

GUIDANCE NOTE 1.1.1

Building Control (Amendment) Regulations 2014 Procurement Implications for Contracting Authorities

Office of Government Procurement

Building Control (Amendment) Regulations 2014
Procurement Implications for Contracting Authorities

Document Reference GN 1.1.1 v 1.0

6 March 2014

© 2014 Department of Public Expenditure and Reform

Published by: Office of Government Procurement
Department of Public Expenditure and Reform
Government Buildings
Upper Merrion Street
Dublin 2

The document is not to be taken as a legal interpretation of the provisions governing public procurement. All parties must rely exclusively on their own skills and judgment or upon those of their advisors when making use of this document. The Government Construction Contracts Committee (GCCC), the Office of Government Procurement (OGP) and the Department of Public Expenditure and Reform and any other contributor to this guidance note do not assume any liability to anyone for any loss or damage caused by any error or omission, whether such error or omission is the result of negligence or any other cause. Any and all such liability is disclaimed.

Contents

| | |
|--|-----------|
| 1.0 Introduction | 1 |
| 1.1 Purpose | 1 |
| 1.2 Terminology | 1 |
| 2.0 Service Contracts | 3 |
| 2.1 Design Certifier | 4 |
| 2.1.1 Necessary Qualifications | 4 |
| 2.1.2 Appointment of the Design Certifier for works designed by the Employer | 4 |
| 2.1.3 Scope of Services for Design Certifier | 4 |
| 2.1.4 Contractor-Designed Contracts | 5 |
| 2.1.5 Design Certifier, Assigned Certifier and Employer's Representative | 5 |
| 2.1.6 Ancillary Design Certificates – Design Team | 6 |
| 2.1.7 Ancillary Design Certificates – Specialist Works Contractors | 7 |
| 2.1.8 Existing Design Team Contracts [appointed prior to 1 March 2014] | 7 |
| 2.2 Assigned Certifier | 8 |
| 2.2.1 Necessary Qualifications | 8 |
| 2.2.2 Appointment of the Assigned Certifier | 8 |
| 2.2.3 Scope of Services of the Assigned Certifier | 9 |
| 2.2.4 Design Certifier, Assigned Certifier and Employer's Representative | 10 |
| 2.2.5 Ancillary Completion Certificates – Design Team | 11 |
| 2.2.6 Ancillary Completion Certificates – Specialist Works Contractors | 11 |
| 2.2.7 Professional Indemnity Insurance | 12 |
| 2.2.8 Existing Design Team Contracts [appointed prior to 1 March 2014] | 12 |
| 3.0 Works Contractors | 14 |
| 3.1 Appointment of Builder | 14 |
| 3.2 Professional Indemnity Insurance | 14 |
| 3.3 Public works contracts | 15 |
| 4.0 Inspection Plan | 16 |
| 4.1 Preparation of Inspection Plan | 16 |
| 4.2 Purpose of Inspection Plan | 16 |
| 4.3 Inspection Notification Framework | 16 |
| 5.0 Construction Industry Register Ireland (CIRI) | 17 |
| 5.1 Notice to Contracting Authorities | 17 |
| Appendices | 18 |
| Appendix I Amendments to the Public Works Contracts | 18 |

1.0 Introduction

1.1 Purpose

The purpose of this guidance is to set out the steps that contracting authorities should take to implement the Building Control (Amendment) Regulations 2014 (the Regulations) having regard to the Capital Works Management Framework. The Regulations will apply to construction projects to which Part III of the Principal Building Regulations¹ applies where the Commencement Notice is lodged with the relevant Building Control Authority after 1 March 2014.

This note does not purport to be a legal interpretation of the Regulations. It concentrates on the procurement of service providers and works contractors to assist contracting authorities to comply with the Regulations and to manage the procurement issues that will arise upon their introduction. The Regulations impact on both service providers and works contractors and both are dealt with separately in this note.

The commencement of the Regulations will have implications on existing service and works contracts where the construction stage is not due to commence until after 1 March 2014. This guidance is structured to deal with both types of contracts under different scenarios.

1.2 Terminology

The following definitions may be of assistance to contracting authorities when considering the terms used in the Regulations and those referred to in the procurement of public works. Procurement terms are used in preference to those used in the Regulations unless the term is particular to the provisions of the Regulations or the term used in the Regulations is more appropriate in the context.

