

GUIDANCE NOTE 1.5.1

Public Works Contracts: Managing the Pre-Contract Phase

Office of Government Procurement

Public Works Contracts: Managing the Pre-Contract Phase

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Contents

Foreword	1
Part 1 – Suitability Assessment and Procurement of Specialists	2
1.1 Suitability Assessment procedure	2
1.2 Substitution	2
1.3 Procurement of Specialists	2
Part 2 – Pre-Tender Reports	3
2.1 General Requirements	3
2.2 Archaeology and Special Interest Areas	3
2.3 Site Investigation	5
2.4 Ground Conditions	6
2.5 Utilities	7
Part 3 – Bonds and Guarantees	8
3.1 Bid Bond	8
3.2 Parent Company Guarantee	9
3.3 Performance Bond	10
3.4 Retention	12
3.5 Regulations and Model Forms	12
Part 4 – Insurance Provisions	13
4.1 Insurance Requirements	13
4.1.1 Summary of type	13
4.1.2 Co-insured	13
4.1.3 Subrogation	14
4.1.4 Cross-liability	14
4.1.5 Employer approval	14
4.1.6 Period of Cover	15
4.1.7 Limits	16
4.1.8 Exclusions	16
4.1.9 Optional insurance provisions	17
4.1.10 Required extensions to insurance	17
4.2 Insurance: Filling in the Schedule	18
4.2.1 Insurance details in the Schedule	18
4.3 Insurance Details	21
4.3.1 Employers' liability insurance	21
4.3.2 Professional indemnity insurance	21

Continued on next page

Contents, continued

4.3.3 Professional indemnity requirements	21
4.3.4 Professional indemnity limitations	22
4.3.5 Insuring existing facilities	22
4.3.6 Valuing Employer's facilities	22
4.3.7 Owner-controlled insurance	23
Part 5 – Risk Management	24
5.1 Delay and Compensation Events	24
5.1.1 Identifying compensation events	24
5.1.2 Delay events in traditional contracts	24
5.1.3 Delay events in design-and-build contracts	24
5.1.4 Identifying delay cost option	25
5.1.5 Tender submission requirements	25
5.1.6 Evaluating rates for compensation events	25
5.1.7 Zero tendered rates	26
5.1.8 Hourly rates for craftspeople, apprentices and general operatives	26
5.2 Weather Events in Public Works Contracts	27
5.2.1 Introduction	27
5.2.2 Weather Event	27
5.2.3 Met Éireann's calculations	28
5.2.4 Air temperature thresholds	30
5.2.5 Precipitation thresholds	31
5.2.6 Wind speed thresholds	32
Part 6 – Preparing to invite tenders	33
6.1 Compiling the Works Requirements	33
6.1.1 Introduction	33
6.1.2 Standard design-and-build specification	33
6.1.3 Specimen design and outline specification	34
6.1.4 Implications of selecting the specimen design and outline specification approach	34
6.1.5 Consents and licences	35
6.1.6 The Works Requirements in relation to the Pricing Document	35
6.1.7 Value engineering proposals	35

Continued on next page

Contents, continued

6.2	Completing the Schedule	36
6.3	Compiling the Content of the Pricing Document	36
6.4	Assembling the Invitation to Tender	37
6.4.1	Documents	37
6.4.2	Key decisions	38
6.4.3	Checklists	38

Part 7 – Evaluating Tender Submissions	39
---	-----------

7.1	Comparing Tender Costs	39
7.1.1	Award criteria	39
7.1.2	Adjusting the tender sum	40
7.1.3	Comparing tenders with and without insurance	42
7.2	Adjusting Details within Tender Pricing	42
7.3	Adjusting for VAT Errors	42
7.4	Evaluating Insurance Options	43
7.4.1	Options	43
7.4.2	Disadvantages of owner-controlled insurance	43
7.5	Tender Evaluation Example	44
7.5.1	Introduction	44
7.5.2	Sample project	44
7.5.3	Sample pricing	45
7.5.4	Sample calculations	45
7.5.5	Traditional contract tender evaluation	46
7.5.6	Award Rates and percentages to be listed	46
7.5.7	Design-and-build tender evaluation	47
7.6	Letters of Intent and Acceptance	48
7.6.1	Contractor requirements	48
7.6.2	Issuing Letter to Successful Tenderer	48
7.6.3	Contractor requirements	48

Continued on next page

Contents, continued

Appendices – Evaluating Tender Submissions	49
A1 Invitation to Tender Checklist – Employer’s Choices	49
A1.1 Invitation to Tender Checklist – Employer’s Choices	49
A2 Consents and Licences Checklists	50
A2.1 Main Checklist	50
A2.2 Operation licences	52
A3 Invitation to Tender Checklist	53
A3.1 General Checklist	53
A4 Tender Evaluation Checklist	54
A4.1 General Checklist	54

End

Forward

The Purpose of this document is to give guidance on procurement and related issues to be considered by the Employer in preparing the tender documents. The issues will vary depending on the procurement strategy and contract type adopted by the Employer. The guidance is primarily focussed on the long forms of public works contract – PW-CF1 – PW-CF5 inclusive.

The Employer should be familiar with the detailed guidance on conducting the procurement and award process as set out in the relevant documents:

- *Procurement and Contract Strategy for Public Works Contracts* (GN 1.4)
 - *Procurement Process for Consultancy Services (Technical)* (GN 1.6 series); and
 - *Procurement Process for Works Contractors* (GN 2.3).
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Part 1

Section 1.1

Section 1.2

Section 1.3

Suitability Assessment and Procurement of Specialists

Suitability Assessment procedure

Substitution

Procurement of Specialists

1.1 Suitability Assessment procedure

The suitability assessment procedure involves inviting applicants or tenderers to submit information about themselves (and any specialists to be pre-qualified with the applicant where so requested by the Employer in a Contractor designed contract) by responding to a questionnaire. The Employer should then use this information to determine which applicants (under a restricted procedure) or which tenderers (under an open procedure) meet the suitability standards and which do not.

Restricted and Open Procedures – EU Rules

The restricted procedure is a two stage process. Stage 1 is the selection stage and Stage 2 is the tender, only those candidates selected at the end of Stage 1 are invited to tender. The Employer publishes a Contract Notice in the Official Journal of the European Union (OJEU) seeking requests to participate. Responses are evaluated and suitable candidates are selected on the basis of a pre-determined process. Upon completion of this process the selected candidates are invited to tender.

An open procedure differs from this in that the suitability submission is included by the tenderer with their tender submission. The suitability process takes place just prior to the tender evaluation. In both cases, once an award is made the procurement procedure ends. An Award Notice should be published in the OJEU not later than 30 days after the award of the contract is made.

1.2 Substitution

Please refer to GN 2.3.3 Specialists and the Public Works Contract.

1.3 Procurement of Specialists

Please refer to GN 2.3.3 Specialists and the Public Works Contract.

Part 2

Section 2.1

Section 2.2

Pre-Tender Reports

General Requirements

Archaeology and Special Interest Areas

2.1 General Requirements

Site reports

For both traditional and design-and-build contracts, the Employer should carry out adequate preliminary site and archaeological investigation works (where appropriate) at its own expense. The adequacy of such investigations will inform the Employer's decision on whether to retain or to transfer the risk of certain Compensation Events when completing Schedule, part 1K of PW-CF1 to PW-CF5 pre tender.

Traditional contract

In a traditional contract, the Employer should make available detailed design information in the Works Requirements and all known factual investigation information where appropriate as background information in relation to any potential risk. This enables the Employer to transfer risk to the Contractor at an economical cost.

Design-and-build contract

In the case of a full design-and-build contract (i.e. where a specimen design is not provided), the level of detail contained in the site reports is not as great as that for traditional contracts. The output specification setting out the functional requirements of a facility that is required, together with a preliminary site investigation and archaeology report (where appropriate) given as background information, will usually be sufficient. As the successful tenderer controls the development of the design as well as the construction activity on site, and is therefore better placed to manage, control and/or mitigate, or through avoidance, the impact of any site-related risks.

2.2 Archaeology and Special Interest Areas

Expert advice

Where the works are to be located in archaeologically sensitive locations, Employers are strongly advised to seek expert advice at feasibility stage and to make contact with the National Monuments Service (NMS) of the Department of Culture, Heritage and the Gaeltacht, which is responsible for the identification and designation of sites through the Archaeological Survey of Ireland. The NMS is also responsible for the implementation of protective and regulatory controls (including the licensing of excavations) under the National Monument Acts.

In the event that the works might affect a designated site or area of archaeological potential, employers should take account of the NMS's *Framework and Principles for the Protection of the Archaeological Heritage*. Where the NMS requires it, a preliminary archaeological assessment should be undertaken. A site investigation should also be carried out if this is considered necessary.

Continued on next page

2.2 Archaeology and Special Interest Areas (continued)***National Monuments Service***

The NMS contact details are:

National Monuments Service
Department of Culture, Heritage and the Gaeltacht
Custom House
Dublin 1
Telephone: (01) 888 2000

Licensing/ planning requirements

The Employer and the Contractor, in consultation with the NMS, must comply with whatever licensing or planning requirements are in force.

Archaeological risk

The Employer should allocate archaeological risk to the Contractor when the Employer, having completed a preliminary site investigation in compliance with the NMS Framework, decides that there is no risk, or that the risk can be easily assessed and priced. Where practicable, archaeological sites should be assessed by way of separate contracts in advance of the main contract.

Areas of special interest

An employer should at feasibility stage have regard to all other areas of special interest designated by other statutory authorities and consult with those authorities to establish any constraints that apply. These include but are not limited to the following:

Natura 2000 network of protected sites such as Special Areas of Conservation and Special Protection Areas. *Natural Parks and Wildlife Service*

Architectural Conservation Areas/Protected Structures. *Local Authorities*

Landscape Preservation Areas. *Local Authorities*

**2.3 Site
Investigation**

Traditional contract

In traditional contracts where excavations are required, the area of the site where a structure is to be located should be subjected to a site investigation that is carefully designed, executed and documented.

