cONSTRUCTION Works Policy

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**PRINCIPLES AND APPLICATIONS**

**General Principles**

1. This policy applies to all civil or construction works (collectively, “Works”) undertaken by UNDP in its development activities as well as with respect to its management projects. The term “works” refer to all the 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 works such as exploratory drilling, mapping and similar services. It covers all aspects of construction such as civil, mechanical, electrical and associated Works.
2. This policy on works covers all stages from the initial idea to solve a need (or part of a need) by constructing a given physical asset or facility to the final taking over of the completed facility by UNDP, and also, where applicable, the operation thereafter or handover of the facility to the project beneficiary or users.
3. All Works in UNDP shall comply with the principles of sustainable development by using designs, methodologies, and technical requirements that make efficient use of resources and energy, protect people and ecological systems, maintain and improve the quality of life of the community and benefit their needs.
4. UNDP shall exercise the highest level of due diligence in managing risks associated with Works to ensure performance on its mandate in accordance with the Strategic Plan and that it adds value to all stakeholders.

**Applicability**

1. Management of projects with substantial works components and procurement and delivery of works are governed by all the existing relevant policies and procedures in the [Programme and Operations Policies and Procedures (POPP)](https://popp.undp.org/), particularly the [Programme and Project Management (PPM)](https://popp.undp.org/taxonomy/term/36) and [Procurement](https://popp.undp.org/taxonomy/term/186), except as modified by the provisions of this Policy. This policy also includes specific provisions that are not currently covered by other existing policies.
2. The [UNDP Policy against Fraud and other Corrupt Practices](https://popp.undp.org/node/4021); [Vendor Sanctions policy](https://popp.undp.org/node/4886); and the [UN Supplier Code of Conduct](https://www.ungm.org/Public/CodeOfConduct) are applicable to the contractors for Works, their personnel and sub-contractors. Business units shall ensure due diligence in verifying that the contractors comply with these policies as part of the sourcing process.
3. The policy applies to the procurement and delivery of Works in all contexts in which UNDP operates under the following implementation modalities, services and projects:
	1. Projects implemented directly by UNDP (DIM) and including Works undertaken on behalf of other UN Agencies;
	2. The provision of procurement support services to implementing partners, including Country Office support to NIM projects or to projects implemented by NGOs or other partners for which UNDP retains procurement responsibility, including MPS; and
	3. UNDP management projects, in respect of building and facility Works services
4. The [Guidance Note on Construction Works](https://popp.undp.org/node/2106) supplements this policy; providing details on how the various clauses in this policy should be implemented.

# **PROGRAMMING ARRANGEMENTS**

## Pre-requisites for the procurement of works

1. A project with a Works component is successful if it meets the expectations of the country programme and other relevant stakeholders and is delivered with the following criteria:
2. Produces the expected result as defined in the project document,
3. With the specified quality,
4. On time,
5. Within the defined budget, and
6. Avoids harm to people and the environment through robust risk management.
7. The following key pre-requisites should be checked before undertaking Works:
8. Confirmation that activities are aligned within UNDP goals and objectives.
9. The programmatic basis for the construction project component is clearly articulated within the scope of the overall project.
10. A feasibility study has been undertaken with a conclusion of technical and financial viability.
11. UNDP has been identified, by donors or beneficiaries, as being the most appropriate Partner to undertake the Works.
12. There is full commitment to the project from all the stakeholders and identification of the people and organizations that will be involved;
13. There is a realistic budget and schedule and the UNDP Business Unit has access to the necessary funding and allocates sufficient resources to support the Works;
14. The UNDP programme unit supporting the Works takes responsibility for ensuring the integration of specific tasks including coordination with government, community sensitization, and interaction with local authorities;
15. The responsible UNDP procurement unit has the expertise to undertake a procurement process; the project has the appropriate project management knowledge and technical skills to monitor the overall implementation of the civil work;
16. There is a mechanism for quality control and assurance;
17. Risk have been identified and assessed as acceptable with appropriate mitigation measures, if necessary. This should include environmental, economic, political and social impacts; and
18. The party responsible for the hand-over and subsequent operation and maintenance (if needed) following construction is identified in the project document.
19. A Works project requires four distinct areas of expertise:
20. Project Management in ensuring that all the programme and operational requirements are articulated in the project and that the project management mechanisms (including work planning, monitoring, risk management and oversight) are in place;
21. Engineering Management to addresses the technical requirements and assure quality in the delivery of the project;
22. Procurement Management to manage the solicitation process in accordance with UNDP procurement policy and ensure that applicable contract terms and conditions mitigate risks to UNDP;
23. Contract Management in the day-to-day management of the Works Contracts during the implantation stage.
24. Programme and operations units shall work together closely on all activities required for the successful implementation of a Works project. Operations/procurement practitioners and engineers shall be involved from early stage of project discussion and design.

