

GUIDANCE NOTE 2.3.3

Specialists and the Public Works Contracts

Specialists and the Public Works Contracts

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Specialists fall into two categories; (i) specialist service providers (typically the design team engaged by a Contractor under a design and build contract) and (ii) specialist works contractors. The latter are generally defined as contractors who carry out activities in the realisation of a construction project requiring specialist construction knowledge and skills. The extent to which specialist works contractors are involved in construction projects varies according to the level of complexity of the project. The extent to which the Employer is involved in the selection of specialists is directly related to the extent of control that the Employer wishes to exert on the project direction and outcome. Typically, Employer designed forms of contract are used where the Employer wishes to retain the greatest extent of control.

This guidance note focusses on the appointment of specialists as sub-contractors to the [main] Contractor engaged by the Employer under a public works contract. Where a specialist works contractor is engaged directly for a specific task, for example the removal of asbestos, the general guidance around the procurement of a works contractor applies.

Specialist works contractors may be appointed subject to various levels of involvement by the Employer under a main contract.

1. The least level of involvement by the Employer applies to very simple projects where specialists may be engaged as sub-contractors to the main contractor with very basic requirements set down for their appointment by the Employer i.e. tax compliance.
2. The next level of involvement by the Employer is where the Employer sets down pre-qualification requirements for specialists but the Employer will have no direct involvement in the tender process for the specialist as the Main Contractor will appoint the Specialist in accordance with the Employer's pre-qualification requirements.
3. The highest level of Employer involvement is in the direct tendering of specialist works where the tender may result in either a) the appointment of the successful specialist tenderer by the Employer who is novated to the main contractor thereafter or b) the naming of the successful specialist tenderer who is to be appointed by the Contractor as a sub-contractor.

This guidance note is split into two parts; the first part deals with the direct tendering of specialist works contractors which is used primarily with Employer designed forms of public works contract (category 3 above).

The second part describes the pre-qualification of specialists (category 2 above) which may be used on design and build contracts to ensure that the specialists engaged by the Contractor meet appropriate standards.

This part of the guidance note provides a detailed description of the appointment and administration procedures for specialist works contractors named by the Employer (i.e. where the tender is conducted by the contracting authority). For convenience they will be referred to as ‘named Specialists’ as this is the convention adopted in the conditions of public works contract.

Whilst a dictionary definition of the word ‘nomination’ applies to the procedure permitted under the forms of public works contract for the appointment of named Specialists by the Contractor, the term is not used in this guidance. The procedure set out in this guidance confers different rights and obligations on both the main contractor and specialists than those provided under the nomination procedure formerly undertaken under the Government Departments and Local Authorities (GDLA) form of contract and currently used under the Royal Institute of the Architects of Ireland (RIAI) form of contract.

Key differences between nomination under the RIAI form and the appointment by Contractor procedure under the public works contract include:

- The tender for the specialist must take place prior to the award of the Main Contract;
- The Contractor retains responsibility for the performance of named Specialists;
- The Contractor is responsible for the reappointment of any Specialist whose contract may be terminated for breach;
- The Employer will not make direct payments to named Specialists¹.

Prime Cost (PC) sums and Provisional Sums² are not used with the public works contracts, instead a Reserved Sum is used for tender purposes where the Contractor is required to appoint named Specialists and it is for this reason that the tender for the specialists must be undertaken prior to the award of the main contract.

Reserved Sums should not be used to manage connection charges or capital contributions which may be required by utility providers. These should be dealt with outside the contract and paid directly to the relevant utility provider.

This guidance does not consider the wider implications that the engagement of named Specialists may have on the assembly of the project team but is intended to provide detailed information which will inform the scope of services for the design team in recognition of the additional work required to prepare separate tender documents for each Specialist tender and in the administration of the tender process for each named Specialist works category.

¹ Unless it invokes the step in rights set out in any Collateral Warranty it may have with a named Specialist.

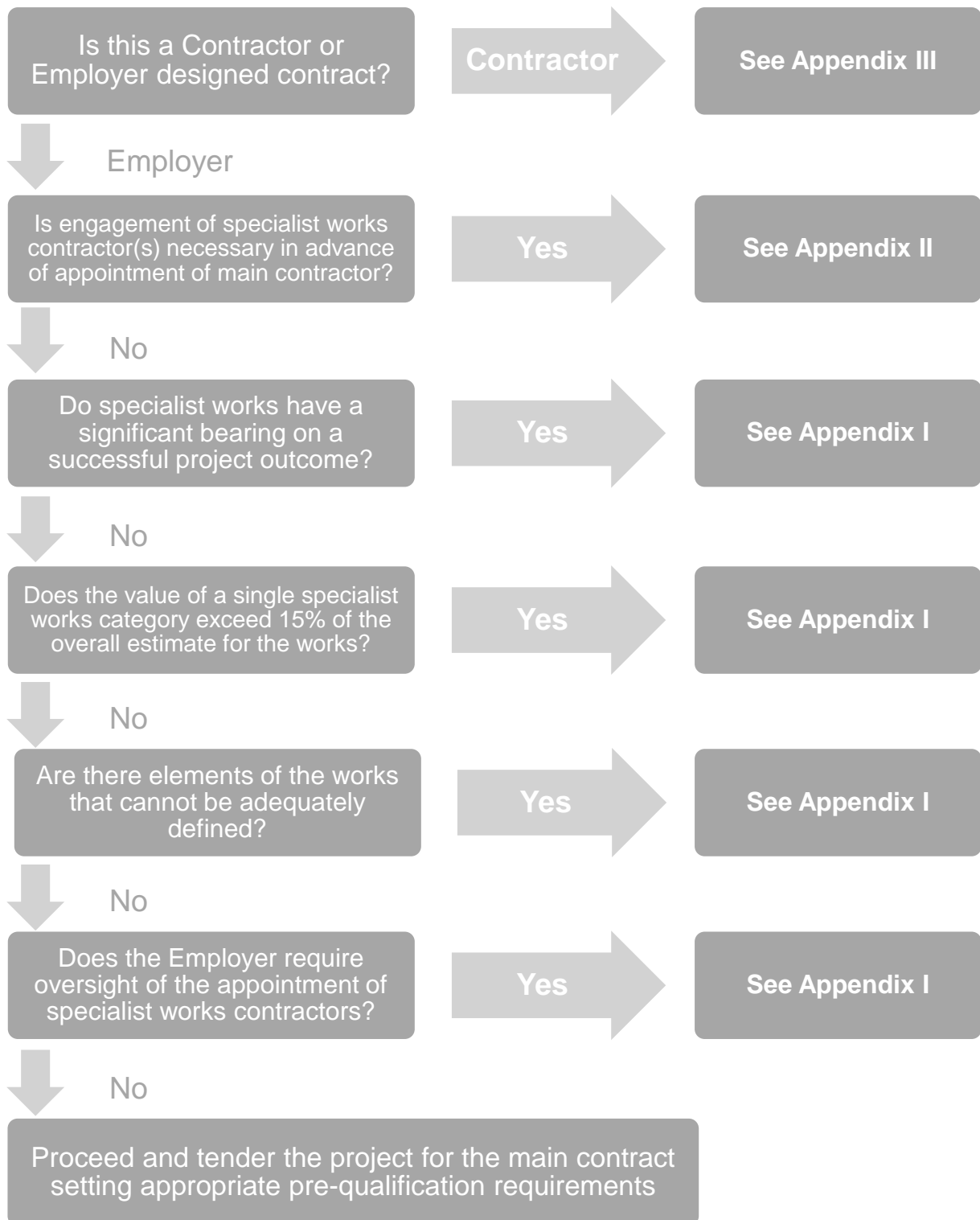
² Provisional sums are used in the investigation forms of contract, PW-CF7 and PW-CF8.

Part 1

Direct Tendering to Specialist Works Contractors

Section 1.2

When should named Specialists be considered?



Continued on next page

Direct tendering of Specialist works contractors will normally only arise on Employer designed public works contracts and would not normally be undertaken on Design and Build (Contractor designed) contracts³. This is because on a Design and Build contract the project is both designed and constructed by the Contractor and therefore the basis for the contracting authority to set parameters for tendering named Specialists is extremely limited. For Contractor designed contracts, please refer to Part 2 of this guidance.

The following non-exhaustive list sets out the circumstances where the direct tendering of specialist works by the Employer should be undertaken:

- Where early engagement of a Specialist contractor is necessary in order to undertake a portion of their works in advance of the appointment of the main contractor. The circumstances where early engagement may be required would include detailed design input from a Specialist such as to inform the main contract's Works Requirements or where enabling works must commence, but may not be complete, in advance of the main contractor's appointment.
 - Where the satisfactory execution of specialist works has a significant bearing on the successful operation of a public facility delivered under an Employer designed form of public works contract.
 - Where the value of a single specialist works category exceeds 15% of the overall pre-tender estimate for the works.
 - Where it is not possible to define the specialist works with sufficient accuracy in the Works Requirements or the Pricing Document to enable it to be tendered (and accurately priced) as part of the main contract.
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³ There are exceptions where specialists may have to be engaged by a contracting authority in advance of the appointment of the main contractor for specific tasks or programme reasons, in this case provision is made in the Contractor designed forms of public works contracts to novate specialists to the main contractor.

1.3.1 Main Contract Forms

Only the main forms of public works contracts; PW-CF1 to PW-CF5 inclusive, contain provisions for named Specialists⁴. Named Specialists are those Specialists named in the Form of Tender and Schedule, part 3B.

