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Ref: S9/03/10

5 May 2010

Circular 6/10: Construction Procurement Reform – the new Capital Works Management Framework

A Dhuine Uasail

1. I am directed by the Minister for Finance to inform you that the Capital Works Management Framework (CWMF)¹ has been introduced as an additional feature to complement the various measures already put in place by Circulars 33/06 (Ref: S9/71/06) dated 27 October 2006 and 4/08 (Ref: S9/12/08) dated 13 February 2008 in relation to the Government's reform of public sector construction procurement, which is a key value for money initiative. The standardisation of documents, procedures and processes in the CWMF is an important step in improving procurement procedures. This Circular should be read in conjunction with Circulars 33/06 and 04/08.

Capital Works Management Framework

2. The CWMF is a structure which has been developed to ensure that the key objectives (i.e. more efficient delivery of projects, better value for money and greater cost certainty at tender stage) of the Government's decision of 4 May 2004 (S29837) in relation to public sector construction procurement reform are achieved.

3. The Framework consists of a comprehensive suite of integrated technical and legal documents, which focus on the various stages spanning the project delivery process. Development work on the Framework commenced in October 2006 (see Section 12 of Circular 33/06), was well advanced by February 2008 (see Section 9 of Circular 04/08) and was completed in 2009. It was published on the Department of Finance website www.constructionprocurement.gov.ie on 13 August 2009.

¹ The CWMF complements the *Guidelines for the Appraisal and Management of Capital Expenditure Proposals in the Public Sector (February 2005)* by amplifying the actions at *Planning, Implementation and Post Project Review*.

4. The Framework has been developed to assist Clients² in procuring public works projects that have to be compliant with the Government construction procurement reform policy. It is an important centralised repository of technical and intellectual information which is available as a national resource to all interested parties. It should be noted that even though the complete Framework was published on 13 August 2009, the information on the website continues to be expanded. The Framework is still undergoing a degree of change, with documents being updated, added to or deleted from time to time as needs arise. This process will continue for some time until the Framework is finalised and users' needs are met. Therefore, it is essential that users regularly view the site in order to keep up to date with latest developments and to ensure that the latest versions of the documents are being used.

5. The Framework spans the complete project delivery process from planning, through procurement and implementation, to review. It addresses the roles, responsibilities and obligations of the three key stakeholders in the delivery process i.e. the Client, Consultants and the Contractor.

Implementation

6. A lead-in time of approximately 9 months has been allowed since publication of the Framework on the Department of Finance's website on 13 August 2009. This has allowed users to familiarise themselves with those aspects of the Framework that were not already brought into force by Circulars 33/06 and 04/08.

7. However, this introductory period³ is now being brought to an end from the date of this Circular. **It will now be mandatory for Clients to comply with all aspects of the Framework as they apply to public works projects.** In this regard, Clients will need to be mindful of the need to be flexible when applying the features in the *Planning Stage* in the Framework (i.e. telescoping the stages where appropriate) to small projects (i.e. projects valued at €500,000 or less) while, at the same time, observing the key principle of that stage which is to ensure that projects are comprehensively designed before tenders are sought, except for projects such as investigation works, or projects where specific Government Construction Contracts Committee approval has been given in advance of tenders being sought. In the case of the public works investigation contracts, their use should be for the type of work for which they were developed and they must not be utilised to circumvent the principle of fixed price lump sum contracts.

² The term Client in this case is a generic term that means a Sponsoring Agency (as defined in the Department of Finance *Guidelines for the Appraisal and Management of Capital Expenditure Proposals in the Public Sector (February 2005)*) and a Contracting Authority (defined as those bodies referred to in Sections 7, 8 and 9 of Circular 33/06 and Section 6 of Circular 04/08 and as defined in Directive 2004/18/EC and SI No 329 of 2006).

³ The introductory period only relates to those aspects of the Framework that are not already dealt with by (i) Circulars 33/06 and 04/08; and (ii) documents published on website prior to 13 August 2009 and subsequent revisions. In the circumstances outlined at (i) and (ii), compliance up to and after 13 August 2009 has always been mandatory. Government policy on procurement thresholds as set out in Section 3.2 'Advertising and Timeframes for the Tender' sub-heading 'National and EU rules' of GN 2.3 *Procurement Process for Works Contractors (28/07/09)* has been mandatory since 13 August 2009.

8. The fixed price lump sum principle in the public works contracts referred to in Circulars 33/06 and 04/08 should not be compromised because of incomplete detailed requirements⁴ at tender stage.

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John O'Connell
Assistant Secretary

⁴ In the case of Employer design contracts this means the need for comprehensive designs and specifications (i.e. provisional sums, contingency sums, prime cost sums or provisional quantities are not permitted), and in the case of Contractor design contracts this means the need for comprehensive output specifications and/or functional requirements (i.e. provisional sums etc, are not permitted).