## Project Document

1. A project that includes Works shall follow the normal internal approval process and observe the requirements established in this policy.
2. The project document must accurately describe the scope, nature, risks and impact of Works, to the extent known at the time. The project document shall at a minimum include the following details specific to the Works which are derived from the preceding preparatory activities:
	1. type of Works; purpose of Works intended contribution to development or management results and comparative advantages of UNDP in supporting the work;
	2. outcome of feasibility study, as indicated in the feasibility study requirements below;
	3. risk analysis and risk management plan (including Social and Environmental Screening and related documents);
	4. budget, including contingency reserve;
	5. management arrangements, including staffing proposal for work-related activities; plan for Works management and monitoring; sustainability plan and handover arrangements;
	6. operation and maintenance assessment.
3. The Social and Environmental Screening Procedure and project quality assurance must be completed for the project, and relevant actions and measures must be identified prior to finalization of the project document. For all projects involving Works the project must be categorized not lower than “Moderate Risk”. In projects involving Works where activities are detailed during the implementation of the project, an Environmental and Social Management Framework must be developed prior to project approval, noting that activities will not proceed until a site-specific Environmental and Social Management Plan is in place.
4. The project document shall be revised if Works are subsequently added to a project or further details of the scope, nature, risks or impact of the Works are identified or changed after the project document is approved and signed. Formal amendment procedures must be undertaken, including approval of the amendment by all relevant authorities. Such revision shall also be require updating the [Social and Environmental Screening Procedure (SESP),](http://www.undp.org/content/undp/en/home/librarypage/operations1/undp-social-and-environmental-screening-procedure.html) project quality assurance mechanisms and the project Risk Register.
5. No procurement of Works shall be undertaken without an approved, signed project document, or substantive project document revision, that accurately describes the nature and scope of Works and risk management measures. All procurement of Works shall be subject to the availability of sufficient funds for the project. The details in the requisition for procurement must accurately reflect the scope and nature of work as stated in the project document or substantive revision. Otherwise, the requisition must be amended, or the project document revised to ensure both documents contain a corresponding description of the Works and internal cost estimate before any procurement action can be undertaken.

## National Partner Capacity Assessment

1. Where there is requirement for the national partner to approve technical requirements and/or be involved in the different stages of project development or implementation of a UNDP project involving Works, the Business Unit shall ensure that the national partner has the necessary expertise and resources to avoid delays and ensure quality. Business Unit shall use the [Partner Capacity Assessment Tool](https://popp.undp.org/node/956) to conduct the assessment.
2. To ensure development results and sustainability, when UNDP supported Works require operation and maintenance, the Business Unit shall assess and ensure that the national partner has the required funds and expertise for the operation and maintenance of the Works that will be delivered by the project.
3. Where the initial assessment identifies gaps in the national partner’s capacity to meet operation and maintenance requirements, the project document, or substantive revision thereof, must outline what actions will be taken to address these gaps and any support UNDP will provide. In that regard, the following must be taken into account:

a. The Business Unit shall support the national partner in developing its budget and staffing plan in respect of its assumption of operation and maintenance responsibilities and costs;

b. The Business Unit shall encourage donors to fund operation and maintenance costs, training or staffing for an initial period of operation and maintenance by the national partner as a means of ensuring project sustainability, service delivery and capacity development, and protecting the initial investment of public funds in the Works; and

c. The Business Unit shall propose and undertake any other approaches or measures to resolve the gap in capacity it deems appropriate.

1. Where the gaps in national partner capacity to meet operation and maintenance requirements are significant and cannot be resolved, the Works and related project documents shall not be approved.