Clause 5 *Contractor's Personnel* of PW-CF1 – PW-CF5 inclusive permits the appointment of named Specialists.

Employer designed public works contracts

Under the Employer designed forms of public works contracts (PW-CF1, PW-CF3 and PW-CF5) there are two types of named Specialist set out in sub-clause 5.4.3. Those whose contracts with the Employer are to be novated to the Contractor (“Novated Specialists”) and those who are to be appointed by the Contractor (“Reserved Specialists”).

Contractor designed public works contracts

The provision exists in the Contractor designed public works contracts (PW-CF2 & PW-CF4) for the novation of a Specialist’s contract with the Employer to the Contractor where the contracting authority has a requirement for early engagement or direct appointment of a particular specialist. It should only arise in limited circumstances since the imposition of a Specialist in a Design and Build contract constrains the Contractor’s capacity to manage the risk undertaken in such contracts.

1.3.2 Named Specialist forms of contract***Novated Specialists***

Only forms PW-CF1 to PW-CF5 inclusive may be awarded to Novated Specialists since the novation agreement (MF 1.9) amends the conditions of PW-CF1 to PW-CF5 inclusive in recognition that the contract must operate as a sub-contract after novation.

Reserved Specialists

For Reserved Specialists the Agreement and Conditions of Sub-Contract (NN), issued by the Construction Industry Federation, must be used.

⁴ The concept of named Specialists is recognised under PW-CF10 Public Works Contract for Early Collaboration but is handled in a different manner.

**1.4 Procuring
named
Specialists**

The engagement of named Specialists requires forward planning by a contracting authority so that the principle of transparency is not compromised. The intention to use named Specialists must be signalled to prospective main Contractor candidates or tenderers from the outset. The total estimated value of the main contract (including the Specialist works) must be considered when deciding whether the contract should be advertised in the Official Journal of the EU (OJEU).

The tender for named Specialists must be undertaken in parallel to the main contract tender so that:

- 1) The Specialists receive the successful main contractor's programme prior to the Specialist submitting their final price bid;
- 2) The identity of the successful tenderer for the main contract can be issued to the Candidates for the Specialist works;

The above process will be set out in greater detail later in this note.

Only in exceptional circumstances, following an application to and approval from the Government Contracts Committee for Construction (GCCC), will it be permitted to undertake a tender for Specialist works after the award of the main contract. Where this is permitted, a modified form of public works contract will be issued on a project-specific basis.

**1.4.1
Procurement
Procedures**

As part of the tendering process the main contract and named Specialist tenderers should be aware of whom they are likely to have to contract with at the earliest possible stage. Therefore, subject to the exception outlined in section 1.4.2 below, a restricted procedure must generally be used where the direct tendering of Specialist works is being undertaken by the Employer.

**1.4.2 Main
Contractor
Procurement**

Where named Specialists are to be engaged the restricted procedure should be used in the procurement of the main contractor.

The exception is where only Novated Specialists are being engaged by the contracting authority and the contract is awarded to the specialists prior to the invitation of the main contract tenders. In these circumstances, the open or restricted procedure may be used to procure the main contractor since the identity of the Novated Specialists (and their price) can be included in the main contract tender documents.

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1.4.3 Named Specialist Procurement*Novated Specialists*

An open or restricted procedure may be used to procure a Novated Specialist when the contract is awarded as set out in section 1.4.2 above. This is because the name and Contract Sum for that Specialist is included in the Form of Tender and Schedule, Part 1 F(iii) and Pricing Document respectively for the main contract tender.

Reserved Specialists

Where Reserved Specialists are concerned then a restricted procedure should be used.

1.5 Pre-qualification

The contracting authority's notices to prospective applicants/tenderers in relation to the works contract should indicate the extent of Specialist subcontract packages that will be separately tendered. This should be referenced in any Prior Indicative Notice (where used) and the contract notice for the Works.

Separate contract notices for the main contract and named Specialist contracts should be published. The notice for the main contract works should set out the separate award of specialist works packages (including the CPV code relevant to the specialist works) as sub-contracts to the main contractor.

The contract notice for both Reserved and Novated Specialists should indicate that the tender is for an element of a larger works contract and the successful tenderer will ultimately be appointed as a sub-contractor to the main contractor and provide a reference to the contract notice for the main contract.

It should also be noted that the successful tenderer for the Reserved Specialist works will be identified by the contracting authority who has published the contract notice with the main contractor awarding the sub-contract. In the case of Novated Specialists, the contracting authority who has published the contract notice will award the contract which will be novated to the main contractor whereupon they will operate as a sub-contractor.

The tender stage under the restricted procedure may not commence until the final shortlists for the Reserved Specialists and main contract candidates are complete.

1.5.1 Main Contractor Pre-qualification

In relation to the Main Contractor works the form of Suitability Assessment Questionnaire (SAQ) that should be used is QW1 – SAQ for the restricted procedure. If the provision at section 1.4.2 of this guidance note applies then the contracting authority may use QW2 – SAQ for the open procedure.

The SAQ for the main contract should indicate the estimated value of each of the named Specialist works categories as a % of the main contract value.

In the SAQs, Section 1.8 *Specialists novated by Contracting Authority* applies to Novated Specialists and Section 1.9 *Specialist works reserved by Contracting Authority* applies to Reserved Specialists.

1.5.2 Novated Specialist Pre-qualification

The form of Suitability Assessment Questionnaire (SAQ) that should be used for the Novated Specialist is QW1 or QW2 (SAQ for a restricted or open procedure respectively) depending on the circumstances outlined at section 1.4.3 of this guidance note.

Continued on next page

1.5.2 Novated Specialist Pre-qualification
(*continued*)

The criteria used and the standards applied to those criteria must be appropriate and proportionate to the contract to be awarded. Where named Specialist works are concerned, criteria such as turnover or insurance requirements (where used) must relate to the estimated value of the specialist works – not to those that apply to the main contract works.

Under the conditions of the main contract the Contractor must appoint a replacement Specialist should a named Specialist default (sub-clause 5.4.5). Performance Bonds shall therefore be sought from Novated Specialists⁵ to cover the additional costs incurred by the main contractor should this arise.

As the Novated Specialists are appointed by the contracting authority any performance bond sought must a) meet the requirements of the Department of Public Expenditure and Reform Circular 07/13 and b) will be to the benefit of the contracting authority. Clause 11 of MF 1.6 *Performance Bond* permits the assignment of the benefit of the bond to the main contractor providing the Employer gives written notice to the Surety who provided the bond.

Sub-clause 5.4.3 (i) of the public works contract requires the benefit of any such bond to be assigned to the Contractor by the Employer on entering the *Novation Agreement*, MF 1.9 (or *Novation and Guarantee Agreement*, MF 1.8 where novation to a joint venture is concerned).

The SAQ for the Novated Specialist should indicate the value range of the main contract (e.g. €3.5 - €4m) and the extent of named Specialists to be appointed.

1.5.3 Reserved Specialist Pre-qualification

In relation to Reserved Specialists the form of Suitability Assessment Questionnaire (SAQ) that should be used is QW4 – SAQ for the restricted procedure.

The criteria used and the standards applied to those criteria must be appropriate and proportionate to the contract to be awarded. Where Reserved Specialist works are concerned, criteria such as turnover or insurance requirements (where used) must relate to the estimated value of the specialist works – not to the main contract.

Under the conditions of the main contract the Contractor must appoint a replacement Specialist should a named Specialist default (sub-clause 5.4.5). Performance Bonds shall therefore be sought from Reserved Specialists⁶ to cover the losses incurred by the main contractor should this arise.

Continued on next page

⁵ Only where the value of the Novated Specialist works exceeds €500,000

⁶ Only where the value of the Reserved Specialist works exceeds €500,000

1.5.3 Reserved Specialist Pre-qualification
(continued)

Where Reserved Specialists are concerned the beneficiary of the Bond (the main contractor) will not be known until the contract award stage and so only the undertaking from a surety set out in the format specified in the SAQ should be sought in the procurement process (as is normally the case in the procurement of the main contractor). At the point of award of the Contract between the Main Contractor and the Specialist, the Reserved Specialist will be asked by the Main Contractor for a Bond in their favour. The amount of the Bond should be a maximum of 12.5% of the Contract Sum for the Specialist works element⁷. A reference to model form MF 1.19 *Reserved Specialist Performance Bond* is included in the SAQ (QW4).

The SAQ for the Reserved Specialists should indicate the value range of the main contract (e.g. €3.5 - €4m) and the extent of named Specialists to be appointed.

⁷ The performance bond on the main contract shall continue to be in accordance with the Department of Public Expenditure and Reform Circular 07/13.

1.6 Tender

Throughout the tender process for the Reserved Specialists and the Main Contractor all information issued, either in response to a query raised by a tenderer or directly by the contracting authority as supplementary information, should be sent simultaneously to both main contract and Reserved Specialist tenderers regardless of the nature of the information contained therein.

This is to ensure that all those tendering can assess the impact that the information may have on their tender submission.

There is a separate Instruction to Tenderers for Reserved Specialist works.

1.6.1 Tender Documents

Information to be provided to the Main Contract and named Specialist tenderers in addition to the information that would normally be required for tender purposes is as set out at 1.6.2, 1.6.3 and 1.6.4.

1.6.2 Main Contract Tenderers

Instruction to Tenderers form ITTW 1 should be used unless only Novated Specialists are to be appointed where an open procedure may be used.

