

Capital Works Management Framework
Guidance Note

**Procurement and Contract Strategy for Public Works
Contracts**

GN 1.4

Procurement and Contract Strategy for Public Works Contracts
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Foreword

Purpose of this document

This document is one of a number of guidance notes aimed at facilitating the implementation of the Government's public sector construction procurement reform objectives. It is a key part of the Capital Works Management Framework (CWMF), which is an integrated set of contract forms, guidance notes and standard templates that are the necessary toolkit for the satisfactory delivery of a works project.

The purpose of this document is to assist Contracting Authorities in the application of the Public Works Contracts when selecting procurement and contract strategies to achieve their project objectives. This covers the alternative strategies and the considerations that contracting authorities need to take into account in deciding which of the public works contracts to use on a particular project. .

The guidance in this document applies to the standard forms of construction contract that have been developed for traditional and design-and-build public works projects. It is for the Contracting Authority to choose which public works contract best meets its needs for particular projects.

The choice of procurement strategy should strike a balance between project objectives, funding, risk allocation and constraints to identify the best way of achieving the required result.

Terminology in this guidance note

The title **Sponsoring Agency** changes to **Contracting Authority** once a contract for technical services for a works project is awarded. And **Contracting Authority** changes to **Employer** when a Works Contract is signed. The term **Client** is used throughout this guidance note as a generic term to cover the Sponsoring Agency / Contracting Authority / Employer.

Audience

This document is intended primarily for the guidance of Sponsoring Agencies embarking on traditional and design-and-build projects. However, the role of the Sanctioning Authorities and any external consultants appointed in relation to the capital works projects is also considered.

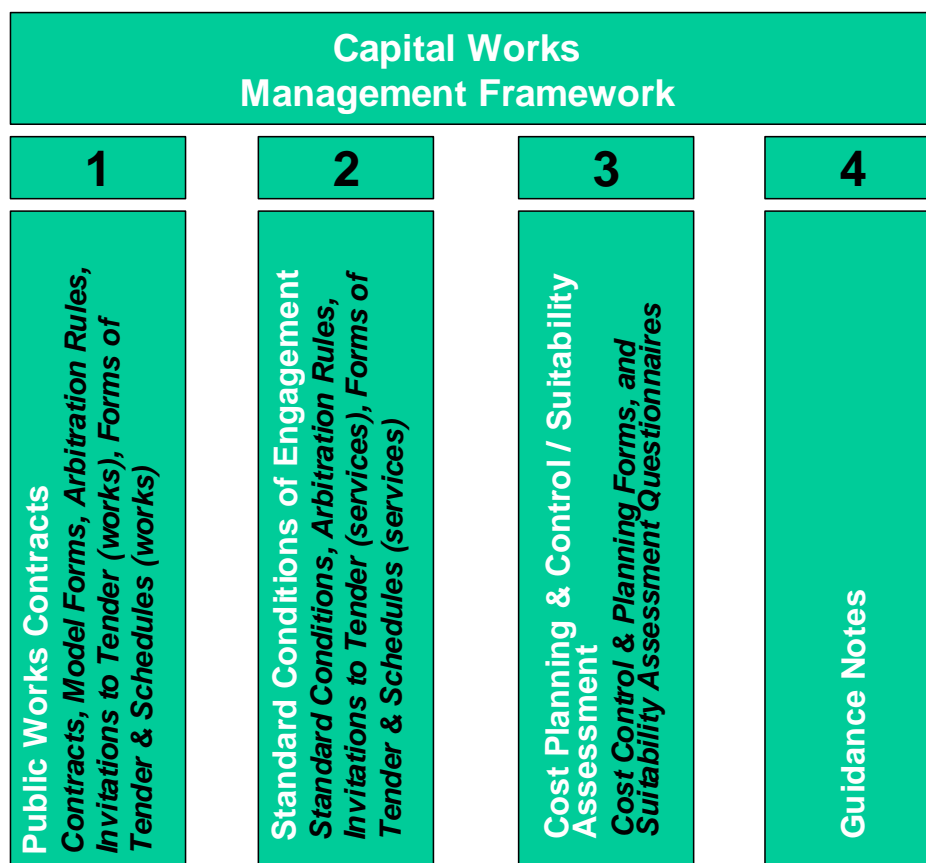
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Foreword, Continued

What is the Capital Works Framework

The Capital Works Management Framework (CWMF) is a structure that has been developed to deliver the Government's objectives in relation to public sector construction procurement reform. It consists of a suite of best practice guidance, standard contracts and generic template documents that form four pillars that support the Framework; the pillars are:

1. A suite of standard forms of construction contracts and associated model forms, dispute resolution rules, model invitations to tender, forms of tender and schedules;
2. The standard conditions of engagement for consultants, dispute resolution rules, model invitations to tender, forms of tender and schedules;
3. Standard templates to record cost planning and control information; and for suitability assessment; and
4. Extensive guidance notes covering the various activities in a project delivery process.



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Foreword, Continued

What is the Capital Works Framework (continued)

The content of the four pillars is outlined below. The constituent documents are coded according to the following scheme:

| Code | Description | Code | Description |
|-------|--|------|--|
| PW-CF | Public Works Contract Form | COE | Standard Conditions of Engagement |
| MF | Model Form | GN | Guidance Note |
| AR | Arbitration Rules | CO | Cost Planning / Control Form |
| ITTS | Invitation To Tender, Services | ITTW | Invitation To Tender, Works |
| QC | Questionnaire: Suitability Assessment for Service Provider | QW | Questionnaire: Suitability Assessment for Works Contractor |
| FTS | Form of Tender and Schedule | GL | Glossary |
| WE | Data on Weather Event | | |

CWMF Pillar 1 **Public Works Contracts**

Contracts, Model Forms, Arbitration Rules, Invitations to Tender (works), and Forms of Tender & Schedules (works)

| Contracts | |
|----------------------|---|
| PW-CF1 | Public Works Contract for Building Works designed by the Employer |
| PW-CF2 | Public Works Contract for Building Works designed by the Contractor |
| PW-CF3 | Public Works Contract for Civil Engineering Works designed by the Employer |
| PW-CF4 | Public Works Contract for Civil Engineering Works designed by the Contractor |
| PW-CF5 | Public Works Contract for Minor Building and Civil Engineering works designed by the Employer |
| PW-CF6 | Public Works Short Form of Contract |
| PW-CF7 | Public Works Investigation Contract |
| PW-CF8 | Public Works Short Form of Investigation Contract |
| PW-CF9 | Public Works Framework Agreement |
| Weather Event | |
| WE 1.0 | Met Éireann's calculations of Weather Events |

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Foreword, Continued

CWMF Pillar 1 (continued)

| Model Forms | |
|--------------------------------------|---|
| MF 1.0 | <i>Model Forms (compendium of all model forms)</i> |
| MF 1.1 | <i>Bid Bond</i> |
| MF 1.2 | <i>Letter to Apparently Unsuccessful Tenderer</i> |
| MF 1.3 | <i>Letter of Intent</i> |
| MF 1.4 | <i>Letter of Acceptance</i> |
| MF 1.5 | <i>Letter to Tenderers Notifying Award</i> |
| MF 1.6 | <i>Performance Bond</i> |
| MF 1.7 | <i>Parent Company Guarantee</i> |
| MF 1.8 | <i>Novation and Guarantee Agreement</i> |
| MF 1.9 | <i>Novation Agreement</i> |
| MF 1.10 | <i>Appointment of Project Supervisor</i> |
| MF 1.11 | <i>Professional Indemnity Insurance Certificate</i> |
| MF 1.12 | <i>Collateral Warranty</i> |
| MF 1.13 | <i>Rates of Pay and Conditions of Employment Certificate</i> |
| MF 1.14 | <i>Bond – Unfixed Works Items</i> |
| MF 1.15 | <i>Retention Bond</i> |
| MF 1.16 | <i>Appointment of Conciliator</i> |
| MF 1.17 | <i>Bond – Conciliator's Recommendation</i> |
| Arbitration Rules | |
| AR 1.0 | <i>Arbitration Rules</i> |
| Invitations to Tender (works) | |
| ITTW 1 | <i>Invitation to Tender for Works, Restricted Procedure</i> |
| ITTW 2 | <i>Invitation to Tender for Works, Open Procedure</i> |
| Forms of Tender and Schedules | |
| FTS 1 | <i>Form of Tender and Schedule: Public Works Contract for Building Works designed by the Employer</i> |
| FTS 2 | <i>Form of Tender and Schedule: Public Works Contract for Building Works designed by the Contractor</i> |
| FTS 3 | <i>Form of Tender and Schedule: Public Works Contract for Civil Engineering Works designed by the Employer</i> |
| FTS 4 | <i>Form of Tender and Schedule: Public Works Contract for Civil Engineering Works designed by the Contractor</i> |
| FTS 5 | <i>Form of Tender and Schedule: Public Works Contract for Minor Building and Civil Engineering Works designed by the Employer</i> |
| FTS 6 | <i>Form of Tender and Schedule: Public Works Short Form of Contract</i> |
| FTS 7 | <i>Form of Tender and Schedule: Public Works Investigation Contract</i> |
| FTS 8 | <i>Form of Tender and Schedule: Public Works Short Form of Investigation Contract</i> |

