

Purpose of this Note

The purpose of this note is to provide guidance to Contracting Authorities who

- are required to procure emergency professional services or works as a result of the Covid-19 response measures; or
- are currently a party to a public works contract or conditions of engagement or both;

As the Covid-19 response measures are updated by Government this note will be amended.

Please note that the terms Contracting Authority/client/Employer reflect the legal and contractual terms applied to a public body during the procurement and contract management stages of a project's development.

1.0 Context

Ireland is operating a containment strategy in line with advice from the World Health Organisation and the European Centre for Disease Prevention and Control.

We are now in the delay phase and the Covid-19 response measures introduced by Government up to the date of this note which include:

- the closure of schools, colleges, childcare facilities and cultural institutions;
- the banning of mass gatherings of more than 100 indoors and 500 outdoors;
- remote working where possible
- social distancing measures
- isolation and quarantine measures

At the time of publication of this Note, there are currently no restrictions on attending work, but where possible, people are encouraged to work from home. In order to reduce unnecessary face to face interaction in the workplace, break times and working times should be staggered and meetings done remotely or by phone.

All of these measures are necessary to slow and potentially halt the spread of the virus.

2.0 Emergency Procurements

The Office of Government Procurement issued '[Information Note – Covid-19 \(Coronavirus\) and Public Procurement](#)' on 18 March 2020. Accordingly, it is important to note that the engagement of contractors or consultants to undertake emergency works associated with the development of treatment facilities for Covid-19 or to support the measures to halt the spread of the virus are not required to comply with the provisions of the Capital Works Management Framework. Nonetheless engagements should be undertaken in a manner that delivers value for money.

Contracting authorities should ensure that prudent budgetary oversight measures are in place to manage the engagement and should ensure that there is a contract in place to ensure both parties are clear on their obligations and entitlements. Cost reimbursable arrangements for

works contractors and time based engagements for consultants are the most suitable given the urgency of the situation.

3.0 Contractual

It is recognised that the Covid-19 response measures announced up to the date of this note are likely to impact both on operations on construction sites and the delivery of aspects of a design team's services.

In these challenging times it is imperative that parties to contracts work together to ensure that the project can be delivered safely. This note sets out measures to assist parties to the contract to take the necessary steps to meet this objective.

Clients/Employers are asked to be proactive in the current climate and, if they have not already done so, to immediately make contact with key individuals including (where applicable to the stage of project development):

- Design team leader;
- Project Supervisor for the Design Process;
- Employer's Representative;
- Contractor;
- Project Supervisor for the Construction Stage;
- Assigned Certifier.

Clients/Employers should establish the current operational capability of the consultants and contractors they have engaged to continue to resource and undertake their duties in accordance with the terms of their contract whilst meeting health and safety requirements. They should also satisfy themselves as to their contingency arrangements.

3.1 Consultancy Contracts – Standard Conditions of Engagement

The Covid-19 response measures are likely to have an immediate impact on the resources available to the consultants. Where the consultant's capacity has been impacted as a result of the measures it should raise these matters with the client. Both parties shall establish the best approach to ensuring the service can be continued, if necessary within redefined delivery parameters.

3.1.1 All stages:

The continued attendance of the various members at meetings is to be facilitated as far as possible by remote means such as video conferencing. Where this is not possible please ensure that the HSE Guidance is followed.

Where key personnel are unable to continue in their role then a deputy that is acceptable to the client may be proposed. Adjustments to the milestone delivery dates may be necessary to allow the project to continue to progress.

Under no circumstances should the service continue if the level of resources are such that they impact on key health and safety requirements. Should this arise, having exhausted alternatives, the client should suspend the service in accordance with Clause 4 of the Conditions of Engagement.

3.1.2 Construction stage:

Oversight of the works from a health and safety, quality and building regulations compliance is critical and it is imperative these roles be resourced adequately.

The Employer should call meetings under sub-clause 4.1 Co-operation [“Co-operation Meeting”] with the Employer’s Representative (ER) and the Contractor to discuss current operational matters relating to site activities.

Key operational matters to be discussed at the Co-operation Meeting should include:

- workers attendance;
- health and safety matters such as
 - whether social distancing requirements can be met;
 - proper welfare facilities
- whether the Employer’s Representative/Consultant/Contractor/Third parties can maintain proper oversight and/or supervision of the works;
- supply chain issues;

Once an assessment of risks has been carried out mitigation measures should be identified. Any adjustments necessary to the programme and the implications of same should be taken on board by the Contractor. The steps to be taken by the Contractor will be considered in greater detail in section 3.2 of this note.

Unless the Co-operation Meeting indicates risks that cannot be mitigated by the Contractor in order to meet health and safety requirements and maintain appropriate supervision then under the current restrictions imposed by Government:

- Inspections by all relevant parties can continue providing social distancing measures are adhered to and all other health and safety measures.
- Site meetings should continue and, where possible, undertaken remotely by means of video conferencing. Where this is not possible it should be managed in accordance with the [HSE Guidelines](#).

Any issues relating to these matters must be immediately brought to the attention of the Employer.

3.2 Construction Contracts – Standard Form Public Works Contracts

The Covid-19 response measures are likely to have an immediate impact on the resources available to the Contractor. Both parties shall establish the best approach to ensuring the works can continue, if necessary within redefined delivery parameters, whilst meeting health and safety requirements.

As noted in section 3.1.2, sub-clause 4.1 Co-operation should be used as the vehicle to assess the likely impact of the Covid-19 response measures on the progress of the works, the issues currently arising and any potential mitigating measures that can be taken. Where the issues arising are linked to the impact of Covid-19 response measures the Employer should adopt a proactive and collaborative approach to address the issues.

The Public Works Contracts make provision for delay and both parties should work within the existing conditions of contract with respect to notification and management of delay. Sub-clause 9.3 Delay and Extension of Time requires the Contractor to notify the ER as soon as practicable of the delay and its cause.

At this point it is difficult to say how the Covid-19 response measures may impact on the progress of the works, however it may arise in a number of different ways. For example social distancing may require works to be undertaken differently, there may be a scarcity of key resources or an interruption to the supply of certain Works Items.

The manner in which each issue is dealt with will vary from project to project, will depend on local conditions and the scale, nature and complexity of the works. Many aspects may be resolved under Event Item 15 in the Form of Tender and Schedule, part 1K by allowing more time to complete the works, others may result in an adjustment to the Contract Sum.

In these cases it is suggested that the ER make use of sub-clause 10.4 Proposed Instruction by requesting the Contractor for a proposal to address the particular issues as they are identified under sub-clause 9.3.

Please note that the use of sub-clause 10.4 is without prejudice to the Contractor's other rights under the contract.

It is important to ensure that the oversight, supervision and inspection roles continue and where this is not possible, or if for any reason the works cannot be executed in compliance with health and safety regulations, it may be necessary to close the site for a period of time. Because the oversight and inspection roles are undertaken by consultants and third parties whereas supervision is the responsibility of the Contractor in the first instance and consultants [engaged in health and safety supervisor roles] it is important that the Employer remains central in this process.

Therefore any decision to close the site will be taken in consultation with the Employer. Should it arise the ER should direct the Contractor to suspend the works under sub-clause 9.2.

Under the provisions of the suspension clause the works may be suspended for a period of up to 3 months after which the Contractor may request permission to proceed, if permission to proceed is not given within 28 days the Contractor may give notice to terminate.