1. The final Suitability Assessment Questionnaire (SAQ) for the named Specialist which is published as part of the Expressions of Interest stage or issued to tenderers must be included in the Works Requirements for the main contract. This has a twofold purpose:
 - a. To provide those tendering for the main contract an indication of the standards expected of the specialists under consideration for the award of the specialist works contract; and
 - b. To facilitate the reappointment of a named Specialist in the event of a default of the type specified in sub-clause 5.4.5 of the public works contract.
 2. The shortlisted candidates for each of the Reserved Specialists works categories must be provided as Background Information.
 3. The Works Requirements for each of the named Specialist works categories should be provided in the main contract Works Requirements and labelled as such. If the Works Requirements for the Reserved Specialist works are not fully defined at the time that the main contract tender commences they should be provided as per item 5 below. However sufficient information to define the scope and extent of the Reserved Specialist works should be provided initially.
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1.6.2 Main Contract Tenderers
(continued)

4. The Pricing Documents (unpriced) for each of the named Specialist works categories should be provided in the main contract Pricing Document and labelled as such. It must be clearly stated that the named Specialists' Pricing Documents are not to be completed by main contract tenderers.
5. The tender documents for the Reserved Specialists competition must be issued to the main contract tenderers at the same time as to the Reserved Specialist works candidates.
6. The name of any Novated Specialist must be stated at part 1F (iii) to the Form of Tender and Schedule where the Novated Specialist(s) has been appointed by the contracting authority in advance of the tender. If the Novated Specialist is appointed after the commencement of the tender for the main contract, the name of the successful tenderer to be novated and their Contract Sum must be provided to the main contract tenderers as a tender clarification.
7. A copy of the public works contract and the associated schedule awarded to the Novated Specialist should be provided. A reference to model form MF 1.9 *Novation Agreement* should also be provided.
8. A copy of the 'NN' sub-contract form issued by the Construction Industry Federation⁸ with the accompanying Appendix (*FTS13*) completed as appropriate for each of the Reserved Specialist works categories should be provided.

Requirements for the Pricing Document

Reserved Sums and Contract Sums (for appointed Novated Specialists) for each of the named Specialist works categories are to be provided in the Pricing Document and part 1F(iii) of the Form of Tender and Schedule by the Contracting Authority.

To take account of the named Specialists' works (Novated or Reserved), the Pricing Document for the main contract works must include items to allow for the pricing of the following:

1. General attendances that the Contractor is to provide to each named Specialist. This shall be listed as an item for each of the Specialists and priced as a lump sum for each.

Continued on next page

⁸ Specimen copy provided at Appendix IV.

**1.6.2 Main
Contract
Tenderers
(continued)**

2. Special attendances, with the extent of each special attendance required for each named Specialist being separately listed as priceable items and a lump sum priced for each.
3. A single priceable item for management, to incorporate the Contractor's management, risk acceptance and indirect overhead costs associated with the employment of each of the named Specialists to be engaged for the Works, which will be listed as an item for each of the Specialists and priced as a lump sum for each
4. An item for main contractor's profit required for each of the named Specialist's Sums, rated as a percentage of each named Specialist's Sum. The percentage for profit is required on any Contract Sum for Novated Specialists and any Reserved Sum provided by the Contracting Authority for each Reserved Specialists' works category. These percentages are applied by a main contract candidate to the named Specialists' Sums to create lump sum item for profit on named Specialist works. The tendered percentage for the main contractor's profit on each named Specialist Sum will not be less than zero.

Any Reserved Sums provided are for tender evaluation purposes and each will be substituted with the tender sums of the relevant successful Reserved Specialist tenderer prior to the award of the main contract. As a result both the figure for the Reserved Sum and item for main contractor's profit is subject to adjustment. Therefore the main contractor's tender sum is termed a notional tender sum until the adjustment as described in section 1.9 of this guidance note.

The notional tender sum of each main contract tenderer will go forward to the evaluation process identified in the Instruction to Tenderers and will be used to identify the successful main contract tenderer.

The amounts tendered for general attendance, special attendance or management shall not be less than zero and no adjustment to the amounts for these items will be made when the actual amounts for the Reserved Specialists become available. The lump sums tendered by the main contractor for these items shall be incorporated in the Contract Sum.

General and Special Attendances shall be defined as per the rules of measurement applicable to the nature of the works as approved or amended by the GCCC for use with the public works contracts.

Any adjustment item that a tenderer may (legitimately) apply to their final total in a Pricing Document does not apply to Employer controlled sums such as Reserved Sums, Contract Sums for Novated Specialists, nor to any associated amounts as referred to above.

1.6.3 Novated Specialist Tenderers

An open procedure may be used where the Novated Specialist will be appointed in advance of inviting main contract tenders – in this case ITTW 2 may be used. If a restricted procedure is being used then ITTW 1 shall be used.

The following information should be provided to Novated Specialist tenderers in addition to the information that would normally be required for tender purposes:

1. The final shortlist of those candidates for the main contract tender is to be provided as Background Information to each of the candidates/tenderers for the Novated Specialist works where a restricted procedure is used for the main contract procurement.
2. A reference to the form of public works contract to be awarded to the Novated Specialist and its associated schedule completed to suit the Novated Specialist works category. A reference to model form MF 1.9 *Novation Agreement* should also be provided.
3. A copy of the completed Schedule, part 1 appropriate to the form of public works contract to be awarded to the successful tenderer for the main contract (if available).
4. Where the Novated Specialist works involve significant design input a copy of the collateral warranty (model form MF 1.12) completed as necessary by the contracting authority will be required.
5. Tendering specialists must be provided with sufficient information so as to understand the scale and extent of the main contract works and any constraints that may apply to the Works whether statutory, legal or physical. Statutory constraints include planning conditions; restrictions on working hours; traffic; environmental constraints such as noise, waste, dust and light pollution. Legal constraints include any agreements with adjoining land or property owners such as rights of way, shared access, etc., wayleaves for services. Physical constraints include adjoining structures, boundaries for the works, access routes any planned building works in the vicinity, etc.
6. The extent of general and special attendances (as defined in the applicable rules governing the measurement of the works) which will be provided to the named Specialist at no cost to the Specialist must be clearly stated. The attention of tenderers should be drawn to the fact that any attendances not so identified must be provided at their expense.

1.6.4 Reserved Specialist Tenderers

ITTW 8 shall be used when procuring Reserved Specialists.

The following information should be provided to Reserved Specialist tenderers in addition to the information that would normally be required for tender purposes:

1. The shortlisted candidates for the main contract tender must be provided as Background Information under Appendix 3 to the Instructions to Tenderers (ITTW 8) to each of the candidates for the named Specialist works categories.
2. A copy of the Construction Industry Federation 'NN' sub-contract form with the accompanying schedule completed to suit the relevant Reserved Specialist works category.
3. A copy of the completed Schedule, part 1⁹ appropriate to the form of public works contract to be awarded to the successful tenderer for the main contract.
4. A copy of the collateral warranty (model form MF 1.12) completed as necessary by the contracting authority.
5. Tendering specialists must be provided with sufficient information so as to understand the scale and extent of the main contract works and any constraints that may apply to the Works whether statutory, legal or physical. Statutory constraints include planning conditions; restrictions on working hours; traffic; environmental constraints such as noise, waste, dust and light pollution. Legal constraints include any agreements with adjoining land or property owners such as rights of way, shared access, etc., wayleaves for services. Physical constraints include adjoining structures, boundaries for the works, access routes any planned building works in the vicinity, etc.
6. **Two pieces of information are to be provided to all of the Specialist Candidates as a clarification during the tender process.**
 1. **The Form of Tender shall be reissued to include the name of the successful tenderer for the main contract, and;**
 2. **A copy of the programme prepared by the successful tenderer for the main contract.**

The deadline for receipt of Reserved Specialist tenderers must be a minimum of 14 calendar days after the Form of Tender and Schedule including the identity of the successful tenderer for the main contract and their programme are issued to the Reserved Specialist candidates.

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⁹ Where using Named Specialists the Employer should always complete the Form of Tender and Schedule Part 1G *Dates for Substantial Completion, Sections, Liquidated Damages, Retention*

**1.6.4 Reserved
Specialist
Tenderers
(continued)**

This does not mean that the tender stage for the specialist must wait until the successful tenderer for the main contract is identified but rather sufficient time be given at the end of the tender stage of the Reserved Specialist tender to incorporate the implications of the main contract programme into their tender.

Particular issues in respect of the Pricing Document for Reserved Specialist works include:

- The extent of general and special attendances (as defined in the applicable rules governing the measurement of the works) which will be provided to the Reserved Specialist at no cost to the Specialist must be clearly stated. The attention of tenderers should be drawn to the fact that any attendances not so identified must be provided at their expense.
- An item to cover the cost of the premium for the performance bond required under sub-clause 1(i) of the Construction Industry Federation 'NN' sub-contract form.

1.7.1 Main Contract Tenders

Main contract tenderers must complete the Form of Tender and Schedule, the Pricing Document and comply with any other requirements set out in the Instruction to Tenderers.

