

Capital Works Management Framework

Guidance Note

Procurement Process for Consultancy Services (Technical)

GN 1.6

Procurement Process for Consultancy Services
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Foreword

Purpose of this document

Early in planning before formal design commences, the Sponsoring Agency will need to acquire the full range of expert resources necessary to carry out the design and supervision of its capital works project. If these resources are not available in-house or in the wider public sector, they will have to be sourced externally. The type of expertise that may have to be engaged to ensure a successful outcome to the undertaking includes the services of planners, architects, quantity surveyors, engineers, designers, archaeologists, geologists and others.

This document provides guidance to government departments, bodies under their aegis, including local, regional or other relevant bodies (including private bodies) that are in receipt of public funds for construction projects or for related consultancy services and who wish to appoint professional consultants for the planning, design, cost control and supervision stages of construction projects.

Terminology in this guidance note (new)

The **Sponsoring Agency** becomes the **Contracting Authority** for a project once it becomes a party to any contract relating to the project. And from the time the contract is signed, the Sponsoring Agency is referred to as the **Employer**. The term **Client** is used throughout this guidance note as a generic term to cover the Sponsoring Agency / Contracting Authority / Employer.

A **Consultant** is a member of one of the technical professional disciplines is engaged by the Client to provide expert technical services (including Category 12 services¹) on a project. A **Service Provider** is any natural or legal person including a public body offering services to the Client.

Scope of this document

This document is intended primarily for the guidance of sponsoring agencies (also referred to as contracting authorities) who are embarking on traditional employer-designed projects. The guidance can also be used where the employer engages professional design consultants and others to produce initial designs or design studies which are subsequently handed over to a contractor under a contractor-design contract.

The principles in this document apply equally to the appointment of technical experts by a Contracting Authority to advise on Public-Private Partnership (PPP) projects. (Note that the procedures for these consultants are different from the procedures for construction consultants employed by a consortium on a PPP project.)

The guidance in this document applies to the engagement of consultants following a design contest, but it does *not* apply to the design contest itself.

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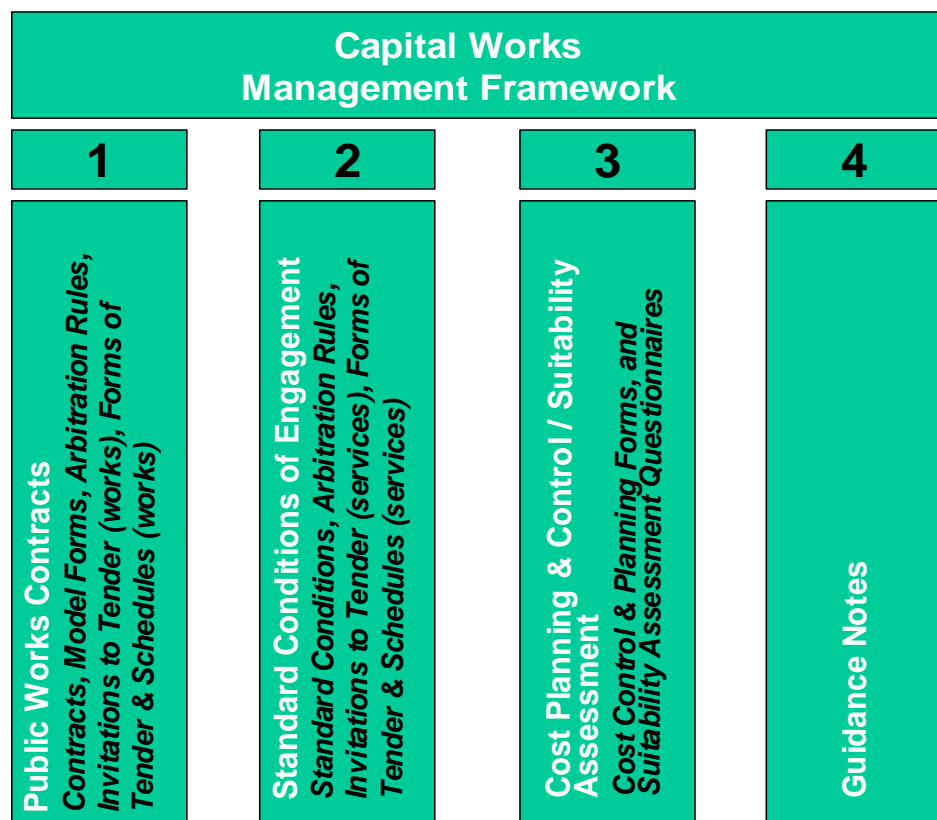
¹ Category 12 services are listed in the EC Directives under Annex XVII A of 2004/17/EC and SI No 329 of 2006, and Annex II A of 2004/18/EC and SI No 50 of 2007. Category 12 services include Project Supervisor and Health and Safety Coordinator services in relation to Health & Safety legislation.

