



Capital Works process for Major Works contracts

Guidance Notes

These notes provide further guidance on each of the process step outlined in 'Capital Works process for Major 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 **Major Works construction contract is initiated, drafted, compiled and stored**. Sign-off procedures and additional procurement stages have been purposely excluded from this document and should not be solely referred to when procuring project works.

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

Note: List of acronyms and related documents can be found on page 7.

Procurement and contract initiation stage

Step 1: The external PM (ext PM) drafts the Procurement Plan and sends the draft plan to the Delivery Manager (DM) and EIS Procurement (EIS Pro) for review and endorsement, followed by the Sponsor signing off on the final version.

Note:

- *Where there is no ext PM on the project, the Procurement plan is drafted by the DM.*
- *EIS Pro will provide guidance to the ext PM (or DM as the case may be) in relation to or whilst the Procurement Plan is being drafted.*
- *At this stage, the ext PM (or DM as the case may be) should begin working through the information required to complete the Contract Information Sheet (CIS) (Step 3).*

Step 2: The ext PM drafts the approach to market documents (RFT or RFP, the RFX documents) and sends the draft documents to the DM and EIS Pro for review and endorsement, followed by the Sponsor signing off on the final version.

Note: Where there is no ext PM on the project, the approach to market documents are drafted by the DM.

Step 3: The ext PM completes the relevant Contract Information Sheet (CIS) (available from the Education Property Website) and sends the completed document to the DM and EIS Pro for review and endorsement. Once the CIS has been endorsed, the DM sends the completed CIS to EIS Legal and requests a draft contract to be prepared.

Note:

- *If the request to draft a contract comes directly from an ext PM, EIS Legal will not process the draft until the DM has given their endorsement (the DM is responsible for ensuring that the CIS is complete and emailing the completed CIS to EIS Legal).*
- *Where there is no ext PM on the project, the CIS is drafted by the DM.*
- *When completing the CIS, the ext PM and/ or DM should refer to the "Guidance Notes – Major Works Contract" found on the Education Property Website.*
- *The Liquidated Damages (LD's) fixed daily sum must have been endorsed by EIS Pro and approved by the DFA prior to completing the CIS (refer to 'Liquidated Damages Guidance Notes' for assistance in calculating the appropriate level of LD's).*
- *The CIS should be completed, endorsed and sent to EIS Legal at least two full working days prior to the scheduled tender release.*