Particular issues that pertain to the provision for named Specialists that must be responded to in the main contract tenderer's response include:

- Pricing of the items associated with named Specialists where required in the Pricing Document. As stated in the Instruction to Tenderers, entries such as nil, included or '0' are not permitted.
 - The Works Proposals will require tenderers to prepare an outline programme¹⁰ in compliance with the Form of Tender and Schedule, part 1G which must identify the named Specialist works. Where a programme is found not to comply, the tender may be judged as a qualified (or conditioned) tender. In order for such a tender to be considered the qualification i.e. the non-compliant programme, must be removed or the tender withdrawn.
-

1.7.2 Novated Specialist Tenders

Novated Specialist contracts are normally awarded in advance of the main contract tender. Tenderers for Novated Specialist works may be required to provide an undertaking to sign the Collateral Warranty in the form provided with the tender when their contract is novated to the main contractor.

1.7.3 Reserved Specialist Tenders

The tender deadline for Specialist Works must be a minimum of 14 calendar days after the revised Form of Tender and Schedule including the identity of the successful tenderer for the main contract and their programme are issued to the Reserved Specialist candidates.

Reserved Specialist candidates must complete the Form of Tender and Schedule – Appendix 2, the Pricing Document and comply with any other requirements set out in the Instruction to Tenderers.

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¹⁰ It is important to note that the outline programme to be sought at tender stage is not intended to meet the requirements set out in clause 4.9. The Contractor, once appointed, will be required to prepare a detailed programme in accordance with the Contract taking into account the Named Specialists works.

1.7.3 Reserved Specialist Tenders
(continued)

A programme for the Reserved Specialist works must be submitted. The Reserved Specialist programme must be in accordance with the programme of the successful tenderer for the main contract which is issued by the contracting authority a minimum of 14 calendar days prior to the deadline for receipt of Specialist Works tenders.

A letter giving an undertaking to sign the Collateral Warranty in the form provided with the tender should they be appointed as the Reserved Specialist by the main contractor.

1.7.4 VAT and Named Specialist Tenders

Tenders for named Specialists (Reserved or novated) should be on a VAT exclusive basis unless the Specialist works contain sizeable elements of fittings that are considered by the Revenue Commissioners as not becoming fixtures. Such tenderers should be carried out on the basis of including VAT at the zero and standard rates only.

These include fittings that may be readily removed from the building after completion such as pendant light fittings, specialist kitchen equipment for commercial kitchens, etc. They are most likely to arise where fit-out works are undertaken.

1.8.1 Main Contract Tenders

Because the main contract tenders are received in advance of the specialist works the evaluation is carried out on the basis of the Reserved Sums provided by the Employer and included in the Pricing Document. The main contract tenderers must include a percentage for profit on each named Specialist works category which is converted to a lump sum on the basis of the Reserved Sum and brought forward to make up the notional tender sum for the main contract.

The Comparative Cost of Tender is carried out on each tenderer's notional tender sum before ranking the tenderers in accordance with the award criterion for the award of the contract.

When the first ranked tenderer is identified their Pricing Document is then checked for errors in line with the Instruction to Tenderers. The programme submitted by the successful main contractor is checked to establish whether it has taken proper account of the specialist works packages.

The first ranked tenderer's agreement to stand over their tender is sought. Once the agreement is confirmed, the letters to the successful and unsuccessful main contract tenderers are then issued to the main contract tenderers.

The conditions precedent to the award of the contract to the successful tenderer are set out in the Instruction to Tenderers. These must be listed in the appropriate letter to successful tenderer (either R.na7 or R.eu7) and must be met prior to the issue of the Letter of Acceptance which forms the contract.

Once the successful main contractor has been identified and the notification letters sent out to all tenderers, the identity of the successful tenderer for the main contract and their programme must be provided to the Reserved Specialist works candidates.

1.8.2 Reserved Specialist Tenders

The Reserved Specialist tenderers are ranked on the basis of the award criterion for the contract (MEAT or Lowest Price).

The Pricing Document of the first ranked Reserved Specialist tenderer is checked for errors in line with the Instruction to Tenderers.

The first ranked Reserved Specialist tenderer's agreement to stand over their tender is then sought. Once the agreement is confirmed, the letters to the successful and unsuccessful Reserved Specialist tenderers are then issued.

A copy of the Form of Tender and Schedule of the successful tenderer for the Reserved Specialist works is retained for use in accordance with the determination of the value of a Compensation Event under sub-clause 10.6.4.

Continued on next page

Part 1

Section 1.8

Direct Tendering to Specialist Works Contractors

Tender evaluation (*continued*)

**1.8.2 Reserved
Specialist
Tenders
(continued)**

The conditions precedent to the award of the contract to the successful tenderer are set out in the Instruction to Tenderers. These must be listed in the appropriate letter to successful tenderer (either R.na7 or R.eu7) and must be met prior to the issue of the Letter of Acceptance by the Contractor which then forms the contract.

The letters to the successful and unsuccessful main contract tenderers will be sent in advance of those to the tenderers for the Reserved Specialist works.

Prior to the award of the main contract and after the successful tenderers for the Reserved Specialists' works categories are identified, the Contracting Authority will replace each of the Reserved Sums in the Pricing Document with the tender sum for the relevant Reserved Specialist category. The tendered percentage for profit will be applied to the relevant Reserved Specialist category to arrive at the Contract Sum.

Once the successful tenderers for the Reserved Specialist works are identified and notified the contracting authority will write to the successful main contract tenderer inviting them and the successful Reserved Specialist tenderers to a pre-contract meeting.

The contracting authority will chair the meeting.

The purpose of the meeting is to confirm the following:

- The Starting Date (as defined in sub-clause 1.1) and the Date(s) for Substantial Completion as set out in the Form of Tender and Schedule, Part 1G to the main contract;
- Agreement by the successful tenderers for the Reserved Specialist works to the programme prepared by the successful main contract tenderer as part of their Works Proposals (providing it accords with the Form of Tender and Schedule Part 1G);
- That the sums tendered for the main contract and each of the Reserved Specialist works categories has been adjusted in accordance with the mechanism set out in the ITT);
- That the conditions of contract governing the main contract and the Reserved Specialist works may not be amended;
- Any other project specific issues that the contracting authority may wish to confirm.

The minutes of the meeting will record any clarifications agreed at the meeting and will be appended as a contract document to each of the successful tenderers' contracts.

Following this a letter will be sought from the successful main contract tenderer confirming their willingness to enter a contract with each of the successful tenderers for the Reserved Specialist works. A corresponding letter from each of the successful tenderers for the Reserved Specialist works confirming their acceptance of the main contract programme and their willingness to enter a contract with the successful main contract tenderer.

Part 1

Section 1.10

Section 1.11

Direct Tendering to Specialist Works Contractors

Contract Award

Under Contract

1.10 Contract Award

There is only a single award of contract undertaken by the Contracting Authority. The Reserved Specialists are subcontractors who are to be appointed by the main contractor under sub-clause 5.4.3(ii) of the conditions of Contract.

The main contract may be awarded to the successful tenderer for the main contract once the six steps below are completed in the order set out before the Employer issues the Letter of Acceptance which forms the Contract:

1. Completion of any Standstill to the main contract and Reserved Specialist contracts that may apply; and
2. The successful tenderer for the main contract has met the pre-conditions to award; and
3. Letters are received by the Employer from all those named Specialists listed in the Form of Tender and Schedule stating that they are willing to enter a contract with the successful main contract tenderer; and
4. A letter is received by the Employer from the successful main contract tenderer stating that it is willing to contract with those named Specialists listed in the Form of Tender and Schedule; and
5. The selected Reserved Specialists are named and listed in part 3B of the Form of Tender and Schedule; and
6. The percentage figure for profit included in the Pricing Document by the successful tenderer for the main contract for each category of named Specialist work shall be transferred to part 3B of the Form of Tender and Schedule.

Where any of the steps set out above cannot be completed the Contracting Authority shall not issue the Letter of Acceptance until the issues preventing their completion have been addressed. Guidance from the Office of Government Procurement may be obtained where necessary.

1.11 Under Contract

Once the contracting authority has sent the Letter of Acceptance the Contract is formed. Under sub-clause 5.4.3 (ii), the Contractor is required to appoint any Reserved Specialists prior to the Starting Date.

The Contractor and the Employer, in accordance with sub-clause 5.4.3(i) must enter the novation agreement in the Works Requirements for any Novated Specialists. Once the novation agreement is executed, the Employer, in accordance with sub-clause 5.4.3(i), writes to the surety who has provided the performance bond to the Novated Specialist (where required) assigning the benefit of the bond to the Contractor.

Continued on next page

1.11 Under Contract
(continued)

The Contractor must provide copies of the signed form of sub-contract (unamended from the form provided in the Reserved Specialist tender) before the Starting Date.

The Employer, when issuing the certificate for payment referred to in sub-clause 11.1.3, will detail the amount for named Specialist works that has been included in the certificate and these will be copied to the relevant named Specialists. The information to be provided is set out in Model Form MF 1.20.

A Change Order may be issued during the course of the Works that increases (or decreases) the Contract Sum. Should this Change Order impact on a named Specialist's works (either Novated or Reserved) then the percentage figure tendered by the Contractor for profit on the named Specialist's works (and listed in part 3B of the Form of Tender and Schedule) will be applied to calculate the adjustment to the Contract Sum. (Sub-clause 10.6).

In the circumstances where sub-clause 10.6.4 is used to determine the value of additional or substituted work which 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.

In limited circumstances, following the procedure outlined in section 1.4, named Specialists may be appointed after the Starting Date. An amended form of public works contract will be used for this purpose which will include conditions to permit the administration of a Reserved Sum. In the standard form of contract no such provision is made so that all Reserved Sums must be converted to final prices at the main contract award stage.

