

Operational Instruction Ref. OLIPS.2022.01**Contracts for Works****1. Authority**

- 1.1. This Operational Instruction (OI) is promulgated by the Director of Implementation Practices and Standards under the Operational Directive (OD) on the Management of UNOPS Partners and Resulting Agreements, on the basis of a delegation of authority from the Executive Director.

2. Purpose

- 2.1. The purpose of this OI is to provide instructions regarding the use of the revised suite of Contracts for Works when implementing Works for, or on behalf of, UNOPS.

3. Effective Date

- 3.1. This OI shall become effective from 13 May 2022 for any Contract for Works to be entered into by UNOPS as a result of a procurement process that is initiated on or after this date.
- 3.2. For any Contract for Works to be entered into by UNOPS as a result of a procurement process that was initiated before 13 May 2022, the Works Contracts listed in [OI.IPMG.2018.07: UNOPS Works Contracts](#), shall continue to be used as a transition measure. Such Contracts for Works shall be entered into by UNOPS by 31 December 2022 at the latest.

4. Consequential Changes

- 4.1. This OI shall abolish and supersede OI.IPMG.2018.07: UNOPS Works Contracts, subject to section 3 above. The purpose of this revision is to introduce and mandate the use of UNOPS revised suite of Contract for Works and related solicitation documents.

[signature redacted]

Nicholas O'Regan
Director, Implementation Practices and Standards

Operational Instruction Ref. OI.IPS.2022.01**UNOPS Contracts for Works**Table of Contents

1.	Introduction	3
2.	Definitions	3
3.	When to use the Contracts for Works	4
4.	The suite of Contracts for Works	4
5.	Selecting the Appropriate Contract for Works	4
6.	Solicitation Methods and Documents	6
7.	Structure of the Contracts for Works	7
8.	Key Elements of the Contract for Works	7
9.	Exceptions	9
10.	Disputes	9
11.	Authoritative Interpretation	9

1. Introduction

- 1.1. In 2010, the General Assembly reaffirmed the role of UNOPS as a central resource for the United Nations system in procurement and contracts management, as well as in civil works and physical infrastructure development, including the related capacity development activities.¹
- 1.2. The implementation of Works for, or on behalf of, UNOPS shall be done in accordance with UNOPS policies, the legal agreements UNOPS has entered into with its partners and construction and services contracts. Given the specificities of Works activities, UNOPS has developed a specific suite of Contract for Works that shall be used when implementing Works for, or on behalf of, UNOPS.
- 1.3. The purpose of this Operational Instruction (OI) is to provide instructions regarding the selection and use of UNOPS Contracts for Works and the related solicitation methods and documents.

2. Definitions

- 2.1. For the purpose of this OI, the following terms shall have the meaning provided herein:
 - 2.1.1. **Works:** All activities associated with the construction, reconstruction, demolition, repair or renovation of infrastructure, including activities such as site preparation, excavation, erection, building, installation of equipment or materials, decoration and finishing, as well as professional services related to construction, such as design and construction supervision services, exploratory drilling, mapping, satellite photography, topographic surveying, seismic investigations and similar services.
 - 2.1.2. **Contracts for Works:** The UNOPS suite of Contracts for Works 2022 editions.
 - 2.1.3. **Defects Notification Period (DNP):** The period between issuing the ‘Taking Over Certificate’ and the ‘Final Completion’ of the Works.

¹ Resolution Adopted by the General Assembly, ‘Renaming of the Executive Board of the United Nations Development Programme/United Nations Population Fund to include the United Nations Office for Project Services’, A/RES/65/176, 20 December 2010.

3. When to use the Contracts for Works

- 3.1. When UNOPS enters into a legal agreement with a partner, relating to the implementation of Works (Legal Agreement), the roles (and associated liabilities) of UNOPS and its partner shall be clearly defined in the Legal Agreement, so that it is clear who is responsible for what work packages/activities (e.g. preliminary studies, design, construction, construction supervision, operation and/or advisory services as applicable).
- 3.2. Where UNOPS is responsible for delivering part or all of the Works, depending on the associated risks and liabilities, UNOPS may decide to implement part or all of the Works directly or contract the Works implementation to contractors and/or consultants. When the implementation of the Works is to be procured, the appropriate Contracts for Works shall be used, except as noted in Section 3.3 of this OI.
- 3.3. Any agreement between UNOPS and a partner for the use of contract forms other than one of the Contracts for Works and/or the related solicitation documents shall require the prior approval from the Head of Standards, Infrastructure and Project Management Group (IPMG) and shall be included in the Legal Agreement.