- Step 4:** EIS Legal Secondedees prepare the contract for tender based on the information provided in the completed CIS and sends the draft contract back to the DM for release as part of the approach to market documents.
- Note: If the CIS has any required information missing, EIS Legal will not draft the contract until a completed CIS is provided by the DM.*
- Step 5:** EIS Pro reviews, endorses and releases the approach to market documents (drafted contract and tags table template must be included).
- Note: The tender will not be released unless EIS Legal has drafted the contract for tender and EIS Pro have reviewed and endorsed (i) the content of the RFX documents and (ii) that the right contract form has been used.*
- Step 6:** Contractors submit their responses and may raise tender tags (utilising the tags table provided).
- Note:*
- *Our default position is that we do not expect tags to be made to the standard terms in our new construction contracts. Where a Contractor requests any amendments to be made to the standard wording in the contract the DM, ext PM and EIS Pro must address tags that are purely commercial and seek legal advice from EIS Legal where necessary.*
 - *Any Notice to Tenderers that will materially impact the information previously provided in the CIS (Step 3) must be sent to EIS Legal (cc EIS Pro) for review. If required, contract amendments will be made. If the ext PM and/ or DM is unsure as to whether or not the Notice to Tenderers will affect the CIS information, EIS Pro must be contacted.*
- Step 7:** Submitted responses are evaluated and a short list of contractors are selected. Purely commercial tags are then forwarded to EIS Pro. Tags requiring amendments to the Ministry's standard terms or requiring legal input are sent to EIS Legal.
- Note:*
- *The evaluation of the responses is completed by a tender evaluation team, typically consisting of the DM, ext PM and other project consultants and EIS Pro as moderation chair.*
 - *The pricing is evaluated by the Quantity Surveyor (QS).*
 - *For contracts with a value of or above \$15 million EIS Legal will be provided with the completed tags tables at the stage of short listing in order to advise on tags that would typically not be acceptable to the Ministry. This is to ensure that submissions are not short listed if the terms of the contractor are incompatible with the Ministry's position.*
 - *Once the short listed contractor(s) is established, a check must be completed in order to identify if any of the selected contractors are currently in litigation and/ or dispute with the Ministry.*
- Step 8a:** EIS Legal provide advice on the risks and legal implications associated with the raised tender tags.
- Note:*
- *Raised tender tags that imply amendments to the Ministry's standard terms (i.e. special conditions) must be sent to EIS Legal for review.*
 - *Tags that will not impact the contract must be sent to EIS Pro and the QS for review.*
- Step 8b:** EIS Pro and the QS provide advice on the commercial implications associated with the raised tender tags.
- Note: If a tag has a potential to be high risk, the Sponsor will be consulted.*
- Step 9:** The DM and ext PM negotiate the raised tender tags, utilising the advice provided by EIS Legal, EIS Pro and the QS.
- Note:*
- *The decision on each individual tender tag should be made by the DM/ Capital Works based on advice provided by EIS Legal and EIS Pro.*
 - *Should the DMs commercial decision on a tender tag differ from the advice provided by EIS Legal and/ or EIS Pro, the DM will escalate such decision to the Capital Works*

Director. The commercial position should be agreed collaboratively between EIS Pro, EIS Legal, the DM and the Capital Works Director.

- *EIS Legal and EIS Pro will keep a register of commercial positions that were agreed after escalation to the Capital Works Director.*

Step 10: The terms of the contract are finalised between the Contractor and the Ministry, following agreement of the negotiated contractual points.

Step 11: The DM submits the Recommendation Report to select the preferred contractor to EIS Pro and the Sponsor and in the exceptional circumstance where a Letter Of Intent (LOI) is required, includes the request for a LOI and its value.

Note:

- *All requests for an LOI must:*
 - *have been endorsed by DFA and a senior EIS Pro representative (senior EIS Pro representatives are (i) Director of Commercial Procurement, (ii) National Procurement Manager Capital Works; or (iii) Senior Strategic Procurement Manager),*
 - *be included with the Recommendation Report,*
 - *indicate the value of the works commissioned with the LOI; and*
 - *Provide an indication of the tender validity period; in order for EIS Pro and the Sponsor to be informed of when the response will expire.*
- *In the circumstance where the sponsor of the project is different to the DFA (ie. Contracts requiring signing by HEIS) and an LOI is required, the ext PM and/ or DM must contact EIS Pro for instructions as to LOI approval procedure.*

Step 12a: EIS Legal (only) update the contract with the agreed contractual amendments (if any) and provide the DM with the final draft word version of the contract.

Note:

- ***Only EIS Legal should be making amendments to the contract.***
- *EIS Legal to email Contract Administrator (CA) to advise contract is in progress.*

Step 12b: ****** In the exceptional circumstances where a Letter of Intent is required:***

If the DFA and a senior EIS Pro representative have endorsed the request for an LOI and the requirements are met, the DM requests EIS Legal to draft LOI. Once the LOI has been drafted, the DM sends the LOI to the Contractor for signing.

