Capital Works process for Major Works contracts – process diagram

List of acronyms and related documents can be found on page 5

PROCURMENT AND CONTRACT INITIATION STAGE

Step 1: EIS Legal

Prepare the contract for tender based on information provided in the CIS

Review, endorse and release the approach to market documents and gain endorsement

Responses are submitted with tender tags raised

NB: Where the CIS is drafted by the ext PM, the DM and EIS Pro are responsible for reviewing and endorsing the document prior to the DM sending the CIS to EIS Legal.

Step 2: EIS Procurement

Draft Procurement Plan and gain endorsement

Complete CIS

NB: The CIS is drafted by the ext PM, the DM and EIS Pro.

Tag the CIS information and send to EIS Legal

1. Evaluate all submitted responses and select a short list of Contractors.
2. Forward purely commercial tags to EIS Pro
3. Forward tags that require an endorsement to the Ministry’s standard terms and or tags that require legal input to EIS Legal

Step 3: Delivery Manager (DM)

Draft the approach to market documents and gain endorsement

Provide advice on the commercial implications associated with the raised tender tags

NB: The CIS must be sent to EIS Legal prior to the tender and EIS Pro have reviewed and endorsed (i) the content of the RFX documents and (ii) the tender contract form has been used.

Step 4: External PM (ext PM)

Provide advice on the risks and legal implications associated with the raised tender tags

NB: Where the Procurement Plan & approach to market documents are drafted by the ext PM, they are then reviewed and endorsed by the DM and EIS Pro, or by the EIS Procurement Manager (EIS Proc) as per the requirements of the CE. This is to ensure that the CIS information is complete and up to date and that all necessary tags are included.

Step 5: Contractor

Negotiate raised tender tags (finalising the advice provided by EIS Legal, EIS Proc & DM)

NB: Where the CIS is signed off by the Sponsor, EIS Legal will ensure the CIS is complete and all necessary tags have been included. The CIS should be completed, endorsed and sent to EIS Legal at least two full working days prior to the scheduled tender release.

Step 6: Contract Administrator (CA)

EIS Legal and EIS Pro will review the commercial tags and provide advice on the commercial implications of a tender tag. If a tag has the potential to be high risk, the Sponsor will be consulted.

Step 7: Delegated Financial Authority (DFA)

NB: Any Notice to Tenderers that will materially impact the information previously provided in the CIS (Step 3) must be sent to EIS Legal (or 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 consulted.

Step 8: Step 9

NB: 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 Proc, 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.

Key:
- Ext PM: Contractor
- To note:
- DFA: To note
- EIS Pro: To note
**Capital Works process for Major Works contracts – process diagram**

**List of acronyms and related documents can be found on page 5**

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<td><strong>Step 11</strong> Submit Recommendation Report to EIS Pro and the Sponsor</td>
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<td><strong>Step 12</strong> Notify unsuccessful respondents</td>
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<td><strong>Step 14</strong> Where there is no ext PM, unsuccessful respondents will be notified by the DM.</td>
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<td><strong>Step 15</strong></td>
<td><strong>Step 15</strong> For open tenders a debrief to respondents will be offered to explain why they were unsuccessful.</td>
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### Step 10
- Update the contract with agreed contractual amendments if any and provide DM with final draft word version of contract.
- **NB:** Only EIS Legal should make amendments to the contract and its wording.
- At this stage, EIS Legal is to email the appropriate CA advising contract is in progress.
- **NB:** Where there is no ext PM, unsuccessful respondents will be notified by the DM.
- For open tenders a debrief to respondents will be offered to explain why they were unsuccessful.

### Step 11
- Submit Recommendation Report to EIS Pro and the Sponsor.
- In the exceptional circumstances where a Letter of Intent (LOI) is required, include the request for a LOI and its value in the Recommendation Report.
- **NB:** All requests for an LOI must:
  - have been endorsed by DFA and a senior EIS Pro representative, 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.
- When the Sponsor of the project is different to the DFA:
  - In the circumstance where the Sponsor of the project is different to the DFA (i.e. Contracts requiring signing by HEIS) and an LOI is required, the ext PM or DM must contact EIS Pro for instructions as to LOI approval procedure.

