

CONTRACTS MANUAL

PART THREE

PHYSICAL WORKS CONSTRUCTION CONTRACTS

PHYSICAL WORKS MAINTENANCE CONTRACTS

PART THREE:

Physical Works Construction Contracts

Physical Works Maintenance Contracts

In this Part Three and the Supplement to Part Three the following nomenclature has been adopted.

1. Numbers shown **bold** refer to the clause numbers of this part of this manual.
2. Numbers and text shown in *italics* refer to clause numbers, appendices and Guidelines of NZS 3910:2003 or the equivalent clauses in NZS 3915:2005.

1. Introduction

Part Three of this Manual covers the policy and process of Physical Works Construction Contracts and Physical Works Maintenance Contracts. Council uses Physical Works Construction Contracts for physical works that create new assets including new assets that replace existing assets that are removed or abandoned as part of the Contract Works, and Physical Works Maintenance Contracts for physical works that maintain existing assets. Physical Works Construction Contracts and Physical Works Maintenance Contracts can be Lump Sum Contracts, Measure and Value Contracts or Cost Reimbursement Contracts.

Physical Works Construction Contracts and Physical Works Maintenance Contracts are identical in most respects. The **Supplement to Part Three** covers the areas where Physical Works Maintenance Contracts differ from Physical Works Construction Contracts.

2. Preliminaries

The following preliminaries must be completed before Council calls for tenders.

2.1 Consultation

Plans and specifications for contract work that will affect other Divisions of Council, or other Network Utility Operators, must be discussed with the appropriate officers or parties.

Plans and specifications for any contracts involving roading work or work within streets must also be sent to the Utility Services Coordinating Engineer for comment and scheme alignment approval as applicable.

The reasonable requirements of other Divisions of Council and network Utility Operators must be included in the plans and specifications.

2.2 Cost Estimate

The Contract Manager must prepare a cost estimate covering all the work set out in the Tender Documents. This estimate will be included in the Contract Manager's Tender Report.

2.3 Contract Numbers

Corporate Information, Records Section, holds a register of contract numbers. The Client's Representative must obtain a contract number from Corporate Information, Records Section.

A new contract number must be obtained for projects that are significantly rescope or retendered after the issue of the original contract number.

2.4 Contractor's Bond

A Contractor's performance bond is recommended for all public-tendered contracts unless the works are of a specialised nature where likely tenderers are required to meet high level quality assurance standards, or a pre-qualification process is used.

Capital & Specific Project Cyclic renewal Construction Contracts	Bond Amount
Under \$100,000	No Bond
From \$100,000 to \$1 million	10% of the estimated cost of the work
Over \$1 million	\$100,000 plus 5% of the estimated cost of the work
Term Cyclic Renewal and Maintenance Contracts	No Bond

The bond amount should be rounded off to the nearest \$5,000.

Bonds shall be in the form of *NZS3910:2003 Third Schedule* (See Appendix A45). The surety shall be a bank, insurance company or recognised bonding company approved by the Client's Representative.

In all cases where a bond is not required in accordance with the above recommendation, the Client's Representative must agree and the reason documented.

In exceptional circumstances, the Client's Representative may require a Principal's Bond. The Principal's Bond shall be in the form of *NZS 3910:2003 Fourth Schedule* for an amount to be agreed with the Client's Representative.

2.5 Insurance

The Contractor shall provide insurances as required by *NZS 3910:2003, 8.1, 8.2, 8.3.and 8.4.*

The amount of the covers required in respect of *8.1.2, 8.3.1, 8.3.2* and *8.4.1* shall be discussed and agreed with the Client's Representative. In special circumstances where there is a perceived unusual or high risk to be insured and where agreed with or directed by the Client's Representative it will be appropriate to consult the Council's insurance brokers for advice prior to finalising the insurance requirements for the Tender Documents.

The minimum amount of cover for each of *8.3.1* and *8.3.2* shall be \$1,000,000. The insurances must include a minimum cover of \$100,000 for damage caused by vibration. The Client's Representative may waive this requirement for a specific contract.

2.6 Council to Insure Contract Works and existing Structures in Certain Cases.

Where the Contract Works are in the nature of additions, alterations, repairs or maintenance to, or are in the vicinity of, an existing structure it may be desirable for Council to arrange the necessary insurance cover. This is because Council is in the best position to know the amount and the scope of cover required. In many cases Council will already have insurance policies in place and will be able to arrange the necessary extensions of cover.

Where this situation may exist the Contract Manager shall discuss the matter with the Client's Representative and obtain specific instructions before providing for the Council to insure the Contract Works and existing structures.

In these circumstances the Special Conditions must state that the Principal shall insure as provided in *NZS 3910:1998 8.5.2(a) and (b)*.

When *NZS 3910:2003 8.6.2(a) and (b)* applies the provisions of these clauses replace those of *8.1*. Attention is drawn to the detailed provisions of *8.6.2(a) and (b)* and the *Guideline G8.6 of NZS 3910:2003*.

2.7 Liquidated Damages

Liquidated damages compensate Council for the loss which Council estimates it will sustain if works are not completed on time.

Where liquidated damages are provided for, the amount must be a genuine pre-estimate of the likely loss to Council that would result from delay of completion. Where liquidated damages are provided for Separable Portions it may be necessary to provide different rates for each Separable Portion.

