

## Consultant Engagement Review

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FOR DISCUSSION

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## Overview

As part of the development of the next generation of the Capital Works Management Framework, (CWMF), the Office of Government Procurement, (OGP) is reviewing the manner in which Government agencies procure, engage with and manage their Consultant Technical Professionals, (CTPs).

The *Report on the Performance of the Public Works Contracts*<sup>1</sup>, that was published in 2014, identified that, fees for design team services which failed to adequately cover the service required was having a negative impact on project delivery. Through engagement with the professional bodies<sup>2</sup> that represent CTPs and public sector bodies it has been determined that better definition of the service that is required of CTPs has the potential to significantly improve project outcomes.

## Review Objective

**Enhancing the service delivery of Consultant Technical Professionals (CTPs).**

Through:

1. Detailed Project Briefs;
2. Detailed Scope of Services;
3. Detailed Fee Breakdown;
4. Establishment of Project Teams with Clear Reporting Lines.

and a range of secondary review topics that will change the risk balance in the conditions of engagement and aspects of the procurement process.

<sup>1</sup> <https://constructionprocurement.gov.ie/wp-content/uploads/Report-on-the-Review-of-the-Performance-of-the-Public-Works-Contract.pdf>

<sup>2</sup> Association of Consultant Engineers of Ireland, (ACEI); Engineers Ireland, (EI); Royal Institute of Architects of Ireland, (RIAI); and Society of Chartered Surveyors of Ireland, (SCSI).

These measures will achieve the objectives<sup>3</sup> that have been set to govern the development of the next generation of the CWMF in the following manner:

#### **Objective 1**

*Develop procurement and contracting strategies that prioritise quality solutions and support the most efficient means of delivery;*

Clear project parameters, detailed scope of services and a fee breakdown [that reflects both] will result in better tender responses, fees that reflect the standard of service required and construction tender documents that adequately describe the project. In so doing it will bring greater efficiency to project delivery both in the design and construction stages, reducing wasted work in both stages.

#### **Objective 2**

*Embed appropriate risk management measures within the project development, procurement and construction stages;*

Better defined projects, detailed scope of services and well-resourced design teams greatly reduces the risk to project delivery.

#### **Objective 3**

*Deploy digital solutions throughout the project delivery stages.*

Digital templates for project briefs, scope of services and fee matrices will be developed.

Once the primary topics are reviewed and policy developed to allow for their improvement secondary topics will come under review in order to improve overall CTP engagement under the CWMF.

In addition to reviewing the existing, it is also the intention of the OGP to investigate alternative processes and practices in use in the wider construction industry, to establish what could or should be considered for the better delivery of capital funded projects.

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<sup>3</sup> See Appendix 1 for Objectives for the development of the next generation of the Capital Works Management Framework

## Approach to Review

In late 2018 and early 2019, the OGP received submissions from representative bodies which outlined their concerns on current practices and processes, under certain headings and proposed possible solutions or alternatives. In Q1 of 2019, the OGP hosted the groups, once again, for a second series of bi-lateral meetings to expand on certain topics and proposals covered in their individual submissions. This position paper summarises the approach that is proposed to improve the procurement and management of CTPs across the capital programme.

Submissions are invited from interested parties by 24 June 2019, and should be submitted to [CWMF2Submissions@ogp.gov.ie](mailto:CWMF2Submissions@ogp.gov.ie). Please note that submissions on this position paper will be published Construction Procurement Reform website.

Further engagement will then take place prior to the publication of a draft implementation plan.

## Primary Review Topics

To achieve the objective laid out above, the OGP propose to investigate options to improve the following deliverables:

### Better Project Briefs

The CWMF contains a detailed guidance note, GN1.2, on the subject of *Project Definition and Development of the Definitive Project Brief*. The opening paragraph of the guidance document states:

***“Project definition is the single most important exercise in the design process.”***

And

***“The importance of the role of the project definition cannot be emphasised enough, and the Sponsoring Agency should ensure that sufficient time and resources are allocated to it so that all aspects of the Client’s objectives are explored and clearly defined”***

The document proceeds to give advice on the topics such as:

- What is a Definitive Project Brief?
  - Who is responsible for its development?
  - What parameters to consider when developing?
  - How to quantify and refine information within parameters?
  - How to prove the information within the parameters?
- The steps required from Preliminary Brief to Definitive Project Brief, including appraisals, feasibility optioneering, sign-offs, and output specification.

The document ends with an appended template for Project Definition Documents.

