

GUIDANCE NOTE 1.5

Public Works Contracts

Public Works Contracts

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Purpose of this document

This document is one of a number of guidance notes aimed at facilitating the implementation of the measures in the Capital Works Management Framework (CWMF) introduced to achieve better value for money on publicly funded works projects.

The purpose of this document is restricted to giving practical advice to Employers to help them administer the construction phase of a project in accordance with the provisions in the new public works contracts. Is also intended as a strategic resource for the wider public sector.

Audience

This document is intended primarily for the guidance of Sponsoring Agencies embarking on capital works projects. However, the role of the Sanctioning Authorities and any external consultants appointed in relation to the capital works projects is also considered.

Terminology in this guidance note

The title **Sponsoring Agency** changes to **Contracting Authority** once a contract for technical services for a works project is awarded. And **Contracting Authority** changes to **Employer** when a Works Contract is signed. The term **Client** is used throughout this guidance note as a generic term to cover the Sponsoring Agency / Contracting Authority / Employer.

Terms used in this Guidance Note are as defined in the following clauses of the Contracts:

Clause 1.1 Definitions; and

Appendix 1 to Clause PV2.

Capital Works Management Framework

The Capital Works Management Framework (CWMF) is a structure that has been developed to deliver the Government's objectives in relation to public sector construction procurement reform. It consists of a suite of best practice guidance, standard contracts and generic template documents. For more information on the CWMF refer to Guidance Note GN 1.0

1.1 Overview

The parties to the Contract are the *Employer* and the *Contractor*. The following table sets out the composition of the Contract for forms of contract PW-CF1 to PW-CF5 and PW-CF6 to PW-CF11.

These forms of contract are referred to generically as the Public Works Contract throughout this guidance note.

Form of Contract		What the Contract Consists of
PW-CF1	Public Works Contract for Building Works designed by the Employer	<p>In the case of these five forms of contract, the Contract consists of the following, in order of precedence:</p> <ol style="list-style-type: none"> 1. The completed Agreement. 2. The Letter of Acceptance and any post tender clarifications attached to it. 3. The Contractor's completed Form of Tender and Schedule. 4. The Contract Conditions. 5. The Works Requirements; the completed Pricing Document and the Works Proposals (if any) identified in the Schedule. <p>These documents are to be read as mutually explanatory if possible. Otherwise, in the event of an inconsistency between contract documents, the document with the higher precedence prevails.</p>
PW-CF2	Public Works Contract for Building Works designed by the Contractor	
PW-CF3	Public Works Contract for Civil Engineering Works designed by the Employer	
PW-CF4	Public Works Contract for Civil Engineering Works designed by the Contractor	
PW-CF5	Public Works Contract for Minor Building and Civil Engineering works designed by the Employer	
PW-CF6	Short Public Works Contract (for Public Building and Civil Engineering Works designed by the Employer)	<p>In the case of this form of contract, the Contract consists of the following, in order of precedence:</p> <ol style="list-style-type: none"> 1. The Contract Conditions; 2. The Contractor's tender submission (Form of Tender and Schedule), with the Acceptance provision signed by the Contracting Authority; and any post-tender clarifications attached to it; and 3. Documents listed in the Schedule. 4. Pricing document (if required)

Continued on next page

1.1 Overview
 (continued)

Form of Contract		What the Contract Consists of
PW-CF7	Public Works Investigation Contract	In the case of the Investigation forms of contract, the Contract consists of the following, in order of precedence: <ol style="list-style-type: none"> 1. The Contract Conditions; 2. The Contractor's tender submission (Form of Tender and Schedule), with the Acceptance provision signed by the Contracting Authority; and any post-tender clarifications attached to it; and 3. Documents stating the Scope – in the Schedule
PW-CF8	Public Works Short Form of Investigation Contract	
PW-CF9	Framework Agreement for Construction Work	In the case of the Framework, the Agreement sets out certain terms and rules governing the award of contracts, such as the form of public works contract to be used in awarding contracts, communications between parties, performance measurement and termination.
PW-CF10	Public Works Contract for Early Collaboration	In the case of the Early Collaboration form of contract, the Contract consists of: <ol style="list-style-type: none"> 1. The 12 conditions and 12 schedules. 2. The Original Employer's Brief. 3. The Pricing Document. 4. The Tender Proposals 5. [add any other documents making up the contract]
PW-CF11	Public Works Term Maintenance and Refurbishment Works Contract	In the case of Term Maintenance and Refurbishment Works form of contract, the Contract consists of: <ol style="list-style-type: none"> 1. The Agreement. 2. The completed tender, acceptance and Schedule. 3. The Conditions. 4. The Works Requirements. 5. The Pricing Document

Part 1

Section 1.2

Section 1.3

Section 1.4

What's in the Contract

Agreement

Letter of Acceptance

Schedule for PW-CF1 to PW-CF5 (long forms of contract)

1.2 Agreement

The Contract Agreement between Employer and Contractor in the case of PW-CF1 to PW-CF5 is signed and where appropriate sealed. It states that the Contractor agrees to execute and complete the works in accordance with the Contract, and the Employer agrees to pay the Contract Sum that is identified in the Agreement and any adjustment to that Sum arising out of the contract.

The Contractor's completed Form of Tender states whether, and to what extent, the Contract Sum includes VAT.

1.3 Letter of Acceptance

In the case of the long forms of contract (PW-CF1, PW-CF2, PW-CF3, PW-CF4, PW-CF5 and PW-CF10), the Letter of Acceptance (MF 1.4) is issued by the Employer accepting the successful Contractor's tender. The issue of the Letter of Acceptance creates a binding contract between the Employer and the Contractor. The completed Schedule should be appended by the Employer to the Letter of Acceptance and any post-tender pre-award clarifications with contractual significance should also be included with it.

In the case of forms of contract PW-CF6, PW-CF7, PW-CF8 and PW-CF11, the binding contractual relationship is created when the Employer returns a copy of the Form of Tender with the Tender Accepted part properly signed and dated. Any post-tender pre-award clarifications, (in the form of letters, emails, minutes, etc.), with contractual significance should be attached to the Tender Acceptance when it is returned.

1.4 Schedule for PW-CF1 to PW-CF5 (long forms of contract)

The Schedule is the part of the Contract that specifies the particular details relating to a particular project. In the case of the long forms of contract (PW-CF1 to PW-CF5), the Schedule refers to the detail contained in the Contract Conditions, and is in three parts:

Part 1 is completed by the Employer; and

Part 2 is completed by the Contractor with the exception of Part 2 E of PW-CF2 and PW-CF4 where the Employer completes the first column titled 'Element' and the Contractor completes the other 2 columns.

