



Medium Works Contract

Guidance Note

The Medium Works Contract (the Contract) has been developed by the New Zealand School Property Agency (NZSPA) for the engagement of contractors for medium-value construction projects. It is suitable for projects led by the Board of Trustees (Board). These guidance notes, together with the drafting notes in the Contract, are intended to provide guidance to Boards and to those managing projects on their behalf.

When to use the Medium Works Contract

Type of work:	All types of construction/building work (which could include renovations, refurbishments, new-builds, demolition, landscaping, remediation projects, work that requires a building consent and/or work that could compromise the weather-tightness of an existing building).
Value of work:	\$100,000 to \$1,000,000 excluding GST and disbursements.

Overview of the Medium Works Contract

The Medium Works Contract is made up of the following parts:

- **Contract Agreement:** This is the front section of the Contract. It lists the documents that form part of the contract, along with the “signature section”.
- **Part 1: Special Conditions of Contract:** This section requires you to fill-in details about your project.
- **Part 2: General Conditions of Contract for Medium Works:** This section contains the terms and conditions.
- **Appendices 1 & 2:** This is where you will insert your drawings and specifications setting out the work to be carried out under the Contract.
- **Appendix 3:** This is where you will insert a breakdown of the agreed price of the works (called the “Schedule of Prices”).

- **Appendices 4 to 10:** These set out standard NZSPA requirements related to health and safety, asbestos handling and sub-contractor warranties, along with template warranty forms and other documents.
- **Appendices 11 & 12:** This is where you can insert a copy of your request for tender and a copy of the Contractor's tender (to the extent that these documents are not already included in Appendices 1 to 3).

When should you start preparing the Contract?

A draft copy of the Contract (including details of the work you require) should be prepared and issued as part of the quoting process. This will give the Contractor an opportunity to familiarise themselves with the terms of the Contract and enable them to more accurately prepare their quote.

The Contract should be signed before the Contractor starts work.

Preparing a Medium Works Contract

Before preparing the Contract, check that you have the most up to date version of the Contract available from:

<https://www.schoolproperty.govt.nz/property-projects/procurement-process-for-school-led-property-projects/step-4-award-the-contract>

There are certain key details that you need to cover-off in the Contract (even if you know and trust the person or company who you are engaging to do the work). Some of these key details are as follows.

The Principal:	The "Principal" is the legal entity who is engaging the Contractor to carry out the Works. On Board-led projects, the Principal is the Board.
The Contractor:	The Contractor is the legal entity who you are engaging to carry out the Works. It is important to identify the Contractor in the Contract by their full legal name to ensure there is no room for doubt about who the Contractor is. If the Contractor is a company (or some other legal entity such as a registered Limited Partnership) then their full legal name will be the name they have registered with the New Zealand Companies Office. You may be able to find their registered name by searching the New Zealand Companies Office website at: https://companies-register.companiesoffice.govt.nz/
The Principal's Representative:	The Medium Works Contract requires a significant amount of contract administration, so it requires the Principal to appoint a "Principal's Representative". This person administers the day to day running of the contract. The Principal's Representative can be an external consultant.

The Works:	The Works are the works that are to be carried out by the Contractor under the Contract. You will need to include drawings and/or specifications in Appendix 1 and Appendix 2 to describe the Works in detail.
Contract Price:	This is the amount you have agreed to pay for the Works. You are required to specify this amount in Part 1 – Special Conditions of Contract. You should also include a detailed breakdown of the Contract Price in Appendix 3.
Commencement Date & Due Date for Completion:	In Part 1 – Special Conditions of Contract, you are required to insert a Commencement Date and a Due Date for Completion. The Commencement Date is the date when the Contractor has to start the Works. The Due Date for Completion is the date by which the Contractor has to achieve Practical Completion (see below for an explanation of what this means). It is important that both these dates are clearly recorded in the Contract.

Who can sign the Contract?

Only the Board (or someone formally authorised by the Board, at a Board meeting) can enter into a contract on behalf of the school.

If the Board authorises a consultant or other person to manage the building project, that Board decision should be recorded in the minutes for the Board meeting at which the decision was made.

When do we pay the Contractor?

In Part 1 – Special Conditions of Contract, you are required to select one of several payment arrangements (e.g. monthly payments, or payment upon Practical Completion). Your chosen payment arrangement will determine when the Contractor can submit payment claims for the work they have done.

Retentions

Under the Contract, the Principal is entitled to retain a percentage of each payment as a kind of security to ensure that the Contractor finishes the Works and fixes defects as required during the Defects Notification Period (see below for an explanation of what this is).

The percentage to be retained is stated in Part 1 – Special Conditions of Contract, and is:

- 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.

The retentions must be paid to the Contractor once the Final Completion Certificate is issued (see below for an explanation of what this is).

Practical Completion

Under the Contract, the Contractor has to achieve “Practical Completion” by the Due Date for Completion.

Practical Completion is when:

- (a) the Site is cleared, and the Works and any adjacent buildings affected by the Works are cleaned to the satisfaction of the Principal; and
- (b) the Works are complete except for minor omissions and minor defects which in the opinion of the Principal:
 - i. the Contractor has reasonable grounds for not promptly correcting;
 - ii. do not prevent the Works from being used for the intended purpose; and
 - iii. rectification of which will not prejudice the convenient use of the Works.