Investigations should take place as early as possible to enable designs to be comprehensively defined and detailed, and based on factual ground information. The adequacy of such investigations will inform the Employer's decision on whether to retain or to transfer the risk of certain Compensation Events when completing Schedule, part 1K of PW-CF1 to PW-CF5 pre tender.

Where it is not possible to undertake a site investigation to a reasonable standard then the risk of unforeseeable ground conditions (Item 19 of Schedule, part 1K) should be retained by the Employer.

Design-and-build contract

In Design-and-build contracts, the primary purpose of site investigations is to facilitate design (unless the Contracting Authority has produced a specimen design which has obtained statutory consents). The scope of the site investigation should be proportional to the scale of the works involved and should be based on sound cost-benefit analysis. The scope and techniques employed in carrying out a site investigation will vary according to the geological nature of the subterranean formation on which the structure is to be built on.

Standards, staffing and supervision

All tests, technical descriptions and reporting procedures should be in accordance with current relevant codes of practice and should be clear and unambiguous.

In all but the smallest projects, the Employer should use experienced specialist site investigation contractors and should select them by competitive tender. Selected site investigation contractors should only employ trained and experienced operators and supervisory staff to ensure quality and integrity of the investigation information.

Site investigations are normally carried out by specialist site investigation contractors on the basis of technical specification prepared by the design engineer. Serious consideration should be given to having these investigations supervised by the Employer's Representative (ER) or another suitably qualified and competent person. Particular attention should be paid to correctly recording factual information in the log book to ensure that the quality and integrity of the information is maintained. The investigation work should be the subject of a separate contract. The form of contract to be used should be the Public Works Investigation Contract (PW-CF7 or PW-CF8).

The site investigation works should be properly supervised by the site investigation contractor in the first instance, this in addition to the Employer Representative's independent supervisory role.

**2.4 Ground
Conditions**

Traditional contract

Employers should be careful how below-ground design information is presented in tender documentation, particularly in relation to depths or datum levels for strata to be encountered. Such information could be provided as background information (for example, as an *aide memoire* annexed to the Invitation to Tender at Appendix 3)

Design-and-build contract

In a full design-and-build contract the site investigation report, supplied as background information by the Employer, is only a preliminary report and, if necessary, may be augmented with additional information obtained by the tenderers so that they can reasonably predict the ground conditions to be encountered.

Where a specimen design has been provided in the tender which has obtained statutory consents, the scope for the Contractor to adapt the design is greatly reduced. This constrains the Contractor's capacity to minimise the cost impact of unsuitable ground conditions or archaeological remains that must be preserved and so the standard of site investigation should match that for a traditional contract.

2.5 Utilities

Survey results

The site surveys/investigations will normally identify electricity transformers, cables and connections, gas mains and pipes, telecommunications cabling, water and waste water pipes, and rights of way to be retained. Where utilities have to be diverted, the work should be identified in the Works Requirements and the cost (as priced by the Contractor or utility company) should be included in the tender price

Traditional contract

In the case of traditional contracts (PW-CF1 and PW-CF3), the Employer assesses the results of site survey/investigations and decides how to allocate the risk of unforeseeable utilities arising on the site.

This decision is documented in the Schedule, part 1K where it is indicated whether the presence of unforeseeable utilities is to be a compensation and a delay event or a delay event only. Likewise, the Employer must state in the Schedule whether delay by the owners of utilities on the site in relocating or disconnecting the utilities is to be a compensation event, or just a delay event. Employers should adopt a practical approach to the issue of utilities. In some cases, a separate enabling works contract to relocate utilities in advance of the main contract may be advisable.

The risk of unforeseeable utilities under PW-CF5 and PW-CF6 is retained by the Employer. Under PW-CF1 and PW-CF3 the risk of unforeseeable utilities remains with the Contractor providing an appropriate risk analysis has been undertaken and is made available to tenderers as background information.

Design-and-build contract

In design-and-build contracts (PW-CF2 and PW-CF4) the Contractor should assess the site survey/investigation for unforeseeable utilities as the Contractor carries the financial burden of this risk if it materialises. The Employer must identify in the Schedule, part 1K whether the risk of cost and delay for failure by the owners of utilities to relocate or disconnect the utilities is to be passed on to the Contractor. The risk of delay only is always retained by the Employer.

Where a specimen design has been provided in the tender which has obtained statutory consents, the same extent of investigation and information on utilities as provided for a traditional contract should be provided as part of the tender documents.

3.1 Bid Bond***What is a bid bond?***

A bid bond is effectively a contract of guarantee whereby the guarantor or surety (authorised to do guarantee business) undertakes to pay damages to a second party, in this case the Employer, when the Contractor does not honour his tender. In essence, the guarantor undertakes to be answerable for losses suffered by the Employer if the Contractor withdraws following a bid.

The Employer does not need to prove loss before calling in this bond. When a bond is called in, the Employer has a guarantee that funds up to the amount of the bond will be available to defray the Employer's losses resulting from the Contractor's default.

How is a bid bond used?

Employers should consider the option of requiring bidders to submit a bid bond with their tenders. A bid bond may be required, for example, where a contractor is to carry out works that are a critical part of a larger project, or if there is a concern that bidders might not honour their tenders when accepted.

A bid bond will help prevent a preferred bidder from pulling out late in the process when the remaining tenderers have moved on, leaving the Employer with the problem of having to run a new competition and the cost and delay associated with that.

However, requiring tenderers to provide bid bonds should be the exception rather than the rule.

Requirements

Any requirements in relation to a bid bond should be clearly stated in the Invitation to Tender documents. It is recommended that, where required, the bid bond should cover 10% of the tender sum for the works.

**3.2 Parent
Company
Guarantee**

What is a parent company guarantee?

A parent company guarantee assures the Employer the opportunity to recourse to the parent company's financial standing, technical capability and resources. For example, if the partners in a joint venture propose to incorporate a new joint venture company (in a single purpose company) as the Contractor, but have been assessed suitable for selection on the basis of the partners' financial standing, technical capability or resources, such a guarantee should be required.

If the financial capacity, technical capability or resources of a tenderer's parent company have been taken into account in a suitability assessment and the tenderer does not offer a guarantee from that parent company the tender should not be accepted. The instruction to tenderers must make this clear - see section 5.2 and Particulars of ITTW1.

How is a parent company guarantee used?

If tenderers seek to rely on their parent companies' financial standing, technical capability or resources for the purposes of meeting the suitability criteria either at suitability assessment stage in a restricted procedure, or at tender stage in an open procedure, it is recommended that the parent company should be required to provide a guarantee.

It is not envisaged that parent company guarantees would be required of a tenderer assessed suitable on the basis of their own financial standing, technical capability and resources.

A parent company guarantee should not be used as a substitute for a performance bond.

Clause 1.6 of PW-CF1 to PW-CF4 states that if a parent company guarantee is required it should be provided before the Starting Date.

Requirements

If a parent company guarantee is required, the Employer should be in possession of such a guarantee before the Starting Date. The standard letter at Annex II Appendix 2 in the Instruction to Tenderers to be used with PW-CF1 to PW-CF5 inclusive issued to tenderers should be submitted with the tender correctly executed by the parent company committing the parent company to executing the guarantee at award stage. It should be executed by the guarantor named in the Schedule, part 2B.

3.3 Performance Bond

What is a performance bond?

A Performance Bond is effectively a contract of guarantee whereby the guarantor or surety (authorised to do guarantee business) undertakes to pay damages to a second party, in this case the Employer, arising from a breach of contract or insolvency, for losses sustained by the Employer due to non-performance by the Contractor. In essence, the guarantor undertakes to be answerable for losses (up to the limit of the Bond) suffered by the Employer if the Contractor's obligations are not performed in accordance with the Contract.

The guarantor or surety will recoup the Employer only for proven losses under the Contract. When a bond is called in, the Employer has a guarantee that funds up to the amount of the bond will be available to defray the Employer's losses resulting from the Contractor's default.

How is a performance bond used?

Performance bonds should generally be provided (not mandatory, depending on particular circumstances) for all contracts with an estimated value in excess of €500,000 (including VAT).

The Employer may also require a performance bond in respect of contracts below €500,000 if he believes that there would be a significant risk to the Employer if such a bond were not in place. Where the Employer has one or more current contracts with the same contractor and the award of a further contract would bring the cumulative value above €500,000, the Employer should carry out a risk assessment to determine whether the State's financial interests are adequately protected.

The bond will also cover the situation where the Contractor becomes insolvent during the Contract. Therefore it is important for the Employer to consider very carefully before deciding against requiring a bond for a project.

Requirements

Performance bonds should be delivered by the Contractor to the Employer before the Starting Date unless the Schedule, part 1E states that no bond is required. The Employer may require the Contractor, by way of the Letter to Successful Tenderer, to provide a performance bond prior to issuing the Letter of Acceptance. This should be stated in the tendering instructions.

The institution providing a bond must, if it is an insurance company, be authorised by the appropriate Regulatory Authority to write guarantee business in Ireland or passported into Ireland.

The performance bond provided in Model Form MF 1.6 is an agreed form which must be used when a Performance Bond is required on a project.

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3.3 Performance Bond (continued)

Claims by the Employer

Claims by the Employer arising out of termination are dealt with under sub-clause 12.2.11 of the Public Works Contract. If the Contractor fails to pay the Employer's demand for payment of such claims within 10 working days the Employer can invoke the first paragraph of Clause 1 of the Performance Bond which states:

'If the Contractor's obligation to complete the Works is terminated under clause 12.1 of the Conditions the Surety will, subject to this Bond, pay the Employer any amount for which the Contractor is liable under clause 12.2.11 of the Conditions.'

Other than termination, claims by the Employer for breach of contract shall be dealt with under Clause 10.9 of the Public Works Contracts. Once notice has been served and the Contractor's response (if any) received, such claims shall be determined in accordance with the Contract by the Employer's Representative. The Employer can offset such amounts against any amount due or likely to become due from the Employer to the Contractor from under the Contract or any other Contract. Only if there are no, or insufficient amounts due or likely to become due should the Employer invoke Clause 2 of the Performance Bond which states:

'If the Contractor breaches the Contract the Surety will pay the Employer any amount for which the Contractor is liable to the Employer as damages for breach of the Contract, as established under the Contract, taking into account all sums due to the Contractor under the Contract.'