Part 3 is completed by the Employer following receipt of tender from the Contractor and prior to issue of the Letter of Acceptance

Part 1**Section 1.4****What's in the Contract**

Schedule for PW-CF1 to PW-CF5 (long forms of contract),
continued

**1.4 Schedule for
PW-CF1 to PW-
CF5 (long forms
of contract)
(continued)**

Part 1 of the Schedule

The Employer completes Part 1 of the Schedule before tenders are invited and includes it with the Tender Form in the tender invitation documents. The following table describes the contents of Part 1 of the Schedule.

Part	Content
A. Employer's Representative and Communications	<ul style="list-style-type: none"> Name, address and other details for the Employer the Employer's Representative (ER); in particular, this includes details for notices from the Contractor to the Employer in relation to Contractor's Termination. Number of members from each Party to sit on the Project Board, (PW-CF1 to PW-CF4 only) Details of the limitations to the ER's authority
B. Documents	<ul style="list-style-type: none"> Details of the reference documents that define the nature of the works, including the Works Requirements, Works Proposals and Pricing Documents.
C Project Supervisor	<ul style="list-style-type: none"> Indicates whether or not the Contractor is to carry out the Health & Safety role of Project Supervisor for the Construction Stage (PSCS).
D Insurance	<ul style="list-style-type: none"> The insurance requirements, including any minimum indemnity limits required, permitted exclusions, optional provisions and required extensions.
E Performance Bond	<ul style="list-style-type: none"> Indicates whether or not the Contractor is required to give the Employer a performance bond; and if so, to what percentage of the Initial Contract Sum.
F(i) Collateral Warranties	<ul style="list-style-type: none"> Details of any collateral warranties required in respect of specialists engaged under contract to the Contractor, including the value to be retained if not presented in time.
F(ii) Ancillary Certificates	<ul style="list-style-type: none"> Details of the categories of Contractor's Personnel from which Ancillary Certificates will be required in accordance with the Building Control (Amendment) Regulations 2014
F(iii) Named Specialists	<ul style="list-style-type: none"> Details of all Category of Specialist whom the Main Contractor will be required to enter contract with at Main Contract Award Stage.

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Part 1**Section 1.4****What's in the Contract**

Schedule for PW-CF1 to PW-CF5 (long forms of contract),
continued

1.4 Schedule for PW-CF1 to PW-CF5 (long forms of contract) (continued)

Part	Content
G Dates for Substantial Completion, Sections, Liquidated Damages, Retention	<ul style="list-style-type: none"> Dates when the works or sections of the works are to be substantially complete (unless these are to be entered by the Contractor in Part 2 of the Schedule – for which, see below); The rate of liquidated damages for delay in delivery of the works or section of the works; and The retention reduction on substantial completion of sections of the works.
H Early Completion	<ul style="list-style-type: none"> Indicates whether or not the ER may exercise the option to issue the certificate of Substantial Completion early.
I Defects Period	<ul style="list-style-type: none"> Specifies the duration of the Defects Period that applies to the Contract.
J Random Checks for Employment Records	<ul style="list-style-type: none"> Indicates whether or not the Employer may exercise the right to carry out random checks on the Contractor's employment records, pay records, and the conditions of employment of the Contractor's personnel.
K Delay Events, Compensation Events, Programme Contingency, Delay Costs, Adjustments	<ul style="list-style-type: none"> Details of the delay and compensation events that apply to the works. Weather Events Details of the programme contingency thresholds. Delay Costs and Adjustments
L Payment Particulars	<ul style="list-style-type: none"> Payment particulars, including details of the payment intervals. Retention details
M Price Variation	<ul style="list-style-type: none"> The price variation option selected, with an indication of which of the two Contract Conditions clauses (PV1 or PV2) is to be used on the project.
N Conciliation, Adjudication & Arbitration	<ul style="list-style-type: none"> Details relating to the appointment of a conciliator or Standing Conciliator or adjudicator or arbitrator by one of the professional bodies failing agreement by the parties to make an appointment.
O Rights in Contractor's Documents	<ul style="list-style-type: none"> Indicates whether or not copyright and other rights in relation to the Contractor's documents and work proposals are to be transferred to the Employer.

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Part 1**Section 1.4****What's in the Contract**

Schedule for PW-CF1 to PW-CF5 (long forms of contract),
continued

**1.4 Schedule for
PW-CF1 to PW-
CF5 (long forms
of contract)
(continued)**

Part 2 of the Schedule

The Tenderer completes Part 2 of the Schedule with the exception of Part 2 E, (PW-CF2 and PW-CF4 only), where the Employer completes the first column titled 'Element' and the Contractor completes the remaining 2 columns. Schedule Part 2 is then submitted with the tender. Part 2 of the Schedule specifies the following:

Part	Content
A Communications	<ul style="list-style-type: none"> Name, address and other details for the Contractor; in particular, this includes details for notices from the Employer to the Contractor in relation to Employer's Termination and notice of referral of dispute to conciliation, adjudication and arbitration. The identity of the Contractor's Agent (for service of legal process) and contact details;
B Parent Company Guarantee (except PW-CF5)	<ul style="list-style-type: none"> Details of a Parent Company Guarantee (if required);
C Dates for Substantial Completion	<ul style="list-style-type: none"> The dates for substantial completion for the whole of the works and for sectional completion is to be completed by the Contractor – unless these are already entered by the Employer in Part 1 of the Schedule
D Adjustments to the Contract Sum including Delay Costs	<p>The values entered here by the Contractor are used by the Employer to determine any adjustments required to the Contract Sum arising from a compensation event.</p> <ul style="list-style-type: none"> Details of the Contractor's all-in tendered hourly rates; Details of the Contractor's tendered percentage addition for costs of materials and costs of plant; The tendered rate of delay costs. <p>These values are also used for comparison purposes by the Employer when assessing the most economically advantageous tender (MEAT) among competing tenderers – see GN 1.5.1 'Public Works Contracts: Managing the Pre-Contract Phase'.</p>
E Specialists named by the Contractor, (PW-CF2 and PW-CF4 only)	<p>The name of one Specialist reference to be entered by the Contractor for each of the elements Items identified by the Employer.</p>

Continued on next page

Part 1**Section 1.4****What's in the Contract**

Schedule for PW-CF1 to PW-CF5 (long forms of contract),
continued

**1.4 Schedule for
PW-CF1 to PW-
CF5 (long forms
of contract)
(continued)**

Part 3 of the Schedule

The Employer completes Part 3 of the Schedule following receipt of the tender from the Contractor and prior to issue of the Letter of Acceptance. Part 3 of the Schedule specifies the following:

Part		Content
A	Project Board, (PW-CF to PW-CF4 only)	Details of the Employer's and Contractor's members of the Project Board
B	Named Specialists	Details of Named Specialists as categorised in Schedule Part 1F(iii), including the Contractor's tendered percentage addition.
C	Conciliation, Adjudication and Arbitration, (PW-CF1 to PW-CF4 only)	Details of the Standing Conciliator, where one is to be appointed.