Despite the existence of the detailed guidance note it is a common complaint from the representative bodies that a Definitive Project Brief is rarely produced by Employers, and where they do exist there is no uniformity of product, leading to certain parameters remaining unconsidered prior to engagement of the CTP. The representative bodies suggest that many procurements of CTPs are done with limited project briefs and the first task of the successful CTP is to sit down with the Employer and define the project brief.

Engagement of a CTP on such terms often leads to serious scope change in projects resulting in lack of budgetary compliance for Funding Authorities and increased costs for CTPs, disputes with CTPs and/or poor service delivery.

#### OGP Proposal

The OGP will prepare a template *Definitive Project Brief* for publication under the CWMF which will be mandatory for all CTP procurements. The template will be structured to encourage comprehensive analysis by contracting authorities, elements of the template that are not addressed or that lack definition will impact on the project's risk rating.

## Better Scope of Service

In CWMF Guidance Note 1.6 – *Procurement Process for Consultant Services* paragraph 4.1 *Service Contracts for well-defined services* states:

**“Where the service being tendered for is well-defined, Sponsoring Agencies must be able to describe the specific time frame and scope of the service in unambiguous, comprehensive and well-defined terms.”**

Many agencies have developed a standardised Scope of Service document which is repeatedly issued at tender stage. However, it has been stated by the representative bodies that the following issues need to be addressed:

- Standard Scope of Service documents are often amended prior to issue with no indication of amendments made;
- It is common that scope items repeat under multiple different or incorrect stages;
- It is common for non-standard scope items to be included under standard scope headings;
- There is a lack of agreement between CTPs and Employers on what is considered standard and non-standard service;
- It is commonplace that scope items which are not required, remain included – cut and paste errors;
- Equally it is increasingly common for “Catch all” terminology in lieu of defined scope to be included;
- The lack of uniformity of document across Contracting Authorities procuring identical services for identical projects needs review;

Conversely, the representative bodies have noted that many agencies who lack the technical capacity to produce detailed scope of service documentation will often rely upon loose terminology for description of services, without full understanding what a typical standard CTP service includes. The representative bodies assert that this regularly leads to complications with projects further down the line when the CTP and the Employer dispute what was and was not included in the Scope of Service.



#### OGP Proposal

The OGP will publish standard scope of service provisions which will be mandatory for all design team procurements. The OGP will investigate whether a standard scope of core services for typical architectural; civil, structural and building services engineering and quantity surveying services can be defined for each stage of a project. The document will present the service requirement in a consistent fashion across all sectors. The intention being to give tenderers confidence in the service provision being sought once they are familiar with the format. There will be provision for additional [defined] services such as PSDP, Assigned Certifier, BIM, design team leader, conservation, etc. as well as bespoke project requirements. It will be considered whether the templates should allow scope for amendments in certain areas so that non-standard services can be included.

### More realistic pricing by tenderers

In CWMF Guidance Note 1.6 – *Procurement Process for Consultant Services* paragraph 4.1 *Service Contracts for well-defined services* states:

***“A breakdown of the lump sum, at a minimum into the five stages ..., should always be supplied by the tenderers.”***

If we look at the procurement of Works Contractors, it is standard operating procedure to define each works item to be delivered and to request that each item is priced individually in accordance with standard methods of measurement. Currently PWC forms for Employer designed contracts over €1m require a BOQ to a standard method of measurement. The BOQ must itemise and quantify the Works Requirements. This requirement allows the Contracting Authority to understand what exactly is contained within the Contractor’s price, it allows the tenderer to understand what is to be priced, and it allows pre award evaluation & valuation of post award additions.

The representative bodies have suggested that currently the link between the required service and the breakdown in cost either does not exist or is too weak to either assess pre award or to rely upon in disputes at later stages.

It is proposed to introduce an approach akin to the BOQ for CTP procurement processes, instead of the Works Requirements it will be the project brief and the scope of services that will form the basis of the pricing template.

With a more defined and standardised Scope of Service, as proffered earlier in this paper, it is possible to request a more defined pricing breakdown with direct linkage between. Where this occurs, it will offer the CTP the opportunity to submit more realistic tenders, it will offer the Contracting Authority opportunity to test the inclusivity of tender sums before committing to award and it reduces the scope for poor service delivery and resultant disputes at delivery stage.

#### OGP Proposal

The OGP propose that in tandem with development of template standardised scope of service documents, as noted above, template standard pricing documents be developed and published on the CWMF website. These template documents will be mandated for use by all Contracting Authorities.