Liquidated damages must always be assessed and agreed with the Client's Representative, and provided for except in special circumstances and on the specific instructions of the Client's Representative.

Where liquidated damages are not provided, Council can recover and the Contractor will be liable only for such actual loss as Council can provide has resulted from the late completion, being loss of a kind reasonably foreseeable to the parties at the time the contract was made as being likely to result.

The assessment of liquidated damages must be undertaken by the Contract Manager before calling tenders using the Liquidated Damages Assessment Sheet. (See Appendix 34). The completed assessment must be filed on the Principal's Set.

When assessing the weekly rate of liquidated damages, the following factors must be taken into account.

<p>Costs</p>	<ul style="list-style-type: none"> • cost of time of the Contract Manager and Engineer, in terms of hours per week at \$x per hour • cost of running a vehicle for the Engineer in terms of kilometers per week at \$x per kilometer • cost of additional engineering or architectural consultancy services • cost of maintaining an existing service e.g. water or sewerage, because of a delay in replacing the service.
<p>Loss of Revenue</p>	<ul style="list-style-type: none"> • loss of revenue caused by a delay in completing buildings such as halls, flats, libraries, etc. • loss of rates revenue caused by a delay in completing subdivisions.
<p>Interest</p>	<ul style="list-style-type: none"> • interest on an overdraft, when that overdraft is caused by any of the loss of revenue listed above. • interest on loan monies, when repayment is delayed by loss of revenue from subdivisions not

	being completed, and houses or subdivided land cannot be sold.
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The amount of liquidated damages payable per week must be entered in the Special Conditions of Contract.

See the **Supplement to Part Three** for special requirements relating to liquidated damages for Physical Works Maintenance Contracts.

2.8 Method of Tender Evaluation

Tenders shall be evaluated using one of the following methods:

- Lowest Price Conforming Tender
- Weighted Attribute
- Price Quality

The Contract Manager shall obtain the Client's Representative's instructions as to which method of tender evaluation is to be adopted in respect of each specific contract.

Where there are no instructions to the contrary from the Client's Representative, the guidelines for method of evaluation as noted in Section 4.1 shall be used.

2.9 Administration Checklist

The Contract Manager must complete and file a Contract Administration Checklist. (See Appendix 31).

3. Preparing The Tender documents

Tender documents consist of:

1. Table of Contents
2. *General Conditions of Contract and Conditions of Tendering – either NZS 3910:2003 or NZS 3915:2005* (a reference only to the relevant conditions in the Schedule to Conditions of Tendering and the Special Conditions of Contract is all that is required).
3. Schedule to Conditions of Tendering including tender evaluation method.
4. Form of Tender
5. Schedule of Prices
6. Special Conditions of Contract
7. Specification
8. Standard Specifications
9. Drawings
10. Documentation required in terms of Hutt City Council Health and Safety Specification for Contracts – No. 31.
11. Contractor's Evaluation of Consultant's Performance Form.

All the documents, apart from the plans, must be on A4 size paper, and appropriately bound.

3.1 Checklist

The Contract Manager must file a checklist of all the above tender documents (See Appendix 32).

3.2 Document Details

3.2.1 General Conditions of Contract and Conditions of Tendering

The General Conditions of Contract and Conditions of Tendering for Physical Works Construction Contracts are normally:

NZS 3910:2003 Conditions of Contract for Building and Civil Engineer Construction.

For contracts involving roading work or work within streets the Special Conditions shall state that “the contract is a roading construction contract”. In this case the provisions of *NZS 3910:2003 Appendix B* shall apply (refer to *NZS 3910:2003, 2.5.1*).

In special cases where an Engineer to the contract is either not required or justified the Client’s Representative may direct that the General Conditions of Contract and Conditions of Tendering shall be *NZS 3915:2005*. In these circumstances the equivalent clauses and procedures in NZS 3915 should be substituted for those of NZS 3910 which are referred to elsewhere in this Part Three of the Hutt City Council’s Contract Manual.

See the **Supplement to Part Three** for details on General Conditions of Contract for Physical Works Maintenance Contracts.

3.2.2 Schedule to Conditions of Tendering

The Schedule to Conditions of Tendering shall be in the form set out in *NZS 3910:2003 pages 102, 103*. (See Appendix 35 or shall otherwise ensure compliance with the requirements as noted in Appendix 35).

Council’s standard policy with regard to the options available are:

102.2 A tender document deposit is required. The amount and whether or not it is to be refundable shall be agreed with the Client’s Representative.

103.1 Normally no appointment need be made to view the Site.

104.3 The inclusion of either or both of the following provisions must be agreed with the Client’s Representative.

Tenders submitted with an endorsement (ie “Tag”) which clarifies any uncertainty or modifies the contract period or conditions will be considered. During the tender evaluation process the Engineer shall adjust the tender price if necessary to allow for the cost implications of the “Tag” prior to

converting the price to a score or comparing tenders.

Tenders submitted for alternative designs or methods will be considered provided that full details of the alternative are included with the tender. The details shall be to a similar standard of detail and presentation as the detail of the Contract Works set out in the Tender Documents.

105.1 Tenders will close at NOON on the _____ day of _____. Tenders shall be enclosed in a sealed envelope addressed to “The Chief Executive, Hutt City Council, Private Bag 31 912, Lower Hutt”. Tenders may be posted or, if delivered, handed in at the Customer Service Centre, Ground Floor, 30 Laings Road, Lower Hutt. The envelope shall be marked on the outside left hand corner “Contract No. _____ Tender for _____”.

