

GUIDANCE NOTE 1.5.3

The Pricing Document

The Pricing Document

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Foreword

The Purpose of this document is to give guidance on the use of a pricing document when using the Public Works Contract. The term *Pricing Document* in the context of the Public Works Suite of Contracts is a collective term for documentation that:

- enables the Employer to prescribe to prospective tenderers the format into which the tenderer's lump-sum price is to be broken down and what other detailed tender cost information is required;
- facilitates the assessment of submitted tenders;
- after an award is concluded, is used in administration of the Contract, the valuation of work done and Compensation Events that may arise during the course of the work.

Part 1

Section 1.1

Section 1.2

Contents of a Pricing Document

Introduction

Cost Summary

1.1 Introduction

For some Public Works Contracts the content of the Pricing Document is precisely defined, for others the contents vary at the Employer's discretion.

A detailed description of the types of Pricing Documents that may be used with the different forms of Contract is outlined in Part 2 of this Guidance Note.

The variety of documents that may be described as pricing documents may be broken down into three broad categories;

1. A Cost Summary
2. Bill of Quantities;
3. Quantified Schedule of Rates.

These are summarised below

1.2 Cost Summary

A Cost Summary is a document that provides a project specific summary list of costs, which may be brought forward from more detailed documents within the tender submission. The listed items may describe the work in phases, works disciplines, elements, works locations or levels, etc. Specific details such as quantities or item rates are not included.

The level of detail in this document can range from a single line item to a multi-elemental breakdown based on phases, work disciplines, categories etc. Expanded versions of this document are often titled a *Pricing Schedule*, *Elemental Cost Summary*, etc.

The greater the level of breakdown, the greater the level of comparative analysis of tenders that is available to the Employer. Greater detailing within the document may also allow its use as a reference document for cost analysis at tender evaluation, establishing interim payments and Contract Sum adjustments during the project.

Part 1

Contents of a Pricing Document

Section 1.3

Bill of Quantities

Section 1.4

Quantified Schedule of Rates

1.3 Bill of Quantities

A Bill of Quantities is a document that provides project specific descriptions and measured quantities for the work to be undertaken to complete a Contract. Against each item in the Bill of Quantities, the Tenderer inserts their unit rate for that work and then extends it by the stated quantity to arrive at the total cost for the work described in that Bill of Quantities item. All extended amounts are then totalled to arrive at the tender amount.

The Bill of Quantities should be prepared by a person of entity experienced in the preparation of such documents, (referred to hereafter in this Guidance Note as '*Cost Consultant*'), to a format specified in the Schedule to the Contract. The format required should be stated in the Schedule to the Conditions of Engagement for the Design Team members and where an appointment is for a Cost Consultant.

The approved methods of measurement for production of a Bill of Quantities for use with the Public Works Contract are as follows;

- *Civil Engineering Standard Method of Measurement 3rd Edition*, (CESMM3), as amended for use with the Public Works Contract
- *The Agreed Rules of Measurement 4, Supplement 1, Issue 2* (ARM4 with Supplement 1). The Agreed Rules of Measurement 4 with Supplement 2, should be used for tendering for Mechanical and Electrical Specialist works only
- Transport Infrastructure Ireland's *Method of Measurement for Road Works*.

1.4 Quantified Schedule of Rates

A Quantified Schedule of Rates is a document that can be prepared by either the Employer's Consultant or the Tenderers and provides descriptions of the work required and the quantity of each type of work. The quantities need to reflect the quantum of work required. The tenderer enters a rate against each item and extends it to arrive at the cost for that item, before all the extensions are totalled to arrive at the tender amount. Where a specific format is required for the Schedule of Rates it should be stated in the ITT.

1.5 Bill of Quantities / Quantified Schedule of Rates differences

The critical difference between a Bill of Quantities and a Schedule of Rates are that:

- A Bill of Quantities is prepared using an approved set of measurement rules¹.
 - The Employer retains the risk of errors in the Bill of Quantities to the extent that the Employer has prepared the content. Whether the error is the manner in which the work is described, the quantities stated, the omission of required work or the inclusion of work that is not required. Where a tendering contractor makes an arithmetical error in extending the quantities by the rates, or totalling the results, which causes the tendered amount to be over or understated, the Tender Sum and the subsequent Contract Sum will not be subject to adjustment to correct the error and the tendering contractor retains the risk of their error.
 - A Quantified Schedule of Rates may, or may not, be prepared using a Method of Measurement. The only content in a quantified Schedule of Rates that is awarded a status under the Conditions of Contract are the rates inserted by the tender against each item. Errors in descriptions, quantities or in the way that the rates are extended or totalled are at the Contractor's risk and, whether such errors affect the type of work to be done or the quantity required, their resolution has no effect on the amount the Contractor will be paid.
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¹ The approved methods of measurement for use with the public works contracts are listed in section 1.3 of this guidance note.

