



Guidance Note

Medium Works Contract

This Medium Works Contract has been developed by the Ministry of Education (**Ministry**) for the engagement of contractors for medium value property construction projects. It is suitable for use for Board of Trustees (**Board**) engaged projects. These guidance notes are intended to provide guidance to Boards and to those managing projects on their behalf.

These guidance notes, as well as those guidance notes included within the contract, will help Boards choose an appropriate contract with the right terms and conditions for each engagement, and give certainty to contractors providing construction services to Boards.

These construction contract templates should be used instead of the Government Model Contracts, which are not designed to be used for construction projects.

This Medium Works Contract is designed so that Part 2 contains the standard terms and conditions, with all the specific project details contained in Part 1 and the applicable Appendices. You should not change the standard terms and conditions as they have been tailored specifically to Ministry requirements.

When to use this Medium Works Contract

The following are guidelines for when you should use the Medium Works Contract.

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|-----------------------------|--|
| Type of work: | Significant construction or building works. |
| Value: | \$100,000 to \$1,000,000 excluding GST and disbursements. |
| Suitable for: | Demolition and general construction or building works requiring a building consent or work that could compromise the weathertightness of the building. |
| Further information: | <p>Weathertightness Requirements: www.education.govt.nz/weather-tightness-and-durability-design</p> <p>Health and Safety Management Requirements: www.education.govt.nz/health-and-safety-management</p> <p>Asbestos Handling Requirements: www.education.govt.nz/asbestos</p> |

Questions?

For Board led projects: Any queries raised by the Board in relation to the terms and conditions of this Medium Works Contract and its use should be directed in the first instance to the School Property Advisor. If legal assistance is required, the School Property Advisor will provide guidance on obtaining legal advice through the New Zealand School Trustees Association.



Getting started

Because you are acting on behalf of the community and using public money, you need to use processes that ensure responsible use of funds. Even when you know and trust the person or company doing the contract works, there are certain basics that you need to cover when setting up a building contract for your school.

Who are the Parties?

Principal to the contract:

The Contract uses the word “Principal” to refer to the entity engaging the Contractor to carry out the works. The Board is the legal body that has the authority to enter into the contract on behalf of the school and will be the “Principal” under the contract.

Contractor:

It is important to use the full legal name of the Contractor. Is it a company, individual, or a company trading under a different name? If the Contractor is a company (or some other legal entity such as a registered Limited Partnership) then check the New Zealand Companies Office to ensure that the Contractor entity actually exists. Entities can be searched at: <https://www.business.govt.nz/companies>.

Managing the Contract

The Project Manager:

The Project Manager manages the design, procurement and construction phases of a project on behalf of the Principal. This may include overseeing the pre-tender activity on a project, managing the process of setting up and finalising the construction contract with the Contractor.

The Principal's Representative:

The Medium Works Contract requires a degree of contract administration and requires the Principal to appoint a “Principal's Representative” to administer the day to day running of the contract on its behalf. The Principal's Representative acts as agent to the Principal and provides directions to the Contractor on behalf of the Principal. The Principal's Representative can include a named individual from an external consultant appointed to manage the project.

Legal Authority – Board of Trustees

The only “person” with the legal authority to enter into a contract on behalf of the school is the Board, or someone the Board has formally appointed at a Board meeting to act on behalf of the Board.

The person or people authorised to deal with the building project by the Board should be recorded in the Board minutes for the meeting at which the Board made the decision to appoint the authorised person or people.

When should the Contract be prepared?

Check that you have the most up to date version of the Medium Works Contract available from: www.education.govt.nz/construction-contracts-for-professional-services-and-works.

The contract should be prepared and issued as part of the tender documents. The contract includes important information that will be required by the Contractor in preparing its quote (e.g. price and programme) for the project. It is also important that the Contractors have this information up front to ensure they understand the terms and conditions upon which they will be appointed. Providing this information at tender stage will avoid any potential surprises further down the line.

It is important to have details of the construction work agreed and the contract signed before the Contractor starts any work on the project.