Normally fax tenders will not be acceptable. When agreed with or directed by the Client’s Representative fax tenders will be acceptable possibly with the proviso that *105.2* is amended as follows.

105.2 The second sentence of *105.2* is amended by inserting the words ‘and all other information required to be submitted with the tender’ after the words ‘tender price’.

105.3

- a) No percentage for On Site Overheads shall be nominated in the tender.
- b) No percentage for Off Site Overheads and profit shall be nominated in the tender.
- c) No rate per Working Day in compensation for time related Cost and Profit incurred in relation to an extension of time shall be nominated in the tender.

In addition supplementary information required to be submitted with the tender is:

105.3

- d) A signed completed Schedule of Prices showing how the tendered sum has been arrived at.
- e) A signed completed Dayworks Schedule appended to Schedule of Prices.
- f) A list of proposed sub-contractors.
- g) Information relating to Tenderer's attributes.
- h) Completed certification and other documentation required in terms of Hutt City Council Health and Safety Specification for Contracts – No. 31

107.2 Unsuccessful tenderers for tenders evaluated by the Lowest Price Conforming Tender Method shall be notified in accordance with *NZS 3910:2003, 107.2*.

Unsuccessful tenderers who have submitted bona fide tenders complying with the Tender Documents for tenders evaluated by the Weighted Attribute or Price Quality Methods shall be notified by the Principal or its agent of the name and tender price of the successful tenderer, the number of conforming tenders received and the tender price range, their own score for each attribute except price and the range of scores for each non-price attribute within 10 Working Days of acceptance of the successful tender.

3.2.3 Form of Tender

The standard Form of Tender shall be used. (See Appendix 36).

3.2.4 Schedule of Prices

A Schedule of Prices is required for most lump sum contracts and all measure and value contracts. *NZS 3910:2003, 2.2.2* sets out the limitations on the use of a Schedule of Prices for lump sum contracts. A Schedule of Prices shall only be omitted from a lump sum contract Tender Documents with the prior approval of the Client's Representative.

For most civil work contracts the valuation of Variations will be simplified if the Schedule of Prices does not provide separately for On-Site and Off-Site Overheads and Profit. The Schedule of Prices should be prefaced by a note stating 'the rates and prices below shall include full allowance for:

1. On-Site and Off-Site Overheads and Profit; and
2. Time related Cost and Profit for the time that the Contract Works covered by the rates and prices below would reasonably take to complete.'

A Dayworks Schedule should be appended to the Schedule of Prices and this should be prefaced by a note stating 'The rates and prices below shall include full allowance for On-Site Overheads, Off-Site Overheads and Profit and time related Cost and Profit'. These steps will remove any subsequent doubt as to whether rates and prices are net cost or include partial or full allowance for On-Site Overheads, Off-Site Overheads and Profit and time-related Cost and Profit when considering the valuation of Variations – refer to **12.1** below.

The Schedule of Prices must include the contingency sum provided for in the Special Conditions.

The Schedule of Prices shall clearly state that all rates and prices are exclusive of GST.

3.2.5 *Special Conditions of Contract*

The Special Conditions of Contract shall be in the form set out in *NZS 3910:2003 First Schedule*. (See Appendix 37 for standard format for Special Conditions of Contract).

Council's standard policy with regard to the options available are:

- 1.1 If the Site is a public place, the Contractor's possession of the Site is usually not exclusive. Often members of the public or others may still use the Site, subject to reasonable restrictions sometimes caused by the nature of the work. In these circumstances, unless the contract involves roading work or work within streets (refer to **3.2.1**.

above), *NZS 3910:2003 Appendix B, B1* should be included in the Special Conditions and numbered *1.1*. Where the access is to be limited to certain people or classes of people the reference to 'public' in *B1* should be amended accordingly.

1.2 The Principal is the Hutt City Council of 30 Laings Road, Lower Hutt.

2.5 Refer to discussion in **3.2.1** above. If the contract does not involve roading work or work within streets or is not a roading maintenance contract then 'the contract is neither a roading construction nor a roading maintenance contract'.

2.6.2 Unless the Contractor specifically asks for all the provisions of *2.7.2* to apply, the Principal will only execute one Contract Agreement and set of Contract Documents and this set shall be retained by the Principal at all times.

2.8.1 The number of sets of Contract Documents should be agreed with the Client's Representative.

3.1.1 A Contractor's Bond may or may not be required. Refer to **2.4** above.

3.1.2 The Contractor's Bond shall be for a sum determined in accordance with **2.4** above.

3.2.1 A Principal's Bond is not required.

5.4.1 The date on which the Contractor is to be given possession of the Site shall be agreed with the Client's Representative. This may be a date to be nominated by the Tenderer (subject to any constraints which must be set out in the Schedule to the Conditions of Tendering).

5.10.1 A construction programme is required to be submitted to the Engineer before commencement of works.

8.1, 8.3 and 8.4

The Contractor shall insure as provided in *8.1, 8.2 and 8.3 (and 8.4 where applicable)*.

(Refer to 2.6 above for guidance on identifying situations where it may be appropriate for the Principal to insure as provided in 8.6.2(a) and (b).