Part 2

Contract Forms and the Pricing Document

Section 2.1

Introduction

Section 2.2

PW-CF1, PW-CF3 and PW-CF5 and the Pricing Document

2.1 Introduction

The Public Works Suite of Contracts includes 11 forms. The minimum requirements for the pricing document and its status in the hierarchy of Contract documents is set out below.

2.2 PW-CF1, PW-CF3 and PW-CF5 and the Pricing Document

The Pricing Document for PW-CF1, PW-CF3 and PW-CF5 shall be a Bill of Quantities prepared in compliance with a method of measurement approved for use with the Public Works Contracts. No other document is to be included in the Pricing Document for these forms of contract. The Schedule to the Contract will define which approved Method of Measurement the Bill of Quantities has been completed in accordance with.

The Schedule to the Conditions of Engagement for the Cost Consultant will specify the approved method of measurement that the Bill of Quantities must be completed in accordance with.

2.2.1 Resolution of inconsistencies under PW-CF1, PW-CF3 and PW-CF5

In PW-CF1, PW-CF3 and PW-CF5, the Works Requirements are to fully define the scope of the works whereas the Pricing Document is to fully quantify the extent of the works.

Therefore, for the purposes of defining the scope of works, the Works Requirements shall prevail over the Pricing Document and for the purposes of arriving at the Tender Sum, the Pricing Document shall prevail. Inconsistencies between the Works Requirements and the Pricing Document shall be resolved by an instruction from the Employer's Representative under sub-clause 4.1.1(1) of the Contract. Where inconsistencies are found to exist between the Works Requirements and the Pricing Document, the Works Requirements take precedence with respect to the Works to be completed and a Compensation Event may arise in accordance with Schedule Part 1K (17). Where such a Compensation Event arises the following shall apply:

1. Where a Works Item is described in the Works Requirements but has not been included in the Bill of Quantities;
 - a. The Contractor will be required to complete the Works, if so directed by the Employer's Representative, and shall be entitled to an adjustment to the Contract Sum.
 - b. The Employer's Representative may direct the Contractor not to complete the Works Item, but there will be no entitlement to adjust the Contract Sum.
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Continued on the next page

Part 2

Section 2.2

Contract Forms and the Pricing Document

PW-CF1, PW-CF3 and PW-CF5 and the Pricing Document,
continued

Section 2.3

PW-CF2 and PW-CF4 and the Pricing Document

2.2.1 Resolution of inconsistencies under PW-CF1, PW-CF3 and PW-CF5 (continued)

2. Where a Works Item is described in the Bill of Quantities but has not been included in the Works Requirements;
 - a. The Employer's Representative may direct the Contractor to complete the Works Item but the Contractor shall have no entitlement to an adjustment to the Contract Sum.
 - b. The Employer's Representative may direct the Contractor not to complete the Works Item and the Employer's Representative or Employer shall be entitled to adjust the Contract Sum.
3. Where both the Bill of Quantities and the Works Requirements have included the Works Item but an inconsistency exists between the quantities in each document;
 - a. If the Employer's Representative directs that the quantity shown in the Works Requirements is to be completed, then the Contract Sum may be adjusted.
 - b. If the Employer's Representative directs that the quantity as described in the Bill of Quantities is to be completed, then the Contract Sum shall not be adjusted.

Note: Where an inconsistency, as noted above, is found to exist, the allocation to the Contractor of other specified risks in Schedule Part 1K must be taken into account when determining any contractual entitlement for a Compensation Event. For example, where the risk of unforeseeable ground conditions under Schedule Part 1K(19) is passed to the Contractor, (i.e. 'No' is entered under the Compensation Event column for this event), and the event arises, resulting in quantities of work increasing or decreasing, then K(19) shall overrule K(17) and a Compensation Event shall not arise from the unexpected ground conditions being encountered. The Bill of Quantities shall identify the allocation of risks, as per Schedule Part 1K

2.3 PW-CF2, and PW-CF4 and the Pricing Document

The format and content of the Pricing Document for PW-CF2 and PW-CF4 is at the discretion of the Employer but should not include a Bill of Quantities. It may include a Quantified Schedule of Rates with only the rates forming part of the Contract. The Schedule to the Contract will define the format and content of the pricing document.