Subcontractors

Generally, the Contractor is allowed to subcontract parts of the work to subcontractors listed in their tender. You should review the subcontractors listed in the Contractor's tender to ensure you are happy with their proposed subcontractors. The Contractor is not allowed to subcontract the whole or substantially the whole of the contract works without consent from the Principal. Contractors are responsible for the work carried out by their subcontractors, and can be required to fix any defective works. Contractors are also responsible to replace Subcontractors if they fall over.

There are also some specific types of subcontractors, including nominated subcontractors.

Nominated Subcontractors: Nominated Subcontractors are subcontractors selected by the Principal who the Contractor is required to use for specific parts of the works. However, the Principal will be liable for the cost of any delay or other loss caused by a Nominated Subcontractor. You should only use a Nominated Subcontractor if it is essential for that particular subcontractor to carry out part of the works.

Contract Works Insurance

The Ministry provides contract works insurance at a minimal cost to the construction project at state schools. The contract works insurance covers accidental loss and damage to the works being undertaken (including temporary works) under the contract including off-site materials, subject to certain limits specified by the policy. It does not cover damage to existing property or contents. If the project involves a building or other asset that is, or will be, owned or partly owned by the Ministry, then you must use the Ministry's contract works insurance. If the project is wholly funded by the Board on a school site, you can choose to use the Ministry's contract works insurance at no cost to the Board.

To obtain contract works insurance for your project, the Ministry requires that the details of the contract are entered into the Ministry's contract works insurance broker's website. The Ministry's insurance broker's website can be accessed via: www.education.govt.nz/insurance.

The insurance is effected jointly in the names of the Principal, the Contractor and its Subcontractors. Damage to the contract works caused by the Contractor will be subject to "nominal deductibles". Nominal deductibles are specified amounts equal to, or less than, the sum of any excess required to be applied under the policy (**Nominal Deductibles**).

Professional Indemnity Insurance

If the Contractor is responsible for any element of design of the contract works (e.g. design of foundations, design of fire systems or design of temporary works), the Contractor is required to hold Professional Indemnity Insurance as set out in the contract.

Existing Structures Insurance

The contract requires that any Principal owned property (i.e. property owned by the Board) is insured by the Principal. This is because the Principal will have existing insurance policies and will be better placed to assess the level of cover required to protect existing structures. It also avoids duplicating insurances which can increase the costs of a project. These structures needs to be listed in the contract, and where Board owned structures are involved you should ensure that your insurance provider is made aware of the construction work to ensure that the policy is extended to cover damage arising from construction activity. Damage to Principal owned property caused by the Contractor will result in the Contractor being liable for payment to the Principal of Nominal Deductibles.



Contents Insurance

This will typically apply to Board led projects. The contract requires that any Principal owned contents are insured by the Principal following the same principles as those outlined above for existing structures. Any damage to contents caused by the Contractor will result in the Contractor being liable for payment to the Principal for any specified Nominal Deductibles. The insurance provider must be notified of the construction work taking place to ensure that the policy is extended to cover damage arising from construction activity.

Weathertightness Warranty

A weathertightness warranty will be required if the works impact the building envelope and therefore may present weathertightness issues. It is not required for works that are entirely within the envelope of the building, or for emergency “patch repairs” to the envelope.

If you feel that the works may pose a weathertightness risk then you must make it a requirement in the contract that the contractor provides a weathertightness warranty.

Subcontractor warranties

The Contractor is required to obtain materials and workmanship warranties from their Subcontractors, for the work packages and time periods set out in Appendix 9 – Part A of the contract. The form of the warranty is set out in Appendix 9 – Part B of the contract. If the Contractor or Subcontractors consider that the warranty periods specified in Appendix 9 – Part A are not readily available in the market, they need to raise this in their tender.

When are the Works completed?

There are two stages of “completion” under the Medium Works Contract: “Practical Completion” and “Final Completion” as follows:

Practical Completion occurs when all works have been substantially completed to the satisfaction of the Principal, except for minor omissions and minor defects.