Note:

Requirements for a LOI are as follows:

- *Procurement of contract has been significantly delayed and without a LOI the delivery date will be severely impacted,*
- *DFA & a senior EIS Pro representative have reviewed the circumstances and have endorsed the proposed LOI and its value (senior EIS Pro representatives are (i) Director of Commercial Procurement, (ii) National Procurement Manager Capital Works; or (iii) Senior Strategic Procurement Manager),*
 - *Approval of the LOI must be given by a DFA who holds financial delegations for the full value of the contract. Sign off will not be accepted if the executing DFA holds only the financial delegation for the value of the works commissioned with the LOI.*
- *Negotiation of the raised tender tags must have been finalised and contract terms agreed upon with the Contractor prior to LOI being drafted,*
- *The value of the works commissioned with the LOI has been agreed with the Contractor,*
- *The LOI value does not exceed the 5% limit of the total project value.*

When requesting a draft LOI, the ext PM and/ or DM must provide EIS Legal with the following details:

- Description of the works to which the LOI relates (generally enabling works or early site works),
- School LOI relates to; and
- Capped value of the works commissioned with the LOI.

Step 13: The ext PM notifies unsuccessful respondents.

Note:

- Where there is no ext PM on the project, unsuccessful respondents will be notified by the DM.
- For open tenders a debrief to respondents will be offered to explain why they were unsuccessful.

Contract compilation and execution stage

Step 14: The ext PM:

1. Compiles the contract (refer to 'Content list for Compiling MOE Major Works Construction Contracts')
2. Completes the Major Works Construction Contract checklist (available from the Education Property Website)
3. Completes the Contract Execution Request form.

Note:

- Where there is no ext PM on the project, the contract compilation, checklist and request form will be completed by the DM.
- When compiling the contract the ext PM and/ or DM should refer to 'Content list for Compiling MOE Major Works Construction Contracts'.
- The CA will review and confirm that the Contract Execution Request form has been completed; however the responsibility of completing the form lies with the ext PM and/ or the DM.
- The ext PM and/ or DM is responsible for producing TWO sets of the compiled contract.
- Where the ext PM:
 - compiles the contract
 - completes the Major Works Construction Contract checklist; and
 - completes the Contract Execution Request formthe documents must be reviewed and endorsed by the DM prior to the documents being sent to the CA by the DM.
- Where there is an ext PM on the project, it is their responsibility to obtain Contract Works Insurance prior to compiling the contract.
- Where there is no ext PM on the project, it is the responsibility of the DM to obtain Contract Works Insurance prior to compiling the contract.

Step 15: Once the two compiled contracts, Major Works Construction Contract checklist and the Contract Execution request form have been endorsed by the DM, the DM couriers the documents to the CA for review.

Note:

- For contracts requiring sign off from a Capital Works North DFA, contracts must be delivered to the Auckland CA.
- For contracts requiring sign off from a Capital Works Central South & Southern DFA, contracts must be couriered (or hand delivered if in the same vicinity) to the Wellington CA.
- For contracts managed by Capital Works North but who will require signing by HEIS; the contract must still be delivered to the Auckland CA for review. Once the Capital Works North (CWN) CA has reviewed the contract, the CWN CA will courier the contract to the National Office CA who will arrange for HEIS signing.

- *An up to date Tracking sheet must accompany all documents when requesting HEIS execution.*

Step 16: The CA undertakes a quality assurance review of the compiled contracts and notably confirms if the contracts:

1. Have been correctly compiled with all schedules completed and in the right order; and
2. That the Major Works construction contract checklist and Contract Execution Request form have been completed.

Note: If the ext PM and/ or DM have not completed both documents, and/ or the contracts have been compiled incorrectly, the CA will return the contracts and additional documents to the DM and will not proceed until the compilation, checklist and request form are correctly completed.

Step 17: The CA couriers (or arranges for internal signing) the two original copies of the compiled contract to the Contractor for execution.

Note: The Document Transfer Record sheet must be included in the courier if the contracts are couriered to the Contractor for execution.

Step 18: The Contractor reviews, signs and initials both contracts (not schedules) and returns the partially executed contracts to the CA.

Note:

- *The Contractor must not date the contract. The last party (the Ministry) to sign the contract is responsible for dating the agreement.*
- *The Contractor is required to initial every page of the contract confirming that they agree to all clauses present in the agreement.*

Step 19: The CA reviews both partially executed contracts, confirming the signing of the contracts has been:

1. correctly completed; and
2. Name(s) of person signing on behalf of the company has authority to bind the business (who has the authority to execute a contract versus a deed is different).