Continued on next page

2.3.1 Resolution of inconsistencies under PW-CF2 and PW-CF4

For the purpose of resolution of inconsistencies in PW-CF2 and PW-CF4, the Works Requirements shall take precedence over the Pricing Document. Where inconsistencies are found to exist between the Pricing Document and the Works Requirements, the Works Requirements shall prevail without any consequent adjustment to the Contract Sum. Where inconsistencies are found to exist between the documents in the Contract, the documents take the precedence in the order set out in clause 1.3 of the Conditions of Contract

2.4 PW-CF6 and the Pricing Document

The Short Public Works Contract (PW-CF6) caters for reasonably straightforward projects where it would be unusual to prepare a Bill of Quantities to an approved method of measurement. There is no specific requirement in PW-CF6 for the inclusion of a Pricing Document, however a document with the same or a similar function could be included as one of the contract documents specified under clause 1.3 of the Schedule. The words *'using rates and prices in this Contract'* in clause 4.5 creates the expectation that such a document will be included among the contract documents. The format and content of this Pricing Document is at the discretion of the Employer but because of variety of different documents that may fulfil that role the risk is not retained by the Employer.

Note: If the Employer wishes to retain the risk of quantities by production of a Bill of Quantities to an approved method of measurement then PW-CF6 should not be used and the Employer should elect to use either PW-CF1, PW-CF3 or PW-CF5

2.4.1 Resolution of inconsistencies under PW-CF6

If there is a Pricing Document in the Contract and there is a discrepancy between the Pricing Document and other documents in the Contract, the other documents prevail and there is no adjustment to the Contract Sum.

Part 2

Section 2.5

Section 2.6

Contract Forms and the Pricing Document

PW-CF7 and PW-CF8 and the Pricing Document

PW-CF9 and the Pricing Document

2.5 PW-CF7 and PW-CF8 and the Pricing Document

There is no specific requirement in PW-CF7 or PW-CF8 for the production of a Pricing Document, however a Pricing Document may be listed under Clause 1.1 of the Schedule for its inclusion as a Contract Document. The format and content of this Pricing Document is at the discretion of the Employer.

In the case of the investigation contracts (PW-CF7 and PW-CF8), quantities are the Employer's risk and the Employer must bear the full risk of any error or change in measurement.

Where a Bill of Quantities is used and because the quantities in the Bill of Quantities are included in the Scope of the Contract (under clause 1.1 in the Schedule), the ER may issue an instruction that has as its sole purpose to change the quantities in the Bill of Quantities. This entitles the Employer or Contractor to the adjustment under the terms of the Contract valued in accordance with the Conditions.

2.5.1 Resolution of inconsistencies under PW-CF7 and PW-CF8

It is unlikely that a Pricing Document included as a Contract Document under PW-CF7 and PW-CF8 will be completed to an approved method of measurement because the scope of works under the investigation forms of contracts is generally not fully definable until Task Orders are issued. The scope of works as defined in a Task Order will take precedence over Works as described in the Pricing Document and inconsistency between what is priced and actually constructed will be resolved by instruction from the Employer's Representative

2.6 PW-CF9 and the Pricing Document

PW-CF9 is a Framework Agreement for construction work which shall utilise one of the other forms of Contract when works contracts are awarded under the Framework Agreement. As such, a Pricing Document may only arise under the form of Contract utilised at tender and award of a works Contract from the Framework Agreement. The exception to this is where a pricing schedule forms the basis for the framework. In such cases the rates in schedule will form part of any Contract awarded from the Framework and should be included in the Pricing Documents.

Part 2

Contract Forms and the Pricing Document

Section 2.7

PW-CF10 and the Pricing Document

Section 2.8

PW-CF11 and the Pricing Document

2.7 PW-CF10 and the Pricing Document

The content of a Pricing Document for PW-CF10 is at the discretion of the Employer but should not include a Bill of Quantities. It may include a Quantified Schedule of Rates with only the rates forming part of the Contract. Schedule 12 to the Contract will define the content of the Pricing Document.

2.8 PW-CF11 and the Pricing Document

The content of Pricing Document for PW-CF11 is at the discretion of the Employer. It would not normally include a Bill of Quantities completed to an agreed method of measurement. The quantities in the Pricing Document are notional quantities included only for tender assessment purposes. They do not describe the extent of works to be executed under the Contract, but should be reasonably representative of the quantum required.

2.8.1 Resolution of inconsistencies under PW-CF11

If there is an inconsistency or discrepancy between the Pricing Document and the Works Requirements then the Works Requirements prevail. If there is an inconsistency or discrepancy between the Works Requirements and a Task Order, or the Pricing Document and a Task Order, the Task Order prevails.