Building Designer – The term *building designer* is used in the Regulations and they are responsible for signing the **Design Certificate** which must be submitted with the **Form of Commencement Notice**. To avoid confusion with other building designers, this role will be referred to as the **Design Certifier** in this guidance.

The **Design Certifier** must be appointed by the building owner (usually the contracting authority in a public works project). For the majority of projects the **Design Certifier** will be the design team leader – see section 2.1.2 of this guidance.

Continued on next page

¹ The Building Control Regulations 1997 – 2014 as amended.

1.0 Introduction (continued)

1.2 Terminology (continued)

Building Designer (continued) – In a Contractor-Designed project utilising PW-CF2 – the **Contractor** is the [building]² designer and will therefore issue the *Design Certificate* for the building. The *Design Certifier* may be an individual or a body corporate.

Design Certificate – Also known as the *Form of Certificate of Compliance (Design)* it is available under the Second Schedule to the Regulations. It must be signed by the Design Certifier and submitted with the Commencement Notice.

Commencement Notice – Notice required to be submitted to the Building Control Authority in accordance with the Principal Regulations in the form set out in Schedule 2 to the Regulations.

Building owner – In a public works project the building owner will generally be the **Contracting Authority** (the **Employer** once a public works contract is awarded). Where more than one person might be construed as the *building owner* then the parties should agree who is to be the *building owner* for the purposes of the Regulations. This should be notified through the Building Control Management System (BCMS).

Assigned Certifier – The *Assigned Certifier* must be appointed by the *building owner* (usually the Contracting Authority in a public works project) and their services should normally be retained by the Contracting Authority, regardless of whether it is an Employer or Contractor-Design contract. The *Assigned Certifier* may be an individual or a body corporate.

Builder – the **Contractor** under the public works contracts is the *builder* for the purposes of the Regulations.

Certificate of Compliance on Completion – as published under Schedule 6 of the Regulations, it must be submitted to the **Building Control Authority** (BCA) upon completion of the building or works. Only when *Certificate of Compliance on Completion* for the building or works is entered on the Register may the building or works be opened, occupied or used. The public works contracts will be amended to note that **Substantial Completion** will only be achieved when the building or works appears on the Register maintained under Part IV of the Principal Regulations.

² The Regulations will only apply to civil engineering projects to the extent that Part III of the Building Control Regulations 1997 – 2014 (as amended) applies to the works.

2.0 Service Contracts

There are two new roles identified in the Regulations; Design Certifier and Assigned Certifier. Both roles will be provided by service providers who meet the requirements set out in the Regulations. The following guidance deals with the procurement of both roles separately.

For simplicity, new roles identified under the Regulations such as the Design Certifier and Assigned Certifier are referred to in this guidance as though they are undertaken as a separate service provision. This is not a requirement of the Regulations, indeed the *Code of Practice for Inspecting and Certifying Buildings and Works* published by the Department of Environment, Community and Local Government acknowledges that both roles may be provided by a single service provider. However there are particular circumstances such as Contractor-Designed public works contracts where it would not be appropriate for the Design Certifier to be the same service provider as the Assigned Certifier and this guidance considers further where such roles should and should not be provided by a single service provider.

2.1 Design Certifier

2.1.1 Necessary Qualifications

The Design Certifier must be appropriately qualified³ with experience appropriate to the project in question.

2.1.2 Appointment of the Design Certifier for works designed by the Employer

The Form of Certificate of Compliance (Design) is signed by the person "commissioned by the building owner to design, in conjunction with others, the building or works ... and to certify such design" and here is referred to as the Design Certifier.

For the majority of projects the Design Certifier will be the design team leader. Where it has been decided that the design team leader is to be appointed for his management skills and the majority of the technical competency is to be delivered by another team member, it may be appropriate that the team member required to provide the greatest technical input will be the Design Certifier.

The fee required for the completion of the Design Certificate should be included as part of the overall service fee tendered by the party selected for appointment to the role.

The name of the Design Certifier must be included in the Commencement Notice for the project and the person or entity so named must sign the Design Certificate.

2.1.3 Scope of Services for Design Certifier

They must perform their role as set out in the Code of Practice for Inspecting and Certifying Buildings and Works.

Whilst the Design Certificate is required to be submitted with the Commencement Notice, the role of the Design Certifier does not end at that point as they are responsible for completing the submission of ancillary certification for elements that are not designed at commencement stage⁴.