1.5 Schedule for PW-CF6

The Schedule for PW-CF6 is in one part only, to be filled in by the Employer. The following table presents a summary of the content of the Schedule.

Clause	Description
1.1	Identifies the Employer's Representative and the Time for Completion of the project.
1.3	Lists the documents that in addition to the Conditions and the Schedule make up the Contract. A Bill of Quantities should not be listed here but a pricing document derived from a Bill of Quantities or Schedule of Rates may be included to obtain the rates and prices identified in Clause 4.5.
2.6	Specifies the rate for liquidated damages for delays.
2.8	Deals with weather events that apply to the works.
3.15	Indicates when the Defects Certificate is to be issued.
4.1	Deals with interim payments
4.2 & 4.3	Sets the period in which payment must be made by the Employer.
10.3	Identifies the minimum indemnity limit for both employer liability insurance and public liability insurance. It also sets the maximum excess levels permitted for these insurances and for insurance of the Works.
10.4	Indicates minimum levels of insurance excess.
12.3	Percentage of the unpaid portion of the Price to be paid if the Employer terminates, clause 12.2 does not apply, and the Employer appoints another contractor within 12 months.
14	Indicates whether or not the Contractor is to be appointed as Project Supervisor for the Construction Stage.
15.2 & 15.3	The Employer can choose the body empowered to nominate a conciliator, in the event of a dispute if the parties cannot agree. If conciliation does not resolve the dispute the matter goes to the courts. Fixed text dictates whom will appoint an Adjudicator where the parties cannot agree.

Part 1**Section 1.6****What's in the Contract****Schedules for PW-CF7 and PW-CF8**

**1.6 Schedules
for PW-CF7 and
PW-CF8**

The Schedules for PW-CF7 and PW- CF8 are in one part only, to be filled in by the Employer. The following table presents a summary of the content of the Schedule.

Clause	Description
1.1	Identifies the Employer's Representative; and the documents stating the Scope.
1.8 (CF 7 only)	Indicates whether or not a performance bond is required; and whether or not the Contractor (or a Contractor nominee) is to be appointed as Project Supervisor for the Construction Stage.
3.1 (CF7 only)	Lists documents containing the Contractor's proposals (if any).
4.6 (CF7 only)	Indicates the weather station whose data will be used in determining weather events.
7.1	Indicates whether payment will be on the basis of milestones in the Milestones Table or on the basis of the Bill of Quantities.
12.3	Specifies the minimum indemnity for employer's liability insurance, for any one event.
12.4	Specifies whether or not professional indemnity insurance is required; and where it is, the minimum indemnity limit (annual aggregate).
12.5	Specifies the maximum excess levels permitted for insurances.
13.2 (CF7 only)	Indicates documents for which licences or copyright are required.
16.2 & 16.3 (CF7 only)	Specifies the person empowered to nominate an arbitrator in the event of a dispute if the parties cannot agree. Fixed text dictates whom will appoint an Adjudicator where the parties cannot agree.

Part 1**Section 1.7****What's in the Contract****Schedules for PW-CF10****1.7 Schedules
for PW-CF10**

There are 12 Schedules in PW-CF10 The following table presents a summary of the content of the Schedule.

Schedule	Description
Schedule 1	Gives details of Meaning under Interpretation and Definitions
Schedule 2	Gives details of Early Services and Tasks
Schedule 3	Gives Payment details for; <ol style="list-style-type: none">1. Amounts.2. Defined Cost3. Performance Goals.4. Charges5. VAT
Schedule 4	Gives Management details for; <ol style="list-style-type: none">1. Communications.2. Contractors Management Services
Schedule 5	Gives Submittal details for; <ol style="list-style-type: none">1. Procedures.2. Certificates.3. Completion Data
Schedule 6	Gives Details of Lands & Consents
Schedule 7	Gives Supply Chain details for; <ol style="list-style-type: none">1. Tender Proposals.2. Work Packages3. Supply Chain to be submitted.4. Novated Supply Chain.5. Collateral Warranties
Schedule 8	Gives details of Other Particulars
Schedule 9	Gives details of Insurance
Schedule 10	Gives details of Other Documents
Schedule 11	Gives details of Dispute resolution for: <ol style="list-style-type: none">1. Neutral Advisor.2. Conciliation3. Arbitration4. Adjudication
Schedule 12	Gives details of the Deed of Agreement

Part 1**Section 1.8****What's in the Contract****Schedules for PW-CF11**

**1.8 Schedules
for PW-CF11**

The Schedule for PW-CF11 is in one part only, to be filled in by the Employer. The following table presents a summary of the content of the Schedule.

Clause	Description
1.4	Identifies the Works Requirements and the Pricing Document
1.10 & 8.2	Identifies specialist Work types and specialists who will undertake that work
8.2	Identifies Professional Indemnity insurance required of Specialists
2.1	Identifies Percentage of Maximum Sum at which Term ends
5.4	Identifies Percentage of Maximum Sum after which Task Orders must include an accepted quotation; maximum value of Task Orders after the percentage exceeded
6.1	Identifies the Maximum Sum
6.5	Identifies the limits of the Interim Statement provided under a Task Order
6.6	Identifies the Time for Payment
10, 1, 15	Identifies optional clauses
11.1	Identifies minimum indemnity levels for Public Liability and Employer's Liability
11.2	Identifies maximum levels of excess on Public Liability and Employer's Liability indemnities
14.2 & 14.3	Specifies the person empowered to nominate an arbitrator in the event of a dispute if the parties cannot agree. Fixed text dictates whom will appoint an Adjudicator where the parties cannot agree.

1.9 Form of Tender

Each tenderer should return the Form of Tender and Schedule attached with the following information included on them:

- The fixed lump sum tender price; and
- The signature of the principal(s).
- Part 2 of the Schedule and the Works Proposals specified in Part 1 (not applicable to PW-CF6, PW-CF7, PW-CF8, PW-CF10 or PW-CF11)

Furthermore, all the tender information required in the Form of Tender (and any attachments to it) should be supplied by the tenderers. Failure to provide such key information will result in a tender being declared invalid.

In the case of PW-CF1 to PW-CF5, once the tender is accepted a contract is formed – the consideration for the contract is expressed on the form of tender with the words:

‘In consideration of your providing us with the contract documents...’

If the formal contract entered into is subsequently declared void, ineffective, or otherwise terminated, for whatever reason, the Employer’s liability will be as set out in clause 12.6 of the Contract Conditions (PW-CF1 to PW-CF5). The wording on the form of tender states

‘..any damages for which you may be liable will not exceed the amount that would have been payable under clause 12.6 of the Conditions of the contract¹ on termination under clause 12.5 of the Conditions of the contract².

Should the fixed price lump sum include VAT?