8.3.1 Public Liability insurance shall be effected for an amount not less than \$1,000,000. The policy shall include a 'Damage by Vibrations' clause for an amount not less than \$100,000 unless this requirement is waived by the Client's Representative. The total amount of cover under the policy and the amount of cover under the Damage by Vibrations clause shall be agreed with the Client's Representative. (Refer to 2.5 above).

8.3.2 Motor vehicle third party liability insurance shall be effected for an amount not less than \$1,000,000.

10.3.1 (As amended by B3 – only applicable to roading construction contracts as defined in 2.5.1).

Allowance for inclement weather NIL Working Days.

10.4.5 A producer statement is required.

Note: For building works the requirements of 10.4.5 ie that the producer statement is in the form set out in the *Sixth Schedule* is appropriate. (See Appendix 38). For other work the following addition should be made to the Special Condition relating to 10.4.5 after the words '..... is required'. The form set out in the *Sixth Schedule* is amended by substituting the words 'Contract Works' for the words 'Building Works'. (See Appendix 39).

10.4.6 Add new clause where as-built plans are required to be provided by the Contractor. Either 10.4.6 or 11.3.3 shall be included. The decision as to which shall be agreed with the Client's Representative. (See Appendix 37). The wording of 10.4.6 shall be as follows:

'Where as-built plans are required to be supplied by the Contractor as part of the Contract Works, the Contractor shall provide the plans prior to the

Engineer issuing the Certificate of Practical Completion’.

10.5.1 Liquidated damages shall be provided for and assessed in accordance with **2.7** above. The amount must never be NIL. Application of Liquidated Damages may not be required where the contract includes for deductions for works and services not meeting key performance indicator levels.

10.6.1 No provision should be made for a bonus to be paid except in special circumstances and on the specific instructions of the Client’s Representative. However in conjunction with deductions for not meeting KPI’s as noted above, additional payment for exceeding key performance indicator levels may be allowed for.

11.1.1 This clause provides for a Period of Defects Liability of three months unless some other period is stated in the Special Conditions. Some Divisions of Council require longer periods in respect of certain types of work. Always confirm the required period for each specific contract with the Client’s Representative. When the period is 3 months this should be shown in the Special Conditions to avoid misunderstanding.

11.3.2 Include new clause *11.3.2* (see Appendix 37) which requires the Contractor to undertake an evaluation of the Consultant’s performance. The evaluation form (see Appendix 40) shall be included in the Tender Documents.

11.3.3 Refer to *10.4.6* above (see Appendix 37). The wording of *11.3.3* shall be as follows:

‘Where as-built plans are required to be provided by the Contractor as part of the Contract Works, the Contractor shall provide the plans prior to the Engineer issuing the Defects Liability Certificate’.

12.3.1 The percentage to be retained from each progress payment and the limit of the total sums retained shall be in accordance with the *First Schedule 12.3.1 (a)*.

See the **Supplement to Part Three** for retention monies for Physical Works Maintenance Contracts.

12.8.2 In most single (asset renewal) projects cost fluctuation adjustments shall not be paid.

However, for longer term maintenance contracts and roading cyclic renewal contracts cost fluctuations may apply (check with Client representation to determine appropriate cost indices for any such adjustment).

12.11.1

A contingency sum shall be included in the contract. The sum shall be 10% of the Contract Manager's cost estimate rounded up to the nearest \$1,000.

(For projects with a total value greater than \$500,000 this may be reduced to 5% of any value greater than \$500,000.

14.2.1 Include the further provisions to *14.2.1* to enable Hutt City Council to immediately terminate the contract if the Contractor remains in serious breach of the requirements of the Council's Health and Safety Specification for Contracts – No.31. (See Appendix 37).

3.2.6 Specifications

The Specifications shall include a main specification for the contract work, and a clearly defined scope for the project.

Specifications must measure or specify either:-

- methodology by defining a single solution or method;
- or
- output by defining a specific product or solution or action;
- or

- outcome by defining an overall objective or result.

Refer to the New Zealand Contract Management Manual clause A3.3 for guidance.

The Hutt City Council Standard Specifications are to be used with the main specification. (See Appendix 55).

3.2.7 Drawings

The Drawings set out the detail of the contract work. All Drawings must be numbered (numbers must be in accordance with the appropriate Council series and are available from Engineering Records) and dated, to provide unique identification during and after the contract.

3.2.8 Generic Documents

Some divisions of Council require a pre-determined format for Contract documents including detailed Conditions of tendering, Conditions of Contract and basis of Measurement and Payment, specific to their asset type/area of responsibility.

Where available these (generic) pre-formatted documents shall be used as a base document for projects. Conditions of Tendering and Special Conditions of Contract may include requirements for tenderers/Service providers additional to those noted in this Contracts Manual. Any such generic document shall be reviewed and updated to meet the specific requirements of each project.

3.3 Health and Safety

The documentation required in terms of Hutt City Council Health and Safety Specification for Contracts – No. 31, shall be included in the Tender Documents.

4. Calling for Tenders

4.1 Council Policy on Advertising

Section 12 of the LGA 2002 gives Council freedom to negotiate its contracts it considers appropriate. However that freedom is constrained by the principles relating to Decision-making and Council policies on levels of expenditure and testing the market as well as being subject to : the materiality tests of s79, the requirement for financial management (being prudent (s101)), and the obligation of the CE (consequently to other officers) to ensure efficient and effective management of the affairs of Council (s42) – all of which involves the application of professional judgement.