## Business Unit Capacity Assessment and Approval to undertake Works

1. In line with the programme and project management policy on [Appraise and Approve](https://popp.undp.org/node/1896), which sets out mandatory UNDP authorizations and approvals in respect of Works, the Resident Representative must obtain specific authorization from the Regional Bureau Director prior to approving a project document, or any substantive revision thereof, that proposes UNDP support to Works above the standard delegation of authority of $300,000, while the Resident Representatives are authorized to approve works up to this threshold.
2. The Regional Bureau Director shall grant a delegation of authority to the Resident Representative to approve a project document proposing Works that are above $300,000, only upon determining that the Business Unit has demonstrated that it has successfully implemented similar projects in the past and/or that it has adequate procurement, technical, engineering, environmental and social safeguards and project management and Works management capacity to support the proposed works. The Business Unit shall prepare a proposal on how it intends to staff such functions, including the engagement of any external experts. The Regional Bureau shall consult PSU in granting the approval. Business Units shall utilise this template, [Request for Approval or Delegation for Project Document that includes Construction Works](https://popp.undp.org/node/2156) to obtain the necessary approval.
3. In respect of the staffing proposal, where the Business Unit is responsible for Works management, it is required to have at least one qualified and accredited engineer with experience in the type of proposed Works to be engaged as a staff or as an external expert. It is recommended to have a project manager and procurement officer with relevant experience in project and contract management.
4. Prior to commencing any procurement activity for Works, it must be verified and confirmed that all mandatory delegations, authorizations and approvals of the project document have been provided by the appropriately authorized personnel, including the government.
5. Overall responsibility remains with the relevant UNDP Business Unit that designed the project to ensure that programmatic goals, construction expertise and UNDP procurement and financial rules and regulations are applied.
6. Business Units shall not undertake any Works if local authorities/beneficiaries cannot meet the following requirements:
7. Request and support for the Works.
8. Conduct due diligence and ensure appropriate land title / right to construct are in place and registered prior to initiating any procurement actions.
9. Acceptance and ownership of the completed Works.
10. Sustained commitment and appropriate interface during the Works implementation activities.
11. Ability to operate, maintain and meet the long-life cycle operation cost after hand over.

# **CROSS-CUTTING ACTIVITIES**

## Social and Environmental Standards into the Procurement of Works

1. Procurement risk analysis, strategy and planning shall be undertaken for Works pursuant to the procurement policies on [Transactional Procurement Strategies and Procurement Planning](https://popp.undp.org/node/11656) and [Sustainable Procurement](https://popp.undp.org/node/11616), and shall adhere to the objectives and requirements of the programme and project management policies and [Social and Environmental Standards](https://popp.undp.org/node/1876), including related social and environmental procedures such as the [Social and Environmental Screening Procedure (SESP)](https://www.undp.org/content/undp/en/home/librarypage/operations1/undp-social-and-environmental-screening-procedure.html) and [Accountability Mechanism](http://www.undp.org/secu-srm).
2. Business Units shall incorporate social and environmental sustainability objectives all through the procurement process, including the development of the technical requirements, Statement of Works (SOW), solicitation documents, evaluation criteria for bidders, and any other relevant aspects of the procurement process.
3. All relevant social and environmental preconditions set forth in the project document shall be verified and satisfied prior to the commencement of Works and the procurement of Works shall be undertaken in accordance with all relevant social and environmental management measures prescribed in the project document. UNDP shall abide by any national requirements and provisions in respect of environmental impact.