Part 3

The Pricing Document – Pre Award

Section 3.1

Introduction

Section 3.2

Production of the Pricing Document

3.1 Introduction

Under the Public Works Contract forms the Pricing Document is a vital tool at Tender Stage. Once a tender submission is received the Pricing Document of the lowest price/ most economically advantageous tender must be assessed for compliance with the tender requirements and to check for errors and inconsistencies. The following paragraphs set out how the document is used throughout the pre contract award period.

3.2 Production of the Pricing Document

The content of a pricing document for use with PW-CF2, PW-CF4 and PW-CF6 to PW-CF11 is at the discretion of the Employer and care should be taken on the content included based on the risk transfer associated. A Bill of Quantities may be provided as a tender document or tenderers may be required to prepare one as part of their tender submission but in either case it should not be included as a Contract document.

Refer to section 3.3.7 for guidance on the use of Bills of Quantities as Pricing Documents for PW-CF6.

For PW-CF1, PW-CF3 and PW-CF5 the Pricing Document must be a Bill of Quantities prepared in accordance with a method of measurement approved for use with the Public Works Contracts. The format must comply with the principles and rules of measurement as amended for use with the Public Works Contracts, (*refer to section 6 of this document*). Below are the roles and responsibilities of the individuals involved in the pre award phase in the production of the Pricing Document for PW-CF1, PW-CF3 and PW-CF5.

3.2.1 Role of the Employer under PW-CF1, PW-CF3 and PW-CF5

The scope of service for the Design Team (whether in-house or external consultants) must stipulate a requirement to produce the various documents that make up the Works Requirements to a sufficient standard that will permit a Bill of Quantities to be produced in accordance with the appropriate and approved method of measurement for the project in question.

The Employer when planning the Design Team's service delivery and project timeline must allow adequate provision for the design and production of the necessary suite of tender documents to a sufficient standard. (*Refer to GN 1.1 Project Management section 1.4 - Managing the Project Programme*)

3.2.2 Role of the Designer under PW-CF1, PW-CF3 and PW-CF5

The Designer must ensure that the documentation that is to be included in the tendered Works Requirements is prepared and coordinated in such a fashion that it is suitable for the production of a fully measured Bill of Quantities by the Cost Consultant.

The Designer shall comply with procurement rules when defining or describing the works on drawings or in specifications with respect to the naming of products².

The Designer must ensure that they provide their designs in a timely manner to the Cost Consultant, so that the Cost Consultant has adequate time to produce a fully measured Bill of Quantities.

The Designer must ensure that that requests for clarification or further information from the Cost Consultant are adequately responded to in a timely fashion.

The Designer must advise the Employer and liaise with the Cost Consultant on issues surrounding design that cannot be adequately defined to allow for the production of a fully measure Bill of Quantities. Where the design cannot be adequately defined the Designer shall liaise with the Employer regarding the option to directly tender such an element of works.

(Refer to the GN 2.3.3 Specialists and the Public Works Contracts)

3.2.3 Role of the Cost Consultant under PW-CF1, PW-CF3 and PW-CF5

The Cost Consultant when preparing the Bill of Quantities must ***not*** make assumptions to cover for inadequate or incomplete design information.

It is incumbent upon the Cost Consultant when preparing the fully measured Bill of Quantities to interrogate the design documentation and, where there are omissions, contradictory or ill-defined elements, to request supplementary information from the relevant design team member.

The Cost Consultant shall comply with procurement rules when defining or describing the various item descriptions in the Bill of Quantities with respect to the naming of products³.

The Cost Consultant must advise the Employer and liaise with the Designer on issues surrounding design that cannot be adequately defined to allow for the production of a fully measured Bill of Quantities. Where the design cannot be adequately defined the Cost Consultant shall liaise with the Employer regarding the option to directly tender such an element of works.

(Refer to the GN 2.3.3 Specialists and the Public Works Contracts)

² See article 23 of 2004/18/EC

³ See article 23 of 2004/18/EC

Part 3

The Pricing Document – Pre Award

Section 3.2

Production of the Pricing Document, *continued*

Section 3.3

Evaluating Tender Submissions

3.2.4 Role of the Design Team Leader under PW-CF1, PW-CF3 and PW-CF5

It is incumbent upon the Design Team Leader, where one is appointed, to ensure that all designers produce and co-ordinate their design to a standard and in a timescale that allows the Cost Consultant to produce a fully measured Bill of Quantities.

The Design Team Leader must ensure that all designers provide their designs in a timely manner to the Cost Consultant, to allow the Cost Consultant adequate time to produce a fully measured Bill of Quantities.