In Part 1 – Special Conditions of Contract, you can require the Contractor to provide various certificates and other documents prior to Practical Completion (e.g. producer statements, a code compliance certificate (CCC), a certificate of public use (CPU) and a weathertightness warranty).

The Contractor has to notify the Principal when it believes Practical Completion has been achieved. If the Principal agrees, the Principal issues a Practical Completion Certificate in the form provided in Appendix 7.

Delays to completion - Liquidated damages

If the Contractor does not achieve Practical Completion by the Due Date for Completion, the Principal may be entitled to “liquidated damages” at the rate stated in Part 1 – Special Conditions of Contract for each day that the Works remain incomplete.

Defects Notification Period

In Part 1 – Special Conditions of Contract, you are required to specify the duration of the Defects Notification Period (**DNP**). The DNP is the period during which the Contractor is required to return to the site and correct any minor outstanding works or defects that come to light during this time.

The DNP begins when the Practical Completion Certificate is issued by the Principal.

The standard duration for NZSPA Contracts is 12 months. However, you should consider whether there are project-specific or school-specific factors that might make a different DNP more appropriate for your Contract.

Final Completion

At the end of the DNP, the Principal has to issue a Final Completion Certificate if the Contractor has fulfilled its obligations.

Limit to the Contractor's liability

The Contractor's liability to the Principal is limited to the amount stated in Part 1 – Special Conditions of Contract. This is the maximum amount of compensation or damages the Contractor will have to pay if it breaches the Contract or carries out the Works incorrectly. By default, the amount is equal to the Contract Price.

In some situations, the Contractor's liability is not limited to this amount. These situations are set out in clause 8.6.1 in Part 2 – General Conditions of Contract for Medium Works.

The limit to the Contractor's liability and the exclusions set out in clause 8.6.1 are standard for NZSPA-led projects and should be appropriate for most Board-led projects. Nevertheless, you should carefully consider whether the standard limit and exclusions are appropriate for your school and your project.

Design responsibility

If the Contractor is required to design any parts of the Works, you should clearly identify those parts in the space provided in Part 1 – Special Conditions of Contract. Doing so will help avoid disagreements about who is responsible for producing the drawings and other technical documentation for those parts of your project.

Subcontractors

Generally, the Contractor is allowed to use any subcontractors they have listed in their tender. You should review the subcontractors listed in their tender to ensure you are comfortable with who they have proposed. The Contractor is not allowed to subcontract the whole (or substantially the whole) of the Works without your consent. The Contractor is responsible for all work carried out by its subcontractors.

A “**Nominated Subcontractor**” is a subcontractor who has been selected by the Principal (i.e. where the Principal requires the Contractor to use a specific subcontractor for a particular part of the Works). If you require the Contractor to use a Nominated Subcontractor, you will need to insert their details in the space provided in Part 1 – Special Conditions of Contract. However, you should only use Nominated Subcontractors if it is essential to your project – the Principal can be liable if the Nominated Subcontractor causes the Contractor to incur costs or delays.

Contract works insurance

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

To obtain contract works insurance for your project, you must submit details of your construction contract via the NZSPA's insurance broker's website:

<https://www.schoolproperty.govt.nz/property-projects/contracts-and-insurance/contract-works-insurance-for-school-property-projects>

Insurance of existing structures

In Part 1 – Special Conditions of Contract, you are required to list any existing buildings that you have agreed to insure against construction-related damage. If you agree to list any buildings, you should let your insurance provider know about the construction work and check that your policy will cover damage resulting from construction activity.

Note that you should only list Board-owned buildings; Crown-owned structures will not generally be covered by the Board's building insurance so should not be listed.

Contents insurance

Under the Contract, the Principal is required to insure its belongings in any structures that will be directly affected by or in the vicinity of the Works. You should ensure that your insurance provider is made aware of the construction work and that your insurance policy covers damage resulting from construction activity.

Weathertightness Warranty

In Part 1 – Special Conditions of Contract, you can require the Contractor to provide a weathertightness warranty. You should require a weathertightness warranty if the Works could cause weathertightness problems if they are not carried out properly (such as where the Works involve changes to the “building envelope” of a structure).

Subcontractor warranties

The Contractor is required to obtain materials and workmanship warranties from their subcontractors. The required warranty periods and a template warranty form are set out in Appendix 9.

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.

Asbestos handling, health and safety & weathertightness design requirements

The Contract includes standard NZSPA requirements for:

- **Asbestos Handling:**
<https://www.schoolproperty.govt.nz/day-to-day-management/hazardous-materials-and-substances/managing-asbestos-in-schools>
- **Health and safety**
<https://www.education.govt.nz/education-professionals/schools-year-0-13/health-and-safety/health-and-safety-responsibilities-schools>
- **Weathertightness design**
<https://www.schoolproperty.govt.nz/designing-school-property/requirements-for-school-design-in-new-zealand/weathertightness-design-standards-for-school-buildings>

Consultants

If you will be appointing consultants to assist you with your project, they should be engaged using the NZSPA's template contracts for consultancy services. These templates are available on the NZSPA's website:

<https://www.schoolproperty.govt.nz/property-projects/procurement-process-for-school-led-property-projects/step-4-award-the-contract>

Storing your signed Contract

You should safely store the signed Contract (and all associated documents and correspondence) in case you discover any defects in the Contractor's work at a later date.

Questions?

Any queries about the Contract should be directed to the School Property Advisor in the first instance. If legal advice is required, the School Property Advisor will provide guidance on obtaining legal advice through the New Zealand School Trustees Association.