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Foreword, Continued

CWMF Pillar 2 **Standard Conditions**

Standard Conditions of Engagement, Arbitration Rules, Invitations to Tender (services), and Forms of Tender & Schedules (services).

| <i>Standard Conditions</i> | |
|--|---|
| COE 1 | <i>Standard Conditions of Engagement for Consultancy Services (Technical)</i> |
| COE 2 | <i>Standard Conditions of Engagement for Archaeology Services</i> |
| <i>Arbitration Rules</i> | |
| AR 1.0 | <i>Arbitration Rules</i> |
| <i>Invitations to Tender (services)</i> | |
| ITTS 1 | <i>Invitation to Tender for Services, Restricted Procedure</i> |
| ITTS 2 | <i>Invitation to Tender for Services, Open Procedure</i> |
| <i>Forms of Tender & Schedule (services)</i> | |
| FTS 9 | <i>Form of Tender and Schedule, Consultancy Services (Technical)</i> |
| FTS 10 | <i>Form of Tender and Schedule, Archaeology Services</i> |

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Foreword, Continued

CWMF Pillar 3 **Cost Planning & Control / Suitability Assessment**

Cost Control & Planning Forms; and Suitability Assessment Forms for works and services.

| Cost Planning & Control Forms | |
|--|---|
| CO 1 | <i>How to Use the Costing Document (Building Works) Template</i> |
| CO 1.1 | <i>Costing Document (Building Works)</i> |
| CO 2 | <i>How to Use the Costing Document (Civil Engineering Works) Template</i> |
| CO 2.1 | <i>Costing Document (Civil Engineering Works, Roads)</i> |
| CO 2.2 | <i>Costing Document (Civil Engineering Works, Water Sector)</i> |
| CO 2.3 | <i>Costing Document (Civil Engineering Works, Marine)</i> |
| Suitability Questionnaires (works) | |
| QW 1 | <i>Questionnaire: Suitability Assessment for Works Contractor, Restricted Procedure</i> |
| QW 2 | <i>Questionnaire: Suitability Assessment for Works Contractor, Open Procedure</i> |
| QW 3 | <i>Questionnaire: Suitability Assessment for Works Specialist for specialist area</i> |
| Suitability Questionnaires (services) | |
| QC 1 | <i>Questionnaire: Suitability Assessment for Service Provider, Restricted Procedure</i> |
| QC 2 | <i>Questionnaire: Suitability Assessment for Service Provider, Open Procedure</i> |
| QC 3 | <i>Questionnaire: Suitability Assessment for Service Provider, Independent PSDP</i> |
| QC 4 | <i>Questionnaire: Suitability Assessment for Service Provider, Independent PSCS</i> |

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Foreword, Continued

CWMF Pillar 4 **Guidance Notes**

| Guidance Notes | |
|-----------------------|--|
| GN 1.0 | <i>Introduction to the Capital Works Management Framework</i> |
| GN 1.1 | <i>Project Management</i> |
| GN 1.2 | <i>Project Definition and Development of the Definitive Project Brief</i> |
| GN 1.3 | <i>Budget Development</i> |
| GN 1.4 | <i>Procurement and Contract Strategy for Public Works Contracts¹</i> |
| GN 1.5 | <i>Public Works Contracts</i> |
| GN 1.6 | <i>Procurement Process for Consultancy Services (Technical)</i> |
| GN 1.6.1 | <i>Suitability Assessment of Construction Service Providers, Restricted Procedure</i> |
| GN 1.6.2 | <i>Suitability Assessment of Construction Service Providers, Open Procedure</i> |
| GN 1.7 | <i>Standard Conditions of Engagement, Guidance Note and Sample Schedules</i> |
| GN 2.1 | <i>Design Development Process</i> |
| GN 2.2 | <i>Planning and Control of Capital Costs</i> |
| GN 2.3 | <i>Procurement Process for Works Contractors</i> |
| GN 2.3.1 | <i>Suitability Assessment of Works Contractors, Restricted Procedure</i> |
| GN 2.3.2 | <i>Suitability Assessment of Works Contractors, Open Procedure</i> |
| GN 3.1 | <i>Implementation Process</i> |
| GN 4.1 | <i>Project Review</i> |
| Glossary | |
| GL 1.0 | <i>Glossary</i> |

Continued on next page

¹ The current guidance note.

Foreword, Continued

Stages in capital works management

The four major stages in the delivery life cycle of a public works project are set out in the Department of Finance’s *Guidelines for the Appraisal and Management of Capital Expenditure Proposals in the Public Sector* (February 2005) and any subsequent addendum. The four stages are:

| | Stage | What happens |
|---------------------------------|--------------------------|--|
| Capital Works Management | 1. Appraisal | The needs are identified, the broad parameters of a solution are agreed, and a decision-in-principle is made to proceed. |
| | 2. Planning | The needs are quantified and assumptions verified, the desired outputs are specified, and the solution is designed. |
| | 3. Implementation | The solution is constructed. |
| | 4. Project review | An assessment is carried out of how successfully the delivered solution addresses the needs. |

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Foreword, Continued

Strategic Objectives of the CWMF

The strategic objectives of the Government's Capital Works Management Framework are to ensure:

- Greater cost certainty at contract award stage;
- Better value for money at all stages during project delivery, particularly at handover stage; and
- More efficient delivery of a project.

Provided there is a comprehensive definition of the Client's requirements in terms of output specifications, and adequate pre-tender detail design input (in the cast of traditional contracts), the new public works contracts will enable the key objectives outlined above be achieved. The degree to which output specifications and the pre-tender detailed design input is developed is determined by the following guiding principles which underpin the new contracts:

- To ensure as far as practicable that the accepted tender prices and the final outturn costs are the same; and
- To allocate risk so that there is optimal transfer of risk to the Contractor.

The public sector Client or is called 'the Employer' in the new public works contracts. The achievement of optimal risk transfer is dependent on the Employer providing complete and detailed information in the tender documentation:

- For design-and-build projects, the Employer must provide detailed output specifications; and
- For traditional projects, the Employer must provide comprehensive input designs and specifications

Then in responding to an invitation to tender, prospective contractors can assess the impact of the risks being transferred and build the costs of such risks into their tender price.