Recommended cover

The following are the recommended levels of cover for the performance bond:

Project value (including VAT)	Performance Bond Cover Level
Less than €10m	12.5%
€10m and above	10%

Continued on next page

Part 3

Section 3.3

Section 3.4

Section 3.5

Bonds and Guarantees

Performance Bond, *continued*

Retention

Regulations and Model Forms

3.3 Performance Bond (continued)

Reducing cover level

It may be necessary as an exception to depart from the normal rules of complying with the recommended levels of cover referred to above. However if it is proposed to increase the level of bond from that recommended, contracting authorities must consult with the bond providers to confirm that the level sought is generally available prior to publishing the contract notice.

After Substantial Completion of the Works the cover level is reduced by half for the period stated in the Performance Bond. The default in the Contract is 10% up to Substantial Completion and 5% for 450 days [15 months] thereafter.

Note: The Government Contracts Committee for Construction (GCCC) will keep this guidance under review.

3.4 Retention

Please refer to GN 1.5.3 *The Pricing Document*

3.5 Regulations and Model Forms

Approval

The Employer should ensure that any required bond (i.e. Bid Bond, Performance Bond or Retention Bond) is provided by an approved financial institution authorised by the relevant Regulatory Authority to provide such bonds in Ireland.

Employers should not accept personal sureties instead of bonds

Model forms

Forms for all bonds and guarantees described in this section can be found under Pillar 1 of the Capital Works Management Framework in the section titled *Model Forms* (documents with a reference commencing in MF 1.). The forms used on a particular project should be included as part of the tender documents (Works Requirements).

4.1.1 Summary of type

The following table summarises the insurance types:

Insurance Type	Description
Insurance of the Works and other Risk Items	The Contractor is required to take out insurance to cover the works, documents and other risk items against loss and damage. The value insured should relate to the full reinstatement cost of the property, including demolition, removal of debris, professional fees, inflation, profit, and all VAT to be paid (i.e. VAT at the reduced rate and VAT at the standard rate irrespective who is the 'principal contractor'.)
Public Liability Insurance	The Contractor is required to take out public liability insurance covering any accidents that might happen in the course of the project.
Employer's Liability	The Contractor is responsible for maintaining employer's liability insurance to cover the death, injury or illness of his personnel.
Professional Indemnity	Where it is requested, the Contractor is responsible for maintaining professional indemnity insurance in relation to design negligence. It may be required on traditional contracts where there is a large amount of Contractor or Specialist design, and it is always required on all contractor-designed projects.

Other special types of insurance policies may be required, depending on the nature of the works, including, for example, marine hull insurance. In situations where the Employer is dealing with a typical works project, expert insurance advice should be sought from a source recommended by the construction consultants or the Employer's insurers.

4.1.2 Co-insured

The Contractor's insurance (Public Liability and Employer Liability) shall name the Contractor and the Employer as co-insured. In the case of Works Insurance, in addition to the Employer being co-insured it should also allow for any person that the Employer requires to be co-insured. This means that the Employer and any other person the Employer requires (in the case of Works Insurance) as co-insured has direct access to the insurer in relation to a claim and does not have to go through the Contractor.

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**4.1.2 Co-insured
(continued)**

If the Employer requires third parties to be co-insured under the Contractor's Public Liability policy or has any other additional insurance requirement, then this must be stated in the Works Requirements in accordance with Clause 3.9.3 of the Public Works Contract.

Note The circumstances where a third party may require to be co-insured under the Contractor's Public Liability Insurance policy would be exceptional as such cover is very expensive. An example as to where this might happen could be where Iarnrod Eireann requires its parent company Coras Iompair Eireann as a third party to be co-insured on the Contractor's Public Liability Insurance on a particular rail project.

4.1.3 Subrogation

The fact that subrogation rights have been waived means that the insurer, having paid out on a claim to a third party, cannot pursue the insured parties to recover its loss.

**4.1.4 Cross-
liability**

If two parties jointly insure a property and a claim is made by one because the other has damaged it, the insurer cannot escape liability by arguing that 'you cannot claim against yourself' and must pay the claim.

**4.1.5 Employer
approval**

It is a condition of the Contract that the Contractor takes out insurance only from companies licensed to trade in Ireland.

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4.1.6 Period of Cover

The following table summarises the periods of cover for which the Contractor and the Employer must maintain the different insurances.

Party	Insurance type	Required period of cover
Contractor	Works insurance	<i>From:</i> The Start Date <i>To:</i> The Date of Substantial Completion
	Employer Liability and Public Liability	<i>From:</i> The Start Date <i>To:</i> The Defects Certificate Date
	Professional Indemnity	<i>From:</i> The Start Date <i>To:</i> The 6 th anniversary of the Date of Substantial Completion (12 th anniversary if the contract is executed under seal)
Employer	Works insurance	<i>Up to:</i> The Start Date <i>and</i> <i>After:</i> The Date of Substantial Completion
	Employer Liability and Public Liability	<i>Up to:</i> The Start Date <i>and</i> <i>After:</i> The Date of Substantial Completion

Note: If the Contractor returns to the site after the Defects Certificate issues, he must have full insurance cover while he is working on the Employer's property.

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4.1.7 Limits

The Employer should set the limits of insurance required in the Schedule. Increased limits for Employers' Liability and Public Liability insurances can be obtained at relatively low cost. Increased limits for Professional Indemnity can be costly as the increase must operate from commencement of design until at least the sixth anniversary of Substantial Completion.

Note: Defence costs can seriously erode the indemnity limit provided under Professional Indemnity insurance policies. Defence costs are legal and other expenses incurred by the Employer in pursuing recovery of the costs involved in remedying the defect. Professional Indemnity normally includes defence costs which means that those costs can be offset against the indemnity limit. If the Employer on a particular project does not require defence costs to be part of the indemnity limit for liability claims, he should investigate the insurance market in advance of tenders being sought to see if such cover is available. If it is, the requirement for such cover should be stated in the tender documents (Works Requirements) and tenderers can price this in their tenders.

4.1.8 Exclusions

Asbestos is listed as a permitted exclusion. If there is a risk of asbestos being encountered, the exclusion should be deleted. In that case, the Contractor will have to employ a specialist to remove asbestos, and a collateral warranty should be required. The date by which the collateral warranty is to be provided should be stated in the Schedule, part 1F. Note that the cover available for this risk is under rectification/remediation including a reduction in the value of the property cover. Cover is available on an aggregate basis only and for relatively low limits – e.g., in the range €250,000 – €500,000.

Terrorism is listed as a permitted exclusion. If the Employer decides that terrorism cover is required, then terrorism must be deleted from the list of permitted exclusions in Part 1D of the Schedule and a minimum amount for the Works and other Risk Items to be insured should be stated. If not deleted, the Employer carries the risk of terrorism damage to the works. This cover is only available for relatively low limits similar to the limits for asbestos.

Note: It should be noted that Performance Bond MF 1.6 excludes the Surety's liability for termination solely and directly by terrorism.

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4.1.9 Optional insurance provisions

The indemnity limit of the insurance in respect of the works, documents and things (except for the loss of or damage to Contractor's things) should be identified, and professional indemnity insurance should be completed as appropriate by the Employer in the Schedule, part 1D.

4.1.10 Required extensions to insurance

If required in the Schedule, any section of the works taken over shall continue to be covered by the Contractor's insurance until the whole of the works have reached Substantial Completion. This requirement should be imposed on the Contractor if independent contractors are engaged to carry out fit-out or other works before Substantial Completion. Where an extension to the Contractor's insurance is required for a section of the work, this should be stated in the tender documents and listed in the Schedule, part 1D. The extension should run until the Employer's Representative issues a certificate of Substantial Completion for the whole of the Works. Normally, once a section of the works is taken into use, it is no longer insured by the Contractor

4.2.1 Insurance details in the Schedule

The Schedule, part 1D sets out:

- Minimum indemnity limits for public and employers' liability insurance;
- Maximum excess limits for insurance;
- Permitted exclusions; and
- Optional insurance provisions.

Exclusions from public liability policies

The Schedule allows for different levels of exclusion from the public liability policies:

The exclusion of...	Means...
1. Loss or damage due to design¹	<ul style="list-style-type: none"> ▪ Any loss or damage to the works, surrounding properties and consequential financial losses due to defects in design are not covered; ▪ Any injury to persons due to defects in design is covered, excluding injury to employees which would be covered by employer's liability insurance.
2. Loss or damage due to design for a fee²	<ul style="list-style-type: none"> ▪ Any loss or damage to the works, surrounding properties and consequential financial losses due to defects in design for which the insured party has charged a fee are not covered. Conversely, loss or damage to the works, surrounding properties and consequential financial losses due to defects in design for which the insured party has <i>not</i> charged a fee are covered. <p>This exclusion is mainly applicable to Public Liability policies issued to Contractors/ Subcontractors who would not normally charge a design fee so that the design exclusion is not applicable in such cases.</p>
3. Loss or damage due to defective workmanship, materials or design but including the consequences thereof³	<ul style="list-style-type: none"> ▪ The actual defective design element whether it be workmanship, materials or design is excluded but any consequential loss or damage including financial losses and injury to persons (other than employees) is insured.

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¹ This is the normal situation, most contractors' Public Liability insurance policies have this exclusion.

² If a narrower exclusion is required the insertion of 'Design for a Fee' should be considered

³ If the design involves the Contractor engaging Consultants to whom fees are payable

**4.2.1 Insurance
details in the
Schedule
(continued)**

Note: In considering exclusions 1 to 3 of the permitted exclusions to the Contractor's Public Liability insurance listed in the Schedule part 1D, item 2 "*Property of the Insured or in the Insured's custody or control other than existing premises and their content temporarily occupied by the Insured for the purposes of the Works*" is in **all** Public Liability Insurance. Therefore all loss or damage including design to the works during the construction period would be excluded under this exclusion. During the construction period, the Public Liability insurance covers damage to property (including financial losses) other than the works and injury to persons other than employees.