The works must achieve Practical Completion by the Due Date for Completion set out in the contract. Delay to achieving Practical Completion by the Due Date for Completion may give the Principal the right to levy liquidated damages against the Contractor. Liquidated damages are a pre-determined sum, usually a daily rate, which must be paid by the Contractor for each day of delay it is responsible for. Liquidated damages must be a genuine pre-estimate of the financial loss that the Principal might suffer as a result of delay. The Principal will need to specify a rate in the contract based on its own assessment of potential loss.

Before issuing a Practical Completion Certificate the contractor must provide the Principal with notice that it has completed the contract works and there are a number of requirements that the Contractor needs to satisfy in terms of specific documentation (e.g., producer statements, Code Compliance Certificate (CCC) or Certificate of Public Use (CPU) under the Building Act, Weathertightness Warranty, etc.). The list of documents required can be added to or varied in the Special Conditions of the contract.

Practical Completion



Defects Notification Period and Final Completion

The Defects Notification Period (**DNP**) is set at 6 months as standard. The DNP begins once the Practical Completion Certificate has been issued by the Principal. The Principal must issue a Final Completion Certificate at the end of the DNP, subject to the Contractor having remedied any defects found in the works and if required, having obtained a Code Compliance Certificate. Failure to meet these requirements will extend the DNP until the Contractor has completed its obligations. Once the Final Completion Certificate is issued the Principal must pay the Contractor the balance of any retention monies (see below). There may be some circumstances where the standard 6 months DNP is not appropriate to the nature of the works being carried out. For example:

- If the contract works affect the **weathertightness** of the building, or include substantial mechanical or electrical work, or include multiple sub-trades, the DNP should be extended to 12 months.
- If the contract works are for **demolition only**, there is no requirement for a DNP. In this situation, the Principal will have to issue both the Practical Completion Certificate and Final Completion Certificate simultaneously once demolition has been completed (providing the Contractor has met the requirements of the Contract) to avoid unnecessary holding of retention monies.

Retentions

The percentage to be retained from each progress payment and the limit of the total sums retained shall be in accordance with the following:

- 5% on the first \$200,000.
- 2.5% on the next \$800,000.
- With a maximum total retention when aggregated of \$30,000.
- With a defects liability retention which is 100% of the total retention.

Retention monies shall be released within 10 Working Days following the issue of the Final Completion Certificate.

Requirements for Performance Bond

There is no requirement for a performance bond under the Medium Works Contract.

Substituted materials

The Contractor may recommend that a product or material that your design consultant has specified could be substituted with an alternative product or material. You must consult your design consultant to establish whether any substitution of products or materials would result in a deficiency in the design – as they are responsible for the design, they will need to sign off that any alternative product or material will not compromise the design, and you may need to consider any potential design variation costs resulting from your consultant having to spend additional time and effort in validating alternative products or materials. The Contract includes a clause that sets out the process that should be followed in the event that the Contractor recommends an alternative product or material.



Salvaged materials

If the project includes demolition of existing buildings or removal of existing features of the site it is important that you and your consultant team consider at an early stage whether there are any specific items considered to be of significant value that you would like to keep. Items can be of significant value in terms of their cultural or heritage significance to the school or to the local community, or they could have a high monetary value or could be re-used on future school projects.

If there are any such features or materials, these should be listed as “salvaged materials” in the relevant clause of the contract as part of the tender documents. Any features or materials found during construction that are not clearly identified in the contract, are considered to be the property of the Contractor i.e. to be disposed of off-site. Should the Principal decide that it wishes to keep any features or materials not identified in the contract, the Contractor will be entitled to a variation under the contract and this may result in additional costs to the Principal as a result of the Contractor having to change its planned method of work.

Conflicts of Interest

The Contractor and all members of the Board are required to disclose any actual or likely conflicts of interest in writing before signing the contract.

A conflict of interest includes any family or business relationship between the Contractor (including the Contractor’s directors and senior managers) and any member of the Board, or any staff at the school.

In the contract itself, the Contractor is also required to declare:

- that they are not aware of any further conflict of interest that has not already been disclosed in writing to the Principal;
- any conflict of interest that arises after signing the contract; and
- any claims by the Ministry or any school board of trustees against the Contractor (including any claims against a majority shareholder or director of the Contractor) for defective work.



