

OPERATIONAL INSTRUCTION REF. OI.IPMG.2018.07

UNOPS WORKS CONTRACTS

1. Authority

- 1.1. This Operational Instruction (OI) is promulgated by the Director, Infrastructure and Project Management Group (IPMG) under Operational Directive Ref. OD.EO.2017.02 on Management of UNOPS Partners and Resulting Agreements, on the basis of a delegation of authority from the Deputy Executive Director.

2. Purpose

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

3. Effective Date

- 3.1. This OI shall become effective **immediately**.

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1. Introduction

- 1.1. In 2010 the General Assembly reaffirmed UNOPS's role as a central resource for the United Nations system in procurement and contracts management; civil works and physical infrastructure development including related capacity development activities.
- 1.2. Works refer to all activities associated with the construction, reconstruction, demolition, repair or renovation of infrastructure or activities such as site preparation, excavation, erection, building, installation of equipment or materials, decoration and finishing, as well as services incidental to construction such as exploratory drilling, mapping, satellite photography, seismic investigations and similar services.
- 1.3. Like all other UNOPS activities, the implementation of Works for or on behalf of UNOPS shall be done in accordance with UNOPS policies and the agreements UNOPS has entered into with its partners, contractors and consultants. Given the specificities of Works activities, UNOPS has developed specific contract templates that shall be used when implementing Works for or on behalf of UNOPS.
- 1.4. The purpose of this OI is to provide instructions regarding the process for selection and use of UNOPS Works Contracts.

2. Use of UNOPS Works Contracts

- 2.1. When UNOPS is implementing Works for or on behalf of a partner, the roles and associated liabilities of UNOPS and its partner shall be clearly defined in the agreement between the two parties (i.e. is UNOPS responsible to deliver the Works to or on behalf of its partner? Is UNOPS responsible for the Works design? Is UNOPS acting in an advisory capacity only?).
- 2.2. Where UNOPS is responsible to deliver part or all of the Works, depending on the associated risks, UNOPS may decide to implement the Works directly or to delegate part or all of the Works implementation to contractors and/or consultants. In this case, UNOPS Works Contracts shall be used (unless agreed otherwise with UNOPS partner).

3. UNOPS Works Contracts

- 3.1. UNOPS has developed six template Works Contracts based on the International Federation of Consulting Engineers (FIDIC) standard suite of contracts:
 - Consultant Services Contract for Works (based on the FIDIC White Book);
 - Minor Works Construction Contract (based on the FIDIC Green Book);
 - Short Form Construction Contract (based on the FIDIC Green Book);
 - Measured Price Construction Contract (based on the FIDIC Red Book);
 - Lump Sum Construction Contract (based on the FIDIC Red Book);
 - Design and Build Construction Contract (based on the FIDIC Yellow Book).

4. Selection of UNOPS Works Contracts

- 4.1. It is imperative to select the correct contract, giving due consideration to the nature of the engagement and the risk profile of the Works.

- 4.2. Elements to take into account when selecting the contract for Works include the technical complexity and value of the Works, the level of sophistication and technical capacity of the UNOPS team responsible for the project and that of the targeted contractors or consultants, as well as, their capacity to assess and manage the risks allocated in the contract and to implement the Works in accordance with the contract.
- 4.3. Selection criteria for each type of contract are provided below. Deviations from the selection criteria shall be approved by the Head of Standards, IPMG.

Consultant Services Contract for Works

- 4.4. The Consultant Services Contract shall be used for infrastructure related design work, or the provision of other technical services such as geotechnical investigation, topographical survey, specialised structural analysis or the supervision of construction activities.
- 4.5. In the case of design services, reference to the applicable UNOPS design planning manual in the tender documents and the contract is a mandatory requirement to ensure that Consultants comply with minimum applicable standards. Further note that for design services the end date in the contract should wherever possible be the end of the underlying construction activities to ensure that any required variations to the design will be done by the Consultant responsible for the design (not by UNOPS), so that liability for the design is not transferred to UNOPS. Refer to OI.IPMG.2018.03 on Design Review of Infrastructure Works for further guidance.