## Provisions for Persons with Disabilities, Gender, Human Rights and Forced Labour

1. In line with the objectives of the [Convention on the Rights of Persons with Disabilities](https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html), newly constructed Works, structural additions, or major renovations must be planned, designed and constructed so as to be accessible to persons with disabilities, including incorporating building codes that meet international and local standards for universal access, wherever possible.
2. Business Units shall incorporate the necessary provisions in the design and procurement of Works to achieve the requirements in the [UN Disability Inclusion Strategy](https://www.un.org/en/content/disabilitystrategy/), [Convention on the Rights of Persons with Disabilities](https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html), the [Sustainable Development Goal for gender equality and empower all women and girls (Goal #5)](http://www.un.org/sustainabledevelopment/gender-equality/) and the [UN Global Compact Principles](https://www.unglobalcompact.org/what-is-gc/mission/principles).
3. In order to achieve the [Sustainable Development Goal for gender equality and empower all women and girls (Goal #5)](http://www.un.org/sustainabledevelopment/gender-equality/) by 2030, newly constructed Works must be planned, designed and constructed to be gender responsive to the different needs and constraints of women and men. The design must remove barriers to access and the use of Works and related services by women, as well as enhance women’s safe access and use.
4. In line with the [Sustainable Development Goal to achieve gender equality and empower all women and girls (Goal #5)](http://www.un.org/sustainabledevelopment/gender-equality/) by 2030, and noting the historical underrepresentation of women in the Works industry, consideration must be given to developing solicitation requirements aimed at promoting women’s economic participation, equality and empowerment where possible (e.g. vendors employ a minimum percentage of women, provide childcare facilities, or have policies that promote gender equality).
5. In implementing Works, Business Units shall support and respect the protection of internationally proclaimed human rights; ensure that the processes are not complicit in human rights abuses and support the elimination of all forms of forced and compulsory labour, wherever possible.

## Risk Management

1. Risk management is a key element in the procurement of Works. A rigorous risk analysis is required to identify risks related to the delivery of Works especially high value and complex Works and provision made for appropriate risk mitigating measures. See UNDP’s [Enterprise Risk Management Policy](https://popp.undp.org/node/10716)  and [Transactional Procurement Strategies and Planning](https://popp.undp.org/node/1426).
2. While responsibility to deliver quality construction is shared amongst all parties involved, roles must be clearly assigned; facilitating the establishment of control parameters and risk management strategies, balancing the rights of the national partner to independently verify both design and implementation, and enabling the implementing entity to manage the construction efficiently.
3. In order to mitigate the risks of poor construction that may result from inadequate design, use of poor-quality construction materials (including concrete), lack of contractor capacity and insufficient quality control during the construction, the following actions are to be taken before engineering Works are undertaken:
4. All Works design must be undertaken by, or under the technical oversight of suitably qualified and experienced professionals; certified by appropriate qualified national or international engineers and cleared by the appropriate local planning agency/authority.
5. A design review system shall be established for all designs and the level of review will depend on several risk factors. Low-risk designs will require at least a peer-review by qualified professionals.
6. Business Units may utilise the services of qualified Engineers with relevant expertise from other UN Agencies, where available, to verify the designs and BOQs, support the evaluation of bids and/or support the supervision of Works. Business Units may also undertake peer reviews by Engineers hired by other projects within the COs or in the region. Engineering consulting firms in the related field may also be contracted to provide the technical expertise required for Works.

# **WORKS STAGES**

1. A Works project development progresses through several stages from the initial concept to feasibility to detailed design development, procurement and finally construction. It is possible that UNDP only become involved at a later phase of project development. For example, a partner or donor may request UNDP to undertake the solicitation process on a project which has reached the bids Solicitation phase with all previous activities having been completed by others. Where UNDP’s role is only in the later phases, it should undertake due diligence to satisfy itself that the requirements of this policy have been met and that it does not assume responsibility for earlier Works undertaken by others.

##  Initial Studies

1. Depending on the type and size of Works, initial studies shall be conducted to enable an informed decision on whether or not to proceed with to the stage of preparation of a detailed feasibility studies of the proposed project.
2. Conceptual designs and suitable sites for the project together with estimates of the time and cost constraints shall be identified at this stage. Larger and more costly projects will generally require more thorough and detailed analysis than smaller projects but, whatever the size, the overall time scale of implementation, the approximate capital and life-cycle costs and potential funding sources of finance for the project shall be assessed and documented.

## Feasibility Study

1. The results of the initial analysis will influence the decision on whether or not to proceed to the stage of undertaking full-scale feasibility studies to verify the overall economic and social viability of the project and to decide whether to continue to project implementation or otherwise. The scope of the feasibility studies will vary according to the nature, size, importance, complexity, and urgency of the project.
2. The feasibility studies shall be conducted to:
	1. assess whether the project is justified from both an economic and a social viewpoint and if the proposed Works is the best solution to address the development issue;
	2. provide a preliminary identification of the scope and cost of the project and its principal technical parameters;
	3. evaluate financing, operation and maintenance and to specify their required time schedules;
	4. identify funding sources;
	5. select the optimum project option;
	6. identify risks and potential problems related to the delivery and running of the proposed project.