Foreword, Continued

What is the Capital Works Framework

The Capital Works Management Framework (CWMF) is a structure that has been developed to deliver the Government’s objectives in relation to public sector construction procurement reform. It consists of a suite of best practice guidance, standard contracts and generic template documents that form four pillars that support the Framework; the pillars are:

1. A suite of standard forms of construction contracts and associated model forms, dispute resolution rules, model instructions to tender, forms of tender and schedules;
2. The standard conditions of engagement for consultants, dispute resolution rules, model instructions to tender, forms of tender and schedules;
3. Standard templates to record cost planning and control information; and for suitability assessment; and
4. Extensive guidance notes covering the various activities in a project delivery process.



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Foreword, Continued

What is the Capital Works Framework (continued)

The content of the four pillars is outlined below. The constituent documents are coded according to the following scheme:

Code	Description	Code	Description
PW-CF	Public Works Contract Form	COE	Standard Conditions of Engagement
MF	Model Form	GN	Guidance Note
AR	Arbitration Rules	CO	Cost Planning / Control Form
ITTS	Instructions To Tender, Services	ITTW	Instructions To Tender, Works
QC	Questionnaire: Suitability Assessment for Service Provider	QW	Questionnaire: Suitability Assessment for Works Contractor
FTS	Form of Tender and Schedule	GL	Glossary
WE	Data on Weather Event		

CWMF Pillar 1 **Public Works Contracts**

Contracts, Model Forms, Arbitration Rules, Instructions to Tender (works), and Forms of Tender & Schedules (works)

Contracts	
PW-CF1	Public Works Contract for Building Works designed by the Employer
PW-CF2	Public Works Contract for Building Works designed by the Contractor
PW-CF3	Public Works Contract for Civil Engineering Works designed by the Employer
PW-CF4	Public Works Contract for Civil Engineering Works designed by the Contractor
PW-CF5	Public Works Contract for Minor Building and Civil Engineering works designed by the Employer
PW-CF6	Public Works Short Form of Contract
PW-CF7	Public Works Investigation Contract
PW-CF8	Public Works Short Form of Investigation Contract
PW-CF9	Public Works Framework Agreement
Weather Events	
WE1.0	Met Eireann's calculations of Weather Events

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Foreword, Continued

CWMF Pillar 1 (continued)

Model Forms	
MF 1.0	Model Forms (compendium of all model forms)
MF 1.1	Bid Bond
MF 1.2	Letter to Apparently Unsuccessful Tenderer
MF 1.3	Letter of Intent
MF 1.4	Letter of Acceptance
MF 1.5	Letter to Tenderers Notifying Award
MF 1.6	Performance Bond
MF 1.7	Parent Company Guarantee
MF 1.8	Novation and Guarantee Agreement
MF 1.9	Novation Agreement
MF 1.10	Appointment of Project Supervisor
MF 1.11	Professional Indemnity Insurance Certificate
MF 1.12	Collateral Warranty
MF 1.13	Rates of Pay and Conditions of Employment Certificate
MF 1.14	Bond – Unfixed Works Items
MF 1.15	Retention Bond
MF 1.16	Appointment of Conciliator
MF 1.17	Bond – Conciliator's Recommendation
Arbitration Rules	
AR 1.0	Arbitration Rules
Instructions to Tender (works)	
ITTW 1	Instructions to Tender for Works, Restricted Procedure
ITTW 2	Instructions to Tender for Works, Open Procedure
ITTW 3	Instructions to Tender, Investigation Contract under an Open Procedure
Forms of Tender and Schedules	
FTS 1	Form of Tender and Schedule: Public Works Contract for Building Works designed by the Employer
FTS 2	Form of Tender and Schedule: Public Works Contract for Building Works designed by the Contractor
FTS 3	Form of Tender and Schedule: Public Works Contract for Civil Engineering Works designed by the Employer
FTS 4	Form of Tender and Schedule: Public Works Contract for Civil Engineering Works designed by the Contractor
FTS 5	Form of Tender and Schedule: Public Works Contract for Minor Building and Civil Engineering Works designed by the Employer
FTS 6	Form of Tender and Schedule: Public Works Short Form of Contract
FTS 7	Form of Tender and Schedule: Public Works Investigation Contract
FTS 8	Form of Tender and Schedule: Public Works Short Form of Investigation Contract