Continued on next page

³ For the purposes of the Regulations the Design Certifier shall be a person [or practice] named on a register maintained pursuant to Part 3 or Part 5 of the Building Control Act 2007 or Section 7 of the Institution of Civil Engineers of Ireland (Charter Amendment) Act 1969.

⁴ The Capital Works Management Framework requires projects to be comprehensively designed at tender stage however the supplier for elements such as lifts, curtain walling, HVAC equipment, etc. may not be known until post-commencement stage – it is these elements of the design that the Design Certifier will have to address.

2.1 Design Certifier (continued)

2.1.3 Scope of Services for Design Certifier (continued)

The Design Certifier will also have to liaise with the Assigned Certifier during the course of the works and prepare any documentation required to record any changes to the works that may have to be submitted with the Certificate of Compliance on Completion. **The scope of services for Design Certifier should note that the Design Certifier is required to provide a Design Certificate and is required to co-ordinate any ancillary certificates scheduled in the Commencement Notice.**

2.1.4 Contractor-Designed Contracts

In the case of a Contractor-Designed project, the Design Certifier will be the Contractor and is expected to be part of the Contractor's Personnel [either a direct employee or a specialist employed by them]. This person [or entity] shall be nominated by the Contractor in the pre-qualification documentation and listed in the Works Proposals. In this way, the Contractor's proposal for the Design Certifier is assessed by the Employer and the pre-qualification documents for the main contractor appointment must include an appropriate level of scrutiny for any design specialists that an applicant wishes to propose as part of their pre-qualification submission.

In the circumstances where the contracting authority undertakes a specimen design for which statutory approvals such as planning permission may have been obtained, the requirements are the same as those noted above since the requirement for a Design Certificate does not arise until the Commencement Notice is lodged.

It is considered best practice in these circumstances for the design team [and Employer's Representative] engaged by the Contracting Authority to be retained by the Contracting Authority. The Contractor employs the Design Certifier [having been approved by the Employer through the tender process] since the Contractor assumes responsibility for the design.

2.1.5 Design Certifier, Assigned Certifier and Employer's Representative

The Design Certifier may also be the Assigned Certifier and/or the Employer's Representative on an Employer-Designed public works contract. Under Contractor-Designed contracts, the Assigned Certifier and Employer's Representative remain as Employer's Personnel and the roles of Design Certifier, Assigned Certifier and Employer's Representative should not be procured as a single entity since the Design Certifier is to be part of the Contractor's organisation.

Continued on next page

2.1 Design Certifier (continued)

2.1.6 Ancillary Design Certificates – Design Team

It must be noted in the scope of services for each member of the design team [and any sub-consultants that they propose to engage to fulfil their service provision] that they may be required to prepare an ancillary certificate for the elements of work for which they are responsible. Where an ancillary certificate is required, appropriate Professional Indemnity Insurance (PII) should be in place and the pre-qualification criteria should set out the levels required for each of the key members of the design team (guidance note GN 1.6.3 sets out suggested levels).

Where sub-consultants may be proposed by applicants in response to specialist skills requirements, the requirement for collateral warranties to be entered into by the sub-consultants and the conditions attached, including the level of PII required of them, should be included in the pre-qualification documents.

Employer-Designed Contracts

Pre-qualification documentation should set out the requirements for PII for each design team member and collateral warranties⁵ that may be required for any sub-consultants.

The requirement for ancillary certificates and/or collateral warranties must be set out in the scope of services in Schedule B to the Form of Tender and the Conditions of Engagement – the tender documents should make reference to an appropriate template for ancillary certificates.

Contractor-Designed Contracts

The pre-qualification questionnaire and the Works Requirements should set out a general requirement for the provision of all necessary certification for compliance with the Building Regulations.

Collateral warranties should be sought from any sub-contractors [consultants] engaged by the Contractor with a significant design input and this requirement must be set out in both the pre-qualification questionnaire and the Works Requirements.

Continued on next page

⁵ Collateral warranties should include PII requirements for sub-consultants

2.1 Design Certifier (continued)

2.1.7 Ancillary Design Certificates – Specialist Works Contractors

In the Design Certificate the Design Certifier may rely on ancillary design certificates for elements of the building from specialist contractors and/or suppliers such as curtain walling, lifts, heating and ventilation equipment, etc. which require specialist design input. The Design Certifier should satisfy themselves as to the certification provided by such specialists.