Where the Employer is a ‘principal contractor’ for VAT purposes, the fixed price lump sum should include standard rate VAT, but *not* reduced rate VAT. Where the Employer is not a ‘principal contractor’ for VAT purposes, the fixed price lump sum should include VAT at both standard rate and reduced rate, as appropriate.

¹ PW-CF1 to PW-CF5

Part 1**Section 1.10****What's in the Contract****Using the correct Form of Tender****1.10 Using the correct Form of Tender**

The correct form of tender must be used with each form of contract, as set out in the following table.

For this Form of Contract ...	Use this Form of Tender.
PW-CF1 Public Works Contract for Building Works designed by the Employer	<i>FTS 1</i> Form of Tender and Schedule: Public Works Contract for Building Works designed by the Employer
PW-CF2 Public Works Contract for Building Works designed by the Contractor	<i>FTS 2</i> Form of Tender and Schedule: Public Works Contract for Building Works designed by the Contractor
PW-CF3 Public Works Contract for Civil Engineering Works designed by the Employer	<i>FTS 3</i> Form of Tender and Schedule: Public Works Contract for Civil Engineering Works designed by the Employer
PW-CF4 Public Works Contract for Civil Engineering Works designed by the Contractor	<i>FTS 4</i> Form of Tender and Schedule: Public Works Contract for Civil Engineering Works designed by the Contractor
PW-CF5 Public Works Contract for Minor Building and Civil Engineering works designed by the Employer	<i>FTS 5</i> Form of Tender and Schedule: Public Works Contract for Minor Building and Civil Engineering Works designed by the Employer
PW-CF6 Short Public Works Contract (for Public Building and Civil Engineering works designed by the Employer)	<i>FTS 6</i> Form of Tender and Schedule: Short Public Works Contract
PW-CF7 Public Works Investigation Contract	<i>FTS 7</i> Form of Tender and Schedule: Public Works Investigation Contract
PW-CF8 Public Works Short Investigation Contract	<i>FTS 8</i> Form of Tender and Schedule: Public Works Short Investigation Contract
PW-CF9 Public Works Framework Agreement	If there is a tender competition for an initial works project as part of the establishment of a framework agreement, use <i>FTS 1 to FTS 8</i> as appropriate. Similarly for any subsequent mini-competitions under the framework agreement, use <i>FTS 1 to FTS 8</i> as appropriate.

Continued on next page

Part 1**What's in the Contract****Section 1.10****Using the correct Form of Tender, *continued***

**1.10 Using the
correct Form of
Tender,
(continued)**

For this Form of Contract ...	Use this Form of Tender.
PW-CF10 Public Works Contract for Early Collaboration	<i>FTS 11</i> Form of Tender and Schedule: Public Works Contract for Early Collaboration
PW-CF11 Public Works Term Maintenance and Refurbishment Works Contract	<i>FTS 12</i> Form of Tender and Schedule: Term Maintenance and Refurbishment Works Contract

1.11 Contract Conditions

The Contract Conditions PW-CF1 to PW-CF5 set out the legal obligations, roles and responsibilities of the parties (and those of their agents) in a contract. The Conditions have been drafted for each contract so that they are generic and to the greatest extent possible they are the same in all five. They vary to a small extent due to the nature of work they cover.

PW-CF6, PW-CF7 and PW-CF-8 present standard contract conditions that, by virtue of the type of project they are used for, are less complex or are more specialised than those for PW-CF1 to PW-CF5. PW-CF9 is a Public Works Framework Agreement.

The following are the standard forms of contract that include the contract conditions:

Code	Form of Contract
PW-CF1	Public Works Contract for Building Works designed by the Employer
PW-CF2	Public Works Contract for Building Works designed by the Contractor
PW-CF3	Public Works Contract for Civil Engineering Works designed by the Employer
PW-CF4	Public Works Contract for Civil Engineering Works designed by the Contractor
PW-CF5	Public Works Contract for Minor Building and Civil Engineering works designed by the Employer
PW-CF6	Short Public Works Contract for Building and Civil Engineering Works designed by the Employer
PW-CF7	Public Works Investigation Contract
PW-CF8	Public Works Short Investigation Contract
PW-CF9	Public Works Framework Agreement
PW-CF10	Public Works Contract for Early Collaboration
PW-CF11	Public Works Term Maintenance and Refurbishment Works Contract

Continued on next page

Part 1

Section 1.11

Section 1.12

What's in the Contract

Contract Conditions, *continued*

Works Requirements for PW-CF1 to PW-CF5

1.11 Contract Conditions (continued)

No amendments permitted

There should be no amendments made to any of the standard forms of contract. The Department of Finance's circular 33/06 7(a) states:

'In line with Government policy, the new Forms of Construction Contracts are to be the norm and no amendments should be made to them. In this context, the new Forms of Construction Contracts have been drafted in a way that better protects the public sector client's interest in order to achieve value for money outcomes from public expenditure on public works projects.'

Provisional Sums and Prime Cost Sums are not permitted

Employers should note that Provisional Sums and Prime Cost Sums, formerly used in public works contracts, are no longer permitted under PW-CF1 to PW-CF6. In the case of PW-CF7 and PW-CF8, Prime Cost Sums are not permitted however Provisional Sums up to a value of 20% of the contract value are allowed where quantities cannot be measured.

1.12 Works Requirements for PW-CF1 to PW-CF5

The Works Requirements in contracts PW-CF1 to PW-CF5 set out the Employer's requirements in relation to the proposed works. They define the scope of the Works.

The Works Requirements for a traditional (employer-designed) contract and those for a design-and-build contract differ primarily in that for the traditional contract, the fully developed design and detailed descriptive specifications are included as *input* specifications, while in the case of design-and-build the focus is on *output* specifications, standards and functional requirements. The content of Work Requirements is summarised in the following table:

Traditional Contract	Design-and-Build Contract
<ul style="list-style-type: none">▪ A developed design (including, for example, construction-quality drawings and bar-bending schedules);▪ Plans and specifications; and▪ Any other documents the Employer regards as necessary to define the requirements.	<ul style="list-style-type: none">▪ Output specification setting out the functional requirements;▪ Details of the expected functional life and maintenance requirements; and▪ Any other documents the Employer regards as necessary to define the requirements – if a specimen design is provided it should be included.

Continued on next page

1.12 Works Requirements for PW-CF1 to PW-CF5 (continued)

The documents containing the Works Requirements provided by the Employer are identified in Part 1B of the Schedule Site investigation and archaeology reports may be provided as background information. In exceptional circumstances where they are included in the Works Requirements in Employer-designed contracts, the Employer carries the risk as to the accuracy of the information, as indicated in the Schedule Part 1K. For that reason, the Employer should ensure the site investigation contractor carries appropriate professional indemnity insurance and that he stands over the factual information in his report.