Completing the Medium Works Contract details

Overview of the Medium Works Contract

It is important that you read over the whole contract to ensure you understand what you are committing to, and what you are entitled to expect from your Contractor.

You should keep a copy of the properly signed contract stored for reference during the time that the Contractor carries out the work. You should also safely store the original (or a copy of) the contract (and all associated documents such as product warranties) for ten years (or longer if one or more of the warranty periods is more than 10 years), in case any defects in the work are discovered later. As there is a high probability that key people in the school will change over that time, it is important to make sure that all property documentation is kept together, and that the Board and the school principal have clear records of where they are stored and how to access them. This should include any passwords or other security measures.

The Medium Works Contract is in four parts:

- **Contract Agreement:** this section lists the documents that form part of the contract and is signed by the Principal and Contractor to legally bind the parties to the contract. The contract should be signed by the Contractor before the Board signs
- **Part 1: Special Conditions of Contract:** this section requires you to complete the specific details and requirements for a project
- **Part 2: General Conditions of Contract for Medium Works:** this section provides the Ministry's standard terms and conditions of contract which should not be amended
- **Appendices 1 – 11**

Some of the key provisions of the Medium Works Contract are listed in the table below for ease of reference. Part 1 of the contract includes additional guidance notes around these key provisions as well as others. This guidance is provided in Part 1 as [blue text](#).

| Subject matter | Clause number |
|--|------------------|
| Public liability insurance | 2.9.1 |
| Motor vehicle third party liability insurance and Contractor's plant and equipment insurance | 2.9.2 |
| Professional indemnity insurance (where Contractor has any design responsibility) | 2.18.1(c) |
| Code Compliance Certificate (CCC) and Certificate of Public Use (CPU) | 5.3.4(d) and (e) |
| Defects Notification Period | 6.1 |
| Lump sum or cost reimbursement contract | 7.1 |
| Liquidated damages | 8.5 |



The Contract also includes a number of appendices that need to be completed and have documents attached to. The below table provides guidance for completing the appendices.

| | |
|--|---|
| Appendix 1 – Contract Price Summary | Insert the items and prices in the table provided |
| Appendix 2 – The Drawings | <p>Attach drawings of the works.</p> <p>You should also include plans of:</p> <ul style="list-style-type: none"> • Where on the site the work is to take place. • All cables or pipes providing services on the site (e.g. water, sewage, electricity and gas). <p>Permitted routes of access to and from the site for the Contractor.</p> <ul style="list-style-type: none"> • Any “No Go” zones or hazards on the site. • Any other information that may be relevant. |
| Appendix 3 – The Specifications | <p>Attach the documents which contain the specific requirement for carrying out the works. These could include:</p> <ul style="list-style-type: none"> • Detailed description of the work to be completed under the project. • Design drawings for the project. • Specific requirements of the project. |
| Appendix 4 – Health and Safety Requirements | This contains details of the Health and Safety Requirements that the Contractor must comply with and includes reference to the Ministry’s health and safety reporting requirements available on the Ministry’s website. |
| Appendix 5 – Asbestos Handling Requirements | This contains details of the Asbestos Handling Requirements that the Contractor must comply with available on the Ministry’s website. |
| Appendix 6 – Form of Contractor’s Weathertightness Warranty | This contains the form of weather tightness guarantee that the Contractor must execute (if required by the Part1: Special Conditions of Contract) and deliver prior to issuing a Practical Completion Certificate. |
| Appendix 7 – Practical Completion Certificate | This contains the form of Practical Completion Certificate that the Contractor must provide. |
| Appendix 8 – Final Completion Certificate | This contains the form of Final Completion Certificate that the Contractor must provide. |
| Appendix 9 – | This contains the timing for subcontractor warranties, and the form of |
| Subcontractor Warranties | Subcontractor warranties that the Contractor must execute and deliver as appropriate. |
| Appendix 10 – Principal’s Request for Tender | Include the Principal’s Request for Tender. |
| Appendix 11 – Contractor’s Tender | Only include the Contractor’s tender submission where necessary (i.e. where the agreed tender clarifications have not been incorporated into the Contract itself). |