The initial and feasibility study may be undertaken as a single process for low value and simple projects.

## Works Procurement Strategy

1. Based on the outcome of the feasibility study, the Business Unit shall develop a procurement strategy identifying the implementation strategy, the national partner and establishing the sourcing approach, which will vary depending on the nature, scope and value of the Works requirements.
2. The Business Unit shall consider retaining the expertise and experience of consulting engineers in developing the strategy.
3. There are different construction implementation modalities/approaches which can be pursued based on risk allocation, contract value, timeliness and other consideration.
4. The traditional approach is where the client fully develops the detailed design and the contractor is paid for the actual quantities of work performed based on tendered rates and prices. This is the standard approach in UNDP.
5. Design and Build approach is where UNDP only prepares a project brief and the final outcome while the design responsibility stays with the contractor. This approach shall only be used where there is a specific advantage to the design being carried out by the contractor who will construct the Works and is often used for high value Works. Examples of where this would be appropriate might be for a Waste-Water Treatment plant, where a specialized contractor is able to offer specific proprietary processes.
6. Due to the risks involved in Design and Build, Business Units choosing to adopt this approach are required to obtain prior approval from PSU Director who will consult with the Legal Office.

## Defining Technical Requirements

1. Works delivered through the traditional approach requires a detailed design which includes a Scope of Works (SOW), Specifications for the Works and a Bill of Quantities (BoQ) and the applicable contract. This is normally accompanied by a construction schedule and an internal estimate for the BOQ.
2. The Scope of Works shall include a clear description of the Works to be carried out, the site location and boundaries, the purpose of the works and the key constraints on time, budget and quality. The design drawings, specifications, BoQ and contract shall be sufficiently clear for the contractor to understand fully the requirements of the project.
3. The internal estimates shall be established with utmost due diligence based on the prevailing market prices. The internal estimate shall be verified by an independent quantity surveyor or international engineer to ensure that is reasonable in comparison to the market. If the estimates are provided by the government/beneficiary, they shall be verified/validated by UNDP and that it is within the available funding prior to the solicitation phase.
4. Pricing and payment method shall be selected jointly by programme and procurement staff at the procurement strategy development stage and the same must be specified in the solicitation documents.

## Works Procurement Solicitation

1. The procurement process for Works shall comply with the existing provisions in the Procurement Section of POPP from requisition to contract management, unless covered by specific provisions in this policy.
2. Works are normally procured through an Invitation to Bid (ITB) as the qualification and requirements (scope and technical specifications are well defined) with a related Bill of Quantities (Price Schedule) that allows direct comparison of offers.

## Evaluation and Contract Award

1. The evaluation of bids shall follow the provisions of POPP in all respects and shall involve technical experts and engineers in the related field of expertise.
2. In addition to the preliminary evaluation of administrative and bid completeness check, the evaluation consists of three parts: vendor qualification, technical evaluation and financial evaluation. As the solicitation is through an ITB and award to the lowest priced technically responsive and qualified offer, if a high number of bids are received, the evaluation process burden may be reduced by firstly undertaking an arithmetic check of the priced BOQs to rank the bids in terms of evaluated price. The evaluation shall then focus on the lower priced bids and extending to further bids as necessary.
3. The qualification evaluation shall be strictly in accordance with the terms of the bid requirements in this respect which shall cover eligibility (not under sanction, litigation), experience (similar past contracts, client reference), financial soundness (liquidity and credit, tax compliance).
4. Where necessary, a Business Unit shall undertake due diligence visits to contractors’ facilities and its previously completed projects in addition to seeking client references.

Technical and Financial Evaluation

1. The technical evaluation shall consider the critical factors in Works such as the provision of required expertise; verification of previous similar experience; control plan; health and safety plan; method statement; quality assessment; product and services quality (i.e., conformity to national/international standards); relevant environmental and social risk management; acceptability of the implementation plan and terms; availability of required equipment; acceptable subcontracting arrangements and compliance with UNDP General Conditions of Contract for Works.
2. Other evaluation criteria include the acceptability of warranty duration and conditions (where applicable); sufficiency of after-sales services/defects liability period; performance guarantees (where applicable); technical and financial capacity and reliability of the offeror to fulfill the requirements as committed; acceptable payment terms; local representatives where required, and other necessary requirements. Where applicable the design documents, as-built drawings shall be included in the evaluation criteria.
3. The financial evaluation shall include a detailed analysis of the price schedule based on requirements listed in the solicitation documents. The price comparison shall be based on the price, including the cost of materials and labor for the various sections of the BoQs; the profit margin; transportation, insurance and the total cost of ownership (including spare parts, consumption, installation, commissioning, training, special packaging, etc., where applicable, as in the procurement of electrical Works).