If the works involve design then the most acceptable of exclusions 1 to 3 above would be 3 followed by 2. Exclusion 1 should only be acceptable if all damage to property is covered under Professional Indemnity insurance i.e. damage to the works, damage to the surrounding properties including consequential financial losses and injury to persons other than employees.

Where an exclusion is to be omitted, the Employer must amend the relevant exclusion in the Schedule, part 1D. The Works Requirements should bring to the tenderers' attention the requirement to have this cover in place for design-related third-party claims for bodily injury and loss or damage to third-party property. Employers should note, however, that such cover is not always easily obtained, and by demanding it, they may limit the number of prospective tenderers or, depending on project size, no tender responses at all. To help avoid this happening, and if the cover is essential its availability should be researched to ensure that there is an adequate number of firms who can get it at reasonable cost and also that it does not restrict real competition

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4.2.1 Insurance details in the Schedule (continued)

Note: Contractor's and sub-contractor's Professional Indemnity Insurance should include indemnity in respect of the cost of making good the defective design element in the works, any consequential damage to the works or any other surrounding property including consequential financial losses and death or injury to persons other than employees.

The contractor and sub-contractors Professional Indemnity policy wording can vary and some wordings may only include making good the defective design element itself. Or the wording may include making good the defective design element including damage to other parts of the works. Where limited cover under Professional Indemnity insurance arises it is important to ensure that the gaps are insured under Public Liability insurance, at least for loss and damage to third party property and also for death or injury to persons other than employees.

Provided the Professional Indemnity insurance is not limited as indicated above the insurance will cover both third party bodily injury and property damage claims. However, limits of indemnity under Professional Indemnity insurance in Ireland are generally low and may not be sufficient to cater for such third party exposure in which case the Public Liability cover would be required.

4.3.1 Employers' liability insurance

The Contractor is responsible for maintaining employers' liability insurance (for death, injury or illness of his personnel) from the Starting Date until the date the Defects Certificate is issued. Subcontractors should also maintain similar cover.

4.3.2 Professional indemnity insurance

Professional indemnity insurance (PII) will normally be required in all contractor-designed contracts. In accordance with the liabilities imposed by the Building Control (Amendment) Regulations 2014 contracting authorities should carefully consider whether it should be required in an employer-designed contract. When there are significant contractor (or specialist)-designed work items on employer-designed contracts PII should be sought. Contracting authorities may be guided by the PII levels set for service providers in guidance note GN 1.6.3.

4.3.3 Professional indemnity requirements

The Contractor must provide evidence to the Employer, annually at the anniversary of the policy renewal, that the required insurance policy has been affected for the following year. This requirement recognises the fact that the Contractor may not be able to secure six-year cover with one premium payment or that the cost of the premium for such a policy would not represent value for money.

Professional indemnity insurance must cover and indemnify the Contractor for liability arising from the performance or non-performance by the Contractor of his duties as Project Supervisor for the Construction Stage and (in the case of a design-and-build contract) as Project Supervisor for the Design Process⁴. The professional indemnity insurance does not cover consultants' (design liability) that have been contracted directly by the Employer.

When professional indemnity insurance is taken out by the Contractor it should include a retroactive provision with a date from when design of the works or works items started or earlier. This is particularly important in relation to design work carried out during tendering period in the case of a design-and-build project. Where a policy is to be renewed the retroactive date will normally not change. However, if a new policy is to be taken out (for whatever reason), it is important that the retroactive date of the policy reaches back to the start of the design period of the project in question – to ensure continuity of cover over the prescribed six years.

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⁴ For Employer-Designed contracts it should be noted that in many cases a Contractor's liabilities when acting as PSCS may be covered by the Contractor's Public Liability Insurance however this should be confirmed in each case with the Contractor's insurers.

4.3.3
Professional
indemnity
requirements
(continued)

Collateral warranties required from specialists should include a requirement to carry professional indemnity insurance if the specialist is involved in design. The same requirements apply to the specialist's professional indemnity insurance as outlined for the Contractor above and similar procedures should be followed for vetting the specialist's insurances.

4.3.4
Professional
indemnity
limitations

If a Contractor is required to take out a professional indemnity insurance policy, it may be on an 'each and every claim' basis or on an aggregate claim basis. In the present insurance market conditions contractors or subcontractors are unlikely to obtain professional indemnity insurance on an 'each and every claim' basis. They will more likely be only able to get insurance on an annual aggregate limit basis during each insurance year. If this is the case careful consideration should be given to the level of the cover being sought. Furthermore, as defence costs are normally paid out of the indemnity limit this should also be taken into account when deciding on level of cover.

It should be noted that cover for claims relating to pollution/contamination, date recognition and asbestos are generally subject to an aggregate limit. However, the Employer should be aware that some contractors may only be able to obtain professional indemnity cover which excludes claims for pollution/contamination, date recognition and asbestos.

There is a choice in the Schedule for the Employer to decide whether to look for professional indemnity insurance on an 'each and every claim' or on an annual aggregate limit basis.

4.3.5 Insuring
existing facilities

Where the project involves having work carried out in the Employer's existing facilities and where clause 3.8 of PW-CF1 to PW-CF5 is applicable as shown in Schedule, part 1D i.e. the word "shall not" struck out, the Employer will be responsible for the risk of loss or damage to its existing facilities and the parts of the Works used or occupied by the Employer, and their contents from fire, storm, tempest, flood, bursting or overflowing water tanks, apparatus or pipes, explosion, impact, aircraft, riot, civil commotion or malicious damage. The Employer should ensure that these risks are covered under its own insurance policies.

4.3.6 Valuing
Employer's
facilities

The minimum value of Employer's property that the Contractor is to insure should be stated in the Schedule, part 1D issued with the Form of Tender.

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4.3.7 Owner-controlled insurance

If the Employer considers that it would be more appropriate for the Employer to control the project insurances, this must be clearly stated in detail as an option in the Works Requirements.

This is normally referred to as *owner-controlled insurance*. Where owner-controlled insurance is being considered, tenderers should submit their fixed price lump sum tender on the basis of excluding the cost of providing certain insurances, but should show separately, as a mandatory option, the extra cost of providing those insurances should the Employer decide to include them in the contract. The Particulars to the Instructions to Tenderer should indicate the requirement for this mandatory option. In comparing the economic benefits of owner controlled insurance at tender evaluation stage the all-inclusive costs must be considered for example some of the following may be requested by insurers offering owner-controlled insurance which could prove to be more costly than if the contractor were to provide the insurance in his tender, particularly where there is a danger of duplication.

- providing secure compounds and temporary housing to store valuable materials and plant,
 - providing security fencing around the site
 - providing security cameras
 - providing security lighting at strategic location around the site
 - providing lighting during hours of darkness
 - providing guards and guard dogs
 - maintaining fencing, lighting, cameras, temporary buildings, hard standing etc.
-

5.1.1 Identifying compensation events

If a compensation event, as listed in the Contract, occurs in the course of the project, there will be an adjustment to the Contract Sum. The Contract sets limitations through procedures and valuation principles on when the Contract Sum can be increased for compensation events. There are a number of delay events that are optional compensation events in the Contract. The Employer has to decide before inviting tenders whether those delay events categorised as 'optional' on the Contract are:

- Flagged as compensation events in addition to being delay events; or
 - Remain just as delay events (default).
-

5.1.2 Delay events in traditional contracts

Delay events considered for compensation status in a traditional contract are:

- An instruction from the Employer to deal with an item of archaeological interest or human remains found on the site;
 - The presence on the site of unforeseeable ground conditions or a man-made obstruction in the ground other than utilities;
 - The presence on the site of unforeseeable utilities; and
 - Unforeseeable failure or delay of owners of utilities on the site in relocating utilities in accordance with the Works Requirements, when the Contractor has complied with their procedures and the procedures in the Contract.
-

5.1.3 Delay events in design-and-build contracts

Delay events considered for compensation in a design-and-build contract are:

- An instruction from the Employer to deal with an item of archaeological interest or human remains found on the site; and
 - Unforeseeable failure or delay of owners of utilities on the site in relocating utilities in accordance with the Works Requirements, when the Contractor has complied with their procedures and contract procedures.
-

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5.1.4 Identifying delay cost option

The Employer should state in the tender documentation (Part 1K of the Schedule) how delay costs are to be dealt with under sub-clause 10.7.1, either as:

- Actual direct costs incurred, or
- Tendered daily rate(s).

The default position in the Schedule, part 1K for PW-CF1, PW-CF3 & PW-CF5 is the actual direct costs incurred, it may be changed by the Contracting Authority to seek the tendered daily rate(s). The default position in the Design and Build forms (PW-CF2 & PW-CF4) is tendered daily rate(s).

If the Employer selects the tendered daily rate(s), it should then be tendered by all competing firms and entered in the Schedule, part 2D. Employers may not change their minds post-tender how delay costs are to be dealt with.

5.1.5 Tender submission requirements

It should be made clear by Employers in the tender documentation for the project that, in addition to the tender price, individual tendered percentage additions are to be submitted by tenderers for the purpose of valuing compensation events, as follows:

- Percentage addition to cost of labour; and
- Percentage addition to cost of materials; and
- Percentage addition or deduction to cost of plant.

Tendered daily rates for delay may also be sought by an Employer in tender documents (as noted in 5.1.4 above). This option may only be exercised when the Employer chooses the 'tendered daily rate of delay' under the Schedule, part 1K.

5.1.6 Evaluating rates for compensation events

The percentage additions tendered in the Schedule, part 2D may be used by the Employer's Representative to evaluate the cost of a compensation event under sub-clause 10.6.4.

In the case of the percentage addition to labour costs, this is applied to the hourly rates set out in the applicable Sectoral Employment Order for the categories of worker required to undertake the works associated with the compensation event. The percentage addition is to cover the cost of that labour to the contractor and is defined in the Schedule, part 2D.

Where an Employer is asking for a tendered daily rate for delay, there is a choice, either to seek:

- A single daily rate; or
 - Three different daily rates, each to be applied at different times during a contract (not available in the Minor Works Contract).
-

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5.1.6 Evaluating rates for compensation events (continued)

In both cases, the single or the three periods selected by the Employer to be used for comparison purposes at tender evaluation stage must be clearly stated in the tender documents. For example, if the number of days indicated is 40 (in the case of a single period), then the delay cost element of competing submissions will be compared based on a 40-day delay as part of an overall tender evaluation exercise. The number of days specified by the Employer should be proportionate to the scale, complexity and duration of the Contract.

