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**Circular 4/08: Construction Procurement Reform – additional measures to the revised arrangements for the procurement of public works projects and for the engagement and payment of construction consultants**

A Dhuine Uasail

1. I am directed by the Minister for Finance to inform you that, in addition to the five forms of Public Works Contracts<sup>1</sup> and the Conditions of Engagement for Consultants introduced by Circular 33/06 (Ref: S9/71/06) dated 27 October 2007, a Short Public Works Contract<sup>2</sup> is being put in place with effect from **3 March 2008** for projects referred to in paragraph 3 below (where the Minor Public Works Contract is not being used) tendered on or after this date. This Contract may be used earlier than the date stated if circumstances deem it appropriate.

**Construction Procurement Reform Process**

2. The introduction of this Contract is to ensure that appropriate measures remain in place to effectively implement the Government's decision of May 2004 to reform the approach to procurement of Exchequer funded works projects and the engagement and setting of consultants' fees for technical services.
3. The Short Public Works Contract has been specifically developed to suit works projects that have a value of €500,000<sup>3</sup> or less. In certain circumstances projects with a value of €500,000 or less may continue to use the Minor Public Works Civil Engineering and Building Works Designed by the Employer Contract introduced by Circular 33/06, if this is considered more appropriate.

**Consultation Process**

4. The Short Public Works Contract was examined and cleared by key representatives from the main capital work spending departments and bodies that are represented on the Government Construction Contracts Committee (GCCC). The Construction Industry Federation (CIF) and the relevant professional bodies (RIAI {architects}, SCS {quantity surveyors} and EI and ACEI {engineers}) have been involved in a consultation process which is now completed.

**Core Element of the Construction Procurement Reform**

5. The principles of cost certainty, better value for money outcomes, timelier and

<sup>1</sup> The five public works contracts are: two traditional [employer designed], two "design and build" and one minor civil engineering and building works designed by the employer [traditional].

<sup>2</sup> This contract is for building and civil engineering works designed by the employer.

<sup>3</sup> Including VAT.

more efficient delivery of projects that the five new Public Works Contracts are designed to achieve, particularly the Minor Public Works Civil Engineering and Building Works Designed by the Employer Contract, are also reflected in the Short Public Works Contract.

### **Implementation**

**6.** The Short Public Works Contract must be used on employer designed projects with a value at or below €500,000 that are procured by a Government department, bodies under its aegis including local authorities, and other relevant bodies (e.g. schools, voluntary hospitals etc.) that provide public services (the only exception being where the minor public works contract is being used – see paragraph 3).

#### **a) Contract amendment**

The Short Public Works Contract as published is to be the norm and no amendments should be made to it. It has been drafted in a way that better protects the Contracting Authority's interest in order to achieve better value for money outcomes from public expenditure on works projects. However, in exceptional and rare circumstances, consideration can be given to amendments to *non core* elements of the Contract. The request for any such amendments from those bodies required to use it should be submitted to the GCCC for consideration and approval, as appropriate. Copyright in the Short Public Works Contract is held by the Department of Finance and any other bodies wishing to use the new Short Public Works Contract, but with amendments, should also submit a request to the GCCC for consideration as appropriate.

#### **b) Exemption provision**

(i) Where the body procuring the works project is not a Government department or body under its aegis or local authority or other relevant body that provides public services and more than 50% of the funding for the project comes from a source other than the Exchequer, the Government body or relevant body, as appropriate, providing part funding should decide if the new Short Public Works Contract will apply to a project with a value of €500,000 or less. If it is decided not to use the Short Public Works Contract, or any of the other public works contracts on a particular works project, the Accounting Officer/Accountable Officer in the Government department or the relevant public body providing the part funding for the project must be satisfied that the contract terms in the other contract being used are framed in a manner that seek to protect such funds. That Officer must also be satisfied that the alternative contract conditions include the provisions on Pay and Conditions of Employment (i.e. Clause 7 of the Short Public Works Contract). The rationale for this decision should be documented in an appropriate and transparent manner.

(ii) Commercial semi-state bodies are not required to use the

Short Public Works Contract or any of the other public works contracts on public works projects unless more than 50% of the funding for the project concerned comes directly or indirectly (e.g. charges) from the Exchequer. The contract conditions in any other contract that might be used must include the provisions on Pay and Conditions of Employment (i.e. Clause 7 of the Short Public Works Contract).

### **Implementation provisions in Circular 33/06 (Ref: S9/71/06)**

7. The phased implementation provisions referred to in sections 9, 10 and 11 of *Circular 33/06: Construction Procurement Reform – revision of arrangements for the procurement of public works projects and for the engagement and payment of construction consultants* are no longer to apply. Contracts for all projects (other than those with a value of €500,000 or less tendered before 3 March 2008 – see paragraph 1 above) must from the date of this Circular be awarded using either the new Public Works Contracts or the Conditions of Engagement for Consultants. Furthermore, as a point of clarification, the Conditions of Engagement must be used for publicly funded commissions such as early planning studies, scoping studies and all other types of technical service studies that are in any way associated with capital investment projects etc. procured by a Government department, bodies under its aegis, including local authorities, and other relevant bodies.

### **8. Performance Bonds**

The model form of Performance Bond recently published on the Department of Finance's website [www.constructionprocurement.gov.ie](http://www.constructionprocurement.gov.ie) is an agreed document with the Surety Companies providing bonding facilities to the Irish market and should therefore be used on all publicly funded works projects that call for a bonding requirement.

### **Capital Works Management Framework**

9. The Capital Works Management Framework<sup>4</sup> (CWMF), which addresses the three key performance areas (i.e. Client, Consultant and Contractor) in the delivery of a works project, is at a very advanced stage of development. The Public Works Contracts, Conditions of Engagement for Consultants and associated guidance material already in use form an important part of the CWMF. Other key elements are being developed and will be available later in 2008. When finalised, the CWMF will contain an integrated set of contractual provisions, guidance material and technical procedures covering a works project lifecycle from inception to final delivery and review. The structure of this strategic framework is closely aligned with Capital Appraisal Guidelines issued by this Department. The framework is intended to encourage more cost effective delivery of works projects by introducing a more systematic approach to, among other things, planning (both preparatory and detailed) and capital budgeting, as well as design and construction cost control.

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<sup>4</sup> The CWMF is an integrated set of contractual provisions, guidance material and technical procedures that forms the core element in the strategy to achieve greater cost certainty, better value for money outcomes and timelier and more efficient delivery of projects.

**Monitoring**

**10.** The GCCC, comprising representatives from Government departments and relevant bodies under their aegis, will conduct on-going monitoring and periodic review of the operation of the suite of new forms of Public Works Contracts and Standard Conditions of Engagement for Consultants and associate guidance. At an appropriate time, a review will be undertaken once there is adequate experience gained in the use of the new Public Works Contracts and Conditions of Engagement for Consultants across the public sector. In line with best practice, a structured approach will be followed during that review process, including engagement with and feedback from, key stakeholders.

**11.** All Contracting Authorities procuring public works and service contracts must indicate through the eTenders website that the new Public Works Contracts and the Conditions of Engagement for Consultants are being used. This is to enable the Department of Finance to collect data on the use of these documents.

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Donal McNally  
Second Secretary General