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Foreword, Continued

Content

This document deals with the following topics:

| Topic | See Page |
|---|----------|
| 1. Overview Outlines how to match the correct <i>procurement strategy</i> with the right contract type so that best value for money is obtained for the facility being provided. | 15 |
| 2. Employer-Designed (Traditional) Projects Covers employer-designed (traditional) contracts, with an overview of the circumstances in which they are appropriate. | 20 |
| 3. Contractor-Designed (Design-and-Build) Projects Covers contractor-designed (design-and-build) contracts, with an overview of the circumstances in which they are appropriate. | 23 |
| 4. Minor Works Form of Contract Covers the Minor Works form of contract, with an overview of the circumstances in which it is appropriate. | 25 |
| 5. Public Works Short Form of Contract Covers the Minor Works form of contract, with an overview of the circumstances in which it is appropriate. | 26 |
| 6. Investigation Forms of Contract Covers the Investigation forms of contract, with an overview of the circumstances in which they are appropriate. | 27 |
| 7. Public Works Contracts and Heritage Strategy Presents an overview of how the public works contracts may be used within the context of a heritage strategy, looking in particular at the two-contract strategy. | 28 |
| 8. Framework Agreement Presents an overview of how to set up and manage a framework agreement. | 32 |

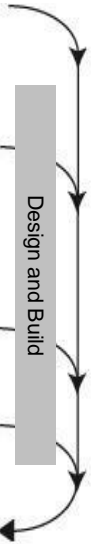
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Project Stages

Capital Works Management Framework

Main Project Processes

| Project Stages | | Project Management | Design Activities (Building) | Design Activities (Civil Eng.) | Cost Control Activities | Risk and Value Management | Documents for Approval | |
|--|--|---|--|---|---|--|--|--|
| Appraisal | | | | | | | | |
| Approval in Principle | | | | | | | | |
| Stage 1 Planning Initial | Stage (i) Feasibility Study / Preliminary Report | <p>Manage outputs: Project Definition (through 16 N° overall parameters)</p> <p>Manage technical experts' appointment (if required)</p> | <p>Conduct Feasibility Studies</p> <p>Develop <i>Definitive Project Brief</i></p> <p>Appoint technical experts (if required)</p> <p>Appoint PSDP (if required)</p> | <p>Conduct Preliminary Report</p> <p>Conduct design studies</p> <p>Develop <i>Definitive Project Brief</i></p> <p>Appoint technical experts (if required)</p> <p>Appoint PSDP (if required)</p> | <p>Conduct cost assessment of Feasibility Studies / Preliminary Report (capital and maintenance costs)</p> | <p>VM: Confirm strategic functional performance</p> <p>Review Feasibility Studies / Preliminary Report options</p> <p>Identify VM strategies</p> <p>Develop functional performance model</p> <p>RM: Identify and assess risk relating to the <i>Project Execution Plan</i></p> <p>Develop high-level <i>Risk Management Plan</i></p> | <p><i>Project Management Structure</i></p> <p><i>Preliminary Project Brief</i></p> <p><i>Preliminary Output Specification</i></p> <p><i>Feasibility Study and Cost Plan</i></p> <p><i>Design Brief</i></p> <p><i>Final Output Specification</i></p> <p><i>Definitive Project Brief</i></p> <p><i>Project Execution Plan</i></p> <p><i>Risk Management Plan</i></p> | |
| | Stage (ii) Design | <p>Project Review 1: Confirm approval for design expenditure (Report to Sanctioning Authority and await approval prior to proceeding)</p> | | | | | | |
| Stage 2 Planning Developed | Standard Conditions of Engagement | <p>Manage procurement strategy</p> <p>Manage design consultant appointment</p> <p>Manage assessment of output requirements</p> | <p>Appoint Design Team / Design Team Leader</p> <p>Assess output requirements</p> | <p>Appoint Design Team / Lead Consultant</p> <p>Develop design standards</p> <p>Assess output requirements</p> | <p>Check / assess budget</p> | <p>VM: Consider VM in relation to procurement strategy</p> <p>RM: Identify risk in relation to procurement</p> <p>Agree risk allocation</p> | <p><i>Definitive Procurement Strategy</i></p> <p><i>Contract Type Proposal</i></p> <p><i>Project Team Selection Report</i></p> | |
| | | <p>Project Review 2: Confirm requirements; review procurement strategy (Certify compliance to Sanctioning Authority; and proceed after agreed period provided no queries / hold from Sanctioning Authority)</p> | | | | | | |
| | | <p>Manage Outline Design process</p> | <p>Develop <i>Outline Sketch Scheme</i></p> <p>Appoint PSDP (if not appointed earlier)</p> | <p>Develop Preliminary Planning</p> <p>Appoint PSDP (if not appointed earlier)</p> | <p>Develop <i>Outline Cost Plan</i></p> | <p>VM: Consider VM in relation to Outline Sketch Scheme / Preliminary Planning</p> <p>RM: Consider RM in relation to Outline Sketch Scheme</p> | <p><i>Outline Sketch Scheme (Building)</i></p> <p><i>Preliminary Planning drawings (C. Eng.)</i></p> <p><i>Outline Cost Plan</i></p> | |
| | | <p>Project Review 3: Assess project design and Outline Cost Plan (Certify compliance to Sanctioning Authority; and proceed after agreed period provided no queries / hold from Sanctioning Authority)</p> | | | | | | |
| | | <p>Manage Developed Design process</p> <p>Manage procurement process</p> | <p>Develop <i>Developed Sketch Scheme</i></p> <p>Prepare submission for statutory approval</p> | <p>Continue Preliminary Planning</p> <p>Prepare submission for statutory approval</p> | <p>Develop <i>Developed Cost Plan</i></p> <p>Develop <i>Whole Life Cost Appraisal</i></p> | <p>VM: Carry out value engineering</p> <p>Assess buildability of the design</p> <p>Consider VM in relation to <i>Detailed Sketch Scheme</i></p> <p>RM: Identify residual risks</p> <p>Consider RM in relation to <i>Detailed Sketch Scheme</i></p> <p>Suitability assessment of contractors</p> | <p><i>Developed Sketch Scheme</i></p> <p><i>Developed Cost Plan</i></p> <p><i>Statutory Approval Submission</i></p> | |
| <p>Project Review 4: Assess project prior to statutory approval (Report to Sanctioning Authority and await approval prior to proceeding)</p> | | | | | | | | |
| Stage (iii) Tender | Standard Conditions of Engagement | <p>Manage statutory submission process</p> | <p>Submit for statutory approval</p> <p>Review statutory approval outcome</p> | <p>Submit for statutory approval</p> <p>Review statutory approval outcome</p> | <p>Review <i>Developed Cost Plan</i></p> | <p>VM: Review any planning conditions for value management impact.</p> <p>RM: Review any planning conditions for risk impact.</p> | <p><i>Developed Cost Plan (reviewed)</i></p> | |
| | | <p>Project Review 5: Assess outcome from statutory approval (Certify compliance to Sanctioning Authority; and proceed after agreed period provided no queries / hold from Sanctioning Authority)</p> | | | | | | |
| | | <p>Manage the Detailed Design Process</p> | <p>Develop Detailed Design (not design-and-build)</p> <p>Prepare tender documents</p> | <p>Develop Detailed Planning (Design) (not design-and-build)</p> <p>Prepare tender documents</p> | <p>Conduct <i>Detailed and Pre-Tender Cost Checks</i> and <i>Whole Life Cost Update</i> in advance of preparing tender documents</p> | <p>VM: Review suitability assessment of contractors for VM potential</p> <p>RM: Review suitability assessment of contractors for risk impact</p> | <p><i>Tender Documentation</i></p> <p><i>Detailed Pre-tender Cost Check</i></p> <p><i>Whole Life Cost Update</i></p> <p><i>Contractor List Selection</i></p> | |
| <p>Project Review 6: Approve detailed design solution; review pre-tender cost check; review risk (Report to Sanctioning Authority and await approval prior to proceeding)</p> | | | | | | | | |
| Stage 3 Implementation | Standard Conditions of Engagement | <p>Manage the Tender Process</p> | <p>Issue tender documents</p> <p>Assess tender returns</p> <p>Recommend successful tenderer</p> | <p>Issue tender documents</p> <p>Assess tender returns</p> <p>Recommend successful tenderer</p> | <p>Develop <i>Tender Cost Analysis</i></p> <p>Develop <i>Tender Report</i></p> | <p>VM: Assess tender returns for VM potential</p> <p>RM: Assess tender returns for risk impact</p> | <p><i>Tender Assessment Criteria</i></p> <p><i>Tender Analysis And Report</i></p> <p><i>Contractor Recommendation</i></p> | |
| | | <p>Project Review 7: Review tender returns in advance of awarding the contract (Report to Sanctioning Authority and await approval prior to proceeding)</p> | | | | | | |
| Stage 4 Review | Stages (iv) Construction & (v) Handover | <p>Manage the implementation / construction process</p> <p>Manage change control</p> <p>Manage contract</p> | <p>Develop Detailed Design (Design and Build)</p> <p>Implement design</p> | <p>Develop Detailed Planning (Design and Build)</p> <p>Implement design</p> | <p>Manage change control for costs</p> <p>Prepare final account</p> | <p>VM: Carry out value engineering (for design and build projects only)</p> <p>RM: Manage residual risk</p> <p>Manage construction risk</p> | <p>Various contract management reports</p> | |
| | <p>Manage the Project Review</p> | <p>Conduct design review</p> | <p>Conduct design review</p> | <p>Develop <i>Analysis of Outturn Cost</i></p> | <p>VM: Evaluate value achieved</p> <p>RM: Evaluate the risk management and risk mitigation process</p> <p>Consider operational risk reviews</p> | <p><i>Project Outturn Review</i></p> | | |