### Step 12
- **NB:** Requirements for a LOI:
  - 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 proposal LOI and its value.
  - Approval of the LOI must be given by a DFA who holds financial delegation 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.
- The following details must be provided to EIS Legal when requesting a draft LOI:
  - 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
- Where there is no ext PM, unsuccessful respondents will be notified by the DM.
- For open tenders a debrief to respondents will be offered to explain why they were unsuccessful.

### Step 14
- Where there is no ext PM, unsuccessful respondents will be notified by the DM.
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### Step 15
- Where there is no ext PM, unsuccessful respondents will be notified by the DM.
- For open tenders a debrief to respondents will be offered to explain why they were unsuccessful.

### For contracts requiring sign off from a Capital Works North DFA, contracts must be delivered (or hand delivered if in the same vicinity) to the Auckland CA.
- For contracts requiring sign off from a Capital Works Central South or 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 send 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.

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**Key**
- EIS Legal
- EIS Pro
- Ext PM
- Contractor
- DFA
- DM
- CA

**To note**
- Step checkpoints
**Capital Works process for Major Works contracts – process diagram**

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**External PM (Ext PM)**
- NB: 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.
- 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.

**Contractor (CA)**
- Undertake a quality assurance review of the compiled contracts and notify the CA if they have not been correctly compiled with all schedules completed.
- Review the partially executed contracts, confirming the signing of the contract has been:
  - Correctly completed;
  - With the name(s) of person signing on behalf of the company identified as having the authority to bind the business.

**Document Transfer**
- Reference Letter must be included in the courier package.
- 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 DFA is located in the same office as the CA, the contract should not be couriered, but hand delivered (same rule applies when contract is returned to CA).

**Post Contractor execution**
- Review (if deemed necessary), sign, initial and date both partially executed contracts.
- Courier or deliver both fully executed contracts back to the CA.

**Key**
- NB: The Document Transfer Record Sheet must be included when couriering the contracts and return both partially executed contracts to the Contractor.

**Delivery Manager (DM)**
- NB: The Document Transfer Record Sheet must be included when couriering the contracts to the Contractor.
- 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.

**Post Contractor execution**
- Review (if deemed necessary), sign, initial and date both partially executed contracts.
- Courier or deliver both fully executed contracts back to the CA.

**Delegated Financial Authority (DFA)**
- Review the partially executed contracts, confirming the signing of the contract has been:
  - Correctly completed;
  - With the name(s) of person signing on behalf of the company identified as having the authority to bind the business.
- Courier or deliver both partially executed contracts to the DFA for Ministry execution & include the completed Contract Execution Request form and supporting information.

**Key checkpoints**
- Refer to: Capital Works process for Major Works contracts – guidance notes for details regarding who has authority to bind a business.
- 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.
- Handwritten amendments are to be made to the execution version.
- The CA will check that this has been complied with.

**Filing**
- NB: At the point of Ministry execution, the DFA must date and initial each page of the contract.

Version: Effective from 1 August 2017
### Capital Works process for Major Works contracts – process diagram

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**Handing of Bonds**

1. Scan bond certificate and save the file in the dedicated bond folder in FileNet.
2. Courier the bond certificate to the Ministry for archiving.
3. Upload the bond metadata to the Capital Works Master Document Registry.

**NB:** Once the Practical Completion Certificate has been awarded, the DM and or ext PM requests CA to:
1. Notify Contractor and Surety that they are released from the bond; and
2. Courier the original bond certificate back to the Contractor.

**FILING AND HELIOS SET UP**

1. Update the contract metadata in the Capital Works Master Document Registry.
2. Upload the FileNet link of the scanned fully executed contract to the corresponding contract in Helios.
3. Save the scanned fully executed contract file in FileNet.
4. Send CA scanned fully executed contract file and contract metadata.

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

**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.

- Capital Works process for Major Works contracts - Guidance Notes
- 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

*NB: the timings provided are indicative and may vary for each contract and time of year.*