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CWMF Pillar 2 **Standard Conditions**

Standard Conditions of Engagement, Arbitration Rules, Instructions to Tender (services), and Forms of Tender & Schedules (services).

Standard Conditions	
COE 1	<i>Standard Conditions of Engagement for Consultancy Services (Technical)</i>
COE 2	<i>Standard Conditions of Engagement for Archaeology Services</i>
Arbitration Rules	
AR 1.0	<i>Arbitration Rules</i>
Instructions to Tender (services)	
ITTS 1 (a)	<i>Instructions to Tender for Services, Restricted Procedure, using a Formula to Calculate Hourly Rates</i>
ITTS 1 (b)	<i>Instructions to Tender for Services, Restricted Procedure, where Hourly Rates are to be Tendered</i>
ITTS 2 (a)	<i>Instructions to Tender for Services, Open Procedure, using a Formula to Calculate Hourly Rates</i>
ITTS 2 (b)	<i>Instructions to Tender for Services, Open Procedure, where Hourly Rates are to be Tendered</i>
Forms of Tender & Schedule (services)	
FTS 9	<i>Form of Tender and Schedule, Consultancy Services (Technical)</i>
FTS 10	<i>Form of Tender and Schedule, Archaeology Services</i>

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Foreword, Continued

CWMF Pillar 3 **Cost Planning & Control / Suitability Assessment**

Cost Control & Planning Forms; and Suitability Assessment Forms for works and services.

Cost Planning & Control Forms	
CO 1	<i>How to Use the Costing Document (Building Works) Template</i>
CO 1.1	<i>Costing Document (Building Works)</i>
CO 2	<i>How to Use the Costing Document (Civil Engineering Works) Template</i>
CO 2.1	<i>Costing Document (Civil Engineering Works, Roads)</i>
CO 2.2	<i>Costing Document (Civil Engineering Works, Water Sector)</i>
CO 2.3	<i>Costing Document (Civil Engineering Works, Marine)</i>
Suitability Questionnaires (works)	
QW 1	<i>Questionnaire: Suitability Assessment for Works Contractor, Restricted Procedure</i>
QW 2	<i>Questionnaire: Suitability Assessment for Works Contractor, Open Procedure</i>
QW 3	<i>Questionnaire: Suitability Assessment for Works Specialist for specialist area</i>
Suitability Questionnaires (services)	
QC 1	<i>Questionnaire: Suitability Assessment for Service Provider, Restricted Procedure</i>
QC 2	<i>Questionnaire: Suitability Assessment for Service Provider, Open Procedure</i>
QC 3	<i>Questionnaire: Suitability Assessment for Service Provider, Independent PSDP</i>
QC 4	<i>Questionnaire: Suitability Assessment for Service Provider, Independent PSCS</i>