1. Overview

Introduction

The primary consideration in procurement of construction projects is the need to match the correct *procurement strategy* with the right contract type so that best value for money is obtained regarding the facility being provided. Best value for money for a project should be considered not only in the context of the capital cost but in the whole life cost of the facility delivering the public service which a Sponsoring Agency can afford. Furthermore, the objective should be to ensure the design and operation of a facility maximises the delivery of effective public services.

The aim of a *procurement strategy* is to achieve the optimum balance of risk and control for a particular project. Issues to be considered in order to achieve the objectives of the project include:

- How is risk is to be dealt with
- How are constraints to be addressed,
- Can the Sponsoring Agency define clearly what it wants;
- When is the facility/service required,
- What are the funding requirements,
- Are the resources available in-house or do they have to be outsourced,
- What type of market (i.e. contractors) is being targeted, what is the expected level of competition, etc.

The *contract strategy* determines the level of integration of design and construction for a given project and should support the main project objectives in terms of risk allocation, delivery, cost and so on. There are a number of different contract strategies: the types being dealt with in this document relate to traditional and design and build.

The decision

The standard suite of contracts in the Capital Works Management Framework consists of nine generic forms (Contract Conditions) that can be used in different situations. Before embarking on a public works project, the Contracting Authority / Employer needs to identify the contract type that is most suitable. It is at this stage, before significant design decisions are taken, that the type of contract should be selected. This will determine what Client activities will take place in the Planning Stage.

The following table summarises the circumstances in which each of the forms of contract is appropriate See also the flow chart on page 17 to help determine which contract form of contract to use.

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1. Overview, Continued

The decision, continued

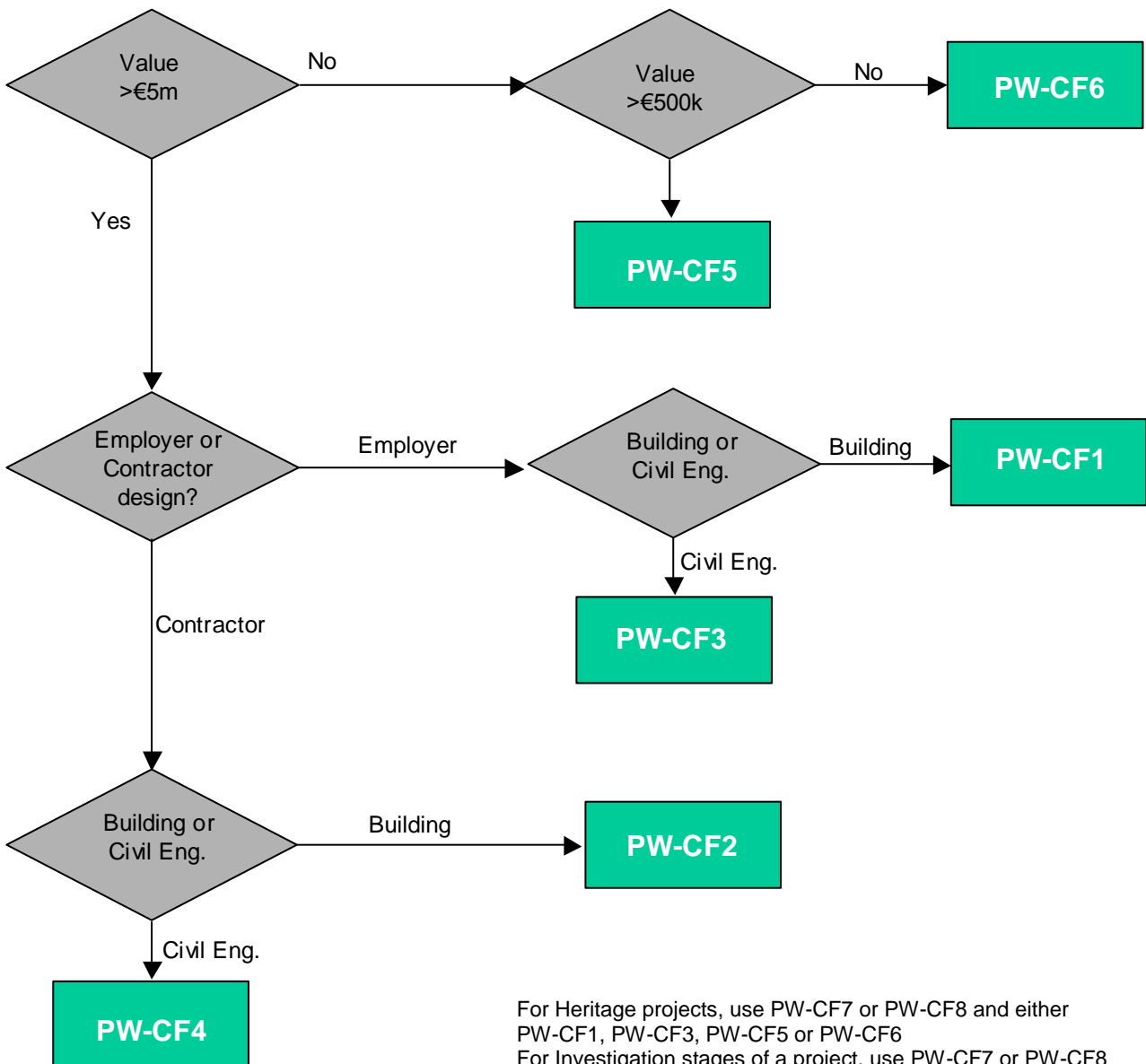
| Nature of Works | Contract Type | Code | Form of Contract |
|--|------------------|--------|---|
| Building Works | Traditional | PW-CF1 | Public Works Contract for Building Works designed by the Employer |
| | Design-and-Build | PW-CF2 | Public Works Contract for Building Works designed by the Contractor |
| Civil Engineering Works | Traditional | PW-CF3 | Public Works Contract for Civil Engineering Works designed by the Employer |
| | Design-and-Build | PW-CF4 | Public Works Contract for Civil Engineering Works designed by the Contractor |
| Minor Works, Building and Civil Engineering | Traditional | PW-CF5 | Public Works Contract for Minor Building and Civil Engineering works designed by the Employer |
| Short Form, Building and Civil Engineering | Traditional | PW-CF6 | Public Works Short Form of Contract for Public Building and Civil Engineering Works |
| Investigation , Building and Civil Engineering | Traditional | PW-CF7 | Public Works Investigation Contract |
| | Traditional | PW-CF8 | Public Works Investigation Short Form of Contract |
| Framework Agreement | | PW-CF9 | Public Works Framework Agreement |

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1. Overview, Continued

The decision, continued

Use the following diagram to help you decide which main form of contract to use.



For Heritage projects, use PW-CF7 or PW-CF8 and either PW-CF1, PW-CF3, PW-CF5 or PW-CF6
 For Investigation stages of a project, use PW-CF7 or PW-CF8
 For Framework agreements, use PW-CF9

Note: The Public Works Contracts that can be used to replace the MF1 for a Mechanical and Electrical Work is the civil engineering works designed by the employer i.e. PW-CF3.