4. The suite of Contracts for Works

- 4.1. UNOPS has developed a suite of Contracts for Works – using elements from the International Federation of Consulting Engineers (FIDIC) standard suite of contracts – which includes the following contracts:
 - 4.1.1. Construction Contract for Major Works;
 - 4.1.2. Construction Contract for Small Works;
 - 4.1.3. Construction Contract for Minor Works;
 - 4.1.4. Consultant Services Contract for Works; and
 - 4.1.5. Construction Contract for Design and Build.²

5. Selecting the Appropriate Contract for Works

5.1. Construction Contracts for Works

- 5.1.1. The appropriate Construction Contract for Works shall be selected with due consideration for the risk profile of the Works and level of rigor required for effective contracts administration.
- 5.1.2. The following five factors shall be taken into account when selecting the Construction Contract for Works:

² Under development at the time of promulgation of this OI and until its completion the current Design and Build Contract shall continue to be used.

- i. Regulatory environment and construction industry capacity in the operating context;
- ii. Complexity of the infrastructure asset design;
- iii. Consultant capacity (if a consultant will be engaged);
- iv. UNOPS project team capacity; and
- v. Estimated construction value.

5.1.3. To assist UNOPS personnel to select the appropriate Construction Contract for Works, the [Contracts for Works: Selection tool](#) shall be used.

5.2. Consultant Services Contract for Works

- 5.2.1. The Consultant Services Contract for Works shall be used for infrastructure-related design services, the provision of other technical services, such as geotechnical investigation, topographical survey, specialized structural analysis, or construction supervision activities.
- 5.2.2. In the case of design services, reference to the applicable UNOPS design planning manual shall be made in the solicitation documents and the contract to ensure that the Consultant complies with the minimum applicable design standards.
- 5.2.3. In addition, the ‘Time for Completion’ in a consultant contract for design services should, wherever possible, be aligned to the ‘Time for Completion’ for the associated construction activities. This will ensure that any required changes to the design are made by the Consultant responsible for the design, not by UNOPS, and avoid any transfer of liability for the design to UNOPS. Refer to the OI on the Design Review of Infrastructure Works for further guidance.

5.3. Construction Contract for Design and Build

- 5.3.1. The Construction Contract for Design and Build shall be used to engage a contractor to both design and build the Works.
- 5.3.2. Given the complexity of this contract, prior approval from the Head of Engagement Assurance, IPMG is required before using this contract modality.

5.3.3. Prior to issuing the procurement process for a Construction Contract for Design and Build, the ‘Requirements of the Employer’, that is the design requirements for the works, shall be reviewed and accepted by the Head of Engagement Assurance, IPMG.

5.3.4. Once the design has been prepared by the Contractor, it shall be reviewed and approved by IPMG Design Review before a Certificate of Design Review Compliance can be issued and the Works can be implemented. Refer to the OI on the Design Review of Infrastructure Works for further guidance.

6. Solicitation Methods and Documents

6.1. Depending on the type of Contract for Works to be used and the estimated construction value or value for the consultant Services, the most suitable solicitation method and documents for the corresponding contract shall be used as per the criteria in *Table 1*.

Table 1: Solicitation Method and Documents

Contract for Works	Estimated Construction Value/Value for Consultant Services	Solicitation method and document
Construction Contract for Major Works	less than \$US 6 million	Invitation to Bid (ITB) or Request for Proposal (RFP)
	\$US 6 million or greater	RFP
Construction Contract for Small Works	less than or equal to \$US 50,000	Request for Quotation (RFQ)
	less than \$US 6 million and greater than \$US 50,000	ITB or RFP
	\$US 6 million or greater	RFP
Construction Contract for Minor Works	less than \$US 50,000	RFQ
Consultants Services Contract for Works	less than \$US 50,000	RFQ
	\$US 50,000 or greater	RFP
Construction Contract for Design and Build	Any Values	RFP
All contracts	Any value when using Emergency Procurement Procedures (EPP)	RFQ for EPP ³

³ Specific RFQ templates are available for each Contract for Works under EPP.