Minor Works Construction Contract

- 4.6. The Minor Works Construction Contract shall be used to engage contractors with low capacity and/or to undertake basic construction works on either a lump sum or measured price basis. This contract shall be used for Works of award value of less than USD 250,000.

Short Form Construction Contract

- 4.7. The Short Form Construction Contract shall be used to engage contractors to undertake routine/repetitive construction works priced on either a lump sum or measured price basis (see below for further guidance on the difference between lump sum and measured price contracts).
- 4.8. This contract shall be used for Works of award value of between USD 250,000 and USD 1,000,000.

Measured Price Construction Contract

- 4.9. The Measured Price Construction Contract shall be used to engage contractors to undertake construction works priced on a re-measurement basis.
- 4.10. The Measured Price Construction Contract shall be used for complex works with competent contractors and requires experienced UNOPS personnel to manage the contract provisions.
- 4.11. The Measured Price Construction Contract shall be used for works with an award value of over USD 1,000,000.

Lump Sum Construction Contract

- 4.12. The Lump Sum Construction Contract shall be used to engage contractors to undertake construction works priced on a lump sum basis.
- 4.13. The Lump Sum Construction Contract shall be used for complex works with competent contractors and requires experienced UNOPS personnel to manage the Contract provisions.
- 4.14. The Lump Sum Construction Contract shall be used on works with a capital value over USD 1,000,000.

Design and Build Contract

- 4.15. The Design and Build Contract shall be used to engage a contractor that shall be responsible to both design and build the Works.
- 4.16. Given its complexity, prior approval from the Head of Engagement Assurance, IPMG, is required to use this contract modality.
- 4.17. Prior to issuing the tender process, the “Employers Requirements”, that is the design requirements for the works, shall be reviewed and approved by the IPMG Design Review team. Upon approval, an interim Design Review Certificate will be issued by IPMG. Once the design has been prepared by the Contractor, it shall be reviewed and approved by the IPMG Design Review Team before the Works can be implemented. At this point a Certificate for Design Review Compliance will be issued by IPMG. Refer to OI.IPMG.2018.03 on Design Review for Infrastructure Works for further guidance.

5. UNOPS Contracts for Works Structure

- 5.1. UNOPS Works Contracts contains a series of documents which should be considered as mutually explanatory of each other. The Contract will contain the following (but not limited to) the following elements;
 - The Articles of Agreement;
 - The Letter of Acceptance;
 - The Letter of Tender;
 - The Particular Conditions;
 - The General Conditions;
 - The Schedules;
 - The Specifications; and,
 - The Drawings.
- 5.2. A draft contract shall be prepared and attached to the tender documents so that potential contractors have the maximum information to prepare their offers. Once a contractor has been awarded the contract, it shall be finalized with the information collected from the contractor’s offer and signed by a UNOPS personnel with appropriate delegation of authority to do it.

General and Particular Conditions

- 5.3. The general conditions of UNOPS Works Contracts may only be amended through the particular conditions. Modifications to the general conditions shall require prior review and written approval by IPAS Legal and the Head of Standards, IPMG.

Schedules

- 5.4. The different technical elements of the contract and forms of security shall be included in the contract schedules, as per the instructions set out in the template contract.

6. Key Elements

Employer and Employer's Representative

- 6.1. In UNOPS Works Contracts, the Employer is UNOPS, as typically represented by the Engagement Authority. The Employer's Representative is the person or entity appointed by the Employer to supervise the implementation of the Works. Typically this will be the UNOPS Project Manager (for this reason this should be an individual with appropriate technical expertise – e.g. a civil engineer or an architect), unless this function is delegated by UNOPS to a consultant.

Lump Sum and Measured Price Contract

- 6.2. A lump sum contract is a contract whereby UNOPS agrees to pay the contractor a given amount for the implementation of the Works. Payments of the lump sum should be paid by installments as agreed upon in the contract. However, note that a lump sum is not a fixed-price and may change in case of variations for example and does not necessarily require a contract amendment.
- 6.3. A measured price contract is a contract whereby UNOPS agrees to pay the contractor for the implementation of the works by measuring the works effectively implemented against a bill of quantities, as agreed upon in the contract. A measured price is therefore by definition not a fixed-price.