Continued on next page

1. Overview, Continued

Building works or civil engineering works?

In most cases it will be obvious from the Definitive Project Brief whether the works relate to a building or a civil engineering project. However there will be circumstances when this distinction is not that clear. In such cases a Contracting Authority should carefully consider all relevant facts about the project before making a decision as to which to which category it falls into. It is important to pick the right category as building contractors and civil engineering contractors have different sets of skills and are used to particular contract types. In normal circumstances the choice will be aided by the following the broad parameters:

| If the project is for... | and if the Contracting Authority's requirements... |
|-----------------------------------|---|
| General construction works | ... are to be satisfied by a building – that is, a structure with walls and a roof – one or other of the <i>building works</i> contracts (PW-CF1 or PW-CF2), the minor works contract (PW-CF5) or the short form of contract (PW-CF6) is the appropriate choice. |
| Heavy construction works | ... relate to something other than a building – for example, a road, a bridge, or water treatment facilities – one or other of the <i>civil engineering works</i> contracts (PW-CF3 or PW-CF4), the minor works contract (PW-CF5) or the short form of contract (PW-CF6) is the appropriate choice. |

Traditional or design-and-build

The Contracting Authority then needs to decide whether to go the traditional or the design-and-build route. Factors that need to be taken into account in deciding which route to take include the following:

- The optimal level of risk that a Contracting Authority wishes to transfer;
- What total risk is tolerable for contractors;
- What needs to be done to achieve optimal risk transfer;
- Where is the necessary design expertise located;
- How important is the performance of the completed works;
- Anticipated market response; and
- Delivery time of end product.

The result of these considerations will guide the Contracting Authority in choosing a particular contract type.

Continued on next page

1. Overview, Continued

If you are unsure ...

If having carefully considered the description of the project as set out in the Definitive Project Brief, you are still unsure as to the type of the project it should be and which form of contract is most appropriate, you should seek expert advice. For most types of project, expertise is available within the public sector – either in the Contracting Authority, the Sanctioning Authority, the parent department or elsewhere in the public sector.

Where the resource is not available, the Contracting Authority should employ outside consultants to advise on the differences between the various approaches and the risks involved and on the most suitable approach to take.

The next step in the planning stage is to appoint design and other experts including the Project Supervisor for the Design Process (if not already appointed) to provide technical services during the Design Stage.

See *Procurement Process for Consultancy Services (Technical)* (GN 1.6).

2. Employer-Designed (Traditional) Projects

Definition: Employer- Designed

An Employer-designed (traditional) project is one where the design is carried out directly by the Sponsoring Agency or by specialist consultants engaged directly by the Sponsoring Agency, and that design forms the basis for the tender for construction.

The works contractor is responsible for the management and delivery of the facility and for the quality of workmanship and materials used – which are checked by the Sponsoring Agency's Employer's Representative.

Its main disadvantage (from an implementation point of view) is that the technical and management experts involved with the project are not part of a single integrated team with a single point responsibility for both design and construction. Instead the design team is separate from the construction team and each work independently of each other. In such an arrangement there are no contractual ties between the parties and the only common feature is that both parties have been engaged by the Sponsoring Agency.

Why choose Employer- Designed?

Employer-design contracts are most appropriate in the following circumstances:

- Refurbishment or alteration of existing buildings or facilities;
 - Works on historic buildings or on heritage sites;
 - Works that a contractor might be unable to scope accurately, or where there are significant unknowns leading to significant risks;
 - If the Contracting Authority cannot commit to proceeding to the construction stage until the design has been fully developed;
 - Where a design competition is held;
 - Where the Contracting Authority has in-house design capacity, or wishes to use design capacity from elsewhere in the public sector, or if the Contracting Authority wishes to build to a pre-existing standard design;
 - If the Contracting Authority needs to retain a high level of control over the quality aspects of the design; and
 - If the Contracting Authority wishes to retain control over the design process, or to choose between alternative proposed solutions
-

Why not choose Employer- Designed?

By retaining control over the design, the Contracting Authority reduces the scope of the Contractor to offer innovative solutions that may offer better value for money, either in construction (i.e. buildability) or in terms of whole-life costs. As the designer and the construction Contractor are contracted separately, there is the potential for conflict between them, and this could give rise to cost and time overruns. The resolution of such conflicts, if they arise, requires additional administrative effort and possibly costs on the part of the Contracting Authority.

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2. Employer-Designed (Traditional) Projects, Continued

Which Employer-Designed contract to use

Where a traditional contract is being used, the Employer includes detailed designs in the tender documentation, and prospective contractors bid for the build element of the project only.

In deciding which traditional contract to use, the Employer should consider the nature, the complexity and value of the project. The project budget should be well established at Definitive Project Brief stage – including the value of the main construction contract. The following table summarises the choices that the Sponsoring Agency takes in deciding which contract to use.

| If the project is ... | and the works are ... | Then use ... |
|---|---|------------------|
| Worth less than €5 million and more than €500,000 (including VAT) | Civil Engineering – or – Building Works | PW-CF5 |
| Worth less than €500,000 (including VAT) | Civil Engineering – or – Building Works | PW-CF6 |
| Worth less than €500,000 (including VAT) and there are exceptional circumstances | Building Works | PW-CF5 |
| | Civil Engineering | PW-CF5 |
| Worth less than €5 million and more than €500,000 (including VAT) and there are exceptional circumstances (see note on <i>Exceptional Circumstances below</i>) | Building Works | PW-CF1 or PW-CF5 |
| | Civil Engineering | PW-CF3 or PW-CF5 |
| Worth €5 million (including VAT) or more | Building Works | PW-CF1 |
| | Civil Engineering | PW-CF3 |

Investigation Contracts

The Public Works Investigation Contract (PW-CF7) must be used for building or civil engineering investigation works above and/or below ground with a value of €50,000 (including VAT) or more.

The Public Works (Short) Investigation Contract (PW-CF8)-should be used for small building or civil engineering investigation works above and/or below ground with a value of €50,000(including VAT) or less. In certain circumstances investigation works with a value of €50,000 (including VAT) or less may continue to use the Public Works Investigation Contract PW-CF8 if this is considered more appropriate.

Continued on next page

2. Employer-Designed (Traditional) Projects, Continued

Which Employer-Designed contract to use (continued)

Framework Agreement

The Public Works Framework Agreement (PW-CF9) is for strategic purchasing of public works. Each party to a Framework must sign the Agreement (PW-CF9) and then subsequently sign the appropriate Public Works Contract (i.e. PW-CF1 to PW-CF 8) as the call-off contracts are awarded. There is no financial threshold set for the use of a Framework Agreement.

Exceptional Circumstances

On projects valued below €5 million, it is more usual to use the Minor Works Contract (PW-CF5). However, *in certain exceptional circumstances* the Employer may deem the project sufficiently complex to warrant the use of one of the major works contracts (PW-CF1 or PW-CF3) – see Appendix A of *Public Works Contracts* (GN 1.5) for a comparison of the Minor Works contract with the major works contracts.

Similarly for projects valued below €500,000, it is more usual to use the Public Works Short Form of Contract (PW-CF6). However *in certain circumstances*, where the Employer deems that the works are of a particular nature, a Minor Works Contract (PW-CF5) or a Major Works Contract (PW-CF1 or PW-CF3) may be used instead. The Short Form of Works Contract (PW-CF6) should not be used for projects with a value in excess of €500,000 (including VAT).

Allocation of risk

In a traditional contract the Employer retains the design risk and normally also retain a greater degree of risk overall.

- The contract specifies the circumstances in which compensation events will be allowed. Compensation events are events for which the Employer retains the risk and
- The Contractor may seek compensation from the Employer in the event of of the fixed compensation events or one of the optional risks *included in the Contract* that the Employer is carrying being realised (there is no option to transfer risk in PW-CF6, PW-CF7 or PW-CF8). It should be noted that the choice of optional risks are reduced in the case of contract PW-CF5 and a greater level of risk is retained by the Sponsoring Agency.

