DM/ Project Coordinator or ext PM (i.e. someone who is not a MoE Business User), the DM sends an invite within the ContractExpress portal to the guest user email address. The guest user is then provided with a unique link that grants access to the ContractExpress portal where the guest can:</p> <ol style="list-style-type: none">(I) Complete the contract questionnaire (draft the contract); and(II) Download the draft contract once the approval loops have been completed. <p>NB: For security reasons the link expires after 48 hours, however the DM is able to refresh the invite within the ContractExpress portal, which will re-activate the original link.</p>