The procedures outlined in this part of the guidance concentrate on the procurement of specialists under design and build (Contractor designed) forms of public works contracts (PW-CF2 and PW-CF4). The named Specialists procurement outlined in Part 1 permits the contracting authority to exercise the maximum level of control in the selection of a specialist without compromising the single point of responsibility on Employer designed contracts.

On a Contractor designed project the direct tendering of specialists should only arise in the situation outlined below because the imposition of a specialist constrains the Contractor's capacity to manage the risk undertaken in such contracts.

Named Specialists may be novated under Contractor designed contracts but this should only arise where there is a need for specialist input prior to the appointment of the main contractor.

The contracting authority's involvement in the procurement of specialists for Contractor designed forms of contracts is therefore limited to:

- the setting of appropriate pre-qualification criteria and associated standards which must be met by those specialists who are proposed by the main contract applicants/tenderers; or
- the pre-qualification of panels from which the main contract tenderers may either select a specialist or propose an alternative of equivalent standing; or
- the appointment of a specialist (by the contracting authority) whose input is required in advance of the appointment of the main contractor – that specialist may then be novated to the main contractor, where necessary. The procedures relating to Novated Specialists outlined in Part 1 of this guidance should be followed in this case.

This section of the guidance (Part 2) concerns itself with the first two categories of specialists.

Where a contracting authority wishes to have the level of control over the appointment of specialists as set out in Part 1 of this guidance then an Employer designed contract should be used.

The circumstances where a contracting authority may wish to establish requirements for specialists on Contractor designed contracts are set out below. Specialists in the context of design and build contracts include both specialist service providers and specialist works contractors.

It is vital that a contractor who is being considered for the award of a design and build contract can demonstrate their ability to a) engage the necessary design expertise and, b) manage the design stage of a project's development in addition to the standard competencies expected of a main contractor in the execution of the construction stage of the project.

It is not always the case that a contractor has to engage service providers to carry out the design, some may be in a position to provide the design service in-house i.e. from professional staff on their payroll.

The contracting authority may also require key specialist works contractors who will be engaged by the contractor to achieve certain minimum standards.

It is also incumbent on the contracting authority to ensure that certain minimum standards are achieved to ensure compliance with its duty as a client under the Safety, Health and Welfare at Work (Construction) Regulations 2013 in the appointment of designers, contractors and project supervisors.

Service providers that may be engaged by the contracting authority to develop the project parameters (or the development of a specimen design) and tender documents for a Contractor designed works contract should be retained by the contracting authority in the capacity of client advisors and, where appropriate, as Employer's Representative.

Part 2

Section 2.3

Section 2.4

Pre-Qualification of Specialists – Design and Build

Contractual Arrangements

Procurement Procedures

2.3 Contractual Arrangements

There are no specific contractual arrangements imposed by the contracting authority to govern the main contractor – specialist engagement where specialists are proposed by the main contractor or are selected from pre-qualified panels established by the contracting authority. Those arrangements are strictly between the successful main contractor and those specialists proposed as part of the procurement process.

Collateral warranties will be required from those specialists appointed by the contractor who are identified by the contracting authority as part of the pre-qualification process and named in the Schedule Part 1F(i).

The Collateral Warranty model form MF 2.3 shall be used for specialist service providers whereas MF 1.12 is used for specialist works contractors.

The form of contract governing the Employer – main contractor engagement (PW-CF2 or PW-CF4) should be disclosed in the contract notice.

2.4 Procurement Procedures

The procurement process will typically focus on the main contractor but the pre-qualification should set minimum standards for the key designers proposed by the contractor, the Project Supervisor for the Construction Stage¹¹ and any category of specialist works contractors identified by the contracting authority.

A restricted procedure is normally used to procure main contractors for Contractor designed contracts because of the cost associated with the tendering process for such contracts but also because of the particular scrutiny required of the designers employed by the Contractor.

Consideration may be given to using an open procedure where a specimen design has been produced for a reasonably straightforward project and where significant documentation is not required as part of the tender response.

Where a panel of specialists works contractors is being established by the contracting authority from which the contractor may choose or propose an alternative then the request to participate stage (pre-qualification and shortlisting) of the restricted procedure is used.

Whether the contractor is to propose specialists for pre-qualification purposes or the contracting authority has put in place panels from which tenderers may select a specialist, the Contract Notice must clearly indicate that the main contract tenderers are tendering for the whole of the works including the specialist works, in a single event in a tender competition.

¹¹ For a Contractor designed project the contracting authority will already have appointed the Project Supervisor for the Design Process (PSDP) in advance of the tender for the main contractor as part of their obligations under the Safety, Health and Welfare at Work (Construction) Regulations 2013.

2.5 Pre-qualification Requirements

The pre-qualification requirements for specialists, whether service providers or works contractors, should be proportionate to the element of the project that they are to undertake.

Guidance on appropriate standards to apply to the different criteria are set out in GN 1.6.3 for service providers and GN 2.3.1.3 for works contractors.

2.5.1 Specialists proposed by the Contractor

The standards required of each specialist should be set out in the appropriate suitability assessment questionnaire. The specialists' SAQs should be included with the documents that make up the requirements for applicants for the main contract in the first stage of a restricted procedure or for tenderers where the open procedure is being used.

The applicants for the main contract tender are responsible for putting together the project team including the specialists that meet the appropriate standards and assembling their responses to the appropriate SAQ. The contracting authority does not communicate with specialists as part of this process.

Specialist Service Providers

A qualitative assessment should normally be undertaken on specialist service providers proposed by the candidate main contractor. Only where the project requirements are reasonably straightforward, should the contracting authority adopt a pass/fail assessment. In either case a QC1 form should be completed by the contracting authority and included with the main contractor's SAQ¹².

Candidates/tenderers may only propose one specialist for each specialist service category and each of the specialist's proposed must pass the minimum standards set before the main contractor's application is assessed. Should a specialist fail to meet the minimum standards required the main contractor's application/tender is excluded.

A qualitative or pass/fail only assessment may be carried out on the specialist service provider proposed by a main contractor applicant in the restricted procedure. Where the open procedure is used for the main contractor procurement a pass/fail only assessment must be undertaken on their proposed specialists.

Where a qualitative assessment is used for specialists, the score achieved by a specialist proposed by the candidate must be incorporated into the candidate main contractor's overall score by means that are set out in the QW1.

Continued on next page

¹² In a restricted procedure where a pass/fail only assessment is carried out on the main contract candidates then a random selection process must be carried out to select the shortlist – see guidance note GN 2.3.1.1. If a pass/fail only assessment is carried out on the main contract candidates then it must also apply to the specialist candidates. A pass/fail only assessment of specialists may be undertaken where a qualitative assessment is carried out on main contract candidates.

2.5.1 Specialists proposed by the Contractor
(continued)*Specialist Works Contractors*

A pass/fail assessment will normally be used where the pre-qualification of specialist works contractors is deemed necessary by a contracting authority. A qualitative assessment may be adopted where the contracting authority wishes to ensure that the quality of particular specialists proposed by the candidate contractors is of the highest standard. In either case a QW3 form should be completed by the contracting authority and included with the main contractor's SAQ.

In the restricted procedure candidates may propose up to three specialists for each specialist works category where a pass/fail assessment is being undertaken on the specialists. At least one of the specialists proposed must pass the minimum standards before the main contractor's application is assessed. Should all specialists proposed under each category fail to meet the minimum standards required, the main contractor's application will be excluded.

The shortlisted main contractor candidates must be informed (in the Invitation to Tender letter) which of their proposed specialists have passed in the case of a pass/fail assessment of those specialists.

Where a qualitative assessment is being carried out on the specialist then only one specialist may be proposed for each category and the score achieved by the specialist proposed by the candidate must be incorporated into the candidate main contractor's overall score by means that are set out in the QW1.

Where an open procedure is being used then tenderers may only propose one specialist works contractor in response to each specialist works category identified in the Form of Tender and Schedule Part 2E. The main contractor and their proposed specialists may only be assessed using a pass/fail assessment in an open procedure.

2.5.2 Specialist panels established by the Contracting Authority

Panels of specialist works contractors may be established by the contracting authority on a project-specific basis. The contract notice for the project must indicate that the contracting authority is putting in place a panel of specialists from which the tendering contractors may choose or suggest an alternative of equivalent standing.

Panels of specialist works contractors may be established and the request to participate stage of the restricted procedure should be used (pre-qualification and shortlisting) for this purpose.

There are a number of options open to the contracting authority where panels of works specialists are to be established which are listed below. Options 1 and 2 below do not require the specialist pre-qualification process to be advertised on eTenders/OJEU however the principles of transparency, non-discrimination and proportionality should be observed in establishing such panels at all times.

1. Panels of specialists are named by the Employer in the Works Requirements for projects under the exemption rule of the EU Directive 2004/18/EC¹³ and SI N° 329 of 2006.
2. Panels of specialists are named by the Employer in the Works Requirements for projects with a value below the EU threshold.
3. Panels of specialists (other than those in options 1 and 2) are named by the Employer in the Works Requirements for projects with a value above the EC threshold.

In all of the options listed above the tender stage for the specialist elements is not conducted by the contracting authority and main contract tenderers must be given the opportunity to provide an alternative to those listed on the panels.

The steps required for the establishment of the panel set out in option 3 are reasonably detailed and the process is summarised in Appendix III to this guidance.

¹³ The exemption rules being referred to here relate to Article 9(5) (b) Directive 2004/18/EC (last paragraph) which deals with exemption under the aggregation rules – i.e., in respect of lots, “the estimated value of which, net of VAT, is less than EUR 80 000, provided that the aggregate cost of those lots does not exceed 20% of the aggregate value of the lots as a whole”.