The use of the term ‘compensation events’ only arises in contracts PW-CF1 to PW-CF6. Contracts PW-CF7 and PW-CF8 cater for ‘instructions’ from the Employer on foot of which the Contractor may be entitled to an additional payment.

3. Contractor-Designed (Design-and-Build) Projects

What is Contractor-design?

A Contractor-designed (design-and-build) project is one where the Contractor takes responsibility for both design and construction of the facility in accordance with the Contracting Authority's specifications.

For a Contractor-designed project to be successful, there must be a complete and comprehensive output specification developed as part of the Definitive Project Brief. This helps facilitate tender assessment of a design, and will help ensure that quality and performance are not compromised during implementation.

Why choose Contractor-Design?

Contractor-designed contracts are most appropriate in the following circumstances:

- For new buildings or facilities; and
- For extensions to existing buildings or facilities

In Contractor-designed projects, design constraints on the contractor are at a minimum, and the contractor may respond to output requirements in innovative ways, and thus present greater opportunities for delivering better value for money.

The main advantage of taking the Contractor-designed route is that all technical and management experts work in a single integrated team with single-point responsibility for both design and construction. This means that the project team has the potential to deliver better performance benefits to the Contracting Authority on certain project types through better buildability, inventiveness, standardisation and integration in the supply chain.

The early involvement and commitment of the construction contractor ensures that the practical aspects of constructing the design are taken account of as the design develops so that it is actually possible to construct the design in the most economic way; the potential for conflict between the designer and the construction contractor (which implicates the Contracting Authority) is eliminated. Risk in the execution of the design is effectively transferred to the contractor who is best able to manage and control it.

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3. Contractor-Designed (Design-and-Build) Projects, Continued

Why not choose Contractor Design?

Contractor-Designed contracts would not be appropriate, for example, if the site is sensitive, with the likelihood of a complex planning result. Nor are they appropriate if there is any other impediment or constraint to the contractor’s freedom to innovate.

Contractor-Designed contracts should be awarded only after a restricted procurement procedure, in which the quality of the contractor’s design team has been verified before the contractor is asked to tender for the project. This helps contain the number of tenders submitted (with designs) to a reasonable level.

The Works Requirements developed from the Definitive Project Brief (including output specifications) must be very clear and specific on the requirements and in particular on the quality requirements. An incomplete brief can lead subsequently to costly alterations, to satisfy the Sponsoring Agency’s requirements.

If there is any uncertainty in these areas, the Contractor-Designed contracts would not be appropriate.

There is no minimum financial threshold set for the use of either of these two contracts (PW-CF2 and PW-CF4). However, for Contractor-Design the project should be of sufficient size to be cost effective and that it would attract appropriate interest from the market.

Which Contractor Design Contract to use

Where design and build is being used the prospective contractor bids for the design as well as the build elements of the project. The type of design and build contract that must be used is one of the following:

| If the work type is..... | Then use ... |
|--------------------------|---|
| Civil Engineering | PW-CF4 Public Works Contract for Civil Engineering Works designed by the Contractor |
| Building Works | PW-CF2 Public Works Contract for Building Works designed by the Contractor |

4. Minor Works Form of Contract

Definition: minor works

Minor works are Employer-designed projects covered by a Minor Works Contract. The value of the construction contract must be less than €5 million including VAT. All projects with a value of €5 million or more must use either the PW-CF1 or PW-CF3 form of contract. In certain circumstances PW-CF1 or PW-CF3 can be used for projects worth less than €5 million.

Why choose the Minor Works Contract

The Minor Works Contract is the appropriate choice in the following circumstances:

- The value of the construction contract (including VAT) is less than €5 million.
- The project is relatively straightforward
- The project can be executed by a smaller contractor, without significant input from specialist subcontractors

Under the Minor Works Contract (PW-CF5), the Contracting Authority retains more risk than under the other two contracts PW-CF1 and PW-CF3.

Note: The minor works contract is never appropriate for a Contractor-designed project.

Why not choose the Minor Works Contract

If the value of the construction contract (including VAT) is more than €5 million or more, the Minor Works Contract should not be used.

In addition, contracting authorities may choose, in particular circumstances, to use PW-CF1 or PW-CF3 on projects where the value of the construction contract is below €5 million and above €500,000. This could arise, for example, if the project (even though low in value) was complex, or required significant input from specialist subcontractors.

5. Public Works Short Form of Contract

Definition: small projects (Traditional Design)

The Public Works Short Form of Contract (PW-CF6) is appropriate for Employer-designed projects whose value is less than €500,000 (including VAT).

However, the use of the Public Works Short Form of Contract is not mandatory for projects with a value below €500,000: forms PW-CF1; PW-CF3; or PW-CF5 may be used if it is more appropriate, depending on the nature of the project.

Why choose the Short Form of Contract

The Public Works Short Form of Contract is the appropriate choice in the following circumstances:

- The value of the construction contract (including VAT) is less than €500,000, and
- The project is straightforward – for example, replacing a pump, replacing a valve, replacing radiators, installing a boiler, replacing windows, repairing a roof, painting and decorating.

Under the Public Works Short Form of Contract, PW-CF6, the Contracting Authority retains more risk than under PW-CF1 and PW-CF3.

Note: The Public Works Short Form of Contract is never appropriate on its own for a Contractor-designed project. If contemplating using the Short Public Works Contract for specialist work under €500,000 with a design input considerations should be given to requiring the Contractor to execute the PW-CF6 and the COE 1 standard Forms. However it should be noted that Clause 2.4 of COE 1 states that “*No contents of the Contract (whether within 1.5, 6, 7.) amount to a guarantee by the Consultant of suitability for purpose of the design or other Services*”.

Why not choose the Short Form of Contract

If the value of the construction contract (including VAT) is €500,000 or more, the Public Works Short Form of Contract should not be used.

In addition, contracting authorities may not choose to use it on projects where the value of the construction contract is below €500,000 because of particular circumstances. This would arise for example, if there was a greater level of risk being transferred to the contractor or there were particular specialists involved.

6. Investigation Forms of Contract

Definition: Investigation studies

Investigation studies are works that are carried out in advance of permanent works to identify and quantify potential risks that are concealed.

The contracts used have been specially developed to suit all types of investigation work that might be carried out for public projects. There are two Public Works Investigation Contracts one (PW-CF8) is for small studies with a value of less than €50,000 (including VAT) and the other (PW-CF7) is for medium to large studies with a value of €50,000 (including VAT) or more.

| Contract | | When to use |
|----------|---|--|
| PW-CF7 | Public Works Investigation Contract | For medium to large studies with a value of €50,000 (including VAT) or more. |
| PW-CF8 | Public Works Investigation Contract, Short Form | For small studies with a value of less than €50,000 (including VAT) |

Why choose an Investigation Contract

Under the new Public Works Contracts there is a requirement that all design work should be comprehensively defined as input specifications and designs (i.e. the traditional approach) or output specifications (i.e. design and build) before a project is put out to tender. This means that all unknown risks in so far as possible relation to design are identified and resolved before the tender competition. An investigation study should be conducted in the following circumstances:

| | |
|---------------------|---|
| Below Ground | Where excavations are required, the site should be subjected to a site investigation so that any subsequent design of the facility to be provided can be comprehensively defined and detailed based on factual ground information. |
| Above Ground | Where refurbishment/alteration work to an existing structure is required all areas that are concealed should be opened up and investigated so that any subsequent design can be comprehensively defined and detailed based on factual information before tenders are sought for the main works. |

7. Public Works Contracts and Heritage Strategy

Introduction

The Public Works Contracts (Employer Design) can be used to great effect for construction works on heritage projects. Such projects relate to works to protected structures, existing structures within the curtilage of a protected structure or the attendant ground, or structures to which the National Monuments Acts apply.

Two-contract strategy

Public expenditure on construction works for heritage projects is subject to the same constraints as expenditure for works on a green field site. The constraints are; value for money, greater cost certainty at tender stage and more efficient delivery of projects. To ensure that greater cost certainty at tender stage is achieved on heritage projects, which by their nature involve working with existing structures where the type and quantum of work is difficult to define in advance, a heritage contract strategy has been developed. The strategy involves the use of two public works contracts and the need for the procurer to have a competent knowledge of the procurement rules.

