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| **Subject:** | **Execution procedures for contract documentation for engagements with third party contractors or consultants for the Directorate of Properties & Facilities** |
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1. **Commencement**
   1. The practices and procedures outlined in this Practice Note commence on 16 November 2016.
2. **Application** 
   1. This Practice Note applies to all engagements with third party contractors or consultants by the Directorate of Properties & Facilities.
3. **Definitions**
   1. In this Practice Note:
      1. **Deed** refers to a special type of contract executed under company seal intended by the executing party to be the most serious form of contract whereby undertakings and warranties contained in the contract may be binding on the parties even if no money has been paid or work performed.
      2. **Contractor** refers to the builder engaged by ACU who carries out the construction work under a contract.
      3. **Consultant** refers to entities engaged by ACU to give professional or expert advice in a construction project and include architects, engineers, surveyors and specialists such as environmental experts.
      4. **Company, company director** and **company secretary** have the same meanings as defined in section 9 of the *Corporations Act 2001* (Cth).
      5. **Execute** means the act of signing a document whereby a party is immediately bound to do all that is required to make the document operative.
4. **Execution by contractors** 
   1. All construction works contracts with value up to $2,000,000 may be executed as an agreement by one authorised representative of the contracting company and the signature is to be witnessed (“*Executed for and on behalf of [Contractor xxx] by its authorised representative*”) ;
   2. All construction works contracts with a value of greater than $2,000,000 must be executed as a Deed in accordance with section 127 of the *Corporations Act 2001* (Cth) namely by one of the following:
      1. Two company directors; or
      2. A company secretary and company director; or
      3. If the company only has one company director/company secretary (a sole proprietorship), the sole company director/company secretary.
   3. Section 127 execution may still be required in certain contracts below $2,000,000 when warranted by the risk of a particular project or when the contractor insists on the form of execution.
   4. A person is a company director or company secretary if they are named as that respective company officer on the current company extract on the Australian Security and Investments Commission Register for that company name. OGC may undertake a company search of the Register to confirm the current holders of the company offices.
   5. Where the contracting party is not an incorporated company under the *Corporations Act 2001 (Cth)* and instead operates as a sole trader or partnership (ie no ACN), then the person is to execute the agreement as a Deed with a witness to the signature *(“Executed for and on behalf of [Contractor xxx] by its authorised representative”*).
5. **Execution by consultants** 
   1. All consultancy agreements with a value up to $500,000 may be executed as an agreement by one authorised representative and the signature is to be witnessed (“*Executed for and on behalf of [Contractor xxx] by its authorised representative*”) ;
   2. All consultancy agreements with a value of greater than $500,000 must be executed as a Deed in accordance with section 127 of the *Corporations Act 2001* (Cth) namely by one of the following:
      1. Two company directors; or
      2. A company secretary and company director; or
      3. If the company only has one company director/company secretary (a sole proprietorship), the sole company director/company secretary.
   3. Section 127 execution may still be required in certain contracts below $500,000 when warranted by the risk of a particular project or in circumstances where the consultancy relates to a project on land that is not owned by Australian Catholic University Limited as the registered owner. Land that is not owned by Australian Catholic University Limited may include land occupied by ACU but owned by the Archdioceses of Brisbane, Canberra, Melbourne or Sydney of the Diocese of Ballarat.
   4. Where the contracting party is not an incorporated company under the *Corporations Act 2001 (Cth)* and instead operates as a sole trader or partnership (ie no ACN), then the person is to execute the agreement as a Deed with a witness to the signature *(“Executed for and on behalf of   
      [Contractor xxx] by its authorised representative”*).
6. **Signatory for ACU** 
   1. Dr Stephen Weller has directed that he must execute all Directorate of Properties & Facilities construction works contracts or consultancy agreements with a value over $100,000 or the designated officer operating in the capacity as Acting Chief Operating Officer. However, an Acting Chief Operating Officer will not be able to execute contracts pursuant to section 127 of the *Corporations Act 2001* (Cth).
   2. Where a construction works contract has a value of more than $2,000,000 or a consultancy agreement has a value of more than $500,000 or OGC decides the contract or agreement otherwise needs to be executed pursuant is section 127 of the *Corporations Act 2001* (Cth),   
      Dr Weller will execute with another company director of ACU. In most circumstances, it is expected that the Vice-Chancellor will execute as the second company director.
   3. For contract documents with a value below $100,000, Directorate of Properties & Facilities staff may execute the agreement on behalf of the ACU Limited in accordance with the delegated authority as prescribed in the [Delegations of Authority Register](https://www.acu.edu.au/policies/governance/delegations_of_authority_policy_and_register) together with Directorate of Properties & Facilities practices from time to time.
7. **Initialling** 
   1. ACU no longer requires every first and last page of each annexure to be signed. Instead, ACU ONLY requires the schedule of specifications and drawings to be initialled, and any attached CD to be initialled only.
   2. In circumstances where two company directors’ signatures are required, it is only necessary that one signatory initials the schedule of specifications and drawings, and any attached CD.
8. **Document Execution Form (DEF)**
   1. The DEF serves as a guarantee to ACU Directors and/or the Chief Operating Officer that the engagement under the agreement has been authorised in accordance with the [Delegations of Authority Register](https://www.acu.edu.au/policies/governance/delegations_of_authority_policy_and_register).
   2. Contract documentation will not be presented to ACU Directors and/or the Chief Operating Officer without a signed DEF from the appropriate Authorised Delegate under the policy.
   3. Properties and Facilities staff must provide OGC with a DEF stating the following:
      1. contract value and details;
      2. name and position of officer making authorising execution;
      3. signed by the delegate who is responsible for the project, as authorised by the [Delegations of Authority Register](https://www.acu.edu.au/policies/675829).
   4. OGC will countersign the DEF indicating its review and it will be provided as the explanatory memorandum to the ACU Directors and/or the Chief Operating Officer executing the contract on behalf of ACU.