2.6 Tender Documents

The extent of documentation describing a design and build project can vary from broad requirements up to and including specimen designs for which statutory approval may have been obtained.

Whilst individual specialist packages are unlikely to be identified in the tender documents, interested parties should be able to get a clear understanding of the contracting authority's requirements so that tenderers can assemble a capable team.

The contracting authority should only specify those categories of specialists in the Form of Tender and Schedule, Part 2E where they have set down pre-qualification requirements for those specialist categories.

Copies of Collateral Warranties MF 2.3 or MF 1.12 as appropriate (completed to the extent possible at the tender stage) should be included in the Works Requirements.

2.6.1 Specialists proposed by the Contractor*Restricted Procedure*

Where a qualitative assessment of specialists is undertaken as part of the main contract tenderer's request to participate then the highest-scoring specialist proposed by the tenderer under each specialist category must be named in the Form of Tender and Schedule Part 2E.

Where a pass/fail assessment is carried out then the tenderer may name any of those specialists who pre-qualified.

Section 5.11 of ITTW 1a sets out the rules in relation to substitution of a specialist at tender stage and up to the award of the main contract where those specialists have prequalified as part of the request to participate stage.

Open Procedure

Section 5.10 of ITTW 2a sets out the rules in relation to substitution of a specialist up to the award of the main contract.

2.6.2 Works Specialist panels established by the Contracting Authority

The names and contact details of all those works specialists included on the panels established by the contracting authority should be provided under each of the specialist categories and included in the Works Requirements.

The pre-qualification requirements for each category of specialist should also be provided as part of the Works Requirements so that the tenderers can propose an alternative should they wish. Where a qualitative assessment was carried out to establish the panel, the scores of the lowest-scoring candidate admitted to the panel for each category of specialist work should be included in the Works Requirements.

The procedures for proposing an alternative are set out in the Instruction to Tenderers. Where an alternative specialist is proposed by a tenderer the contracting authority undertakes to provide a response as to whether the alternative has qualified before the last date for the submission of tenders. Should the alternative fail to meet the standards required the tenderer may include one of the panel specialists in the Schedule Part 2E providing they meet the requirements set out in the Instruction to Tenderers.

Part 2

Section 2.7

Section 2.8

Pre-Qualification of Specialists – Design and Build

Tender Submissions

Tender Evaluation

2.7 Tender Submissions

Tenderers are permitted to name one pre-qualified specialist in response to each specialist category required by the contracting authority in the Form of Tender and Schedule, Part 2E.

Tenderers must provide a letter from each of the specialists named in the Form of Tender and Schedule, Part 2E stating that they are prepared to enter a contract with the tenderer should they be identified as the successful tenderer.

Particular requirement associated with the Restricted Procedure

Where those specialists were qualitatively assessed, tenderers must name the highest-scoring specialist in each specialist category.

2.8 Tender Evaluation

The following circumstances set out where a tender may be rejected for non-compliance with the specialist requirements¹⁴ of the Instruction to Tenderers:

- Where the tenderer names a specialist in the Form of Tender and Schedule, Part 2E other than
 - the specialist who scored highest in the relevant specialist category at the request to participate stage of a restricted procedure, or;
 - in the circumstances of a pass/fail assessment - the specialist who has pre-qualified in the relevant specialist category, or;
 - one who has been chosen from a panel established by the contracting authority for the project.
 - The tenderer fails to provide a letter from each of the specialists named in the Form of Tender and Schedule, Part 2E stating that they are prepared to enter a contract with the tenderer should the tenderer be identified as the successful tenderer.
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¹⁴ Compliance with other requirements of the ITT is not considered in this guidance

Part 2 **Pre-Qualification of Specialists – Design and Build**

Section 2.9 Pre-Contract

Section 2.10 Contract Award

Section 2.11 Under Contract

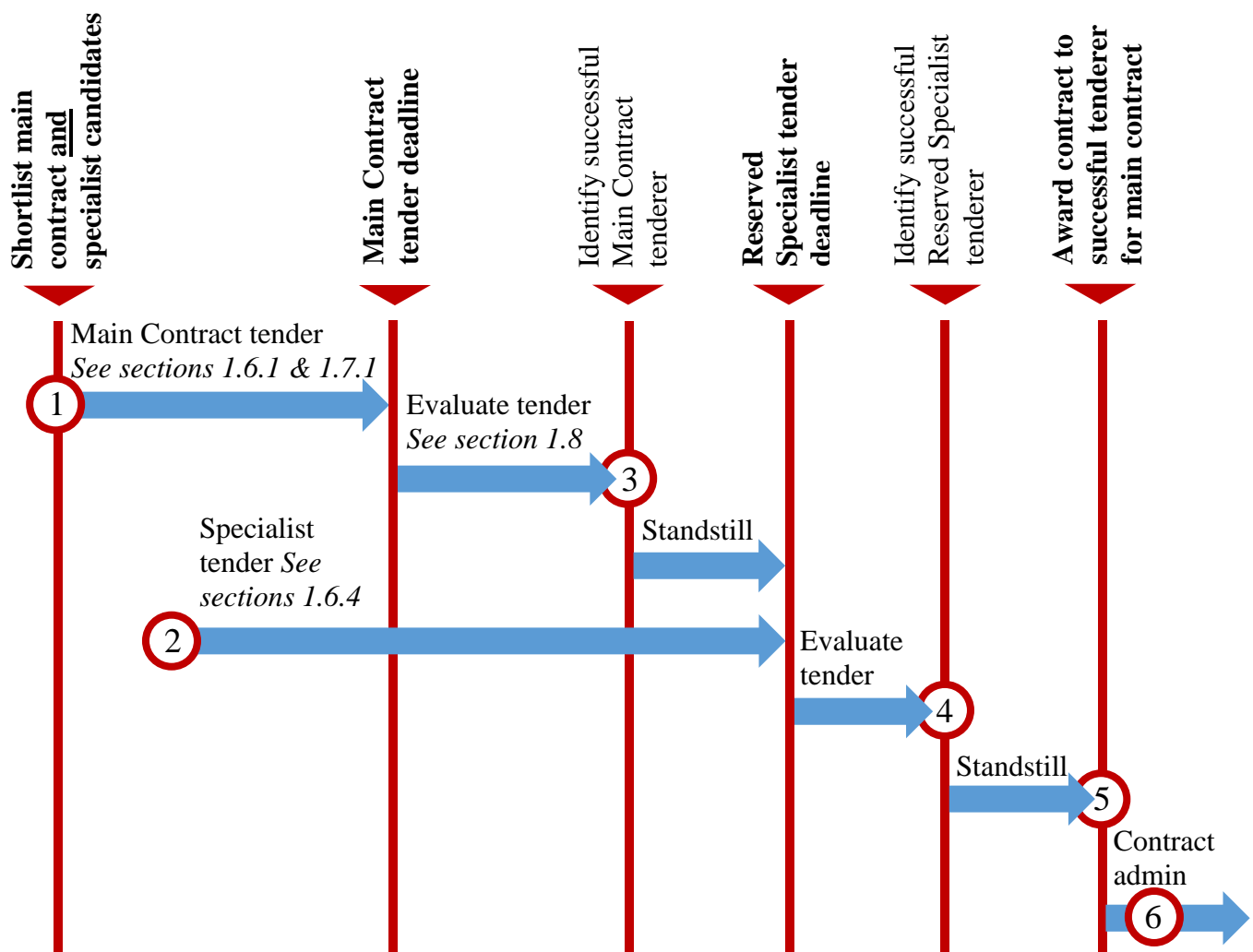
2.9 Pre-Contract There are no specific requirements relating to pre-qualified specialists prior to the award of a design and build contract other than those that may be set out by the contracting authority.

Only in the limited circumstances set out in the Instruction to Tenderers may the successful tenderer be permitted to propose a substitute specialist. The substitute proposed by the successful tenderer must meet the pre-qualification requirements for the specialist set out as part of the main contractor's pre-qualification requirements or in the Works Requirements.

There can be no change to the successful tenderer's tender sum should the substitute specialist be accepted by the contracting authority.

2.10 Contract Award The notifications to the successful and unsuccessful tenderers should be sent out at the same time. There is no requirement to notify any specialists who may have formed part of the tenderers' submissions.

2.11 Under Contract The conditions of contract govern the extent of the Employer's and Contractor's obligations. The obligations set out in Part 1 of this guidance to specialists named by the Employer or named Specialists do not extend to those specialists who are engaged by the Contractor following the procurement procedures described in this part of the guidance other than where a specialist appointed by the contracting authority is novated to the main contractor.



Notes to programme above

1. Complete shortlist of main contract and specialist candidates before commencing tender stage. Notify unsuccessful candidates at the same time as inviting tenders.
2. Provide the main contract tenderers with a copy of the completed Appendix, part 1 associated with the specialist works contract.
3. Advise successful and unsuccessful main contract tenderers using the appropriate notification letters – *see MF 1.2*;
At the same time provide specialist tenderers with:
 - The identity of the successful main contract tenderer (provided in the revised Form of Tender and Schedule for the Reserved Specialist works); and,
 - A copy of the successful main contract tenderer’s programme.
 - Specialist tender deadline to be at least 14 calendar days after these two pieces of information are issued.
4. Advise successful and unsuccessful specialist tenderers using the appropriate notification letters – *see MF 1.2*. Invite all successful tenderers (main contract & specialists) to pre-contract meeting as set out in section 1.9.
5. Once the requirements set out in *section 1.10* have been met, send Letter of Acceptance to the successful tenderer for the main contract (unless proceedings have been initiated). Include any post-tender clarifications arising out of pre-contract meeting with the Letter of Acceptance.
6. Under sub-clause 5.4.3 (ii), the Contractor is required to appoint any Reserved Specialists prior to the Starting Date.