The two public works contracts in question are; the Employer Design fixed price lump sum contract (i.e. PW-CF1, PW-CF3, PW-CF5, or PW-CF6), and an Investigation contract (i.e. PW-CF7 and PW-CF8) specially developed for this type of investigation work.

The appropriate use of the two contracts (i.e. the Employer Design fixed price lump sum contract and the Investigation contract) should achieve the objective set at the outset i.e. greater cost certainty at tender stage.

Investigation contracts

In any one heritage project, the investigation contracts need to be balanced with the main contract so that the greater portion of the construction work is done under in the main contract.

Ultimately the purpose of investigation contracts is to obtain sufficient information to allow comprehensive designs and specifications be developed and competitively priced so as to ensure greater cost certainty for the main works at contract award stage.

The investigation contract is a stand alone contract which includes the facility for the Employers Representative to instruct the contractor to change the 'scope' (clause 7.5 of PW-CF7 and PW-CF8) of the work as may be deemed appropriate. Under 'Scope' the investigation contracts allow for opening up inaccessible areas for examination, and permanently or temporarily making good any elements which have been disturbed.

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7. Public Works Contracts and Heritage Strategy, Continued

Heritage specialists

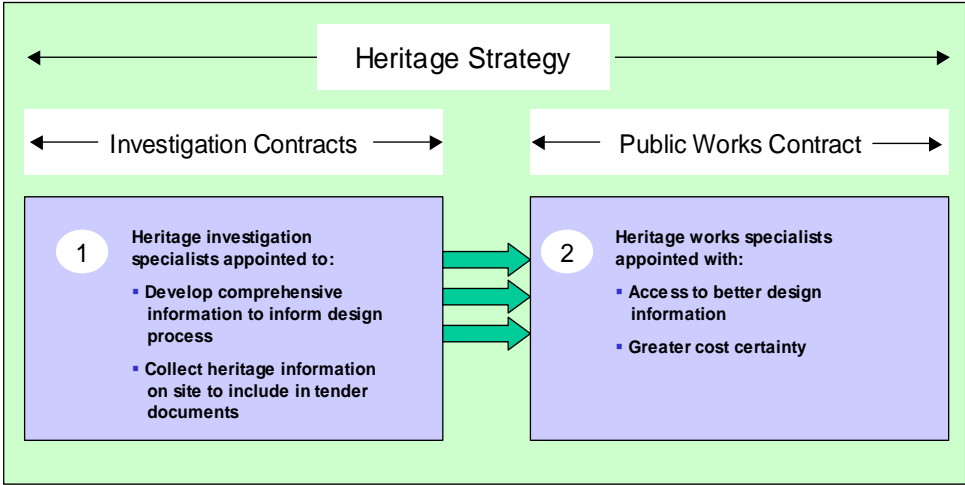
Specialist works form a significant part of heritage contracts. To ensure the integrity of work to protected structures, it is important that control is exercised over the specialists selected to undertake this work. There are two equally important roles that specialists fulfill on heritage projects, each of which is described in more detail below.

1. **Heritage investigation specialists** are appointed by the Contracting Authority under an investigation contract (PW-CF7 or PW-CF8). They carry out investigation studies and tests so that the Design Team can determine in as thorough a manner as possible the likely scope and quantum of the works that will subsequently be undertaken by a main contractor under a separate Public Works Contract.
2. **Heritage works specialists** are employed by the Works Contractor to carry out the detailed specialist work specified and illustrated in the Works Requirements. They are named in the tender documents (i.e. Works Requirements) in panels for the specialist areas of work identified in the Works Requirements.

In limited situations heritage investigation specialists may be engaged for both parts of the heritage project i.e. both the investigation and execution work. In particular, there are two situations in which this can arise:

- **Where no works contractor is involved:** in this case the heritage investigation specialist appointed by the Contracting Authority carries out all the work, investigation and execution under the Investigation Contract (PW-CF7 or PW-CF8).
- **Where the heritage investigation specialist’s contract is novated to the Works Contractor:** in this case the heritage investigation specialist appointed by the Contracting Authority carries out the initial investigation work under the Investigation Contract (PW-CF7 or PW-CF8), and later that contract is then novated to the Works Contractor for the execution of the detailed specialist works specified in the Works Requirements.

The diagram below illustrates the heritage strategy and the relationship between the Investigation Contract (heritage investigation specialists) and the Public Works Contract, Employer Design (incorporating the heritage works specialists).



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7. Public Works Contracts and Heritage Strategy, Continued

Heritage investigation specialists and the Investigation Contract

The heritage investigation specialist appointed under the Investigation Contract is responsible for carrying out tests, opening up structures, gathering and collating all the necessary heritage-related information, which can subsequently be drawn on and can assist in the development of designs and specifications that are to be included in the tender documents for the main contract. This approach brings a number of key advantages:

- Comprehensive design information is developed earlier in the cycle, and before the Contractor for the construction is appointed;
 - Authoritative heritage information is included in the tender documents; and
 - Greater cost certainty is achieved because the full heritage implications of the project are known in advance of the appointment of the main Contractor.
-

Heritage works specialists and the Public Works Contract

Following a tender competition for the main contract for a heritage project, the Main Contractor is appointed under the *Public Works Contract for Building Work Designed by the Employer* (PW-CF1, PW-CF3, PW-CF5 and PW-CF6). The design information in the main contract tender documentation will have been influenced by the outputs from the proceeding Investigation contract. The tender competition for the main works should be between competent contractors experienced in heritage work who have won a place on a short list in a separate qualitative assessment competition.

The heritage works specialist is employed by the Contractor, and can be:

- Pre-qualified with Works Contractors who identify their specialists in the Works Contractors' suitability assessment material submitted; or
- Included on a panel in main contract tender documents drawn up by the Employer; and can then be selected by Works Contractors and named in their main contract tenders; or
- Alternatives proposed by Works Contractors in their tenders to those on a panel in main contract tender documents. Note that if the panel arrangement is used, then this must be made clear by the Employer in the tender documents.

Note: If there is a panel of specialists included in the tender documents, the Contractor must be allowed to propose alternatives of his choice. This must be made clear by the Employer in the tender documents.

Pricing of specialists' work

At tender evaluation stage the Pricing Document of the preferred tenderer should be examined to see that a reasonable allocation of money has been identified for each area of specialist work. If it is felt that the price is too low and the Employer is otherwise satisfied with the rest of the main contract tender price a more realistic price should be arrived at for the specialist area of work through the re-balancing of rates and included (in consultation with the tenderer – prior to issue of notice to unsuccessful tenderers) without affecting the overall tendered fixed price for the main works (in accordance with section 8.2 of the *Invitation to Tender Document (ITTW 1, ITTW 2)*).

Continued on next page

7. Public Works Contracts and Heritage Strategy, Continued

Combining specialist roles

In limited situations heritage investigation specialists may be engaged for both parts of the heritage project i.e. both investigation and execution work. In particular, there are two situations in where this can arise:

- **Where no works contractor is involved:** in this case the heritage investigation specialist appointed by the Contracting Authority carries out all the work, investigation and execution under the Investigation Contract (PW-CF7 or PW-CF8) .
- **Where the heritage investigation specialist's contract is novated to the Works Contractor:** in this case the heritage investigation specialist appointed by the Contracting Authority carries out the investigation work under the Investigation Contract (PW-CF7 or PW-CF8), and when complete the Investigation contract is then novated to the Works Contractor so that the specialist can assist with the execution of the detailed specialist works specified in the Works Requirements

Note: in both situations the scoping and specifying of the specialist work in the main contract tender documents is done by the Contracting Authority's Design Team.

Insurance

The PW-CF7 and PW-CF8 Investigation contracts allow for alternative insurance arrangements to be used. These can either rely on the provisions in Clause 12 of the Conditions as the default or on an alternative set out in the Scope of the Contract.

8. Framework Agreement

Definition: Framework Agreement

In effect, a framework agreement is an agreement between a Sponsoring Agent and one or more works contractors which sets out terms and conditions under which specific purchases can be made during the term of the agreement. Article 1(5) of Directive 2004/18/EC defines a framework agreement as:

‘... an agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity.’