Council's current tender advertising policy is:

Anticipated Physical Works Contract Value <i>(Total project cost, not annual expense)</i>	Tender Requirements (Council does not advertise for open tenders for Physical Works Contracts under \$50,000)	Recommended Method of Evaluation
(a) Less than \$30,000	Either: Engage pre-approved/suitably qualified contractor previously engaged by HCC for similar services; or Seek three written quotations	Negotiation and Divisional Manager approval Lowest price conforming
(b) \$30,000 to \$50,000	Either: Obtain specific approval from Divisional Manager and engage pre-approved/suitable qualified specialist contractor; or Seek three written quotations.	Negotiation and Divisional Manager's approval Lowest price conforming

(c) \$50,000 to \$100,000	Either: Council must obtain at least three written quotations from suitably qualified tenderers	Lowest Price Conforming method. Either Lowest Price Conforming Method or Weighted Attributes method <i>Evaluate at least: Methodology Technical Skills Resources and Commitments Price</i>
(d) \$100,000 to \$200,000	Either: Council must obtain at least three written quotations from suitably qualified tenderers (Non-Land Transport NZ subsidised works only); or Council advertises for open tender	Lowest Price Conforming or Weighted Attributes Weighted Attribute Method or Price/Quality Method
(e) \$200,000 to \$500,000	Council advertises for Open Tender	Weighted Attribute Method or Price/Quality Method
(f) More than \$500,000		Price/Quality Method

The policy can be varied, with the approval of the Client's Representative, if the work is so specialised that there will only be a small number of suitable tenderers.

4.2 Pre-qualification Determination

The tender process for highly specialised work may include a pre-qualification phase. The tender process will then be one of the following:

<p>1. PRE-QUALIFICATION PHASE Council advertises for expressions of interest from possible tenderers.</p>	<p>2. TENDER PHASE Council assesses pre-qualification submissions and invites written quotations from suitable tenderers.</p>

<p>1. PRE-QUALIFICATION PHASE Council advertises for general tenders, seeking a broad description of work and estimated price.</p>	<p>2. Tender Phase Council assesses pre-qualification submissions and invites detailed tenders from suitable tenderers.</p>
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4.3 Advertising Process

Contracts are advertised a minimum of:

- Through the web-based “E-Tender” administered by Tenderlink for Hutt City Council.
- Once in The Dominion Post newspaper (either Wednesday or Saturday); and
- Once in the weekly Hutt News.

The Client’s Representative shall decide whether extra advertising is needed for large and complex contracts.

Each advertisement shall comprise:

- A brief description and scope of the work
- Information on where the tender documents are available
- Closing time and date of tenders.

All advertisements including the closing date of tenders shall be agreed with the Client’s Representative, taking into account the size and complexity of the contract.

A draft advertisement shall be prepared on the standard form. (See Appendix 41). This shall be forwarded to the City Services Utility Services Division Administration Coordinator, along with electronic copies of all tender documentation for forwarding to Tenderlink Ltd.

5. Issuing Tender Documents

5.1 Method of Issuing

Tender Documents may be:

- sent to prospective tenderers by the Council
- collected from the Council
- downloaded from the “E-Tender” website.
- for Physical Works Contracts of a value less than \$100,000 only, issued from a consultant’s office

The person issuing the documents must ensure the following information is recorded in the Contract Book, held in the Hutt City Council’s Customer Service Centre:

- name, postal address and contact telephone number of the firm taking out the documents
- set number and date of issue of the documents

5.2 Tender Document Deposits

Tender document deposits limit the costs of excessive sets of documents, and ensure that only bona fide tenderers collect the tender document sets.

Deposit Required	Unless waived by the Client’s Representative
Amount of Deposit	As stated in Schedule to Conditions of Tendering (minimum \$50 when applied)
Deposit Paid	When documents are collected or before documents are posted out
Deposit Banked and Received	As soon as practicable after payment
Deposit Refunded	See Schedule to Conditions of Tendering – may be non-refundable (maximum amount non-refundable \$50 – Council retains non-refundable amount). Otherwise in accordance with <i>NZS 3910:2003, 102.2.</i>

5.3 Confidentiality

Except for Land Transport NZ subsidised projects, the names of parties taking out the documents are normally confidential, and should not be made known to others without obtaining the Client's Representative's approval.

For Land Transport NZ subsidised projects, the names of parties taking out documents shall be made available on request by any interested party.

6. Receiving Tenders

6.1 Submission of Tenders

All tenders must be submitted in accordance with the requirements set out in the Schedule to Conditions of Tendering.

Note:

For contracts of an estimated value greater than \$100,000, all tenders shall be received at Hutt City Council's Customer Service Centre. For contracts of an estimated value of \$100,000 or less, tenders may be received at the Consultant's office, provided that:

- The Consultant's office hours are at least 8am to 5pm weekdays;
- The Consultant's office is within 50km of Lower Hutt boundaries;
- The Consultant has a tenderbox (suitably marked and lockable) and a written procedure for opening of tenders; and
- The Consultant's tender opening procedure is acceptable to Hutt City Council.

6.2 Late Tenders

Council will only accept late tenders that are in the Tenders Box prior to it being opened.

6.3 Opening Tenders

Tenders shall be cleared from the Tenders Box as soon as possible but not later than 60 minutes after the closing time. The Contract Manager shall open and record the tenders, witnessed by an appropriate independent Council officer.