The Contractor is responsible for the provision of ancillary design certificates required of Contractor's Personnel. Amendments to the public works contracts currently being undertaken will set out mechanisms to identify such ancillary design certificates but in the interim they must be identified in the Works Requirements.

It is acknowledged that PII is not currently held by many specialist works contractors and, in the interim, contracting authorities are asked to consider Section 4.2 of this guidance note before setting out PII requirements for ancillary design certificates sought from specialist works contractors.

Employer-Designed Contracts

The ancillary design certificates required from the Contractor – whether provided by the Contractor, Specialists, subcontractors, suppliers or designers - must be listed in the pre-qualification questionnaires and the Works Requirements. An acceptable format for the certificates must also be referenced.

Contractor-Designed Contracts

The pre-qualification questionnaires and the Works Requirements should set out a general requirement for the provision of all necessary certification for compliance with the Building Regulations.

2.1.8 Existing Design Team Contracts [appointed prior to 1 March 2014]

In the circumstances where a project for which a design team has been appointed is to commence on site after 1 March 2014 and the foregoing requirements were not set out in the pre-qualification and tender documents for the service providers in question the following must be considered.

Contracting authorities must establish the additional costs to the design team member identified as the Design Certifier and other design team members in submitting the Design Certificate. These will vary depending on the project circumstances with the greatest cost to the service provider likely to arise out of the requirement to co-ordinate the information and any necessary ancillary certificates for the submission of the Design Certificate – the workload and associated costs will be lessened should the online submission of documentation be available. Any increase in the fee must be in accordance with Clause 11 of the Standard Conditions of Engagement.

2.2 Assigned Certifier

2.2.1 Necessary Qualifications

The Assigned Certifier must be appropriately qualified⁶ with experience appropriate to the project in question.

2.2.2 Appointment of the Assigned Certifier

The Assigned Certifier must be appointed by the building owner (usually the contracting authority in a public works project) and their services should normally be retained by the contracting authority, regardless of whether it is an Employer or Contractor-Designed contract.

The Assigned Certifier should be a separate appointment (even where the service provider providing the role may also be engaged in another capacity on the project) and should be pre-qualified on the basis of appropriate qualifications and experience. The Assigned Certifier may also be the Design Certifier and Employer's Representative – see Section 2.2.4.

It is recommended that the appointment should be made at the same time as the design team where the works are designed by the Employer [particularly if the same service provider is required to provide design services or Design and/or Assigned Certifier roles] – a comprehensive brief prepared by the contracting authority will assist in this regard.

The *Notice of Assignment of Assigned Certifier*⁷ must be completed by the contracting authority and submitted with the Commencement Notice.

The *Undertaking by Assigned Certifier*⁸ must be completed by the Assigned Certifier and submitted with the Commencement Notice.

Where the appointment of the Assigned Certifier is made in conjunction with that of either the Employer's Representative and/or Design Certifier then the manner in which the fee is tendered should be in accordance with existing procurement procedures for service providers but consideration should be given to ensuring that the fee for the Assigned Certifier role is separately identified to establish the extent of resource the tenderer proposes to allocate to the role.

Continued on next page

⁶ For the purposes of the Regulations the Assigned Certifier shall be a person [or practice] named on a register maintained pursuant to Part 3 or Part 5 of the Building Control Act 2007 or Section 7 of the Institution of Civil Engineers of Ireland (Charter Amendment) Act 1969.

⁷ Available under the Second Schedule to the Building Control (Amendment) Regulations 2014.

⁸ Available under the Second Schedule to the Building Control (Amendment) Regulations 2014.

2.2 Assigned Certifier (continued)

2.2.3 Scope of Services of the Assigned Certifier

The Assigned Certifier must perform their duties in accordance with the *Code of Practice for Inspecting and Certifying Buildings and Works*.

The Assigned Certifier does not have authority under the Building Control Regulations [or the Public Works Contracts] to issue directions. The scope of services for the Assigned Certifier should require the service provider to liaise directly with the Design Certifier and Employer's Representative (where they are separate service providers) at an early stage when issues of non-compliance (design or construction) are identified.

It is recognised that it may be difficult to set out in particular detail the scope of services of the Assigned Certifier at the stage where the contract for the design team is being tendered since the scope and resource requirements will depend on factors such as the building design, the ground conditions, experience of the design team and contractor, etc. Nonetheless it is recommended that the Assigned Certifier should be appointed at the earliest point and certainly no later than the start of the detailed design stage so that they can properly plan the inspection regime and to otherwise contribute to the risk management of the design.