The Design Team Leader must ensure that all Designers respond adequately and in a timely manner to all requests for clarification, or further information from the Cost Consultant, so as to allow the Cost Consultant adequate time to produce a fully measured Bill of Quantities.

The Design Team Leader must advise the Employer and liaise with the Designers and Cost Consultant on issues surrounding design that cannot be adequately defined to allow for the production of a fully measured Bill of Quantities. Where the design cannot be adequately defined the Design Team Leader shall liaise with the Employer regarding the option to directly tender such an element of works.

(Refer to the GN 2.3.3 Specialists and the Public Works Contracts)

3.3 Evaluating Tender Submissions

The Pricing Document has a vital role in evaluating Tender Submissions. The Pricing Document enables the Employer to prescribe to prospective tenderers the way they are to break down their tendered lump-sum price and provide details of other tender cost information. Where the Pricing Document includes a Bill of Quantities or a Quantified Schedule of Rates the totalled extend costs from the Bill or Schedule must equal the tendered amount on the Form of Tender.

3.3.1 The Pricing Document and direct tendering of Specialists

Please refer to Guidance Note GN 2.3.3 *Specialists and the Public Works Contracts*

3.3.2 Assessment of the Pricing Document

Once the lowest price/most economically advantageous tender has been identified, an assessment of the Pricing Document should be carried out before any permitted adjustments or evaluation of other award criteria is carried out. The Pricing Document should be assessed on the basis of the following non exhaustive list;

- Are any pages missing from the Pricing Document?
- Are there any computational errors?
- Are the page amounts from each section properly transferred to the summary?
- Have any additional entries or notes been added by the tenderer?
- Have any amendments been made by the tenderer?
- Is the ratio of the priced preliminaries to the priced Works Items as expected?
- Are *set-up* related preliminaries priced separately to *time* related preliminaries?
- Are items priced on a bundled basis with a single rate entered against them, which may not suit assessment of interim payment due?
- Are there any blank, 'zero' or 'incl' entries?
- Have risk transfer items been priced appropriately?
- Does the tenderer have the necessary resources to fund risks where they have not been priced appropriately?
- Are there inconsistencies in how the same type of work is priced in different locations within the document?
- Is the construction cost distributed as expected across the overall document, project and Contract duration?
- Do rates comply with norms or expectations?
- How does the Pricing Document compare to the latest budget estimate and reasons for divergences?

Do the rates match the expected quality for the Works Items required?

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3.3.2 Assessment of the Pricing Document, (continued)

The most important consideration when carrying out the assessment is whether the Employer's interests can be protected both at Contract award and during construction.

Once the assessment is carried out, a request for clarifications on any anomalies noted should be issued to the tenderer. The responses received may lead to further discussion, clarification requests, rebalancing of the pricing document or a recommendation that the tenderer not be considered for the award.

3.3.3 Adjustments to the Pricing Document

When a successful tenderer is selected, and prior to issue of the Letter to Unsuccessful Tenderers (MF 1.2), it may be necessary to correct errors to deal with inconsistencies between tendered rates and to rebalance the distribution of costs across elements of the Pricing Document where a pattern contrary to the Employer's interests has been noted during tender assessment.

The outcome of this exercise must not alter the Tender Sum

This exercise is undertaken so that the valuation of interim payments and Compensation Events is fair to both the Employer and the Contractor. The exercise should be completed in consultation with the preferred tenderer and the outcome should be notified to and accepted by the preferred tenderer in advance of the issue to all tenderers of the notice of the Employer's intention to award the Contract.

3.3.4 How to adjust the Pricing Document

Any individual lump-sum included in the make-up of the preferred tender must be broken down in sufficient detail to be of use for tender assessment and during implementation. For example, a single sum for the complete heating installation should be broken down into sufficient detail (e.g. quantified Works Items) to enable it to be used during the construction stage for interim payments and for valuing *change orders* that are *compensation events*. This applies as much to traditional Contracts as it does to design-and-build Contracts.

3.3.5 Rebalancing rates

In determining what the balanced or corrected rates should be, the Employer/Cost Consultant should consider the following:

- Rates for similar work which the Employer or its Consultants have access to on other projects, adjusted as necessary;
- Rates for similar work in separate locations in the Bill of Quantities;
- Rates built up from first principles using labour constants, market prices of materials, labour hourly rates and an allowance for overheads and profit; and
- Rates for similar work published in construction industry pricing books, adjusted as appropriate for currency, time and location and for general level of tenderer's pattern of pricing;
- Rates derived from a combination of some or all of the foregoing four points.

