

Ref: DPE033/002/2013

1 May 2013

To Heads of Departments/Offices¹

Circular 07/13: Construction Procurement Reform – Reduction of the Current Level of Construction Performance Bonds for use with the Public Works Contracts.

A Dhuine Uasail,

1. I am directed by the Minister for Public Expenditure and Reform to inform you that revised arrangements are being put in place in regard to the requirement for performance bonds on public works contracts with immediate effect from the date of this circular. In the circumstances that contracting authorities commence a tender and have not concluded an award after this circular has been issued they should consult section 5 below and where in doubt follow section 6.

Performance Bonds

2. In response to the increase in the number of insolvencies in the construction sector, recent reviews undertaken by construction performance bond providers in the Irish market has resulted in a reduction in the level of bond that is available generally in the Irish market.

Requirements

3. The Capital Works Management Framework sets out the current requirements for performance bonds on public works contracts in Section 2.3.3 of guidance note GN 1.5 Public Works Contracts.

Following consultation with public sector contracting authorities, construction industry representatives and the surety sector the following requirements for performance bonds are to replace the Recommended Cover section of the requirements set out in Section 2.3.3 of GN 1.5. These steps are being taken in recognition of the current levels of cover available in the market and are being introduced on an interim basis and will be reviewed 18 months from the date of this circular.

- Performance bonds should generally only be provided for contracts with an estimated value in excess of €500,000 (including VAT).
- For contract values up to €10m a performance bond of 12.5% of the contract sum should be sought.
- For contract values in excess of €10m a performance bond of 10% of the contract sum should be sought.

¹ In this letter, the term “Department” encompasses Departments and Offices.

Guidance

4. A new guidance note will shortly be published on the Construction Procurement Reform website setting out the financial appraisal that should be undertaken for works contractors at the pre-qualification stage. The guidance will include a range of measures that may be utilised by a contracting authority based upon the risk profile of the contract in question.

Implementation

5. (a) The level of performance bond sought on public works contracts set out at section 3 above shall apply to all tender processes commencing from the date of this circular.
5. (b) For tender processes which are underway and the deadline for submission of the tender has not passed, contracting authorities shall review their bond levels in accordance with this circular and take steps to implement the necessary changes during the currency of the tender process and, where necessary, to extend the tender deadline ensuring that the change is communicated to all prospective tenderers.
5. (c) For tender competitions where the tender deadline has passed and bond levels in excess of those set out in section 3 above have been sought. Where the contracting authority is unable to award the contract at the bond level originally sought then the contract shall be retendered with the bond levels set out at section 3 above.

Further Information

6. Any further information in relation to the measures set out in this circular should be addressed to David O'Brien in the Department of Public Expenditure and Reform at the following email address construction@per.gov.ie

Mise le meas,

Paul Quinn
Chief Procurement Officer