Retention and Forms of Performance Security

- 6.4. Retention refers to an amount of money (expressed as a percentage rate in the contract, normally between 5 to 10%) withheld from each and every interim payment made to the contractor that gives the Employer (UNOPS) leverage to make sure the contractor performs the works to the specified standards. Upon Taking Over of the Works, the Employer (UNOPS) will typically return half of the retention to the Contractor. The balance of the retention will typically be returned to the contractor upon Final Completion of the Works.
- 6.5. Another form of performance security is when UNOPS holds an unconditional and irrevocable on-demand bank guarantee (or similar instrument) from a contractor in order to ensure performance of the works (normally between 5 to 10% of the works' value). Should the performance of the contractor be determined by the Employer (UNOPS) to be unsatisfactory, the relevant contractual procedures shall be executed in accordance with the provisions of the contract in consultation with IPAS. UNOPS may cash the bank guarantee as compensation for the contractor's breaches. A bank guarantee for performance (or similar instrument) shall be valid through Final

Completion of the Works, and will typically state that its value shall reduce by half upon Taking Over of the Works and expire upon Final Completion of the Works.

- 6.6. Note that one may require either retention or a bank guarantee (or a similar instrument) as performance security, or both, as long as the total security amount is within the maximum of 10% requirement
- 6.7. Approval to deviate from the above threshold shall be taken through discussion and agreement between the Project Manager, the Head of Engagement Assurance, IPMG, and the Integrated Practice Advice and Support (IPAS).

Bank Guarantee for Advance Payments

- 6.8. An advance payment can be made to the contractor that will enable them to commence the works and get to the first interim payment within their financial means. The use of advance payments is discouraged wherever possible. For works contracts, advance payments should normally not exceed 10% of the total contract value. Approval to deviate from the 10% threshold should be sought from the Head of Engagement Assurance and be in consultation with the Engagement Authority.

Time and Costs Contingencies

- 6.9. Professional planning and implementation of physical infrastructure works require time and costs contingency allowances to cover unforeseen and unknown components of works within the overall general scope.
- 6.10. A cost contingency sum of between 6% and 12% of the award value should be included in the request for award. Approval to deviate from the defined threshold shall be taken through discussion and agreement between the Head of Engagement Assurance, IPMG, and IPAS.
- 6.11. Note, however, that the 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 Works Contract.
- 6.12. These contingencies, however, shall be planned for and included in the agreement between UNOPS and its partner.

Taking Over Certificate

- 6.13. The Taking Over Certificate is issued when the Employer's Representative for the Works certifies the Works have been substantially completed and ready for beneficial use. Minor elements of the works can be finished within the Defect Notification Period but only with the approval of the Employers Representative. Note that upon issuance of the Taking Over Certificate, the Employer (UNOPS) takes over responsibility for the Works until transferred to the beneficiary. This transfer should be done at the same time or shortly thereafter.

Defects Notification Period

- 6.14. The Defects Notification Period (DNP) is the period between Taking Over and Final Completion of the Works. This period shall be not less than 12 months. Deviation from this practice shall be subject to the written approval of the Head of Engagement Assurance and the Engagement Authority.

- 6.15. Sufficient time should be included in the Engagement Agreement between UNOPS and its partner to include the DNP and any close-out processes after DNP completion.

Final Completion

- 6.16. Final Completion occurs when the DNP has come to an end and all defects notified to the contractor have been addressed. At this time the Employer's Representative will issue a Final Completion Certificate.

7. Exceptions:

- 7.1. Requests for exceptions to use of the approved Works Contracts and associated templates (such as use of other forms of contracts required in legal agreements) shall be submitted by the Project Manager to the Head of Standards, IPMG, for written approval.

8. Disputes:

- 8.1. If the respective personnel in IPMG, IPAS and the Project Manager are not able to agree, the issue shall be escalated to the respective Country/Hub Director, the Regional Director, and the Director of IPMG for resolution.
- 8.2. In the event of further disagreement, such disagreement shall be escalated to the Executive Office for decision.

9. Authoritative Interpretation:

- 9.1. Authoritative interpretation of this OI may be made by the Director of IPMG, or other personnel as authorised by the Director of IPMG, in order to provide clarification on the applicability or interpretation of the requirements stated herein.