It is important that the rationale behind the establishment of a balanced or corrected rate is worked out logically and can be demonstrated to the tenderer, if necessary.

3.3.6 Adjustments for VAT errors

If a lump-sum tender price is VAT-inclusive it should be evaluated on the basis of;

1. **The Employer is not a Principal Contractor for VAT.**
2. **The Employer is a Principal Contractor for VAT.**

When a preferred tenderer is identified, the Pricing Document of that tenderer should be examined for inconsistencies, errors and imbalances in rates. If VAT has been calculated incorrectly (for example, using the wrong rate), the pre-VAT tender price should be adjusted so that the correct VAT calculation is reflected in the submitted tender lump-sum price. This will probably require making adjustments elsewhere in the Pricing Document to maintain the overall tender amount. The Employer should consult with the tenderer after adjusting the make-up of the Total Tender Price including VAT to get agreement to the adjustment.

Note: It is important to remember that any necessary adjustments made for VAT should not affect the tender sum

3.3.7 Pricing Document evaluation for PW-CF6

As a Schedule of Rates may be used during the tender evaluation stage for PW-CF6, the submitted schedule, whether prepared by the Employer or tenderer, is checked to ensure that the prices and rates are not abnormally low or high so as to benefit the tenderer disproportionately from any Compensation Event and to avoid a situation where a disproportionate amount of the Contract Sum is paid over in the early stage of the Contract. Rates that are believed to leave the Employer exposed to these risks should be queried with the tenderer and an adjustment sought. If the tenderer refuses to agree, then the Contracting Authority should take this into account in their decision to award a contract.

Once the evaluation stage is complete and the rates provided are deemed to be satisfactory, the rates and prices in the Pricing Document (subject to any necessary adjustments to the rates and prices carried out in accordance with Section 6 of the Instruction to Tenderers (ITTW4 or ITTW5)) may be included in the Contract Documents. The entry against Clause 1.3 of the Schedule to the Contract will then identify the Rates and Prices in the identified pricing document as forming part of the Contract. However the quantities and descriptions in the pricing document identified are at the Contractor's risk, do not form part of the description of the Works in the Contract and will not fall within the definition in clause 4.4 of the Conditions of what may give rise to a Compensation Event

Part 4

The Pricing Document – Post Award

Section 4.1

Introduction

Section 4.2

Valuation Days and the Payment Claim Date

Section 4.3

The Payment Claim Notice or Contractor's Statement

4.1 Introduction

Once a Contract has been awarded, the Pricing Document becomes an important tool in the administration of the Contract. The document plays a pivotal role in the valuation of payments under the Contract and adjustments to the Contract Sum. The document itself can also become a useful tool in the resolution of disputes over inconsistencies. The following paragraphs detail its uses during the post award stage

4.2 Valuation Days and the Payment Claim Date

The intention of the Valuation Day is to identify the extent of progress on site on a specific day to inform the valuation of the Payment Certificate.

In advance of receipt of the Payment Claim Notice, (Contractor's Statement), the Employer's Representative, (or Employer's Cost Consultant where applicable), should arrange to visit site to measure the extent of progress as of the Payment Claim Date to which the impending payment will apply.

It is advised that the Contractor's Representative should be requested to accompany the Employer's Representative, (or Employer's Cost Consultant where applicable). During the site visit the Employer's Representative should note, (jointly note, where both parties are present), the extent of progress versus the Pricing Document. Records of the site visit, including notes and photographs should be kept on file to support the impending valuation.

4.3 The Payment Claim Notice or Contractor's Statement

The Contractor shall give a statement, (*refer to sub-clause 11 of PW-CF1 to CF5, sub-clause 4.2 of PW-CF6, sub-clause 7.2 of PW-CF7 and PW-CF8, sub-clause 3.3 of PW-CF10 and sub-clause 6.3 of PW-CF11*), to the Employer's Representative detailing the instalment of the Contract Sum that the Contractor Considers should, under the Contract, be paid.