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Foreword, Continued

CWMF Pillar 4 **Guidance Notes**

Guidance Notes	
GN 1.0	<i>Introduction to the Capital Works Management Framework</i>
GN 1.1	<i>Project Management</i>
GN 1.2	<i>Project Definition and Development of the Definitive Project Brief</i>
GN 1.3	<i>Budget Development</i>
GN 1.4	<i>Procurement and Contract Strategy for Public Works Contracts</i>
GN 1.5	<i>Public Works Contracts</i>
GN 1.6	<i>Procurement Process for Consultancy Services (Technical)</i>²
GN 1.6.1	<i>Assessment of Construction Service Providers, Restricted Procedure</i>
GN 1.6.2	<i>Assessment of Construction Service Providers, Open Procedure</i>
GN 1.7	<i>Standard Conditions of Engagement, Guidance Note and Sample Schedules</i>
GN 2.1	<i>Design Development Process</i>
GN 2.2	<i>Planning and Control of Capital Costs</i>
GN 2.3	<i>Procurement of Works Contractors</i>
GN 2.3.1	<i>Assessment of Works Contractors, Restricted Procedure</i>
GN 2.3.2	<i>Assessment of Works Contractors, Open Procedure</i>
GN 3.1	<i>Implementation Process</i>
GN 4.1	<i>Project Review</i>
Glossary	
GL 1.0	<i>Glossary</i>

Continued on next page

² The current guidance note.

Foreword, Continued

Strategic Objectives of the CWMF

The strategic objectives of the Government's Capital Works Management Framework are to ensure:

- Greater cost certainty at contract award stage;
- Better value for money at all stages during project delivery, particularly at hand-over stage; and
- More efficient end-user delivery.

Provided there is a comprehensive definition of client's requirements in terms of output specifications, and (in the case of traditional contracts) adequate pre-tender detailed design input, the new public works contracts will enable the key objectives outlined above be achieved. The degree to which output specifications and the pre-tender detailed design input is developed is determined by the following guiding principles which underpin the new contracts:

- To ensure as far as practicable that the accepted tender prices and the final outturn costs are the same; and
- To allocate risk so that there is optimal transfer of risk to the Contractor.

The public sector client is called 'the Employer' in the new public works contracts. The achievement of optimal risk transfer is dependent on the Employer providing the following detailed information in the tender documentation:

- In design-and-build (Contractor-design) projects: detailed output specifications
- In traditional (Employer-design) projects: comprehensive input designs and specifications in the tender documentation;

In responding to an invitation to tender, prospective contractors can then assess the impact of the risks being transferred and build the costs of such risk into their tender price.

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Content

The topics dealt with in this document are as follows:

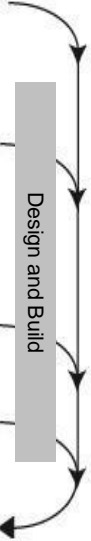
Chapter	See Page
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Project Stages