Services Pre-Commencement

Whilst their input in the early stages is likely to be periodic, their involvement will intensify during the preparation of tender documentation and the scope of services should be drafted to reflect this.

The Assigned Certifier, in consultation with the design team and Design Certifier, must prepare the Inspection Plan and set out any testing requirements. These must be included in the Works Requirements.

The Assigned Certifier must set out the ancillary certificates upon which they propose to rely when signing the Certificate of Compliance on Completion⁹. The ancillary completion certificates required from the Contractor – whether provided by the Contractor, Specialists, subcontractors, suppliers or designers - must be listed in the Works Requirements.

Services Post-Commencement

The scope of services for the Assigned Certifier should note that the Assigned Certifier is required to inspect, and to co-ordinate the inspection activities of others during construction, and to certify the building or works on completion.

Continued on next page

⁹ Available under the Sixth Schedule to the Building Control (Amendment) Regulations 2014.

2.2 Assigned Certifier (continued)

2.2.3 Scope of Services of the Assigned Certifier (continued)

It is important that the Assigned Certifier does not become a certification coordinator but takes a hands-on role in assessing the aspects of the works that lie within their competence. The Regulations and the Code of Practice allows reliance on ancillary completion certificates but contracting authorities should ensure that the Assigned Certifier does not over-rely on such certificates.

The Assigned Certifier will be the point of contact for the Building Control Authority and must inspect the works and co-ordinate the activities of ancillary certifiers to meet the requirements of the Inspection Plan. The level of involvement during the construction stage will differ depending on the various risk factors associated with the project and the scope of services should be drafted to cover this. Guidance will be available from the professional bodies on the appropriate intensity and timing of inspection and the likely involvement of the Assigned Certifier.

The Assigned Certifier, in conjunction with the Contractor and the design team, develops the Inspection Notification Framework out of the Inspection Plan.

2.2.4 Design Certifier, Assigned Certifier and Employer's Representative

The Assigned Certifier may also be the Design Certifier and/or the Employer's Representative on an Employer-Designed public works contract.

Where there is a requirement for the Assigned and Design Certifier and/or the Employer's Representative roles to be provided by the same service provider, all three roles must be identified as specialist skills in Section 1.4 of the Suitability Assessment Questionnaire for the member of the design team that is to provide those roles.

Under Contractor-Designed contracts, the Assigned Certifier and Employer's Representative must remain as Employer's Personnel and the Design Certifier, Assigned Certifier and Employer's Representative roles should not be procured as a single entity.

Continued on next page

2.2 Assigned Certifier

(continued)

2.2.5 Ancillary Completion Certificates – Design Team

The role of Assigned Certifier does not carry any design responsibility. The Assigned Certifier identifies the design professionals and specialists on whom they propose to rely for ancillary completion certificates.

It should be noted in the pre-qualification and tender documentation that such certificates may be required for all design team members and any sub-consultants they may employ – copies of approved template ancillary completion certificates should be referred to in the tender documents. The appropriate levels of Professional Indemnity Insurance will be those set out in Guidance Note GN 1.6.3 and must be included in collateral warranties for sub-consultants.

2.2.6 Ancillary Completion Certificates – Specialist Works Contractors

The Assigned Certifier may rely on specialist works contractors for ancillary completion certificates for inclusion with the Certificate of Compliance on Completion. The Assigned Certifier should satisfy themselves as to the certification provided by such specialists.

The Contractor is responsible for the provision of ancillary completion certificates required of Contractor's Personnel. Amendments to the public works contracts currently being undertaken will set out mechanisms to identify such ancillary completion certificates but in the interim the category of specialists from whom ancillary completion certificates are required must be identified in the pre-qualification questionnaires and the Works Requirements.

It is acknowledged that PII is not currently held by many specialist works contractors and contracting authorities are asked to consider Section 3.2 of this guidance note before setting out PII requirements for ancillary completion certificates sought from specialist works contractors in the short to medium term.

Employer and Contractor-Designed Contracts

The ancillary completion certificates required from the Contractor – whether provided by the Contractor, Specialists, subcontractors, suppliers or designers - must be listed in the pre-qualification questionnaires and the Works Requirements. An acceptable format for the certificates must also be referenced.