Note

Please read Part 1 of this guidance note for full details of the process.

**Specialist Works
- Procurement**

1. The restricted procedure must be used in the procurement of Reserved Specialists. Use SAQ form QW4 for the pre-qualification stage. FTS 13 and ITTW 8 are used for the tender stage.
2. The 'NN' sub-contract form issued by the Construction Industry Federation must be used in the procurement of Reserved Specialists.
3. Publish a contract notice for the project seeking expressions of interest setting out that the main contract and Reserved Specialist works subcontracts as lots. Reserved Specialist subcontracts will be awarded by the successful main contract tenderer following a competition administered by the Contracting Authority.
4. Evaluate the submissions, validate evidence, shortlist and prepare to invite tenders.
5. Complete the tender documentation including the Works Requirements. Information that should be provided to Reserved Specialist Candidates in addition to that normally provided is set out at section 1.6.4 of this guidance note.
6. The Reserved Specialist tenders should be undertaken in parallel with that of the main contract tender.
7. The return date for the Reserved Specialist tenders should be 14 days after the identity of the successful main contract tenderer and their programme is provided by the Contracting Authority to all Reserved Specialist candidates.
8. Evaluate the Reserved Specialist tenders in accordance with the award criteria set out in the Instruction to Tenderers.
9. Identify the successful Reserved Specialist tenderer for each Reserved Specialist works category and retain a copy of the Form of Tender and Schedule of the successful tenderer for the Reserved Specialist works for use in accordance with sub-clause 10.6.4.

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Summary (continued)

**Specialist Works
– Procurement
(continued)**

10. Send out the notification letters to the successful and unsuccessful Reserved Specialist tenderers.
 11. Invite the successful tenderers for the main contract and the Reserved Specialist works to a pre-contract meeting as set out in section 1.9 of this guidance note.
 12. After the meeting seek a letter from the successful tenderer for each Reserved Specialist works category confirming their acceptance of the successful main contract tenderer's programme and their willingness to enter a sub-contract with the successful main contract tenderer.
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**Main Contract
Works –
Procurement**

1. The restricted procedure must be used in the procurement of the main contractor where Reserved Specialists are to be appointed. Use SAQ form QW1 for the pre-qualification stage and ITTW 1 for the tender stage.
 2. The main contract for must be either PW-CF1, PW-CF3 or PW-CF5 and the appropriate Form of Tender and Schedule for the selected form of contract should be used.
 3. Publish a contract notice for the project seeking expressions of interest setting out that the main contract and Reserved Specialist works subcontracts as lots. Reserved Specialist subcontracts will be awarded by the successful main contract tenderer following a competition administered by the Contracting Authority.
 4. Evaluate the submissions, validate evidence, shortlist and prepare to invite tenders.
 5. Complete the tender documentation including the Works Requirements. Information that should be provided to main contract candidates in addition to that normally provided is set out at section 1.6.2 of this guidance note.
 6. The main contract tender should be undertaken in parallel with that of the Reserved Specialist tenders. The return date for main contract tenders must be in advance of the Reserved Specialist tenders.
 7. Evaluate the main contract tenders in accordance with the award criteria set out in the Instruction to Tenderers.
 8. Identify the successful main contract tenderer and notify the successful and unsuccessful tenderers.
 9. Notify all Reserved Specialist candidates of the identity of the successful main contract tenderer and provide a copy of their programme.
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Main Contract Works – Procurement
(continued)

10. Upon the identification of the successful tenderer for each Reserved Specialist works category invite the successful tenderers for the main contract and the Reserved Specialist works to a pre-contract meeting as set out in section 1.9 of this guidance note.
11. Adjust the successful main contract tenderer's tender sum in accordance with the ITT to reflect the successful tenderer for each Reserved Specialist works category and tenderer profit percentage.
12. After the meeting seek a letter from the successful main contract tenderer confirming their willingness to award a sub-contract to each category of Reserved Specialist.
13. Name the successful tenderer for each Reserved Specialist works category in the Form of Tender and Schedule, part 3B.
14. Transfer the percentage figure for profit included in the Pricing Document by the successful tenderer for the main contract for each category of named Specialist work to the Form of Tender and Schedule, part 3B.
15. Issue the Letter of Acceptance in accordance with section 1.10 of this guidance note attaching any necessary clarifications.

Contract Administration

Upon the award of the main contract the Employer:

- At each staged interim payment to the main contractor issues the notification to each named Specialist of the amount included in the payment certificate for them. (Model Form MF 1.20).
- Where sub-clause 10.6.4 is used to determine the value of additional or substituted works that include named Specialist works, the tendered hourly rates of the relevant named Specialist are used to determine the value of the named Specialist works.

Upon the award of the main contract the Contractor:

- Appoints any Reserved Specialists prior to the Starting Date in accordance with sub-clause 5.4.3 (ii).

Note

Please read Part 1 of this guidance note for full details of the process.

**Specialist Works
- Procurement**

1. The contracting authority identifies the procurement procedure to be used for the specialist – the open or restricted procedure should normally be used. The open procedure must be used where the anticipated value of the contract for the specialist works is less than €250,000. The open or restricted procedure may be used where the value of the contract exceeds €250,000.
2. The contracting authority decides which form of contract is to be awarded to the specialist based on CWMF guidance. Typically these will either be PW-CF1 or PW-CF5 for building works or PW-CF3 or PW-CF5 for civil engineering works. Where the specialist is engaged to design and build PW-CF2 (for building works) or PW-CF4 (for civil engineering works) should be used.
3. If the restricted procedure is used publish the contract notice for the specialist works seeking expressions of interest. In addition to the information that would normally be provided to applicants the notice should indicate the following:
 - The intention to novate any contract that may be awarded at the conclusion of the specialist tender process. The contract will be novated to a main contractor who will be appointed following a separate competition;
 - If a performance bond is required of the specialist the contract notice should specify that the benefit of the bond will be assigned to the main contractor upon novation of the specialist.
4. Evaluate the submissions, validate evidence, shortlist and prepare to invite tenders.
5. Complete the tender documentation including the Works Requirements. In addition to the information that would normally be provided to tenderers, the **Works Requirements** should include:
 - The contract period for the specialist works;
 - A copy of the novation agreements (MF1.8 and MF1.9);
 - A copy of the collateral warranty (model form MF 1.12) completed as necessary by the contracting authority;

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Summary (continued)

**Specialist Works
– Procurement
(continued)**

- Where the specialist is to undertake design work or work that may not be measured and certified in the normal fashion it is important to include details for payment for such work.
- Background information** supplied with the specialist tender should include:
- An indication of the scale of the main contract works – (general arrangement drawings if available);
 - The contract period for the main contract works;
 - The anticipated period between the commencement of the novated specialist works and the commencement of the main contract works.
6. If using the open procedure publish the contract notice – the same additional information as specified in 3 above should be provided in the notice.
 7. Issue the Suitability Assessment Questionnaire (SAQ) and tender documents (as per 5 above) to the applicants for the relevant specialist works package.
 8. Evaluate the tenders in accordance with the award criteria. Identify the successful tenderer and award the contract to the successful tenderer having undertaken the necessary notifications and observed, where applicable, any standstill period.
-

**Main Contract
Works -
Procurement**

1. The contracting authority identifies the procurement procedure to be used – the open or restricted procedure should normally be used. The open procedure must be used where the anticipated value of the contract for the specialist works is less than €250,000. The open or restricted procedure may be used where the value of the contract exceeds €250,000.
 2. The contracting authority decides on the appropriate form of contract to be awarded to the main contractor based on CWMF guidance.
 3. If the restricted procedure is used publish the contract notice for the main contractor seeking expressions of interest. In addition to the information that would normally be provided to applicants the notice should indicate the following:
 - That specialists who have been appointed by the contracting authority will be novated to the successful tenderer for the main contract;
 - Where a performance bond is required of the specialist to be novated that the benefit of the bond will be assigned to the main contractor upon novation of the specialist.
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Appendix II The Appointment Process for Novated Specialists

Summary (continued)

Main Contract Works – Procurement (continued)

4. The Suitability Assessment Questionnaire (SAQ) under section 1.8 should indicate the percentage of the contract value that will be undertaken by the specialist(s) to be novated.
 5. Evaluate the submissions, validate evidence, shortlist and prepare to invite tenders.
 6. Complete the tender documentation including the Works Requirements. In addition to the information that would normally be provided to candidates, the **Works Requirements** should include:
 - A copy of the novation agreements (MF1.8 and MF1.9);
 - The identity of the specialist works contractor(s) to be novated;
 - The Works Requirements for the specialist works
 - An unpriced copy of the specialist Pricing Document(s);
 - The SAQ(s) for the specialist(s) pre-qualification;
 - The programme for the novated specialist works.
 7. If using the open procedure publish the contract notice – the same additional information as specified in 3 above should be provided in the notice.
 8. Issue the Suitability Assessment Questionnaire (SAQ) and tender documents (as per 4 & 6 above) to the applicants for the relevant specialist works package.
 9. Evaluate the tenders in accordance with the award criteria. Identify the successful tenderer and award the contract to the successful tenderer having undertaken the necessary notifications and observed, where applicable, any standstill period.
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Contract Administration

Upon the award of the main contract the Employer:

- Oversees the execution of model form MF1.9 (or MF1.8 where the contract is being novated to a joint venture company) by the main contractor and the novated specialist;
 - Writes to the surety who has provided the performance bond to the specialist to assign the benefit of the bond to the main contractor.
 - At each staged interim payment to the main contractor issues the notification to each named Specialist of the amount included in the payment certificate for them. (Model Form MF 1.20)
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Appendix III Specialists and Contractor Designed Contracts

Summary

Note Please read Part 2 of this guidance note for full details of the process.