Both officers shall complete and sign a Tender Opening Schedule. This Schedule notes the names and addresses of all the tenders received, and each tendered sum. (See Appendix 42).

6.4 Checking Tenders

Tenders must be checked to ensure that:

- The tender conforms with all the requirements set out in the Tender Documents
- Where a bond is required, the surety is a bank, insurance company or recognised bonding company approved by the Client's Representative.
- The Schedule of Prices, including the extensions and additions, has no discrepancies or errors.

6.5 Errors in the Schedule of Prices

If the tender contains an error in extensions of unit rates or in summation of items such as to vary the tendered sum and Council or its agent becomes aware of the error prior to acceptance of any tender, then the provisions of *NZS 3910:2003, 105.6* apply.

If a tender containing such an error is accepted then the provisions of *NZS 3910:2003, 2.2.3 or 2.3.5* apply.

7. *Evaluating Tenders*

7.1 Evaluation Procedure

All tenders shall be evaluated using the method identified in the Schedule to Conditions of Tendering. This may be a Transfund CPP method.

The tender evaluation process should seek to identify the tender which provides the best overall value to Council in the circumstances of the particular contract. Value to Council can be measured in many ways including local resident satisfaction, ability to maintain traffic flows, tidiness, potential rate of progress, quality, diligence in meeting important contract requirements, etc.

The most important factors may vary from contract to contract.

7.2 Tenders for Alternative Designs or Methods

Council may consider and accept tenders for alternative designs or methods, providing the Schedule to the Conditions of Tendering states that these tenders will be considered and tenderers have not varied the scope of the work so much that the tenders submitted by other tenderers are unfairly disadvantaged.

The Tender Report must clearly state that a tender for an alternative design or method is recommended.

7.3 Tender Report

The Contract Manager shall prepare the Tender Report after tenders have been evaluated. (See Appendix 43A).

Contains:	Sent To:
<ol style="list-style-type: none"> 1. A brief description of the project 2. The Contract Manager's estimate of the overall cost of the work 3. The method of calling of tenders 4. List of tenders received, with tender prices 5. Details of any errors or tags in any of the tenders 6. A brief summary of the evaluation process. 7. Source of funds, with reference to the Hutt City Council Annual Plan 8. Comment and explanation on any relevant matters 9. Answers to any questions that can reasonably be anticipated 10. A recommendation on which tender should be accepted. 	<ul style="list-style-type: none"> • The Client's Representative, for their approval and action. The Client's Representative will require copies for forwarding to: <ul style="list-style-type: none"> ○ General Manager ○ Divisional Manager ○ Asset Manager ○ Hutt City Council Corporate Information Records

7.4 Tender Acceptance Form

Appended to the Tender Report (Appendix 43A) shall be a Tender Acceptance Form, to be completed by the Divisional Manager or the Council officer with delegated authority [refer Appendix 43(B)].

7.5 Notification

If no tender has been accepted within one month after the closing of tenders, each tenderer shall be notified in accordance with *NZS 3910:2003, 107.1*.

8. *Accepting A Tender*

Tenders are accepted in terms of the Hutt City Council Delegations Register. The Client's Representative reports to the relevant committee, and that committee formally advises Council of acceptance.

8.1 **Advising Tenderers**

Successful and unsuccessful tenderers must be advised in writing of the acceptance of tender. *NZS 3910:2003, 106 and 107*, as modified by the Schedule to Conditions of Tendering when applicable, sets out the requirements. The following table sets out the additional requirements for the letter to the successful tenderer.

Letter of Acceptance

Sent To:	Successful tenderer
When	As soon as practicable after the decision to accept tender.
Must Include:	<ol style="list-style-type: none"> 1. Advice of Acceptance. 2. Confirmation of the tendered sum for the work. 3. Date of possession of site. 4. The number of other tenderers. 5. Contractors weighted attribute scores, range of scores, etc. in accordance with the weighted attribute or price/quality method when applicable. 6. The range of conforming tender prices. 7. Two copies of the Form of Contractor's Performance Bond – <i>NZS 3910:2003, Third Schedule</i> (See Appendix 45) where a bond is provided for in the Special Conditions. 8. Request for insurance certificate(s) required in terms of <i>NZS 3910:2003, 8.4.3</i> enclosing Form of Certificate as to Contractor's Insurances – <i>NZS 3910:2003 Seventh, Eighth, Ninth, Tenth and Eleventh Schedules</i> (See Appendix 46) and copies of insurance policies if required for checking. 9. Request other requirements of the Contract Documents prior to the commencement of the Contract Works e.g. construction programmes, quality plan, traffic management plan (See Appendix 47).

9. **Contract Documents**

The Contract Manager shall arrange for the Contract Agreement to be executed by the Contractor and Council. The Contract Agreement shall be on the Council's standard form (See Appendix 44).

If the Contractor has specifically asked for a copy executed by Council all of the provisions of *NZS 3910:2003, 2.6.2* shall apply.

If the Contractor has not specifically asked for a copy executed by Council then, after the Contractor has executed the Contract Agreement in accordance with *NZS 3910:2003, 2.6.2(c)* the Contractor shall retain one copy and forward the other copy and the original to the Engineer. The Engineer shall retain the second copy and forward the original (the Principal's set) to the Client's Representative for execution and retention by Council.

If the Contractor is a registered company rather than an individual, the Contract Agreement must be executed in the way set out in the company's constitution. In executing the Contract Agreement both the Contractor and the Council shall initial each page of the documents and any alterations to any of the documents.