Sub-clause 11.1.1(ii)(2) of PW-CF1 – to PW-CF 5 has prescriptive requirements of what the statement should show such as;

- Progress of the works;
 - Instalment the Contractor considers they are entitled to;
 - Detailed breakdown of claimed value of work completed using the Pricing Document
 - Supporting evidence the Employer's Representative requires
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4.4 The Payment Certificate

Payment Certificates may be either *Interim* or *Penultimate* or *Final*. The valuation of a Payment Certificate should be completed with reference to the Pricing Document and should be informed by the following;

- The value of the works properly executed. Consideration should be given to any defects notified to the Contractor, resolved or unresolved, and defects agreed between the parties to be accepted by the Employer. (*Refer to Sub-clause 8.5 of PW-CF 1 to PW-CF5*).
- Amounts owed by the Contractor for rectification of defects by the Employer or at the Employer's cost.
- The value of unfixed Works Items, see Schedule Part 1L.
- Amounts for adjustments to the Contract Sum as determined under the Contract. Consideration should be given to Determinations of Contractor and Employer Claims where applicable.
- Amounts to be paid according to clause PV1 or PV2.
- Amounts included in the Pricing Document for Contractor's Documents properly completed and supplied as required by the contract.
- Amounts which can be withheld from the Contractor in accordance with sub-clause 4.9.3, 5.3, 11.4.1 and 11.4.2 of PW-CF1 to PW-CF5.
- Amounts to be withheld for retention
- Amounts for adjustments arising out of dispute resolution procedures.
- Amounts arising from Liquidated Damages
- Cumulative amount previously certified for payment

Note: Payment should only be certified, or withheld, where entitlement to do so can be demonstrated, by reference to the Conditions of Contracts.

Payment Certificates shall be issued to the Contractor, copied to the Employer, setting out the amount of payment to be made to the Contractor in the opinion of the Employer's Representative. Reasons for any difference between the Contractor's Statement and the Payment Certificate shall be detailed and provided to the Contractor, (PW-CF1 to PW-CF6 only)

4.5 Retention

It is usual for construction contracts to provide for the retention of part of the Contract Sum until the completion of the Defects Period stipulated in the Contract. The retention percentage retention to be withheld from Payment Certificates is stated in Part 1L of the Schedule to PW-CF1 to PW-CF5. In the case of PW-CF6, it is stated in the Schedule under Clause 4.1 and the payment arrangements in PW-CF7 and PW-CF8 are based on the completion of milestones.

Upon issue of the certificate of Substantial Completion (PW-CF1 to PW-CF6) of the works, the Contractor will invoice the Employer for half of the amount so retained. Upon the issue of the Defects Certificate (PW-CF1 to PW-CF6) at the end of the Defects Period, the Contractor can invoice the Employer for the balance of the money so retained.

Retention limits are set at a level appropriate to the value of the Contract. The recommended levels of retention in relation to public works are as follows:

Contract Cost	Retention Percentage
Under €200,000	10% ⁴
Between €200,000 to €3,000,000	Sliding scale between 10% and 3% <i>pro rata</i> to the nearest whole number
Over €3,000,000	3% minimum (special circumstances may require higher retention)

Note: The Retention Sum is not for the purposes of rectifying known defects or finishing off incomplete work. Payment should not be certified for Works Items that are defective or for the portion of Works Items that remain incomplete.

⁴ The default percentage in the Short Public Works Contract is 10%. This contract can be used on projects with a value of up to €500,000

4.6 Adjustments to the Contract Sum

Adjustments to the Contract Sum may arise from Compensation Events or Delay Costs, (*sought under sub-clause 10.3 of PW-CF1 to PW-CF5, sub-clause 4.5 of PW-CF6, sub-clause 7.5 of PW-CF7 and PW-CF8 and sub-clause 11.2 of PW-CF10*), or from Employer's Claims, (*sought under sub-clause 10.9 of PW-CF1 to PW-CF5*) all of which should be evaluated on the principles detailed in the Conditions of Contract.

4.6.1 Delay and Compensation Events

Delay and Compensation Events are defined in the Conditions of Contract and categories are listed in the Schedule, Part 1. Subject to meeting the requirements of clause 10, where a Delay or Compensation Event arises the Date for Substantial Completion and the Contract Sum may be adjusted in accordance with the Contract.

Most events have defined positions and may not be changed but some may be determined to be Compensation Events by changing the default position of 'No' to 'Yes' by clicking on the drop-down menu in the soft copy version of the Schedule. The Employer must therefore decide, before inviting tenders whether those Events categorised as 'optional' in the Schedule are flagged as Compensation Events.

Delay events considered for compensation status in a traditional contract are:

- An instruction from the Employer to deal with an item of archaeological interest or human remains found on the site;
- The presence on the site of unforeseeable ground conditions or a man-made obstruction in the ground, other than utilities;
- The presence on the site of unforeseeable utilities; and
- Unforeseeable failure or delay of owners of utilities on the site in relocating utilities in accordance with the Works Requirements, when the Contractor has complied with their procedures and the procedures in the Contract.