7. Structure of the Contracts for Works

- 7.1. Each Contract for Works shall include, but is not limited to, the following documents that shall be deemed to form the Contract:
- i. The Instrument of Agreement;
 - ii. General Conditions of Contract (GCC);
 - iii. The Particular Conditions of Contract, if any; and
 - iv. Schedules.
- 7.2. The documents that form the Contract for Works shall be included in the solicitation documents to inform potential bidders during the preparation of their bid.
- 7.3. The GCC may only be amended by the inclusion of Particular Conditions of Contract. Any modifications to the GCC require prior review by Integrated Practice Advice and Support (IPAS) Legal and Project Management and Infrastructure (IPAS-PMI), and written approval by the Head of Standards, IPMG.
- 7.4. The Schedules shall include all relevant technical elements of the contract, requirements and standard forms, such as forms of security.

8. Key Elements of the Contract for Works

8.1. *Roles and Responsibilities*

- 8.1.1. In the Contracts for Works, the Employer is UNOPS, typically represented by the Procurement Authority.
- 8.1.2. The Employer's Representative is the person who is appointed by the Employer to supervise the implementation of the Works. Typically the UNOPS Project Manager takes the role of the Employer's Representative but this role can also be delegated to the Technical Coordinator or other UNOPS personnel, as approved in the Implementation Plan.
- 8.1.3. The Employer's Representative shall fulfill the necessary qualifications, experience and competencies applicable to the Works (e.g., engineers, architects, or contract administrators with relevant experience).
- 8.1.4. The Engineer shall be appointed by the Employer when using the Construction Contract for Major Works, and acts within the duties and authorities assigned in the Contract.

8.2. Retention and Performance Security

- 8.2.1. The Retention and Performance Security amount required under the Contract for Works shall be between 5 and 10 per cent of the contract price. Either or both a retention or a bank guarantee or security (or a similar instrument) may

be required as performance security, as long as the total security amount is between 5 and 10 per cent of the contract price.

- 8.2.2. Any deviation from this section 8.2.1 shall be made in consultation and agreement between the Project Manager, the Head of Engagement Assurance, IPMG and IPAS PMI.

8.3. Advance Payment Security

- 8.3.1. The use of advance payments shall be discouraged, wherever possible, except where required by commercial practice or the best interests of UNOPS. In this case, advance payment shall be done in accordance with the UNOPS Procurement Manual.
- 8.3.2. Advance payments should not normally exceed 10 per cent of the total Contract Price and an advance payment security should be required.
- 8.3.3. Approval to deviate from the 10 per cent threshold should be sought from the Head of Engagement Assurance, IPMG, in consultation with the Procurement Authority.

8.4. Time and Cost Contingencies

- 8.4.1. The planning and implementation of works shall take into account time and cost contingency allowances to cover unforeseen and unknown components of the Works within the overall scope of the Works.
- 8.4.2. A cost contingency sum between 6 and 12 per cent of the contract value shall be included in the request for award of a construction contract for works.
- 8.4.3. Approval to deviate from the defined threshold shall be made by the Head of Engagement Assurance, IPMG, in consultation with IPAS PMI.
- 8.4.4. The time and cost contingencies are an internal mechanism for the Employer (UNOPS) to manage the risk of additional time and costs and shall therefore not be included in the Contract.
- 8.4.5. These contingencies shall also be planned for and included in the overarching Legal Agreement between UNOPS and its partners so that the Legal Agreement and the Contract for Works are aligned.

8.5. Defects Notification Period

- 8.5.1. The DNP shall not be less than 12 months. Deviation from this practice shall be subject to the written approval of the Head of Engagement Assurance, IPMG and the Engagement Authority.

9. Exceptions

- 9.1. Requests for exception to deviate from the contracts options available in the Contracts for Works selection criteria shall be prepared and submitted by the Project Manager (with endorsement from the Project Executive) to the Head of Standards, IPMG for written approval.

10. Disputes

- 10.1. In the case that an agreement cannot be reached between IPMG, IPAS and the Project Manager, on any aspect of this OI, the issue shall be escalated to the respective Country/Multi Country Director, the Regional Director and the Director of IPS (or other personnel, as authorized by the Director of IPS) for resolution.
- 10.2. In the case that an agreement still cannot be achieved, it shall be escalated to the Executive Office for a final decision.

11. Authoritative Interpretation

- 11.1. The authoritative interpretation of this OI may be made by the Director of IPS, or other personnel, as authorized by the Director of IPS, to provide clarification on the applicability or interpretation of the requirements stated herein.