Article 32 of Directive 2004/18/EC sets out the conditions and procedures under which agreements must be set up and contracts based on the agreements awarded².

Collusion

Contracting Authorities need to exercise care when setting up Framework Agreements to ensure that they do not inadvertently create an environment that allows competitors on Framework Agreements to collude with each other so as to fix prices. Furthermore, Contracting Authorities should continuously monitor the operation of their Framework Agreements to search for any suspicious signs of collusion. If there is any suspicion whatsoever the contracting authority should suspend all procurement activity under the relevant Framework Agreement until such time as the suspicions have been fully investigated and the contracting authority is satisfied that there is nothing to be concerned about.

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² Regulations 33, 34 and 35 of SI No.329 of 2006 implement Article 32 of Directive 2004/18/EC.

8. Framework Agreement, Continued

Using a Framework Agreement

Framework arrangements are covered by Directive 2004/18/EC as implemented by SI 329 of 2006. The rules in the Directive are designed to ensure that contracts and panel placement under-framework agreements are awarded in an open, transparent and competitive manner. The Framework Agreement form of contract (PW-CF9) should be executed separately by each party to the Framework Agreement to contractually bind them to the framework agreements for public works projects.

Strategic purchasing policy in relation to construction works is a matter for each Contracting Authority to decide on. Some of the areas where such a policy might apply are:

- The establishment of panels of specialists for public works contracts;
- Multiple works projects for which there is a generic design;
- Multiple low-value works projects;
- Strategic centralised purchasing; and
- Purchasing by a Central purchasing body.

In normal circumstances framework agreements should last for a fixed period (maximum of 4 years) set at the outset and should provide an economic and efficient means of procuring works projects. Only those who are admitted at the outset can participate in the framework – it is not open to Sponsoring Agencies to admit new entrants during the course of the agreement.

Using a Framework Agreement (continued)

As the requirement for each project arises under a Framework Agreement, the Contracting Authority invites those participants listed on the Framework Agreement who are in a position to perform the contract to tender for the work in a mini-competition. The successful tenderer subsequently enters into a contract with the Contracting Authority (as Employer). The Short Form contract (PW-CF6) is normally used for this purpose; however the threshold rules for use in relation to PW-CF1, PW-CF3 and PW-CF5 also apply.

Main advantages of using a Framework Agreement

The main advantage of establishing a Framework Agreements is that the Contracting Authority only needs to advertise (in the OJEU and on the eTenders website) just once – announcing the intention to set up the framework. Individual projects can be awarded following a call off mini-competition under the framework which does not involve advertising.

Note: Procuring works projects outside a framework is allowable where, for instance, a Contracting Authority believes that the terms of a framework do not fit a particular requirement or that more advantageous terms can be obtained outside the framework, or there is a suspicion of collusion..

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8. Framework Agreement, Continued

Managing a Framework Agreement

The Contracting Authority needs to manage framework agreements very carefully, particularly for specialist, technical or complex works; and before deciding on a framework, the Contracting Authority should assess whether or not it is suitable in a particular situation. For example, a framework arrangement might not be suitable for long-term works contracts that could run longer than the duration of the framework agreement

Under Directive 2004/18/EC and SI No 329 of 2006, the duration of framework agreements is limited to a maximum of 4 years. However, there is provision to allow for longer periods in exceptional circumstances where it can be justified by the nature of the work that is subject to the framework agreement. An example might be where in order to execute a works contract a contractor has to incur a certain level of expenditure; and if the recovery of that expenditure cannot be achieved within a normal maximum 4-year period, a longer term framework may be justified.

How does a Framework Agreement work

A framework agreement is established using many of the features involved in a standard tendering procedure. Normally the total value of contracts to be awarded under framework agreements would exceed the relevant EU threshold and therefore the rules set out in the EU Directives must be followed. Such rules cover procurement in relation to open and restricted procedures; and in exceptional circumstances in relation to competitive dialogue and negotiated procedures. In practice, therefore most frameworks would be established using the open or restricted procedure.

It is also possible, however, that the total value of the contracts awarded under some frameworks will not exceed the threshold (€5,000,000³ excluding VAT) and in such cases the flexible procedures set out in national guidelines for awarding below threshold contracts can be followed for both the award of an initial contract (if applicable) and for places on the framework agreement.

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³ EU Threshold with effect from January 2012 to 31 December 2013. Thresholds are revised every two years. Full and up to date thresholds can be checked on the EU public procurement website <http://simap.europa.eu/>.

8. Framework Agreement, Continued

Setting up a Framework agreement

The Contracting Authority must advertise its intention to establish a framework agreement in the *OJEU* and on the eTenders website and where appropriate in the *OJEU*.

Content of the eTenders and OJEU notice

The Notice should indicate the following:

- That it is the Contracting Authority's intention to establish a framework agreement;
- That the framework agreement is for a single or a stated number of contractors/specialists;
- The duration of the framework agreement;
- The estimated total value of all contracts to be procured under the proposed framework agreement; and
- Whether an open or restricted procedure is being used to appoint suitable candidates to the framework agreement.

Open tendering process to determine participation in a framework

A standard open tendering procedure may be used to establish a single or multi-participant framework. A single participant framework involves the award of the complete framework contract to one contractor who is also awarded the follow-on contracts under the framework without further competition on a draw-down basis. This type of framework requires that all award criteria for the agreement and follow-on contracts as well as all the suitability criteria are established at the outset. Bona fide tenders are evaluated using the award criteria to determine which one of them is the most economically advantageous tender and is therefore the most eligible to be awarded the framework contract.

In the case of a multi-participant framework tenderers are invited to compete for a place on the framework. There may, or may not be an award of an initial contract when the framework is being set up. The criteria used to establish a framework are suitability and award criteria, and in order to satisfy the transparency principle they should be published in the contract notice. This enables the contracting authority establish eligibility, of interested parties, for a place on the framework, and if an initial contract is to be awarded to determine which is the most economically advantageous tender. All applicants that meet the minimum suitability and award standards (criteria) should be included in the framework agreement.

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8. Framework Agreement, Continued

Setting up a Framework agreement (Continued)

Open tendering process to determine participation in a framework

A standard open tendering procedure may be used to establish a single or multi-participant framework. In this case tenders are invited for inclusion in the framework. These are then evaluated and admission to the framework is awarded to the best bidder or bidders in accordance with the published award criteria.

Restricted tendering process to determine participation in a framework

Alternatively, under a restricted procedure, candidates may be shortlisted under suitability assessment criteria and appropriate award criteria. Those who are shortlisted are placed on a panel on the Framework Agreement and may subsequently be invited to tender in mini-competitions for individual draw-downs of the framework agreement as they arise.

Following award of framework agreement

Following the award of the framework agreement, each participant should:

- Sign a Framework Agreement form (PW-CF9);
- Participate in mini-competitions when invited during the life of the framework agreement; and
- If awarded a contract from a mini-competition, execute one of the Public Works Contracts (PW-CF1 to PW-CF8).

The Contracting Authority should endeavour to ensure that there is no opportunity for collusive tendering among the participants in the framework

Award Criteria

The published notice (in the *OJEU* or the eTenders website) or the information supplied to candidates must include details of:

- The basis for admission to the framework agreement; and
- Indicative ranges for the criteria for the award of contracts that will arise within the ambit of the agreement.

No substantive changes or modifications in award criteria are permitted during the operation of the framework. For that reason, the Contracting Authority should (when advertising the establishment of the framework agreement) set out indicative ranges (rather than precise values) for the weighting of criteria for subsequent contract awards. Mini competitions for the award of contracts can operate within those indicative ranges and at criteria weightings that are appropriate for the particular contract award.

Small and medium-sized enterprises

As part of the decision to establish a framework agreement, consideration should be given to how the proposed arrangements will impact on small and medium sizes enterprises. In selecting participants for a framework, contracting authorities should ensure that where smaller enterprises can meet the requirements for the terms of the framework, their inclusion should be facilitated.