Introduction The contracting authority's involvement in the procurement of specialists for Contractor designed forms of public works contracts is limited to the following:

1. the setting of appropriate pre-qualification criteria and associated standards which must be met by those specialists who are proposed by the main contract applicants/tenderers; or
2. the pre-qualification of panels from which the main contract tenderers may either select a specialist or propose an alternative of equivalent standing; or
3. the appointment of a specialist (by the contracting authority) whose input is required in advance of the appointment of the main contractor – that specialist may then be novated to the main contractor, where necessary.

This section deals primarily with options 1 and 2 above, should the project circumstances require option 3 above then the procedures relating to Novated Specialists outlined in Part 1 and summarised in Appendix II of this guidance note should be followed.

A restricted procedure is normally used with design and build contracts because of the additional tendering costs. The procedures summarised in this guidance assumes the use of the restricted procedure.¹⁵

A contracting authority may opt to deploy each of the three options for different categories of specialist in any one tender but may use only one option for each category. In other words should the contracting authority opt to put in place a panel of specialists for mechanical works they may not require the applicants to propose specialist mechanical contractors as part of the pre-qualification process.

Option 1 - Specialists proposed by the main contract applicant.

1. The pre-qualification process is focussed on the main contractor and those specialists (either service providers or works contractors) whom the applicant/tenderer proposes to meet the standards identified by the contracting authority in the Suitability Assessment Questionnaire (SAQ).

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¹⁵ Where a specimen design has been prepared for a reasonably straightforward project and the extent of documentation required as part of the tender submission does not greatly exceed that for an Employer designed tender then consideration may be given to using the open procedure.

Appendix III Specialists and Contractor Designed Contracts

Summary (*continued*)

Option 1 - Specialists proposed by the main contract applicant (*continued*)

2. The SAQ may be reasonably extensive and include several supplements associated with the different categories of specialists set out by the contracting authority.
3. QW1 (including its H&S supplements) is the primary SAQ and the extent of specialist pre-qualification is identified in section 1.6 of QW1. Nonetheless specialists proposed by the applicant have a significant bearing on the outcome of their pre-qualification as set out below.
4. Where specialist service providers are to be proposed by the applicant then form QC1 must be completed by the contracting authority setting the minimum standards required for each category of service provider. Only one specialist service provider may be proposed for each category of specialist service.
5. Where specialist works contractors are to be proposed by the applicant then form QW3 must be completed by the contracting authority setting the minimum standards required for each category of specialist works. A minimum of one specialist must be proposed by the applicant and the contracting authority may permit up to four specialists for each category of specialist works.
6. A qualitative assessment may be undertaken for both specialist service providers and specialist works contractors, however where a qualitative assessment is undertaken the scores obtained by the specialists must be incorporated into the overall score achieved by the applicant main contractor.
7. Each specialist service provider proposed by the applicant for each category of specialist service must pass the minimum standards set in the appropriate QC1 form or the applicant is excluded.
8. At least one of the specialist works contractors proposed by the applicant for each category of specialist works must pass the minimum standards set in the appropriate QW3 or the applicant is excluded.
9. Publish the contract notice setting out the requirement for applicants to propose specialists as required.
10. Evaluate the submissions, validate the evidence, shortlist and prepare to invite tenders.
11. Once the final shortlist of candidates who are to be invited to tender is completed the contracting authority notifies the unsuccessful candidates and issues the invitation to tender letters to the shortlisted candidates.
12. Where a qualitative assessment was carried out on the specialist works contractors, the shortlisted candidates must be informed of the name of the highest scoring specialist works contractor.
13. Where a pass/fail assessment was carried out on the specialist works contractors, the shortlisted candidates must be informed of the names of those specialist works contractors who have passed the minimum standards under each category.

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Appendix III Specialists and Contractor Designed Contracts

Summary (continued)

Option 1 - Specialists proposed by the main contract applicant (continued)

14. Issue the invitation to tender, the Instructions to Tenderer (ITTW 1a), Form of Tender and Schedule (FTS2 or FTS4) and the necessary documentation to describe the project. Ensure that part F(i) of the Tender and Schedule is completed to indicate the category of specialists from which Collateral Warranties are required. In a design and build contract this would typically include members of the design team and any works specialists with a design input.
 15. Assess the tenders for compliance with ITTW 1a. Tenderers must name one of the specialists that have prequalified in the Form of Tender and Schedule, part 2E. In the case of 11 above tenderers must name the highest scoring specialist works contract that prequalified for each category of specialist works.¹⁶
 16. Evaluate the tenders in accordance with the award criteria. Identify the successful tenderer and award the contract to the successful tenderer having undertaken the necessary notifications and observed, where applicable, any standstill period.
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Option 2 –Panels of Specialists established by the Contracting Authority

Panels may be established by the contracting authority from which a tenderer may choose or propose an alternative. The panels are established on a project specific basis using the expressions of interest stage of the restricted procedure. The shortlist of specialists established under each category of specialist becomes the panel which lasts only for the duration of the procurement of the main contractor.

The following steps should be followed:

The Contracting Authority must...

1. Publish a Contract Notice for the main contract works inviting expressions of interest from applicants wishing to tender for the complete works including all specialist works.
 2. State in the Contract Notice that panel specialists will be named in tender documents issued to those applicants that are invited to tender.
 3. Publish a second non-mandatory Contract Notice for the same specialist works referred to at step 1 above, inviting expressions of interest from applicants wishing to be considered for inclusion on a panel and to be named in the main contract tender documents. It should be indicated in the Notice that Specialists who meet the minimum standard and are short-listed and included in the main works tender documents will not necessarily be selected by the successful main contractor who may select someone else for the specialist works, subject to the contracting authority's approval.
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¹⁶ Subject to any substitutions that may be permitted in ITTW 1a.

Appendix III Specialists and Contractor Designed Contracts

Summary (continued)

Option 2 –Panels of Specialists established by the Contracting Authority (continued)

4. State in the non-mandatory Contract Notice at step 3 above that the purpose of the notice is to create a panel of suitable specialist firms that will be included in the main contract tender documents. The applicants should be told that this procedure will end once the panel has been established.
5. Short-list applicants responding to Contract Notices at steps 1 and 3 above by marking suitability assessment material of applicants.
6. Include as part of the main contract tender documents the suitability assessment questionnaire and weightings (where appropriate) used by the contracting authority to short-list specialists at step 5 above.
7. State in Appendix 1 of ITTW 1a that tenderers must submit the names of their specialists in part 2E of the Form of Tender and Schedule. They should also be informed that they must choose from the panel included in the Works Requirements or name alternatives of their choice which have been submitted in accordance with section 5.11 of the ITTW 1a.
8. State in the main contract tender documents that any tender submission that does not include the name of a specialist for specialist work will be treated as a non-compliant tender and will be rejected.
9. Invite main contractors to tender for the complete works including specialist works.

The main contract tenderers must....

10. Tender for the complete project including the specialists' work.
11. Choose a specialist from the panels of named specialists in the Works Requirements or
12. Propose another of their choice in accordance with the rules set out in section 5.11 of ITTW 1a. The SAQ referenced in step 6 above must be completed and submitted within the period stipulated prior to the submission of tenders in the Particulars to the ITT.
13. Name in part 2E of the Form of Tender and Schedule those specialists that will be used to do the specialist work should their tender be successful.
14. Include letters from all those specialists named in part 2E of the Form of Tender and Schedule that they are willing to enter a contract with the tenderer should they be successful.
15. Submit their tender in accordance with the requirements of the Particulars to the ITT.

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Appendix III Specialists and Contractor Designed Contracts

Summary (continued)

Option 2 –Panels of Specialists established by the Contracting Authority (continued)

The Specialist Applicants must...

16. In response to the Contract Notice at step 3 above submit the completed questionnaire together with appropriate supporting material.
17. Be willing if chosen to be a domestic subcontractor to the main contractor.
18. Accept the possibility that even if included on a panel in the main contract tender documents, the successful main contractor may select, if approved, someone else not on that panel.

The Contracting Authority must....

19. If candidate submits an alternative specialist, including the SAQ referred to in 6 above completed with the details of the alternative specialist, prior to the date stated in the Particulars to the ITTW 1a the contracting authority will evaluate the submission and advise the candidate whether the alternative specialist meets the minimum requirements prior to the date for the submission of tenders.
 20. Evaluate the tenders in accordance with the award criteria. Identify the successful tenderer and award the contract to the successful tenderer having undertaken the necessary notifications and observed, where applicable, any standstill period.
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Appendix IV Conditions of Sub-Contract (NN)

Published by the Construction Industry Federation

Please click on the link below to view the Conditions of Sub-Contract (NN)

<http://cif.ie/images/pdfs/NNExplanatoryNote.pdf>