Continued on next page

2.2 Assigned Certifier (continued)

2.2.7 Professional Indemnity Insurance

The level of Professional Indemnity Insurance sought for the Assigned Certifier should be no more than 15% of that sought for the lead designer¹⁰ on the project subject to a minimum limit of €500,000.

This level of PII sought is considered appropriate because the Assigned Certifier is not a designer¹¹ and the Contractor is responsible for supervising the construction of the building or works. They inspect (according to the Inspection Plan) and coordinate the inspection by others.

They certify that the Inspection Plan has been undertaken. They certify, based on the undertakings and certification of others that the works are compliant.

2.2.8 Existing Design Team Contracts [appointed prior to 1 March 2014]

Where a project for which a design team has been appointed is to commence on site after 1 March 2014 and the requirement for one of its members to act as an Assigned Certifier was not set out in the pre-qualification and tender documents or the Conditions of Engagement.

The extent of additional work that is involved in undertaking the role of Assigned Certifier will vary from project to project. The level of detail set out in the scope of services may describe the extent of periodic inspections originally envisaged. Whilst the cost of additional inspections may be easily agreed, the cost of other duties required to comply with the Regulations may be more difficult to determine under existing contractual arrangements.

These include 1) The additional liability on those acting in the role of Assigned Certifier in signing the Certificate of Compliance on Completion. 2) Coordinating the activities of those ancillary certifiers upon which they propose to rely in certifying compliance. 3) Preparing the Inspection Plan for inclusion in the Works Requirements and developing the Inspection Notification Framework in conjunction with the contractor. 4) Setting out those specialist works where ancillary certificates will be required in both the pre-qualification questionnaire and Works Requirements.

Continued on next page

¹⁰ Guidance note GN 1.6.3 section 1.4 Professional Indemnity Insurance contains suggested appropriate PII levels based upon the value of the building or works to which the design service applies.

¹¹ Unless they are also appointed in the role of designer and or Design Certifier, in this case the level of PII cover sought must be the level of PII for their design role.

2.2 Assigned Certifier (continued)

2.2.8 Existing Design Team Contracts [appointed prior to 1 March 2014] (continued)

Contracting authorities must first establish whether an appropriately qualified member of the design team is willing to provide the service of Assigned Certifier. If not, then the contracting authority must immediately publish a contract notice for the role of Assigned Certifier. A design team may not be directed to take on the role if the scope of service originally outlined did not set out the foregoing requirements.

If an appropriately qualified member of the design team is willing to provide the service of Assigned Certifier the contracting authority must establish the additional costs to that design team member in taking on the role.

Any increase in the fee must be in accordance with Clause 11 of the Standard Conditions of Engagement.

3.0 Works Contractors

3.1 Appointment of Builder

The builder (Contractor) must be appointed by the building owner (usually the contracting authority in a public works project).

The *Notice of Assignment of Builder*¹² must be completed by the contracting authority and submitted with the Commencement Notice.

The *Undertaking by Builder*¹³ must be completed by the Contractor and submitted with the Commencement Notice.

3.2 Professional Indemnity Insurance

Whilst it is acknowledged that building contractors should carry Professional Indemnity Insurance (PII) to insure their liabilities under the Regulations, most contractors tendering in the mid and lower contract value bands do not currently have PII cover. The same broadly applies to specialist works contractors, although there are exceptions.

Typically contractors who tender for Design-Build contracts will have PII cover and this would include most, if not all, of the large construction, mechanical and electrical contractors.

In recognition of the limitations in the market place in the short to medium term, contracting authorities should only seek PII cover from main contractors where they might reasonably expect such cover to be generally available i.e. on main contracts with a value in excess of €20m. Contractors tendering for Design-Build contracts with a lower value would be expected to carry PII.

It is envisaged that PII cover that is appropriate to all construction companies will be more widely available in the medium term and it would be reasonable for contracting authorities to seek PII from main contractors for contract notices published after 1 January 2015.

In the interim contracting authorities should, as usual, assess the risk presented by any elements of the building design which are to be undertaken by specialists engaged by the contractor and ensure that those areas are properly identified in the tender process and collateral warranties sought with appropriate levels of PII where such specialists might reasonably be expected to carry PII.

Continued on next page

¹² Available under the Second Schedule to the Building Control (Amendment) Regulations 2014.

¹³ Available under the Second Schedule to the Building Control (Amendment) Regulations 2014.