In the interests of ensuring that tender cost certainty is maintained up to outturn cost stage, it is important that the project scope in the Works Requirements is not changed after the Contract has been awarded. However, details relating to project scope in order to refine it may be changed or supplemented by any additional information required by the Contractor to satisfactorily complete the works – the Employer or the Employer's Representative (ER) provides such information by way of a *change order*. The issue of *change orders* should only be for essential requirements that were unforeseeable prior to tender

Note: The Works Requirements remain the property of the Employer and the Contractor can only use them for the sole purpose of executing the works.

Changes to Works Requirements for PW-CF1 – PW-CF5

The scope of the Works defined in the Works Requirements should not change. The Works Requirements set out in the Contract can be revised by a *change order* issued by the ER (Employer's Representative) in relation to any matter concerning the works.

Not all changes to the Works Requirements result in compensation events – for example amendments resulting from a Contractor's error are not compensation events. (Compensation events are detailed in Part 1K of the Schedule.)

The *change order* when it involves a compensation event should include instructions as to how the works in the *change order* are to be valued, and the value should be added to the Contract Sum.

When work in the Works Requirement is to be omitted, the Employer's Representative should issue a *change order* removing the work and identifying its value – which should then be deducted from the Contract Sum

Part 1

Section 1.13

Section 1.14

What's in the Contract

Works Requirements for PW-CF6 to PW-CF8

Works Requirements for PW-CF10

1.13 Works Requirements for PW-CF6 to PW-CF8

Public Works Short Form of Contract (PW-CF6)

There are no specific titles in Short Public Works Contract (PW-CF6) for Employer's design information, Contractor's contract information or the pricing document. This information, along with the Form of Tender, Tender Acceptance the Schedule and other documents are listed under clause 1.3 of the Schedule and collectively form the contract.

The works may be changed by an instruction issued (under clause 3.4 of the contract conditions) by the Employers Representative.

Public Works Investigation Contracts (PW-CF7 and PW-CF8)

The scope of a Public Works Investigation contract (PW-CF7, PW-CF8) is defined by the specification, drawings, schedules and bills of quantities identified in clause 1.1 of its Schedule. By including a bill of quantities in the scope of the contract, the quantities listed in the bill may subsequently be changed by way of an instruction from the Employer's Representative. This is permissible under PW-CF7 and PW-CF8, but **not** under PW-CF1 to PW-CF5.

The scope may be changed by an instruction issued (under clause 2.1) by the Employers Representative.

1.14 Works Requirements for PW-CF10

Public Works Contract for Early Collaboration

There are no specific referral to Works Requirements under the Public Works Contract for Early Collaboration. The Contract is made up of the documents listed in Schedule 12.

The scope for Early Services and Tasks are described in the Employer's Brief and elsewhere in the contract. Contractor design of Works may be included in the Early Services or in a Task by the Employer.

The works may be changed by an instruction issued (under clause 4.5 of the contract conditions) by the Employers Representative.

Part 1

Section 1.15

Section 1.16

Section 1.17

What's in the Contract

Works Requirements for PW-CF11

Environmental Impact Statement

Pricing Document

1.15 Works Requirements for PW-CF11

Public Works Term Maintenance and Refurbishment Works Contract

The Works Requirements are the documents identified as such in the Schedule, as may be amended by instruction of the Employer's Representative according to Clause 3 of the Contract.

The Employer's Representative may give the Contractor, during the Term, a Task Order describing Works which the Contractor is to complete and hand over to the Employer.

1.16 Environmental Impact Statement

Where there is an Environment Impact Statement (EIS) it should not normally be included in the Works Requirements. Much of the content of an EIS is specifically written either in technical language, or is discursive and the language used is just not precise enough to be appropriate in a contract document. If parts of the EIS or other statutory consents are interpreted in the Works Requirements, care should be taken not to restrict unintentionally the Contractor's ability to make design proposals and take responsibility for their compliance with the consents. This may occur if specific steps from the EIS are brought forward to the Works Requirements.

Under clause 2.2 of PW-CF1 to PW-CF5 and clause 15 of PW-CF6, the Contractor is to comply with all legal requirements, which includes any EIS. It is not, therefore, necessary to include the EIS as a contract document. It can be provided as a reference document (or back-up document) during the tender procedure. During the course of statutory procedures, a public authority will sometimes make commitments that are not specifically referred to in the EIS or other consents, and it is important that these commitments are also passed on to the Contractor. This may require including a schedule of these commitments, and perhaps the transcripts of oral hearings, in the Works Requirements.

1.17 Pricing Document

Refer to Guidance Note GN 1.5.3

1.18 Works Proposals (PW-CF1 to PW-CF5)

In the case of PW-CF1 to PW-CF5, the Works Proposals state how the Contractor proposes to carry out the works in response to the Employer's Invitation to Tender. Usually this will include a list of proposed suppliers or products and relevant specification to satisfy M.E.A.T. criteria, method statements, details of the Contractor's design and any other information required by the Employer in relation to the carrying out of the Works. Works Proposals from the Contractor will vary depending on whether the Contract is design-and-build (Contractor-design) or traditional (Employer-design).

Design-and-build (Contractor-designed)

In the case of a design-and-build project, the Contractor has responsibility for design, and the Works Proposals should include information similar to that described above for the traditional contract, but also design proposals, which would include design drawings of temporary and permanent works, finishes schedules, calculations and all necessary information to enable the Employer's Representative (ER) to assess the proposal technically in the Tender Evaluation.

Traditional (Employer-designed)

In a traditional contract the Works Proposals will include a list of proposed suppliers or products and relevant specification to satisfy M.E.A.T. criteria and may include details of the roles and activities of the Contractor's management personnel dedicated to the project, the initial management arrangements – including systems, methods, project programme, planning and other preparations for the extent, type and allocation of labour and other resources.

For example, in a civil engineering project, the Contractor could indicate how available working space might be deployed around structures, or show locations where excavated material might be safely stockpiled, or where concrete batching plant and aggregate stockpiles of materials or the like might be located.

Alternatively, the Contractor could outline other arrangements such as additional lands that might be acquired, or licences and permits that might be obtained in order to free up working space on a particularly congested site. The Contractor's approach to addressing the question of re-use of materials and disposal of C&D (construction and demolition) waste might also be indicated. If, for instance, it is considered that road closures are required to perform the Works, the Contractor could outline their sequence, duration, alternative routes to be used, and so on. The Contractor might also state the proposed working methodologies to be used, including any measures for environmental or HS&W (Health, Safety and Welfare) protection.

Part 1

What's in the Contract

Section 1.19	Works Proposals (PW-CF6 to PW-CF8)
Section 1.20	Works Proposals (PW-CF10)
Section 1.21	Works Proposals (PW-CF11)

1.19 Works Proposals (PW-CF6 to PW-CF8)

There is no reference to Works Proposals in the Contract Conditions for PW-CF6, PW-CF7 or PW-CF8. However, this does not preclude the Employer from requiring documents such as method statements or programmes to be submitted as part of the Contractor's proposals and included in the contract.