Note:

- *If the contract has not been correctly executed, the CA will re-issue a new copy of the execution ready version of the contract to the Contractor and will not proceed until the contract is executed correctly.*
- *No handwritten amendments are to be made to the execution version. The CA will check that this has been compiled with.*

Who has authority to execute a contract versus a deed?

- *A **contract** may be signed by one person acting under the company's express or implied authority. This signature must be provided before an independent witness (who, for completeness, provides their residential address and occupation).*

*A **deed** requires a Director or POA authorisation. If the company has two or more directors, the deed must be signed by two directors of the entity. If there is a sole director only, the director signs before an independent witness (who, for completeness, provides their residential address and occupation).*

Step 20: The CA couriers (or delivers) both partially executed contracts to the DFA for Ministry execution and includes the completed Contract Execution Request form and supporting information.

Note:

- *The courier package must contain the completed Contract Execution Request form and if the contract requires HEIS execution, the Tracking sheet must also be included.*
- *If the DFA is located in the same office as the CA, the contract should not be couriered, but hand delivered.*

Step 21: The DFA reviews (if deemed necessary) and signs both partially executed contracts.

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.

Step 22: The DFA couriers (or delivers) both fully executed contracts back to the CA.

Filing and Helios setup

Step 23: The CA:

1. Retains one fully executed contract on behalf of the Ministry; and
2. Courier's one fully executed contract to the Contractor.

Note: For the Contractors contract, the Document Transfer Record sheet & Invoice reference letter must be included in the courier.

Step 24: The CA couriers the retained fully executed contract, drawings and all additional documents to the Capital Works 3rd party scanning and archive preparation partner.

Step 25: The 3rd party:

1. Scans the retained fully executed contract, drawings and all additional documents,
2. Barcodes, indexes and prepares contract for archiving,
3. Couriers boxed contract to the Ministry Archive for archiving; and
4. Sends CA scanned fully executed contract file and contract metadata.

Step 26: The CA saves the scanned fully executed contract file in **FileNet**.

Step 27: The CA uploads the FileNet link of the scanned fully executed contract to the corresponding contract in Helios.

Step 28: The CA updates the contract metadata in the Capital Works Master Document Registry.

Note: Contract metadata is automatically extracted during the scanning process. Metadata will be provided by the 3rd party to the CA when the scanned contract file is shared (step 25).

Handling of Bonds

Step 29: The CA receives the bond certificate from the DM and/or ext PM.

Step 30: The CA:

1. Scans the bond certificate and saves the file in FileNet under the dedicated bond folder; and
2. Couriers the original bond certificate to the Ministry Archive for archiving.

Step 31: The CA uploads the bond information obtained from the bond certificate to the Capital Works Master Document Registry.

Practical Completion:

Step 32: The DM and/ or ext PM award the Practical Completion Certificate to the Contractor and release the bond.

Note: Once the Practical Completion Certificate has been awarded, the DM and/ or ext PM will request the CA to notify the Contractor and the Surety that they are released from the bond and return the original bond certificate to the Contractor.

Acronyms used in this document:

EIS Legal	Education Infrastructure Service Legal team
EIS Pro	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
Contractor	Contractor/ Supplier
CA	Education Infrastructure Service Contract Administrator
DFA	Ministry of Education Delegated Financial Authority
QS	Quantity Surveyor
HEIS	Head Of Education Infrastructure Service
CIS	Contract Information Sheet

Related documents:

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

Document
Capital Works process for Major Works contracts - process diagram
Content list for compiling MOE Major Works Construction Contracts NZS3910:2013
MoE Major Works Construction Contracts Overview of Compilation and Execution
Major Works Contract Execution Request form
Major Works Construction Contract Tags Table Template
Major Works Contract Completion Checklist
Template Contract Information Sheet - Major Works Contract