3.0 Works Contractors (continued)

3.3 Public works contracts

Amendments to the public works contracts are being undertaken currently to ensure compliance with the Regulations. Until such time as the amendments are published please reference Appendix I to this guidance note in tender competitions so that tendering contractors are aware of the requirements of the revised suite of contracts.

4.0 Inspection Plan

4.1 Preparation of Inspection Plan

The preliminary Inspection Plan will be prepared by the Assigned Certifier in consultation with the design team [and Design Certifier] and included in the tender documents as a Works Requirement.

Whilst the Commencement Notice requires the submission of the preliminary Inspection Plan, for public works projects, a reasonably well defined Inspection Plan will be necessary at tender stage to ensure tenderers are aware of the inspection regime on the project.

The tenderer should include in their tender response what they consider to be necessary additions/augmentation of the Inspection Plan, based on their schedule of works, acknowledging that this is subject to the final agreement of the Assigned Certifier.

The tenderer's Programme (and price) should also be confirmed as taking appropriate account of the Inspection Plan and any requests that might reasonably be required to be made in conjunction with the Inspection Plan.

It will be finalised once the project is underway subject to input from any designers that may be appointed by the Contractor or to take account of any changes to the project's design or construction method.

4.2 Purpose of Inspection Plan

The Inspection Plan will have regard to specific risk issues such as building scale and complexity, ground conditions, structural design solution, building use, site constraints, design of fire prevention and detection solution, experience of contractor, level of design innovation, etc.

Its purpose is threefold 1) as a key management tool in coordinating the inputs of all those involved in delivering the project to ensure that inspections are carried out at the appropriate time thereby minimising uncertainty and potential for delays in the programme. 2) It will be examined by the Building Control Authority to establish whether an appropriate level of oversight is being adopted on the project (section 9. (1) (b) (IV) of SI 9 of 2014) and 3) Is used by the Assigned Certifier as the basis of their certification of the building or works (section 7 of the Certificate of Compliance on Completion).

4.3 Inspection Notification Framework

The Inspection Notification Framework (INF) is developed from the Inspection Plan in conjunction with the contractor and design team and is used by the contractor in developing their programme for the building or works.

5.0 Construction Industry Register Ireland (CIRI)

5.1 Notice to Contracting Authorities

The Construction Industry Register Ireland represents a significant step forward in setting acceptable standards for those engaged in the construction of buildings and infrastructure. However, until the register is set up on a statutory basis, contracting authorities may not include a requirement for applicants or tenderers to be registered with CIRI.

Appendices

Appendix I Amendments to the Public Works Contracts

Amendments to the contract conditions of the public works contracts are being finalised currently. The underlying requirements for '*compliance with the Law*' set out under clause 2 of the Contract covers most of the situations that are likely to arise under the construction phase of a project's delivery. From the contractor's point of view, the only new requirements not set out in the public works contracts are the signature of the Certificate of Compliance on Completion and the provision of ancillary design and completion certificates.

The main changes from the tendering perspective are those identified in other sections of this guidance note and will generally be included in the Works Requirements and pre-qualification requirements for works contractors.

The contract already contains provisions that will cover some of the new requirements and the following (non-exhaustive list) summarises the amendments being undertaken to the conditions of contract.

The Assigned Certifier has no authority to issue directions under the Regulations and it is proposed to include a new definition under clause 1.1 to note the role of the Assigned Certifier.

The definition of *Substantial Completion of the Works or a part of the Works [including a section]* under clause 1.1 will be amended to include another provision under 'all of the following have happened' (5) the details of the Certificate of Compliance on Completion for the Works have been included on the register maintained under Part IV of the Building Control Regulations 1997 – 2014 as amended from time to time

Clause 4.9 'Programme' will be amended to make reference to the Inspection Plan and the Inspection Notification Framework.

Clause 4.11 'Notice and Time for Employer's Obligations', deals with notification requirements and *Clause 8.3 'Inspection'* both broadly cover the Inspection Plan and the Inspection Notification Framework. Both clauses will be amended to include a reference to the Assigned Certifier.

Clause 4.12 'Documents', a new sub-clause dealing with the requirements under section 9 of the Code of Practice for Inspecting and Certifying Buildings and Works for the retention of documents by the Contractor.

New Sub-clause under clause 5 setting out requirements for ancillary certificates covering the Design Certificate and Certificate of Compliance on Completion.*

Two additional matrices to be included in the Schedule part 1 setting out the requirements for ancillary design and completion certificates.*

* Both to be dealt with in the Works Requirements in the interim.