- In the case of PW-CF6, the Employer may specify (at Clause 1.3 of the Schedule) what documents are to be included in the contract.
- In the case of PW-CF7 and PW-CF8, there is provision for Works Proposals under Clause 3 of the Contractor's Proposals. These, however, are not limited to the provisions in Clause 3, and further provisions can be included under Clause 1.1 'Scope' in the Schedule.

1.20 Works Proposals (PW-CF10)

Under PW-CF10, (Public Works Contract for Early Collaboration), Works Proposals are referred to as *Tender Proposals*. Where the design of the Works is included in the Contractor's Early Services of Tasks as so ordered by the Employer, then the design may be included in the Tender Proposals or in *any other documents making up the contract*

1.21 Works Proposals (PW-CF11)

There is no reference to Works Proposals in the Contract Conditions for PW-CF11. However, this does not preclude the Employer from requiring documents such as method statements or programmes to be submitted as part of the Contractor's proposals and included in the contract. The Employer may specify (at Clause 1.4 of the Schedule) what documents are to be included in the contract.

Part 2**Section 2.1****Key Contract Dates****Dates defined in the Contract****2.1 Dates defined in the Contract**

Date	Form of Contract	Description
Contract Date	PW-CF1 to PW-CF5 & PW-CF10	The date the Employer issues the Letter of Acceptance.
	PW-CF6 to PW-CF8 & PW-CF11	The date on the Tender Acceptance is sent to the Contractor
Starting Date	PW-CF1 to PW-CF5	The date on which the Contractor proposes to start the works. This must be within the time limit set in the contract.
	PW-CF6	Within 5 working days after the Contract comes into effect.
	PW-CF7 and PW-CF8	Within 7 days of the last date for permission to start a task.
	PW-CF10	The date so instructed by the Employer or ER to commence a Task or Early services
	PW-CF11	The date stated in the Works Requirements or the Task Order
Date for Substantial Completion	PW-CF1 to PW-CF5 & CF10	The date by which the works, or part of the works (a section), must be ready to be taken over and used by the Employer. On building contracts this has traditionally been referred to as the Date for Practical Completion.
Time for Completion	PW-CF6	This is the construction period stated in the Schedule or such other approved extended period until substantial completion is reached at which time the facility should be available to be taken over.
	PW-CF11	Time for completion may be stated in Works Requirements or the Task Order. The Contractor must certify the completion of a Task
Performance Period for a Task	PW-CF7 and PW-CF8	This is the period for a Task in the Task Table within which work is to be completed after permission to start is granted.

Key Contract Dates

 Dates defined in the Contract, *continued*
2.1 Dates defined in the Contract (continued)

Date	Form of Contract	Description
Defects Period	PW-CF1 to PW-CF5	This is the date that defines the period after substantial completion during which any defects must be rectified – this usually lasts 12 months.
	PW-CF6	This is the period stated in Schedule after the date for which the Works are certified substantially complete. The default period is between 12 and 13 months.
	PW-CF7, PW-CF8 and PW-CF11	Not applicable.
Defects Date	PW-CF11	This is the last date of the period stated in Schedule 8.
Designated Date	PW-CF1 to PW-CF5	The date 10 days before the last day for receipt of the Contractor's tender for the works. Relevant only for the price variation provision.
Recovery Date	PW-CF1 to PW-CF5	The Designated Date adjusted by the period of delay to the Starting Date that results from the actions or omissions of the Contractor. Relevant only for the price variation provision.
Base Date	PW-CF1 to PW-CF5	Depends on which price valuation method is used:
		PV1 The first day of the 31 st calendar month after the Contract Date.
		PV2 The date of the first day of the 37th calendar month after the Designated Date/Recovery Date.

Note: The Base Date is only applicable to contracts that are longer than 36 months duration from the Designated Date/Recovery date in the case of PV2, or contracts that are longer than 30 months duration from the Contract Date in the case of PV1. The Contract, Designated, Recovery and Base Dates have a specific meaning in relation to the Price Variation clauses. See GN 1.5.3 'Public Works Contracts: The Pricing Document'.

Note: The Contractor's time for completion of the works (unless it is a fixed date) runs from the date when the Letter of Acceptance / Tender Acceptance is issued.

Part 3

Section 3.1

Section 3.2

Legal Issues Relating to the Contract

Interpretation and jurisdiction

Legal opinion

3.1 Interpretation and jurisdiction

Irish law governs the Contract and its interpretation. The arbitration rules (AR1) apply in relation to disputes referred to arbitration. The jurisdiction of the Irish courts applies in relation to the referral of any point of law arising out of arbitration proceedings about the Contract or the works.

Certain words, phrases, periods and times should be interpreted in accordance with how they are defined in the Contract.

3.2 Legal opinion

If the Contractor or any person executing a bond, guarantee, warranty or other deed or agreement required by the Contract is not an individual or a company incorporated in Ireland, then the Contractor must provide to the Employer, at his own expense, a legal opinion to the effect that:

- The Contractor is an entity duly incorporated under the laws of its place of incorporation;
 - The Contractor is a separate legal entity, subject to being sued in its own name;
 - The Contractor is validly existing under the laws of that place and no steps have been taken or are being taken to appoint a receiver, examiner, administrator, liquidator, trustee or similar over it or to wind it up;
 - The Contractor has the necessary power and authority, and all necessary corporate and other action has been taken, to enable it to execute, deliver and perform the obligations undertaken by it under the Contract;
 - The contract has been duly executed by the Contractor, or on its behalf, and is binding on it under the laws of the place where it is incorporated;
 - A judgment of an Irish Court will be enforceable against the Contractor (or other counter-party) in its place of incorporation
-

Part 3

Legal Issues Relating to the Contract

Section 3.3

Joint and several liability

Section 3.4

Assignment

Section 3.5

Ethics in Public Office

3.3 Joint and several liability

If the Contractor consists of a joint venture, consortium or other unincorporated grouping of two or more persons, each person is jointly and severally liable to the Employer for the performance of the Contract.

It should be noted (in the context of health & safety) that the Project Supervisor for the Design Process (PSDP) and the Project Supervisor for the Construction Stage (PSCS) must each be an individual (i.e. a human person) or a body corporate.

3.4 Assignment

The Contractor may not assign the benefit of the Contract, or any part of it, without the Employer's consent.