Note: If delays are underestimated, there is a risk of exploitation by the tenderers. If they are overestimated, there is a risk of distortion in the selection by Most Economically Advantageous Tender (MEAT). The figure selected for delay in the MEAT method should also have regard to the choice already made on the Programme Contingency, which will be included in the lump-sum tender price. Where separate delay rates at different time stages are quoted, the MEAT calculation needs to include a calculation to show the financial impact of each type of delay.

5.1.7 Zero tendered rates

Where the successful Contractor does not include percentage additions to the cost of labour, materials and plant (a 50% deduction is permitted for plant) in his tender submission (and where the tender documents expressly indicate that these were required), the Schedule, part 2D sets out that it will be taken that the Contractor has tendered a zero percentage addition. This is important in the context of the Comparative Cost of Tender exercise which applies to PW-CF1 – PW-CF5 inclusive, but also where the Employer's Representative conclusively decides to value a Change Order which gives rise to a Compensation Event under sub-clause 10.6.4 of the Contract.

5.2.1 Introduction The reference in the Public Works Contracts (PW-CF1 to PW-CF5 – Schedule, part 1K) to weather measurements ‘... *as determined by Met Éireann and published most recently...*’ is the data published in this document. This data supplied by Met Éireann for publication is being published under the CWMF and it relates to the 90th percentile of past weather measurements for each month of the year measured at a particular location. This data will be reviewed periodically; however the frequency of such reviews will be at intervals of not less than five years and any Met Éireann updates will be published by way of revision to the document titled *Weather Event WE 1.0* which is part of the CWMF.

5.2.2 Weather Event

A weather event under the Public Works Contracts is an event that, provided certain conditions are met, can allow a contractor extra time (arising out of delay due to bad weather) to complete the construction of a project without liquidated damages being deducted from the contractor’s payments because of the delay.

Established 90th percentile weather thresholds for each month at particular weather stations based on historical data by Met Éireann for the three weather events identified in Schedule Part 1K of PW-CF1 to PW-CF5⁵ should be gauged against the contract **weather measurements for a month** to determine if relief for extra time is to be allowed.

For extra time to be considered the 90th percentile for a particular event for a month will need to exceed the **weather measurement for a month** in the contract.

The three events and the weather measurements for a month in the contract are:

1. The number of days with rainfall exceeding 10mm;
2. The number of days with a minimum air temperature less than 0⁰ Celsius; and
3. The number of days with maximum mean 10-minute wind speed exceeding 15 metres per second.

The weather station that applies to a particular contract is indicated in the Schedule, part 1K to the Contract.

The tables that follow here show the thresholds for air temperature, precipitation and wind speed. It is envisaged that the three weather events referred to above will be the norm on most projects and that the thresholds in the tables that follow relate to those events; however, additional weather measurements may be added to this list for particular projects, if required.

Continued on next page

⁵ The same weather events are referred in Clause 2.8 of PW-CF6, and Clause 4.6 of PW-CF7.

5.2.3 Met Éireann's calculations

The thresholds indicated in the tables below are derived by Met Éireann from historical data and are 90th percentile figures for each of the measurements in question.

The definition of the 90th Percentile is: ***The 90th Percentile is the lowest value which has 90% of the sample less than or equal to it.***

In other words, this may be understood as expressing the notion that a given value was unusual in a 1-in-10 sense, based on actual historical weather conditions.

The 90th percentile for a data series can be calculated as follows.

1	Given N sample of years
2	Order the data from lowest to highest for the sample.
3	Multiply N (the number of samples – years in this case) by 0.9. If this produces a whole number, the value corresponding to that number in the order is the 90 th percentile. If $0.9 \times N$ has a fractional part (as only whole numbers are possible), then the calculation will be by linear interpolation between the two nearest whole numbers selecting the lowest whole number that has 90% of the sample less than or equal to it.

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5.2.3 Met Éireann's calculations (continued)

As an example, look at *Days with rainfall > 10mm for March* at Valentia, for which there is data going back 67 years. In this case the data is sorted from lowest to highest – i.e. from **0** (the lowest) to **11** (the highest number of days with rainfall in excess of 10mm). So $N = 67$, and $0.9 \times N = 60.3$.

The figure 60.3 falls between 7 and 8 days (i.e. between the 58th and 65th percentiles); so 8 is the lowest whole number which has 90% of the sample lower than it.

Rainfall exceeded 10mm on this number of days...	In this number of years...	Subtotals*	Percentile
0	8	8	12
1	10	18	27
2	13	31	46
3	7	38	57
4	7	45	67
5	5	50	75
6	5	55	82
7	3	58	87
8	7	65	97
9	0	65	97
10	0	65	97
11	2	67	100

*These are cumulative subtotals for the number of years with less than or equal to the number of days with rainfall in excess of 10mm.

In this table, 7 days is in the 87th percentile, which is not sufficient for our purpose. But 8 days brings us over the 90% threshold – if March has 8 or more days of high rainfall, it would be considered unusual, as this has historically occurred in fewer than 1 in 10 years.

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Part 5**Section 5.2****Risk Management****Weather Events in Public Works Contracts, *continued*****5.2.4 Air temperature thresholds**

The following table shows the number of days on which the air temperature must fall below 0° Celsius (at named weather stations) in order for a weather event to be deemed to have occurred. For each contract (PW-CF1 to PW-CF5)⁶, the Schedule, part 1K indicates the weather station whose measurements apply.

Station	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Ardee (Boharnamoe)	17	17	13	10	6	0	0	0	2	6	11	15
Ardfert (Liscahane)	11	12	6	6	1	0	0	0	0	2	6	10
Ardarmon	7	7	5	1	0	0	0	0	0	0	1	6
Ballincurragh (Peafield)	10	10	6	6	0	0	0	0	0	1	4	8
Ballyshannon	13	12	7	4	1	0	0	0	0	1	5	9
Belmullet	9	9	5	2	0	0	0	0	0	0	3	6
Birr	15	16	13	8	3	0	0	0	1	4	11	13
Carron	11	10	6	3	0	0	0	0	0	2	4	8
Casement Aerodrome	14	14	11	8	3	0	0	0	0	4	11	11
Connemara Nat. Park	6	7	5	2	0	0	0	0	0	0	2	7
Cork Airport	11	9	7	4	0	0	0	0	0	0	6	8
Derrygreenagh	20	17	13	8	4	0	0	0	1	5	12	16
Dublin (Merrion Square)	5	8	3	1	0	0	0	0	0	0	3	5
Dublin (Phoenix Park)	17	16	12	8	2	0	0	0	0	3	10	13
Dublin Airport	15	14	10	4	1	0	0	0	0	1	7	10
Dungarvan (Carriglea)	12	13	8	6	1	0	0	0	0	3	8	10
Fermoy (Moore Park)	16	13	10	8	3	0	0	0	1	4	10	14
Fethard (Parsonshill)	15	14	11	6	1	0	0	0	0	2	6	11
Galway (Univ.Coll.)	10	11	7	2	0	0	0	0	0	2	5	10
John F. Kennedy Park	11	12	7	5	1	0	0	0	0	1	6	10
Johnstown Castle	8	9	6	3	0	0	0	0	0	0	3	7
Knock Airport	12	9	8	5	0	0	0	0	0	0	2	11
Maam Valley	8	9	5	3	0	0	0	0	0	1	4	6
Malin Head	7	7	4	1	0	0	0	0	0	0	1	3
Mount Russell	8	11	7	4	1	0	0	0	0	1	4	11
Mullingar	17	19	13	8	1	0	0	0	0	5	10	16
Shannon Airport	13	15	8	3	1	0	0	0	0	2	8	10
Sherkin Island	7	5	3	1	0	0	0	0	0	0	1	4
Straide	13	16	9	5	3	0	0	0	1	5	11	11
Valentia Observatory	7	8	5	1	0	0	0	0	0	0	3	7
Warrenstown	17	16	9	5	1	0	0	0	0	3	9	13
Waterford (Tycor)	10	12	7	4	0	0	0	0	0	0	5	9

⁶ See Clause 2.8 of PW-CF6 and Clause 4.6 of CW-PF7

5.2.5 Precipitation thresholds

The following table shows the number of days on which precipitation must exceed 10mm (at named weather stations) in order for a weather event to be deemed to have occurred. For each contract, (PW-CF1 to PW-CF5), the Schedule, part 1K indicates the weather station whose measurements apply.

Station	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Ardfert (Liscahane)	9	6	4	3	5	3	4	5	6	8	7	9
Ardtarmon	5	4	3	3	5	4	3	5	4	8	5	6
Ballincurragh (Peafield)	9	6	5	5	5	6	4	7	8	8	6	7
Ballygar	6	5	3	3	4	3	3	4	5	7	6	8
Ballyshannon	6	5	4	2	3	3	5	5	6	6	5	7
Belmullet	7	4	4	3	3	3	4	5	6	6	6	7
Birr	4	3	2	3	3	4	3	4	4	6	4	4
Carron	10	9	8	5	6	5	4	8	7	10	8	12
Casement Aerodrome	3	3	2	2	3	3	2	4	3	4	3	4
Connemara Nat. Park	9	9	7	6	7	5	5	9	7	10	9	11
Cork Airport	9	8	6	4	5	5	4	6	6	7	7	8
Derrygreenagh	4	3	3	3	3	3	4	4	4	5	4	5
Dublin (Merrion Square)	3	3	2	3	3	4	3	3	4	4	4	4
Dublin (Phoenix Park)	3	3	3	2	3	3	3	4	3	4	4	4
Dublin Airport	4	3	3	3	3	3	3	4	5	4	4	4
Dungarvan (Carriglea)	9	6	5	5	5	5	5	7	6	8	8	8
Fermoy (Moore Park)	7	4	5	3	4	3	4	4	6	6	5	6
Fethard (Parsonshill)	4	3	3	3	4	5	3	6	5	6	5	6
Galway (Univ.Coll.)	7	5	5	4	5	4	4	5	6	8	7	8
John F. Kennedy Park	6	5	4	4	5	5	4	5	6	7	7	7
Johnstown Castle	8	5	4	4	4	4	4	5	6	7	7	6
Knock Airport	7	8	6	5	5	4	6	6	8	7	6	9
Maam Valley	18	16	13	9	10	9	8	13	11	14	16	17
Malin Head	5	4	3	3	3	4	4	4	5	6	6	6
Mount Russell	6	5	4	4	5	4	4	6	7	8	6	8
Mullingar Ii	5	4	4	3	4	4	4	4	4	5	4	6
Shannon Airport	5	4	3	3	3	4	3	4	5	5	5	6
Sherkin Island	7	6	6	5	6	3	4	5	6	7	7	8
Straide	9	7	5	3	5	3	2	5	5	7	7	8
Valentia Observatory	9	8	8	5	6	5	5	6	8	9	9	9
Warrenstown	4	4	3	3	3	5	3	4	4	5	4	5
Waterford (Tycor)	7	5	5	5	4	4	3	5	5	6	6	6

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5.2.6 Wind speed thresholds

The following table shows the number of days on which 10-minute wind speed must exceed 15 m/sec (29.16kt) (at named weather stations) in order for a weather event to be deemed to have occurred. For each contract (PW-CF1 to PW-CF5)⁷, the Schedule, part 1K indicates the weather station whose measurements apply.