The template pricing documents will be companion documents to the scope of services templates.

## Better Project Delivery Team Definition

In CWMF Guidance Note 1.6 – *Procurement Process for Consultant Services* paragraph 1.1 –

*Overview – Introduction* states:

***“Each of the principal construction-related consultants employed as a member of a design team for a single requirement should be engaged directly by the Contracting Authority.*”**

Many contracting authorities favour the single point delivery model because of the reduced administrative burden both in the tender and contract administration stages. However, this must be considered in the light of the best project outcome. Clear reporting lines with the contracting authority and project obligations are also important for the successful delivery of a project. These roles and responsibilities prevent ‘group think’ arising within project teams and promote greater scrutiny of decisions both within the design team and in the administration of the contract.

It is considered among the Representative Bodies that the single point procurement model does not provide for *best in class* CTPs to procurement competitions, and therefore Contracting Authorities should consider moving away from this model, save for very standard repetitive works.

Another point to consider is the use of the term “*Design Team*”. The term appears to have developed from a time when the CTP market was only required to provide design services and potentially some *light touch* contract administration. The current CTP market is required to provide much more than just design. Services such as Quantity Surveyor, PSDP, PSCS, Employer’s Representative, Design Certifier, Assigned Certifier and Project Manager are all definable services that should contain no design role. Yet all will generally be included under the services of a design CTPs.

Equally a problem that can exist with current model is the lack of clarity of whom within the team is responsible for providing what service and when that service is to be provided. Many CTPs will favour their primary design discipline whilst other roles they are procured to provide will limp along ultimately resulting in poor service delivery.

#### OGP Proposal

The OGP will consider the potential to have an incremental approach to procuring project delivery teams, i.e. below a defined value the Contracting Authority are open to pursue a single point procurement model, once over a defined value certain key role must be procured separately such as, Quantity Surveyor or Employers Representative, and once above a max value all key roles must be procured separately. In addition, the OGP will consider whether pure design functions should be procured separately to non-design functions at certain project cost increments.

Where it is considered a suitable model to have separate procurements for key roles the OGP look into the suitability of *Project Team Agreements* to be entered into by the key members.

The OGP will also consider whether it should be mandatory for Contracting Authorities to issue *Responsibility Matrices* for Project Teams in order to limit or remove the trapdoors through which tasks fall between CTPS within a Project Team

## Ancillary Review Topics

In tandem with the primary review topics, the OGP propose to investigate the following topics to further enhance CTP/Employer working relationship to ultimately improve service delivery:

- % fee only for early stage services;
- New inflation index for prolongation;
- Unlimited liability or capped liability;
- Insurance limit requirements;
- Standard Quality Criteria template questions;
- Two part evaluation reporting – (quality ranking to be published prior to opening price submission)
- Revised *Conditions of Engagement* to be published aligned with Works Contracts Conditions
- Alternative *Conditions of Engagements* for non-design related *bolt-on services*;
- Standardised payment application templates and certification of payment by Design Team Lead or other;

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END

## Appendix I

Objectives for the development of the next generation of the Capital Works Management

Framework:

1. *Develop procurement and contracting strategies that prioritise quality solutions and support the most efficient means of delivery;*
2. *Embed appropriate risk management measures within the project development, procurement and construction stages;*
3. *Deploy digital solutions throughout the project delivery stages.*

A series of principles have been derived from the objectives under three headings. The principles will provide a framework within which to develop procedures and templates to give effect to the objectives of the next generation of the CWMF.

### 1. Procurement & Contracting Strategy:

- a. determine the optimum procurement and contracting strategy taking into account;
  - i. the quality of the operational asset
  - ii. the available resources (including the budget)
  - iii. risk profile of the project
- b. provide the most efficient means of engaging the necessary resources, whether consultants or contractors, in a manner that is compliant with procurement rules and Government policy;

### 2. Risk:

- a. require risk identification from the earliest stage of the project;
- b. set minimum standards for the information necessary for each stage of a project's development;
- c. determine who is best positioned to manage risk at the different stages of a project's development.

### 3. Performance:

- a. provide the means to measure the performance of a project and its key actors during the course of its delivery and beyond into its operation;

- b. provide the means to review project outcomes to determine whether they have met their objectives and ensure that learnings are captured to inform future deliveries.

*Through its development the next generation of the CWMF will,*

- Facilitate the timely and effective delivery of sustainable public assets
- Foster collaborative working through all stages of an asset's delivery

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*END*