Contract Award

1. Procurement actions for Works are governed by the same provisions in POPP in respect of procurement authority and procurement oversight review.

## Contract Management

1. The period for active contract management commences upon the signature of the contract and ends when the Works have been handed over from the contractor to UNDP or the end-user. The project manager or the identified “Engineer” in charge of the Works, referred to as the Employer’s Representative and specifically named in the contract is primarily responsible for contract management and is supported by procurement officials as applicable (e.g. to process contract amendments, etc.). The contract management shall be conducted in line with the [Contract Management Policy in POPP](https://popp.undp.org/node/146).
2. Prior to the commencement of the work’s physical activities on the site, the Business Unit shall ensure that the necessary oversight and controls are in place. It is advisable to have a permanent presence on site with a proper plan established for the day-to-day management, coordination, supervision and monitoring and conduct of all necessary quality inspections and testing, and approval of Works at all stages of the Works to confirm that they conform to the required specifications and risks are being managed.
3. Depending on the size and scope of the construction, a multi-layered approach to construction supervision may be applied. For very small projects, the Business Unit’s engineer may be able to provide adequate supervision.
4. For large scale engineering projects, UNDP may contract another agency or private sector firm, typically and engineering consulting firm to act as the Employer’s Representative/the Engineer on behalf of UNDP. UNDP shall always retain the Employer Role and remain responsible for paying contractors directly.

Completion and Handover

1. Business Units shall make adequate plans well in advance with the client and the end user such that the latter are prepared to take over on the same day as UNDP issues the Substantial Completion Certificate to the contractor. When there is a gap between UNDP’s acceptance of the Works and the actual handing over to the end-user, Business Units shall make adequate arrangements for the security and insurance of the Works while it is in the possession of UNDP to manage the risk of exposure to theft, vandalization, outbreak of crisis, etc.
2. The Resident Representative shall be responsible for monitoring and reporting (including annual reviews) on the implementation of any capacity-building measures in respect of the project and the transfer of operation and maintenance responsibilities to the national partner or designated national entity.

# **CONTRACTING ARRANGEMENTS**

## Form of and Conditions of Contract

1. The standard form of Contract for Works and the UNDP General Terms and Conditions for Works shall be used for all Works awards. They are the most critical component of UNDP Works framing all aspects of the Works.
2. The UNDP General Terms and Conditions for Works clarify which conditions the vendors are expected to accept when signing a contract with UNDP and they shall not be modified in any respect.
3. Special conditions may be included in addition to the UNDP General Conditions for Civil Works related to the specific solicitation. All special conditions that contradict or modify or regulate the GTC provisions shall be cleared by the Legal Office prior to the issuance of the solicitation document; prior to the issuance of the contract to the winning bidder(s) or following negotiations with the winning bidder.
4. The solicitation documents shall state that bidders must submit any reservations to UNDP standard contract terms, including but not limited to the GTC, together with their bids, and that failure to submit such reservations will be deemed by UNDP as acceptance of all said contract terms. Any deviations to the UNDP standard contract terms, including but not limited to the GTC, shall be cleared by the Legal Office prior to the signature of the contract.
5. Depending on volume and complexity of construction works and donor requirements, the Business Units may consider the use of one of the adapted FIDIC contracts together with the UNDP Adapted Particular Conditions, upon advance clearance from PSU and the Legal Office, such clearance to be sought at the early stages of procurement planning. The use of FIDIC adapted forms requires technical experts familiar with its use and needs significant inputs to incorporate UNDP specific conditions.