Station	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Belmullet	16	15	13	7	6	4	2	4	7	10	12	13
Birr	3	2	1	0	0	0	0	0	0	0	1	2
Casement Aerodrome	13	12	11	3	3	1	1	2	4	8	9	11
Cork Airport	11	9	7	4	2	1	0	2	3	6	7	8
Dublin Airport	9	7	6	3	2	1	1	1	2	4	5	7
Knock Airport	6	9	3	2	1	0	0	0	1	3	3	5
Malin Head	23	22	20	12	9	6	5	7	13	17	20	21
Mullingar II	4	3	2	2	1	0	0	1	1	2	1	3
Shannon Airport	10	8	6	5	3	2	1	2	4	4	5	8
Valentia Observatory	10	7	6	4	2	1	0	1	2	5	7	9

⁷ See Clause 2.8 of PW-CF6 and Clause 4.6 of CW-PF7

6.1.1 Introduction The range of options for design-and-build projects varies from performance output specifications and statement of functional requirements at one end of the spectrum to specimen designs to novated developed designs and specifications at the other.

In traditional contracts, the Works Requirements must be comprehensive, and should always include detailed designs and specifications at Tender Stage.

6.1.2 Standard design-and-build specification

In design-and-build projects, the challenge is for the Employer's functional requirements to be clearly and comprehensively stated in the tender documents, along with clear performance specifications covering all items of importance. This approach allows maximum flexibility for integration of design with construction to create innovative solutions that tenderers can propose in their tender submissions.

Under this approach, statutory approval will not have been obtained by the time tenders are submitted. In such a situation, the successful tenderer will be required to carry the risk associated with planning and other necessary statutory approvals.

Where designs are developed and the risk associated with planning and a number of other approvals are being carried by the Employer, the level of flexibility to integrate design with construction is severely curtailed.

In summary, the design-and-build approach:

- Allows greater scope for positive integration of design with construction methods, techniques and resources;
- Reduces the time scale to go to the market;
- Provides a greater degree of cost certainty at award stage;
- Provides greater certainty of time and outturn cost at award stage;
- Obliges the Contractor to ensure fitness for purpose; and
- Removes the Employer from any disputes between designers and the Contractor.

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6.1.3 Specimen design and outline specification

As an alternative to the ideal design-and-build approach, the Employer's designers could develop an outline design, which could be included in the tender documents either as background information or as contract design documents. These outline designs would only become novated design documents if the Employer's designers were also novated to the appointed Contractor.

The specimen design can be presented in two ways:

- Illustrative and capable of adoption by tenderers within certain constraints; or
- Directional, in which case it cannot be changed and is part of the Works Requirements and becomes a contract design document.

If the Contractor is obliged to follow the outline design there will be less flexibility for tenderers to be innovative in their proposed solutions, as the Employer has taken the main design decisions. On the other hand if a specimen design is given as an illustration that can be varied, this offers greater flexibility with regard to innovation in tender proposals. The specimen design will also give tenderers an insight into what the Employer has in mind as a solution.

6.1.4 Implications of selecting the specimen design and outline specification approach

The specimen design and outline specification approach has a number of advantages and disadvantages:

- It gives the Employer some control over the quality of the design (if directional), but it has the negative effect of restricting a contractor's input to design;
 - It takes longer to get to the market. However, it is still considerably shorter than the traditional approach;
 - There is a greater possibility of the tenderers interpreting the brief correctly;
 - Less design resources are required of tenderers and therefore their tender preparation costs are lower;
 - There is greater degree of cost certainty at award stage;
 - An obligation can be imposed on the Contractor to ensure fitness for purpose; and
 - The Employer is removed from involvement in any disputes between the designers and the Contractor.
-

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6.1.5 Consents and licences

The Works Requirements should identify what, if any, consents and licences the Employer has obtained in relation to the works at the time the Invitation to Tender is published and Instructions to Tenderers are issued. **Appendix A** contains a list of consents and licences that may be required for a public works contract. This list is not to be taken as a comprehensive list of all possible consents and licences that may be required.

Clause 2.3 in the Public Works Contracts (PW-CF1 to PW-CF5) deals with Consents that the Employer has obtained, leaving the rest for the Contractor to obtain. If the successful tenderer in the case of a design-and-build building project is required to obtain Planning Permission, the Works Requirements should detail this requirement clearly and should specify that attendance at oral hearings, and all costs, fees and documentation associated with obtaining planning permission, including any appeals to an Bord Pleanála, are at the contractor's risk and that the contractor should tender accordingly.

6.1.6 The Works Requirements in relation to the Pricing Document

Please refer to GN 1.5.3 *The Pricing Document*

6.1.7 Value engineering proposals

In the case of traditional contracts, it may be appropriate in some cases to allow variants at tender stage in order to obtain *value-engineering proposals*. In the case of EU procurement rules, it would be necessary to indicate in the Contract Notice that variants are permitted. Any minimum requirements in relation to variants must be stated in the tender documents so as to limit consideration to only those variants that meet the minimum requirements. Where variants are allowed, tenders must be submitted on a *non-variant compliance* basis, with the variants shown separately.

The tender documents must make it clear that the Contractor would be responsible for the design element of any pre-award value-engineering proposal accepted by the Employer. Furthermore, any proposal would have to be fully developed when tenders are being submitted, as communications thereafter would only be for clarification purposes. The value engineering proposal in this context differs from a value engineering proposal under the Contract in that the price offered for the variant may be higher than the approved budget on the basis that the proposal achieves greater long term savings. The prime objective for the value engineering proposal under the contract is to reduce cost (without a reduction in quality, standard or functional requirements) or to accelerate the execution of the works (see Clause 4.8.1 PW-CF1 and PW-CF3).

Part 6

Section 6.2

Section 6.3

Preparing to invite tenders

Completing the Schedule

Compiling the Content of the Pricing Document

6.2 Schedule Part 1 of PW-CF1 to PW-CF5

Refer to Section 4: *Schedule for PW-CF1 to PW-CF5 (long forms of contract)* of guidance note GN 1.5 Public Works Contracts

6.3 Compiling the Content of the Pricing Document

Please refer to GN 1.5.3 *The Pricing Document*

6.4.1 Documents

The documents to be issued as part of the Invitation to Tender for the main forms of contracts (PW-CF1 – PW-CF5) would normally be:

Instruction to Tenderers with letter of Invitation to Tender (which does not form part of the Contract);

Form of Tender and Schedule (Schedule, part 1 [completed by the Employer] and may include attached to the Schedule appendices 7 and 8 of the Contract Conditions where PV2 is being used [this is also to be completed by the Employer]);

Works Requirements (completed by the Employer including model forms and may include various reports relevant to the project;

Pricing Document – Refer to guidance note GN1.5.3 The Pricing Document; and

Any other background information or documents not forming part of the Contract, for example, reports or a Bid Bond.

The Employer may also include a copy of the Contract Conditions or may simply refer prospective tenderers to its own website or to the Construction Procurement website, www.constructionprocurement.gov.ie where the Contract Conditions are published.

[Caution: Documents on the website are subject to revision from time to time and the Employer should keep themselves informed of the revisions and the effect on their tender and proposed contract]

Documents such as the Instruction to Tenderers, Invitation to Tender and Form of Tender and Schedule also apply to PW-CF6, PW-CF7 and PW-CF8, terms such as Works Requirements and Pricing Document are not used in these forms of contract but documentation detailing the works or tasks and scoping the works for the purposes of accurate pricing are to be included to permit tenderers to submit fixed-price lump-sum tenders.

Continued on next page

6.4.2 Key decisions

The Instructions to Tenderer should clearly specify:

- Which of the standard forms of public works contract will apply to the project;
 - How price variation is to be treated if applicable;
 - Compensation events and how they are to be treated; and
 - Bonds, guarantees and insurance and how they are to be treated.
-

6.4.3 Checklists

At the outset of preparation and also before making the decision to publish the Invitation to Tender, the Employer should review the checklists contained in Appendix A.

- The relevant Checklists are:
 - Invitation to Tender Checklist – High Level;
 - Consents and Licences Checklist;
 - Operation Licence Checklist; and
 - Invitation to Tender Checklist – Traditional; *or*
Invitation to Tender Checklist – Design-and-build.
-

7.1.1 Award criteria

In comparing tenders, the Employer will need to consider some or all of the following:

- The values in the Pricing Document (including the value of the project forwarded to Form of Tender);
- The tenderer's Works Proposals;
- The tenderer's management and supervision structure (if requested);
- The tenderer's proposed working methods (if requested);
- The tenderer's initial programme (if requested);
- The tenderer's plant, labour resources and named specialist subcontractors (if requested);
- PW-CF1 – PW-CF5 only: The tenderer's percentage additions to the costs of labour, materials and plant (a 50% deduction to the costs of plant is permitted) or tendered daily rate(s) for delay are submitted in the Schedule, part 2D. The Comparative Cost of Tender exercise is undertaken for each tenderer using the values they have tendered which are applied to the quantities provided by the Employer in Appendix 5 of the Instructions to Tenderers – see **Adjusting the tender sum**, immediately below;
- Value Engineering proposals submitted with tenders if variants are permitted (stated in the Particulars to the ITT);
- Credits offered for owner-controlled insurance if mandatory options are requested (stated in the Particulars to the ITT); and
- If time is tendered, its impact on tender prices.
- Any other items to be tendered in the Works Proposals.