3.5 Ethics in Public Office

As regards compliance with the Ethics in Public Office Acts, 1995 and 2001, and the Prevention of Corruption Acts 1889 to 2001, the Contractor is required to warrant that:

- Neither he, nor any of his associates or representatives, has or will offer a gift of any kind in relation to the Contract;
 - Neither he, nor anyone acting on his behalf, has or will commit an offence under the Acts in relation to this specific contract;
 - No public servant or Minister shall have a material interest in any aspect of the Contract;
 - Persons, except for novated specialists, who worked for the Employer in the previous 12 months will not be engaged by the Contractor, unless the Employer agrees otherwise.
-

Part 3

Section 3.6

Section 3.7

Legal Issues Relating to the Contract

Other points

Contractor's Indemnity

3.6 Other points

The following points should also be noted:

- The Employer is responsible for obtaining the consents stated in the Works Requirements; the Contractor is responsible for obtaining all other consents. See Appendix B for a checklist of consents that may be required for the works;
 - The Contractor must pay all taxes, fees and charges in accordance with legal requirements;
 - If stated in Part 10 of the Schedule², ownership of, and all copyright and other intellectual property rights in, contractor's documents prepared for the works transfer to the Employer when he receives them. Ownership of works proposals transfers to the Employer at the Contract Date; and
 - The Employer may copy, modify and use the Contractor's documents for any purpose in connection with the Works.
-

3.7 Contractor's indemnity

In general terms, the Contractor indemnifies the Employer and the Employer's employees against liability resulting from the Contractor's infringements of property rights (including intellectual property rights) arising out of the works and against other liability resulting from the works (such as third party claims for property damage, personal injury or nuisance).

The Contractor must indemnify the Employer and his employees against liability and loss of or damage to the Employers property, including the site, arising in the course of or as a result of providing the works.

The Contractor's indemnity for liability for the death, injury or illness of any of his personnel must apply regardless of whether the death, illness or injury was caused wholly or in part by the negligence or other fault of the Employer or any of his personnel where the Employer has personnel on the site at the same time – for example other contractors on the site employed by the Employer.

The Contractor's obligation to indemnify the Employer is reduced to the extent that the loss is covered by the Employer's indemnities under the Contract.

² PW-CF1 to PW-CF5; Clause 13.2 of PW-CF7 and PW-CF8. PW-CF6 does not have a similarly worded copyright provision however it does include under clause 11.2 an entitlement for the Employer to copy, modify, adapt and translate for any purpose documents that the Contractor provides to the Employer.

Part 3

Section 3.8

Section 3.9

Legal Issues Relating to the Contract

Employer's indemnity

How is the Contract / Deed executed

3.8 Employer's indemnity

The Employer indemnifies the Contractor against liability for; the Employer's negligence, or the Employer's infringement of property rights (including intellectual property rights) resulting from the unavoidable use of the Works Requirements and Employer's Things, or the unavoidable damage resulting from the Works being executed in accordance with the Works Requirements, or from the use or occupation of the site to provide the works in accordance with the Works Requirements.

The Employer's indemnity does not cover liability for death, injury or illness of the Contractor's personnel.

The indemnity for Employer's negligence covers for example, an employee of the Employer damaging the property while doing a test. This indemnity does not extend to claims by Contractor's personnel, who are the Contractor's responsibility.

3.9 How is the Contract / Deed executed

The Contract between the Employer and the Contractor must be executed by both parties.

On the Employer's side, the Contract / Deed must be:

In the case of (a Contract executed as) **a Deed**, sealed with the Employer's common seal, authenticated by signatures of authorised persons; *or*

In the case of a **Contract** (not executed as a Deed), signed on behalf of the Employer by an authorised person, in the presence of a witness.

On the Contractor's side, the Contract / Deed must be:

In the case of (a Contract executed as) **a Deed**:

Sealed with the Contractor's common seal, authenticated by signatures of authorised persons; *or*

Signed, sealed and delivered by a lawful attorney in the presence of a witness; *or*

Signed, sealed and delivered by the Contractor who affixes his personal seal in the presence of a witness;

Note: There is no provision under Irish law (as there is under UK law) for a company to execute a document as a deed by signature only.

In the case of a **Contract** (not executed as a Deed):

Signed on behalf of the Contractor by an authorised person in the presence of a witness; *or if the Contractor is an individual, or*

Signed by the Contractor in the presence of a witness.

Continued on next page

Part 3

Section 3.9

Section 3.10

Legal Issues Relating to the Contract

How is the Contract / Deed executed, *continued*

How is a document sealed?

3.9 How is the Contract / Deed executed (continued)

Where the Contractor is a partnership or joint venture, the Contract must be executed by each joint member:

Given under the member's common seal, authenticated by signatures of authorised persons; *or*

Signed, sealed and delivered by a lawful attorney for the member in the presence of a witness; *or*

Signed on behalf of the member by an authorised person in the presence of a witness.

Note: The benefit of a contract being a deed is that the twelve-year statute of limitations will apply instead of the six years for contracts that are signed under hand only. For a deed to be created in this jurisdiction, a construction contract must be executed under seal. The legislation in the UK is different – there, once the contract states that it is a deed then that is all that is required to make it a deed and no seal is required

3.10 How is a document sealed?

A document (such as a Contract) is validly sealed when some act is done by the person sealing it with the intention of sealing the document. It is common practice for the person to use a special sealing device to make an impression in the document, for example, the company's name, or to affix a sticker to the document. However the person can also seal the document in many other ways, including affixing a ribbon to or pouring some wax on the document.

How is a company's seal authenticated?

The procedure to be followed in authenticating a company's seal is set out in the company's Memorandum and Articles of Association. The usual requirement is for a director to sign the document to which the seal is affixed and for the document to be countersigned by one of the following:

- Another director;
- The company secretary; or
- Some other person appointed by the directors for that purpose.

Continued on next page

3.10 How is a document sealed?
(continued)

Ensuring that a company's common seal is properly authenticated

To ensure that a Contractor company's seal is properly authenticated the Employer should take the following steps:

Step	Action
1	Ask the company to provide a certified copy of their current <i>Memorandum and Articles of Association</i> . This will set out the procedure for authenticating the company's seal.
2	Where the <i>Memorandum and Articles of Association</i> set out the formal requirements for use of a company's seal, carry out a Companies Registration Office (CRO) search to determine who the directors (including alternate directors) and secretary of the company are. If the directors have appointed a person to countersign the affixing of the company seal, you should request from the company a certified copy of the board resolution appointing that person.
3	Check the signatories' names against those who are permitted to sign, and countersign the affixing of the seal in the case of a deed or other document to be executed under seal.

These steps should provide sufficient comfort that the Contractor company's common seal has been properly authenticated. Further steps that may be taken include:

Where the document is signed in your presence, obtain some form of proof of identity of the signatories;

Where the document is executed in counterparts, have the signatures notarised;

Have the affixing of the signatures to the sealed document witnessed and the details of the witness inserted on the document;

Obtain an opinion on valid execution from the Contractor company's solicitors.