Delay events considered for compensation in a design-and-build contract are:

- An instruction from the Employer to deal with an item of archaeological interest or human remains found on the site; and
 - Unforeseeable failure or delay of owners of utilities on the site in relocating utilities in accordance with the Works Requirements, when the Contractor has complied with their procedures and contract procedures.
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4.6.2 Evaluating Adjustments

The following sets out how adjustments arising from Compensation and Delay events should be valued, (adjustments as a result of an Employer's Claim should be valued on this basis also);

PW-CF1 to PW-CF5

Adjustments to the Contract Sum for a Compensation Event shall only be for the value of any additional, substituted and omitted works required as a result of the Compensation Event. Where an adjustment to the Contract Sum arises from additional, substituted or omitted named Specialist Works, the percentage addition tendered by the Contractor, and inserted in the Schedule Part 3B by the Employer prior to issue of the Letter of Acceptance, for that named Specialist shall be taken into account in the valuation. The valuation of the adjustment shall be carried out as follows

- If the Compensation Event requires additional, substituted or omitted work similar to work for which there are rates in the Pricing Document and where it is to be executed under similar condition the determination shall use those rates.
- If the Compensation Event requires additional, substituted or omitted work that is not similar to work for which there are rates in the Pricing Document, or is not to be executed under similar conditions, the determination shall be on the basis of the rates in the Pricing Document when that is reasonable.
- If the adjustment cannot be determined under the above rules, the Employer's Representative shall make a fair valuation based on rates for similar work in the locality, if available.

Instead of any of the above applying, the Employer's Representative may conclusively direct that additional or substituted work required as a result of a Compensation Event be determined (in full or in part) on the basis of the cost of performing the additional or substituted work, compared with the Contractor's cost without the Compensation Event. That cost is determined by one of two options which the Employer sets out in the Form of Tender and Schedule Part 1K. Where the additional or substituted work includes named Specialist Works, the determined value shall be based on the tendered hourly rates, the tendered percentage addition for costs of materials and the tendered percentage addition/deduction for costs of plant as tendered by the respective named Specialist.

Continued on the next page

4.6.2 Evaluating Adjustments
(continued)

Adjustments to the Contract Sum as a result of an extension to the Date of Substantial Completion of the Works because of a Compensation Event shall be valued on the basis of the following, (whichever is stated in Schedule, part 1K):

- For each Site Working Day for which the Date for Substantial Completion of the Works has been extended because of the Compensation Event, the daily rate of delay cost tendered by the Contractor in the Schedule, part 2D
- The expenses [excluding profit and loss of profit] unavoidably incurred by the Contractor as a result of the delay to the Date for Substantial Completion of the Works caused by the Compensation Event in respect of which that date has been extended under the Contract.

Note: When evaluating an extension to the Date of Substantial Completion the *Programme Contingency* must be taken into account.

PW-CF6 to PW-CF8

The amount of the adjustment will be the amount of an accepted or agreed quotation, if a quotation is agreed. If there is no agreed quotation, the Employer's Representative will assess the amount of any adjustment using the rates and prices in the Contract, or on the basis of those rates and prices if there are any and they are suitable and, if not, by assessing the effect of the change on the Contractor's cost of constructing the Works or doing the investigation.

PW-CF10

Adjustments in proportion to the forecast value of work added, omitted, or changed by a Change Order are made:

- using rates in the Cost Breakdown to value work if the rates are similar and the work is to be done in similar conditions or
- in proportion to rates in the Cost Breakdown if this is reasonable, although the work or conditions are not similar or
- if there are no rates in the Cost Breakdown that can reasonably be used, by making a fair valuation (based on rates for similar work in the locality if available).

5.1 Introduction

Public Works Contracts are based on the principle of lump-sum fixed price contracts. The Contract Sum being a fixed amount only subject to adjustment in stated circumstances. Where rules of measurement (such as CESSM, ARM4 with Supplement 1 to ARM4 and Transport Infrastructure Ireland rules) are referred to in a Contract, they must be complied with.

Included in this section are the published amendments to the standard rules of measurement to align them with the principle of lump-sum, fixed-price contracts. For contracts that reference rules of measurement, the Employer must include these amendments with the tender documents.

This appendix includes amendments the *Civil Engineering Standard Method of Measurement* 3rd Edition, (CESMM3), as amended for use with the Public Works Contract

As a general amendment rule references to a professional discipline (for example, architect or engineer) in any of the foregoing publications should be checked to see if the reference should be to the Employer's Representative, as identified in the Public Works Contract.

Part 5

Methods of measurement

Section 5.2

Amendments required when using CESMM3

**5.2 Amendments
when using
CESMM3**

TBC