The award criteria can also include other things as listed in Article 67 of Directive 2014/24/EU on public procurement and should take account of SI N° 284 of EU (Award of Public Authority Contracts) Regulations 2016 and Directive 2014/25/EU and SI N° 286 EU (Award of Contracts by Utility Undertakings) Regulations 2016.

Where the form of contract to be used is PW-CF1 – PW-CF5 inclusive the award criterion must be stated as being the 'Most Economically Advantageous Tender' (MEAT), and not 'the lowest cost only' tender.

7.1.2 Adjusting the tender sum for the Comparative Cost of Tender

For comparison purposes, the Employer adds to the tender sum of the different tenders by reference to **a) provisional values** the Employer has included in Appendix 5 of Instruction to Tenderers and **b) details of rates and percentages** that the tenderer has supplied in the Form of Tender and Schedule, part 2D.

a)	In Appendix 5 of the Invitation to Tender, the Employer specifies a number of provisional values that are to be used to assist the Employer to calculate the comparative costs of tenders. These are: <ul style="list-style-type: none"> Provisional costs for labour; Provisional costs for materials; Provisional costs for plant; and Provisional number of Site Working Days (only if the Schedule, part 1K says that sub-clause 10.7.1(2) applies)
b)	In Part 2D of the Schedule, the tenderer indicates details of rates and percentage additions that are to be used in the event that the Contract Sum requires adjustment; these details are: <ul style="list-style-type: none"> The tenderer's tendered percentage addition to costs of a) labour and b) materials The tenderer's tendered percentage addition or deduction to costs of c) plant; and The tenderer's rate of delay costs per Site Working Day. (only if the Schedule, part 1K says that sub-clause 10.7.1(2) applies)

Adjusting for percentage addition for costs and materials

Where the tenderer has indicated percentage additions to costs of labour and materials and a percentage addition or deduction (max. 50%) to costs of plant, the Employer multiplies these by the provisional costs associated with them.

a)	x	b)
provisional costs of labour	x	tenderer's percentage adjustment
provisional costs of materials	x	tenderer's percentage adjustment
provisional costs of plant	x	tenderer's percentage adjustment

For each tenderer, the values derived from these calculations are added to the tender sum.

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7.1.2 Adjusting the tender sum for the Comparative Cost of Tender (continued)

Adjusting for a daily rate – only where Schedule, part 1K states that sub-clause 10.7.1(2) applies

Where the tenderer has indicated a rate of delay costs per Site Working Day, the Employer multiplies that rate by the provisional number of days' delay.

a)	x	b)
Provisional number of days' delay	x	Tenderer's rate of delay costs per Site Working Day

For each tenderer, the value derived from this calculation is added to the tender sum.

Adjusting for the Tendered Date for Substantial Completion – only where Schedule, part 2C is to be completed by tenderers

Where tenderers have been asked to tender the Date for Substantial Completion (in part 2C of the Schedule), the Employer needs to adjust each tenderer's tender sum by reference to the date they have specified. The Employer does this by multiplying the following values for a) and b):

a)	The difference in calendar days between the tenderer's tendered Date for Substantial Completion and the earliest Date for Substantial Completion indicated by the Employer in the Particulars (section 5.10) to the Instructions to Tenderers.
b)	The value per calendar day of days in excess of the earliest Date for Substantial Completion as referenced in Appendix 5 of the Invitation to Tender.

Continued on next page

Part 7

Section 7.1

Section 7.2

Section 7.3

Evaluating Tender Submissions

Comparing Tender Costs, *Continued*

Adjusting Details within Tender Pricing

Adjusting for VAT Errors

7.1.3 Comparing tenders with and without insurance

In cases where the Employer is considering using owner-controlled project insurance, this should be clearly indicated as an option in the Works Requirements. The Particulars in the Instructions to Tenderers should also indicate the type of insurance for which an optional tender is being sought. Tenderers are asked to submit their fixed price lump sum tenders on the basis of excluding the cost of providing certain insurances, but should show separately as a mandatory option the extra cost of providing those insurances should the Employer decide to include them in the contract.

The Employer can then compare compliant tenders with and without the particular insurance element, and may award the Contract *either*:

Exclusive of insurances – in cases where there is a financial advantage to do so having considered the all-inclusive cost of the Employer separately taking out owner-controlled insurance; *or*

Inclusive of insurances based on tendered costs submitted by the winning tender – in cases where the tendered price without insurance *plus* the cost of owner-controlled insurance is higher than the tendered price *plus* the mandatory tendered option of providing the insurance. In such a situation there is a financial advantage to award the contract inclusive of insurances.

The mechanics for this comparison should be stated in the tender documents.

7.2 Adjusting Details within Tender Pricing

Please refer to GN 1.5.3 *The Pricing Document*

7.3 Adjusting for VAT Errors

Please refer to GN 1.5.3 *The Pricing Document*

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7.4.1 Options

There are two approaches to providing contract insurances; they are:

- Contractor-controlled insurances where the Contractor provides all the project insurances during construction (this is usually the preferred approach); and
- Owner-controlled insurances where the Employer is responsible for providing public liability, all risks and professional indemnity insurance, and the remainder are provided by the Contractor (for example, employer liability insurance).

Owner-controlled insurance is used in exceptional circumstances where there is a transparent and justifiable case for doing so. If owner-controlled insurances are required, the contract amendments must be set out in the Works Requirements; the Contract itself must not be amended.

7.4.2
Disadvantages of
owner-controlled
insurance

The disadvantages of owner-controlled insurances include (this is not an exhaustive list):

There is no reduction to Contractor's general insurance policy premium when one project is excluded from insurance cover. Usually, contractors, carry a block of insurance for all of their projects and the premiums charged will not significantly change because one project is excluded.

There is no claims history and therefore the insurer is likely to load the premium charged to the Employer as the policy taken out is a once-off owner-controlled insurance policy. Alternatively, the insurer may only make the premium for owner-controlled insurance economical by making the Employer carry very large excesses.

Similarly, the benefit of a discount for bulk continuous business, as a Contractor would likely get, will not arise.

The cost of site security tends to be higher on owner-controlled insurance. This is because insurers will seek to minimise risk exposure as much as possible with an Employer that has very little commercial leverage because of the once-off nature of the insurance requirement.

Owner-controlled insurances must be tendered for separately in an open transparent and competitive way which will involve an additional administrative function and cost.

The scope of the insurance contract may be very difficult to define at tender stage as the Contractor will not be known and additional costs will probably arise later when the insurers know who the Contractor and sub-contractors are, or else a very significant premium will be charged for such an unknown at the outset.

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7.5.1 Introduction The following example illustrates how certain issues, in relation to price only, might be considered by the Employer at tender evaluation stage. If criteria relating to technical merit is part of an award (e.g. price 60%: technical merit 40%) it should be evaluated at the same time and the results merged with the results of the price assessment to determine which is the most economically advantageous tender.

7.5.2 Sample project

The working assumption is a public works project with:
The contract is the Public Works for Civil Engineering Works Designed by the Employer (PW-CF3);
The project estimated value is €25 million; and
The construction period is 30 months.
The following contingent items are included in the tender documents:
40 delay days;
€105,642 estimate for labour comprising:

1,800 hours for a Craft Worker;	€18.93 ⁸ x 1,800 = €34,074
1,800 hours for an Apprentice (Year 4);	€17.04 ⁹ x 1,800 = €30,672
2,400 hours for a Category 1 Worker;	€17.04 ¹⁰ x 2,400 = €40,896
Total	€105,642

€250,000 estimate for materials; and
€100,000¹¹ estimate for plant, including rates of €120.30 per hour for special plant item 'A' and €125.30 per hour for special plant item 'B'.

Note: Ideally these should be Expected Values (in a statistical sense) of contingent items, estimated by professional judgement of similar projects.

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⁸ Hourly rate for Craft Worker from the SEO (Construction) dated 17 October 2017

⁹ Hourly rate for Apprentice (Year 4) from the SEO (Construction) dated 17 October 2017 (90% of €18.93 = €17.04)

¹⁰ Hourly rate for Category 1 Worker from the SEO (Construction) dated 17 October 2017

¹¹ The €100,000 estimate for plant in this example has been calculated by the Employer's designer as follows:

(i)	Rates in sterling for a selection of plant items in CECA publication converted to euro and multiplied by an estimated number of hours.	€50,880
(ii)	The rate of €120.30 per hour for special plant item 'A' multiplied by an estimate of 200 hours.	€24,060
(iii)	The rate of €125.30 per hour for special plant item 'B' multiplied by an estimate of 200 hours.	€25,060
Total		€100,000

7.5.3 Sample pricing

The following tender prices were received:

	Contractor A	Contractor B	Contractor C
Tender Price €	25,100,000	25,200,000	24,900,000
Delay cost €	8,200	4,800	12,000
Percentage on Labour	70%	58%	63%
Percentage on Materials	31%	18%	25%
Percentage on Plant	20%	8%	10%

7.5.4 Sample calculations

The tender evaluation exercise would give rise to the following calculations:

Pricing	Contractor A	Contractor B	Contractor C
Tender Price €	25,100,000	25,200,000	24,900,000
Daily rate € * delay days = € Delay cost	8200 * 40 = 328,000	4800 * 40 = 192,000	12,000 * 40 = 480,000
Labour cost € * % tendered = € Labour contingency	105,642 * 70% = 73,949	105,642 * 58% = 61,272	105,642 * 63% = 66,555
Materials cost € * % tendered = € Materials contingency	250,000 * 31% = 77,500	250,000 * 18% = 45,000	250,000 * 25% = 62,500
Plant cost € * % tendered ¹² = € Plant contingency	100,000 * 20% = 20,000	100,000 * 8% = 8,000	100,000 * 10% = 10,000
Total €	25,599,449	25,506,272	25,519,055

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¹² Note: If a deduction of more than 50% is tendered the entry in this evaluation table will read as a deduction of 50%. If the entry tendered is blank it will read as 0%.