## Important Terms and Conditions in Contracts for Works

Governing Law and Regulations

1. The legal relationship between the contractor and UNDP shall be governed solely by the Works Contract, and where applicable, by internationally accepted general principles of commercial law, to the exclusion of any national laws, and in accordance with UNDP’s privileges and immunities under the [Convention on the Privileges and Immunities of the United Nations](https://popp.undp.org/node/4476).
2. Works must be conducted in accordance with, and comply with, the applicable national regulatory framework, including applicable environmental, labor, building and safety regulations. The obligation to comply with national law vests solely with the contractor.

Payment Terms

##

1. The solicitation documents must specify the payment terms which are normally 30 days upon receipt of an invoice and all other required documentation and acceptance of the implemented Works, including the summary of measurement sheets duly signed off by the assigned project staff. Interim or milestone payments are common practice for Works.
2. Advance payments shall be used when deemed regular practice in the industry and in accordance with UNDP Financial Rules and Regulations and procurement policy on advance payments, the provision of advance payment guarantee where required.

Subcontracting

1. The contractor shall not be permitted to subcontract the Works without approval of UNDP. In addition, the contractor may not be permitted to subcontract the whole of the Works. The Business Unit shall determine the maximum value of subcontracted Works and for each subcontractor. The recommended default requirement is that subcontracted Works shall not be permitted to exceed 30% of Works contract price.

Contingency and variations

1. A contingency allowance necessary for the unforeseen and unknown components of Works within the overall general scope. The level of contingency required shall be based on the value of the Works, understanding of potential unknown factors such as ground and climatic conditions, and other risk factors. A contingency sum of between 6% and 15% shall be included in the request for award. The contingency is obligated with the Works itself as an integral component of the procurement process. However, it shall only be accessed by the contractor upon the approval by the UNDP Engineer, who will obtain prior approval from UNDP as the Employer.
2. The contingency value is a mechanism to manage variations and shall be reflected in the award amount to be approved by the procurement review committees. It shall be indicated in the contract narrative as a contingency sum but shall not be included in the breakdown of milestone payments. The project engineer (employer’s representative) may use this contingency with no additional procurement process to manage variations with the approval of UNDP. Any variation that utilizes the contingency but is not covered by rates in the BOQ or schedule of rates shall be subject to a value for money analysis by the Engineer and UNDP.

Retention Sum

1. When retention sum is utilized, it shall be applied in line with the provisions in the contract and the General Terms and Conditions of Works.
2. Upon the issuance of the Certificate of Substantial Completion with respect to the whole Works, one-half of the retention money, or upon the issue of a Certificate of Substantial Completion with respect to a Section or part of the Works, only such proportion thereof as the Engineer determines as having regard to the relative value of such Section or part of the Works, shall be certified by the Engineer for payment to the contractor. The contractor may substitute the remaining retention money with an on-demand bank guarantee in a form, and from a source, acceptable to UNDP. Upon the expiration of the Defects Liability Period for the Works, the other half of the retention money shall be certified by the Engineer for payment to the contractor (or return of the remaining security, which replaced the retention money) upon issuance of the Certificate of Final Completion.
3. When there are remaining Works to be executed by the contractor as instructed, pursuant to the Defect Liability Period Clauses, the Engineer shall be entitled to withhold certification until completion of work; the Engineer may retain a certain balance of the Retention Money which he thinks represent the cost of the work remaining to be executed.

Incident Reporting

1. In addition to regular reporting, the contractor shall be required to report any major incidents within 36 hours to UNDP. These include incident or accident in relation to the project execution, regarding details of any incident of an
2. environmental nature; and/or
3. occupational health and safety nature; and/or
4. public health and safety nature
5. UNDP shall put in place a stop work order until an investigation is conducted and all remedial actions in place to ensure no further harm.

## Acceptance of the Works

1. Acceptance of the final product is the responsibility of the Business Unit or the assigned Engineer, supported by the end user, where applicable. The acceptance is normally a two- stage process and shall be done in line with the provisions in the [UNDP General Terms and Conditions for Works](https://popp.undp.org/node/4586).
2. A Certificate of Substantial Completion shall be issued when the specified certifier considers or has established that the whole or part of the works has been satisfactorily completed, tested and is ready for use by the beneficiary or end user for the Defect Liability Period which normally is for 12 months during which time the contractor is expected to rectify all defects.
3. A Certificate of Final Completion shall be issued at the end of the Defect Liability Period passing the responsibility and liability for the works from UNDP to the end user or beneficiary.