9.1 **Principal's Set**

The Principal's Set is the official file for the contract. It shall contain:

1. Contract Agreement and the following related documents:
 - The Schedule to Conditions of Tendering
 - Notices to tenderers (if any)
 - The Contractor's tender including the Schedule of Prices
 - The notification of acceptance of tender
 - The Special Conditions of Contract
 - The Specification
 - The Drawings

2. Other documents generated during the course of the contract such as:

- Letters to unsuccessful tenderers
- Contractor's Bond
- Certificates issued by the Engineer

The following table summarises the Principal's Set.

Contains:	The signed Contract Agreement and related documents, other documents generated during the Contract.
Held By:	Corporate Information Records Never remove from the Administration Building
Used For:	Official Contract File
Kept Until:	Permanent record

The Contract Manager must complete and file a checklist of the Principal's Set of documents as a quality assurance measure. (See Appendix 33).

9.2 Engineer's File

The Contract set retained by the Engineer shall be kept on the Engineer's file. The following table summarises the Engineer's file.

Contains:	<ol style="list-style-type: none"> 1. Copy of Contract Agreement and related documents. 2. All relevant documents created during the contract, such as: <ul style="list-style-type: none"> • progress claims and payment certificates • correspondence • variation orders
Held By:	Engineer
Used For:	Engineer's record during the contract
Kept Until:	The end of the contract, when relevant papers are transferred to the Principal's Set.

9.3 Unsuccessful Tenders

The Corporate Information Records must hold all documents relating to unsuccessful tenders.

10. Possession of the Site

The Engineer must ensure that the Contractor has possession of the site on the date nominated in the Special Conditions subject to *NZS 3910:2003, 5.4.1*. The Special Conditions may provide for the Contractor's possession of the site to be not exclusive.

11. Job Diary

The Engineer shall keep a job diary for each contract. Requirements for the job diary are:

Format	Content	Copies
<p>Specific printed form</p> <p><i>or</i></p> <p>Manifold book.</p> <p>Every page headed with contract name and number</p>	<ul style="list-style-type: none"> • Dates and times of site visits • Weather conditions • Progress of work • Delays, and reasons for delays • Number of workers on site • Plant on site • Unexpected site difficulties • Other relevant information • Confirmation that site/contract health and safety requirements are being met 	<ol style="list-style-type: none"> 1. Original placed on Engineer's File 2. Copy kept by Engineer for three months after the issue of the Final Payment Certificate or until the resolution of any dispute of which notice has been given under <i>NZS 3910:2003, Section 13</i>.

See the **Supplement to Part Two** for requirements relating to Job Diary for Physical Works Maintenance Contracts.

12. Variations

NZS 3910:2003, Section 9 sets out the requirements in respect of Variations to a contract.

All Variations must be authorised on the Council standard Variation Order form. (See Appendix 48). No Variation in the Contract Work can take place without a Variation Order.

12.1 Valuation of Variations

The value, if any, of each Variation shall be determined in accordance with *NZS 3910:2003, Clause 9.3 or 9.4* when applicable.

To simplify the valuation of Variations under *NZS 3910:2003, 9.3* the Schedule of Prices should not provide separately for On-Site Overheads or for Off-Site Overheads and Profit (refer to **3.2.4** above). The costs for on-site and off-site overheads and profits should be included in the rates and prices of scheduled items and dayworks rate.

For advice on the valuation of Variations refer to *NZS 3910:2003 Guidelines, Section G9* (which are part of *NZS 3910* and have contractual status as between the Council and the Contractor but only to the extent that they may be referred to as an aid to the interpretation of the substantive clauses) and also to the worked examples and flow chart at *pages 115-119 of NZS 3910:2003*.

The Engineer shall have the authority to vary the contract to the amount of the contingency sum. The Engineer shall not vary the contract beyond that sum without consulting the Client's Representative.

13. Progress Payments

The Contractor may submit claims for payment and the Engineer shall issue progress payment certificates in accordance with *NZS 3910:2003, 12.1 and 12.2*. Attention is drawn to the time limits set out in *12.2* in relation to the issue of a certificate by the Engineer and the payment by the Principal. When a bond is required, no payment certificate shall be issued until the Contractor and its surety have executed and delivered the Contractor's Bond to the Council – see *NZS 3910:2003, 3.1.3*.

Progress Payment Certificates shall be in the Council's standard form. (See Appendix 49).

Retention monies shall be retained by the Council in accordance with *NZS 3910:2003, 12.3*. The Engineer shall show the amount to be retained as a deduction on the Progress Payment Certificate.

Claims shall be accompanied by a spreadsheet showing the schedule of quantities, rates and prices (as applicable to Contract), showing any previous certified payment quantities /amounts, the current claim quantities/amounts, and the sum claim to date for works completed.

For measure and value contracts, a reconciliation shall also be included, showing additions and deductions from the tendered price.

13.1 Liquidated Damages

In assessing, and where necessary amending the Contractor's claims, the Engineer should not make any deduction for liquidated damages. The power to deduct liquidated damages is vested in the Council by *NZS 3910:2003, 10.5.3* and the deduction is made from the amount certified as payable by the Engineer. The Engineer shall advise the Client's Representative of any amount which Council is entitled to deduct for liquidated damages. *NZS 3910:2003, 10.5* sets out the provisions relating to damages for late completion of contract works.