3.11 Ensuring that a power of attorney has been validly executed

For a company to grant power of attorney, the following two conditions must be satisfied:

The Memorandum and Articles of Association of the company must give directors the authority to grant power of attorney;

The Board of Directors of the company must pass a resolution granting power of attorney.

Once these conditions are in place, the company may then grant the power of attorney to a named person or firm

Note: Section 15 of the Power of Attorney Act 1996 does not require a power of attorney to be executed under seal, however documents executed under power of attorney may be executed under hand or under seal.

Ensuring that a power of attorney is properly authenticated

To ensure that the person acting with the Contractor's power of attorney is properly authenticated, the Employer should take the following steps:

Step	Action
1	Ask the company to provide a certified copy of their current <i>Memorandum and Articles of Association</i> . This will set out the procedure for granting power of attorney.
2	Obtain a certified copy of the resolution of the board of directors granting the power of attorney.
3	Obtain proof of the power of attorney by having the company provide: The original power of attorney document (that is, the document granting the power of attorney); A copy of the power of attorney document certified by the company granting the power of attorney to a solicitor or a member firm of an approved stock exchange; and A copy of the power of attorney document which has been attested by the Central Office of the High Court – where the power of attorney has been deposited in the Central Office of the High Court (pursuant to Section 22 of the Powers of Attorney Act, 1996).
4	Obtain proof of identity of the attorney.
5	Check that the Contract document has been personally signed and sealed by the attorney and witnessed.

Ensuring that a company has the authority to execute contracts under hand

3.12 Ensuring that a company has the authority to execute contracts under hand

For a company to be able to execute a contract under hand (i.e., by signature), the following two conditions must be satisfied:

The *Memorandum and Articles of Association* of the company must give directors or the Managing Director the authority to execute documents;

The Board of Directors of the company must pass a resolution granting directors or the Managing Director the authority to execute documents;
or

A Managing Director can execute a contract under hand without a separate board resolution once the company has the authority to execute such a contract under the terms of its *Memorandum and Articles of Association*;
or

The Board of Directors can pass a resolution to give any other person (in that person's employment contract) the authority to execute a contract.

Once these conditions are in place, the directors or Managing Director may execute contracts under hand.

To ensure that each person signing the Contract on behalf of the Contractor is properly authenticated, the Employer should take the following steps:

Step	Action
1	Ask the company to provide a certified copy of their current <i>Memorandum and Articles of Association</i> . This will set out the procedure for executing documents.
2	Obtain a certified copy of the resolution of the board of directors granting the power to execute documents.
3	Obtain proof of identity of the person(s) signing.
4	Obtain proof that the party signing the contract has the authority under its contract of employment to do so.

Consequences if the signatory has the required authority

Where a director or employee of the Contractor company executes a contract within their express authority, the Employer may enforce the executed contract against the Contractor company.

Continued on next page

3.12 Ensuring that a company has the authority to execute contracts under hand (continued)***Consequences if the signatory does not have the required authority but has apparent authority***

Where the signatory does not have the required authority but acts in such a way that it appears to have the required authority, the Contractor company will also be bound by the actions of the signatory where:

- The Contractor's company (through a person with actual authority) represents to the Employer that the arrangement entered into under apparent authority of a signatory will be binding on the company;
- The Employer relies on this representation; and
- The Memorandum and Articles of Association of the company neither forbid that type of transaction nor the delegation of the power to an agent.

The Employer is entitled to infer that all requirements of the *Memorandum and Articles of Association* have been complied in relation to the valid delegation of authority to the signatory – usually by the passing of a board resolution. This will require the Employer to establish the pre-conditions to the delegation of authority contained in the *Articles of Associations*. There is also a requirement for the Employer to act in good faith in relying on the representation.

Consequences if the signatory acts outside their actual or apparent authority

Where the signatory acts outside their actual or apparent authority, the Contractor's company will not be bound unless it subsequently ratifies the execution of the Contract, (which is not one which the company is prevented from executing under its Memorandum and Articles of Association).

3.13 VAT in the Contract

The way VAT is treated under the Public Works Contracts depends on whether or not the Employer is a 'principal contractor' for VAT purposes. Bodies such as local authorities, Government departments and larger public bodies are likely to be registered as 'principal contractors'; others will not, as they are not required to be so registered by legislation. Employers should be aware of their status in this respect.

In all cases, however, the Employer is required (under clause 11.7.2 of the Contract) to pay the Contractor (or the Revenue Commissioners, as appropriate) any VAT arising on the supply under the Contract.

The following table summarises the differences that apply for employers who are 'principal contractors' and those who are not.

	Employer is a 'Principal Contractor'	Employer is NOT a 'Principal Contractor'
VAT in tenders	The Employer invites tenderers to submit tenders that include standard-rate, exempt and zero rate VAT, but are exclusive of the reduced rate VAT. The Pricing Document should, where appropriate, allow space for the tenderer to insert amounts to which VAT at the standard, exempt and zero rates rate (but not at the reduced rate) can be added, so that the total amount for VAT in the tender can be established.	The Employer invites tenderers to submit tenders that include VAT at all VAT rates. The Pricing Document should allow space for the tenderer to insert amounts to which all of the different VAT rates apply, so that the total amount for VAT in the tender can be established.
VAT on invoices	Invoices that the Contractor submits to the Employer include standard-rate, exempt and zero rate VAT, but are exclusive of the reduced rate VAT.	Invoices that the Contractor submits to the Employer include VAT at all rates.
Payment of VAT to the Revenue	The Contractor is responsible for all VAT at the standard, exempt and zero rates (but not at the reduced rate) and includes these in its VAT return to the Revenue. The Employer calculates the reduced rate VAT that applies, and remits this directly to the Revenue Commissioners.	The Contractor is responsible for all VAT (including the reduced rate), and includes all VAT in its VAT return to the Revenue.

Continued on next page

Part 3

Legal Issues Relating to the Contract

Section 3.14

Which VAT rate applies?

Section 3.15

VAT and the Contract Sum

3.14 Which VAT rate applies?

The reduced rate and standard rates of VAT apply as follows:

- The **reduced rate** of VAT applies to items that are fixed in position in a building; and
- The **standard rate** of VAT applies to fittings – for example, furniture and light fittings. The Pricing Document should indicate what items attract the standard rate.

The ‘two thirds’ rule

The Revenue Commissioners have a ‘two thirds rule’ to prevent materials that are liable for the standard rate being sold with the lower, building rate.

The rule says that, where the value of materials used in works of construction exceeds two thirds of the total charge for the works, the VAT liability on that work is at the standard rate rather than the building rate. For example, a contract that consists only of fitting a very expensive door set in a building might easily be caught by the rule and be VAT liable at the standard rate rather than at the building rate.

This ‘two thirds rule’ applies only where the Employer is not a ‘principal contractor’.

3.15 VAT and the Contract Sum

The Contractor's completed form of tender states whether, and to what extent, the Contract Sum includes VAT.

END