7.5.5 Traditional contract tender evaluation

For a traditional contract, the most competitive price offered is that of Contractor B. Where technical merit is part of the basis for the award, technical merit should be assessed and merged with the total tender prices to determine the most economically advantageous tender. Some examples of other criteria that would qualify as technical merit and might be included are:

- The tenderer's proposed management, supervision structure and personnel;
- The proposed working methods;
- The initial programme;
- The plant and labour resources that would be deployed;
- Additional price criteria might be:
- Value Engineering proposals included with tender (i.e. where variants are permitted or options are requested).
- Mandatory tender options (e.g. owner controlled insurance).

7.5.6 Award Rates and percentages to be listed

The following tendered rates and percentages of the winning tenderer were included in the Schedule, part 2D attached to the Form of Tender (e.g. FTS 1) which included the fixed price lump sum tender price:

- €4,800 for the daily delay rate; and
- 58% on labour costs; and
- 18% on material costs; and
- 8% on plant costs.
- The 8% adjustment was applied to plant rates in the Civil Engineering Contractors Association (CECA) publication *Schedules of Dayworks Carried Out Incidental to Contract Work*¹³ on the basis of euro parity with sterling (discounted appropriately in the tender submission) at the time the work is done and also to the rates of €120.30 per hour for special plant item 'A' and €125.30 per hour for special plant item 'B' that were supplied with the tender invitation. The adjusted rates will be used for valuing plant as authorised under clause 10.6.4 (3) of the Contract.

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¹³ www.ceca.co.uk/Publications.aspx

7.5.7 Design-and-build tender evaluation

In the case of a design-and-build contract, the technical merit criteria can include design as well as the other technical merit criteria mentioned for traditional contracts. Whole Life Cost as a criterion will also be a factor. Separate weightings should be allocated to price and technical merit, with technical merit having an appropriate weighting relative to the project.

7.6.1 Contractor requirements

The Contractor is required to provide certain information to the Employer before the Starting Date. The Employer should ensure, before issuing the (binding) Letter of Acceptance (MF 1.4) or Tender Accepted (in the case of the Short Public Works Contract PW-CF6), that bonds, insurances, any required parent company guarantees, tax clearance certificates¹⁴, and other relevant documents are in place. The procedure for this should be specified in the tender documents

7.6.2 Issuing Letter to Successful Tenderer

If the Letter of Acceptance has issued, and the Contractor fails to provide the required documents, the Employer can terminate the Contract, but would have to commence a new procurement procedure to award a new contract. EU procurement rules do not allow Employers to move on and select the next placed tenderer after an award has been made as that procurement procedure is regarded as being over.

This situation can be avoided by the Employer exercising its option under the section titled ‘Award Process’ of the relevant Instruction to Tenderers and issue the appropriate Letter to Successful Tenderer. A portal under MF 1.2 in the Model Forms section of the Construction Procurement Reform website will direct you to the appropriate letter depending on whether the competition is subject to the European Directives. This letter can specify a list of items that must be provided such as a performance bond, any required parent company guarantee, evidence of required insurance, appropriate tax clearance statement from the Revenue Commissioners, any required appointment as project supervisor for the construction stage or the design process and construction stage, or other appropriate documentary conditions, within the stated period in the letter, failing which the Employer can exercise any of the three options stated in the ITT.

7.6.3 Contractor requirements

The issue of a Letter of Acceptance/Tender Accepted by an Employer to a tenderer forms a binding contract. The letter must be signed by a person authorised to sign contracts on behalf of the Employer. The Employer should make sure that all required approvals and supporting documents are in place before the letter is issued.

¹⁴ Prior to the award of the Contract, the successful Tenderer shall be required to supply its Tax Clearance Access Number and Tax Reference Number to facilitate online verification of their tax status by the Contracting Authority.

A1.1 Invitation to Tender Checklist – Employer's Choices

As early as possible, and in any event before the Invitation to Tender for any public works is published, the Employer should be satisfied he has answers to the following questions:

Step	Action	Check
1	Is the scope of the works clearly defined in the Works Requirements?	
2	Has the level of site investigation required been identified and an appropriate site investigation report been prepared?	
3	Has the necessity for an archaeological report been determined and an appropriate preliminary archaeological report been prepared?	
4	Have the required bonds/securities/insurances been identified?	
5	Has the most appropriate procurement route been identified?	
6	Have all the tender documents been prepared?	
7	Is all the required information available to allow the Schedule (Part 1) to be completed?	
8	Have the award criteria and sub-criteria been decided	

Note: Only when the Employer is satisfied that all the above-mentioned questions have been addressed to his complete satisfaction (and taking into account the appropriate guidance) should the Invitation to Tender be published.

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A2.1 Main Checklist

The list below is the main checklist (non-exhaustive) of consents/licences that may be required in connection with a public works contract; those that are required should be identified in the Works Requirements:

Item	Consent/Licence	Check
1	Outline Planning Permission	
2	Planning Permission under the Planning and Development Act 2000	
3	Part 8 Planning and Development Regulations 2001	
4	Part 9 Planning and Development Regulations 2001	
5	Compulsory Purchase Orders (e.g. in accordance with the Housing Act 1966)	
6	Toll Scheme (Section 57 of the Roads Act 1993 as amended)	
7	Motorways Scheme Orders under the Roads Act 1993 (as amended)	
8	Wayleaves (Section 43 Gas Act 1976)	
9	Foreshore Licence under the Foreshore Acts 1933-2003	
10	Dumping at Sea permit (Dumping at Sea Act 2004 (No. 35))	
11	Agreements with State or Semi-State Bodies (for example, ESB, Coillte, NRA, OPW, Irish Rail)	
12	Rights of way/consents in relation to habitats, Special Areas of Conservation (SACs), Natural Heritage Areas (NHAs) (Wildlife Acts 1976-2000, Council Directives 79/409 EEC, 82/72/EEC, 92/43 EEC)	
13	Tree Felling licence (Forestry Act 1946)	
14	Approval of local fisheries boards (Fisheries (Tidal Waters) Act 1934)	
15	Appropriate licences / consents under the National Monuments Acts 1930 – 2004.	

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**A2.1 Main
Checklist
(continued)**

Item	Consent/Licence	Check
16	Bridge Order required in certain circumstances from the Minister of the Environment, Community and Local Government (Local Government Act 1946)	
17	Consent of the Commissioners of Public Works to all new bridge proposals under Section 50 Arterial Drainage (Amendment) Act 1995	
18	Railway Order (Transport Railway Infrastructure Act 2001)	
19	Canal Bye Laws (Canals Act 1986 (Byelaws) 1988)	
20	Position of vehicle/mobile crane/hoist application	
21	Temporary Road Closure Application (Section 75 of the Roads Act 1993)	
22	Road opening licence/T-2 Licence (S13 subsection 10(b) of the Roads Act 1993)	
23	Hoarding/Scaffolding Licence	
24	Abnormal Indivisible Load (Road Traffic (Construction and Use of Vehicles) Regulations 2003)	
25	Effluent discharge licence	

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**A2.2 Operation
licences**

The list below is a subsidiary checklist (non-exhaustive) dealing with operation licences that may be required in connection with a public works contract; those that are required should be identified in the Works Requirements:

Item	Operation Licence	Check
1	IPC or IPPC Licence	
2	Water Abstraction Order (Water Supplies Act 1942)	
3	Waste Management (Licensing) Regulations 2000 to 2004	
4	Effluent Discharge Licence	
5	Waste Licence	
6	Air Pollution Licence	
7	Sewer Discharge Licence	
8	Radiological Licence (Issued by RPII), Radiological Protection Acts 1991– 2002	
9	Emissions Trading/GHG Emission Licence	
10	Dangerous Substances Licences (for example, storage of petroleum), Dangerous Substances Regulations 1979– 2002	

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Appendices Evaluating Tender Submissions

Appendix A3 Invitation to Tender Checklists

A3.1 General Checklist

Questions that an employer needs to address in the tender invitation documents include the following (on a non-exhaustive basis):

Item	Question	Addressed
1	How are other contractors working on the site on behalf of the Employer to be managed?	
2	Is a parent company guarantee required, particularly in relation to open and restricted procedures?	
3	Should performance and retention bonds be required?	
4	What insurances are required and what excess limits should apply?	
5	What specific risks should be transferred to the Contractor?	
6	What specific risks should be retained by the Employer and what actions will be taken to mitigate those risks?	
7	What work items require a specialist to be selected or novated?	
8	Are delay costs to be paid to the Contractor on the basis of tendered daily rate(s), or on the basis of expenses actually incurred?	
9	What is the number of hours for each category of workperson to which the Contractor's tendered hourly rates will be applied for tender evaluation purposes?	
10	What are the costs of materials and plant to which the Contractor's tendered percentage additions will be added for tender evaluation purposes?	
11	What is the delay period (number of days) to which the Contractor's tendered daily delay rate will be applied for tender evaluation purposes?	

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Appendices Evaluating Tender Submissions

Appendix A4 Tender Evaluation Checklist

A4.1 General Checklist

The following checklist should be completed by the Employer in respect of all tenders being considered for public works contracts:

Step	Action	Check
1	Pricing document (completed by the tenderer)	
2	Schedule of Rates in the Pricing Document (completed by the tenderer)	
3	Tender total calculated	
4	Schedule (completed by tenderer) Parts 1 and 2	
5	Works proposals (completed by the tenderer)	
6	Daily rate of delay cost given (if applicable)	
7	Daily rates for valuing compensation events given	
8	Adjustments to cost of materials and plant for valuing compensation events	
9	Parent company guarantee (if required)	
10	Performance bond	
11	Insurances	

END