14. Tax Invoices

Payment certificates also serve as GST tax invoices.

NZS 3910:2003, 12.12 sets out the requirements in respect of Goods and Services Tax and *Guideline G12.12* the procedure to be followed in respect of creating a recipient created invoice when issuing a payment certificate to Council.

Both the Council's and the Contractor's GST registration numbers must be shown on the payment certificate.

14.1 Paying on Payment Certificates

The Payment Certificate issued by the Engineer shall show the full amount certified for payment, the amount to be held for retentions, and the GST amount to be paid on the net payment (certified amount minus all deductions) – (refer Appendix 49 – sheet 1).

In addition to the Payment Certificate, a payment voucher shall be prepared. This payment voucher sheet shall show the costs apportioned to charge numbers applicable to each new/replacement asset type.

- This will include the amount (for each asset type) paid to the contractor, the amount held in retentions and the sum of each (refer Appendix 49 – sheet 2).

15. Completion of Work

The following tables set out the sequence of events for the completion of Physical Works Construction Contracts.

15.1 Practical Completion

Due Date for Completion	Specified in <i>NZS 3910:2003, 10.2</i>
Practical Completion	Stage of the work where the Contract Work, or any Separable Portion, complies with the requirements of <i>NZS 3910:2003, 10.4.1</i> and the Contractor has provided the Engineer with a Producer Statement and the as-built plans if required by the Special Conditions.
Certificate of Practical Completion	Issued by the Engineer in accordance with <i>NZS 3910:2003, 10.4</i> . Use Council's standard form (see Appendix 50).
Liquidated Damages	Payable by the Contractor to the Council for the period between the Due Date for Completion and the time of Practical Completion. Refer to <i>NZS 3910:2003, 10.5</i> and 13.1 above.
Occupancy	Council has the right of occupancy to the Contract Works or any Separable Portion: <ul style="list-style-type: none"> • After the issue of a Certificate of Practical Completion; • With the Contractor's agreement, to any portion which is sufficiently completed before the issue of the Certificate of Practical Completion. Refer to <i>NZS 3910:2003, 10.7</i>.
Evaluation of Contractor's Performance – Construction Phase	Made by the Contract Manager at the time of issuing the Certificate of Practical Completion and submitted to the Client's Representative (see Appendix 51).

When a bond has been provided the Engineer shall inform the Client's Representative of Council's obligation to release the Contractor and its surety from the bond – see *NZS 3910:2003, 3.1.5 and 3.1.6*.

15.2 Defects Liability

<p>Period of Defects Liability</p>	<p>The period set out in the Special Conditions commencing on the date of Practical Completion.</p> <p>During the Period of Defects Liability, the Contractor shall fulfil the obligations imposed on the Contractor by <i>NZS 3910:2003, 11.2</i>.</p>
<p>Defects Liability Certificate</p>	<p>Issued by the Engineer when:</p> <ul style="list-style-type: none"> • The Period of Defects Liability has expired, and • The Contractor has remedied any minor omissions or defects. Refer to <i>NZS 3910:2003, 11.3</i>, and • The Contractor has submitted the Contractor's Evaluation of Consultants Performance directly to the Hutt City Council; and • The Contractor has provided the Engineer with as-built plans if required by the Special Conditions. <p>Use Council's standard form (See Appendix 52).</p>

15.3 As-built Plans

Where as-built plans are required to be provided by the Contractor as part of the Contract Works, the plans must comply with Council's Specification for As-Built Plans. On receipt they must be checked and passed to Corporate Information Records for filing.

15.4 Final Payment

<p>Final Claim</p>	<p>Made by the Contractor not later than two months after the expiry of the Period of Defects Liability all in accordance with <i>NZS 3910:2003, 12.4.</i></p>
<p>Final Payment Schedule</p>	<p>Issued by the Engineer as soon as practicable after receipt of the Contractor's final claim all in accordance with <i>NZS 3910:2003, 12.5.</i></p> <p>The Final Payment Certificate must be:</p> <ul style="list-style-type: none"> • A recipient-created tax invoice, as set out in 14 above. • Accompanied by a reconciliation showing additions and deductions to the tendered price. <p>Use Council's standard form (See Appendix 53).</p>
<p>Payment</p>	<p>Must be made by Council within 10 Working Days of issue of the Final Payment Schedule. See <i>NZS 3910:2003, 12.5.5.</i></p>
<p>Evaluation of Contractor's Performance – Defects Liability Phase</p>	<p>Made by the Contract Manager at the time of issuing the Final Payment Certificate and submitted to the Client's Representative. (See Appendix 54).</p>

16. *Disputes*

Every dispute or difference concerning the contract shall be dealt with in accordance with *NZS 3910:2003, Section 13*. Note that there are time limits for giving notice to the Engineer set out in *13.1.1 and 13.2.1*.

NZS 3910:2003, 13.2 sets out the requirements for the Engineer to review every dispute or difference and also options available to the Contractor and the Engineer to assist them to resolve any dispute amicably (see *13.2.2 and 13.2.3*).

The Contractor or Council may require the Engineer to make a formal decision under *NZS 3910:2003, 13.2.4*.

If Council or the Contractor is dissatisfied with the formal decision, or the Engineer makes no formal decision, the dispute may be referred to mediation or arbitration (see *NZS 3910:2003, 13.3 and 13.4*).