Capital Works Management Framework

Main Project Processes

Project Stages		Project Management	Design Activities (Building)	Design Activities (Civil Eng.)	Cost Control Activities	Risk and Value Management	Documents for Approval
Appraisal							
Approval in Principle							
Stage 1 Planning Initial	Stage (i) Feasibility Study / Preliminary Report	<p>Manage outputs: Project Definition (through 16 N° overall parameters)</p> <p>Manage technical experts' appointment (if required)</p>	<p>Conduct Feasibility Studies</p> <p>Develop <i>Definitive Project Brief</i></p> <p>Appoint technical experts (if required)</p> <p>Appoint PSDP (if required)</p>	<p>Conduct Preliminary Report</p> <p>Conduct design studies</p> <p>Develop <i>Definitive Project Brief</i></p> <p>Appoint technical experts (if required)</p> <p>Appoint PSDP (if required)</p>	<p>Conduct cost assessment of Feasibility Studies / Preliminary Report (capital and maintenance costs)</p>	<p>VM: Confirm strategic functional performance</p> <p>Review Feasibility Studies / Preliminary Report options</p> <p>Identify VM strategies</p> <p>Develop functional performance model</p> <p>RM: Identify and assess risk relating to the <i>Project Execution Plan</i></p> <p>Develop high-level <i>Risk Management Plan</i></p>	<p><i>Project Management Structure</i></p> <p><i>Preliminary Project Brief</i></p> <p><i>Preliminary Output Specification</i></p> <p><i>Feasibility Study and Cost Plan</i></p> <p><i>Design Brief</i></p> <p><i>Final Output Specification</i></p> <p><i>Definitive Project Brief</i></p> <p><i>Project Execution Plan</i></p> <p><i>Risk Management Plan</i></p>
	Stage (ii) Design	<p>Project Review 1: Confirm approval for design expenditure (Report to Sanctioning Authority and await approval prior to proceeding)</p>					
Stage 2 Planning Developed	Stage (iii) Tender	<p>Manage procurement strategy</p> <p>Manage design consultant appointment</p> <p>Manage assessment of output requirements</p>	<p>Appoint Design Team / Design Team Leader</p> <p>Assess output requirements</p>	<p>Appoint Design Team / Lead Consultant</p> <p>Develop design standards</p> <p>Assess output requirements</p>	<p>Check / assess budget</p>	<p>VM: Consider VM in relation to procurement strategy</p> <p>RM: Identify risk in relation to procurement</p> <p>Agree risk allocation</p>	<p><i>Definitive Procurement Strategy</i></p> <p><i>Contract Type Proposal</i></p> <p><i>Project Team Selection Report</i></p>
		<p>Project Review 2: Confirm requirements; review procurement strategy (Certify compliance to Sanctioning Authority; and proceed after agreed period provided no queries / hold from Sanctioning Authority)</p>					
	<p>Manage Outline Design process</p>	<p>Develop <i>Outline Sketch Scheme</i></p> <p>Appoint PSDP (if not appointed earlier)</p>	<p>Develop Preliminary Planning</p> <p>Appoint PSDP (if not appointed earlier)</p>	<p>Develop <i>Outline Cost Plan</i></p>	<p>VM: Consider VM in relation to Outline Sketch Scheme / Preliminary Planning</p> <p>RM: Consider RM in relation to Outline Sketch Scheme</p>	<p><i>Outline Sketch Scheme (Building)</i></p> <p><i>Preliminary Planning drawings (C. Eng.)</i></p> <p><i>Outline Cost Plan</i></p>	
	<p>Project Review 3: Assess project design and Outline Cost Plan (Certify compliance to Sanctioning Authority; and proceed after agreed period provided no queries / hold from Sanctioning Authority)</p>						
	<p>Manage Developed Design process</p> <p>Manage procurement process</p>	<p>Develop <i>Developed Sketch Scheme</i></p> <p>Prepare submission for statutory approval</p>	<p>Continue Preliminary Planning</p> <p>Prepare submission for statutory approval</p>	<p>Develop <i>Developed Cost Plan</i></p> <p>Develop <i>Whole Life Cost Appraisal</i></p>	<p>VM: Carry out value engineering</p> <p>Assess buildability of the design</p> <p>Consider VM in relation to <i>Detailed Sketch Scheme</i></p> <p>RM: Identify residual risks</p> <p>Consider RM in relation to <i>Detailed Sketch Scheme</i></p> <p>Suitability assessment of contractors</p>	<p><i>Developed Sketch Scheme</i></p> <p><i>Developed Cost Plan</i></p> <p><i>Statutory Approval Submission</i></p>	
<p>Project Review 4: Assess project prior to statutory approval (Report to Sanctioning Authority and await approval prior to proceeding)</p>							
		<p>Manage statutory submission process</p>	<p>Submit for statutory approval</p> <p>Review statutory approval outcome</p>	<p>Submit for statutory approval</p> <p>Review statutory approval outcome</p>	<p>Review <i>Developed Cost Plan</i></p>	<p>VM: Review any planning conditions for value management impact.</p> <p>RM: Review any planning conditions for risk impact.</p>	<p><i>Developed Cost Plan (reviewed)</i></p>
<p>Project Review 5: Assess outcome from statutory approval (Certify compliance to Sanctioning Authority; and proceed after agreed period provided no queries / hold from Sanctioning Authority)</p>							
Stage 3 Implementation	Stages (iv) Construction & (v) Handover	<p>Manage the Detailed Design Process</p>	<p>Develop Detailed Design (not design-and-build)</p> <p>Prepare tender documents</p>	<p>Develop Detailed Planning (Design) (not design-and-build)</p> <p>Prepare tender documents</p>	<p>Conduct <i>Detailed and Pre-Tender Cost Checks</i> and <i>Whole Life Cost Update</i> in advance of preparing tender documents</p>	<p>VM: Review suitability assessment of contractors for VM potential</p> <p>RM: Review suitability assessment of contractors for risk impact</p>	<p><i>Tender Documentation</i></p> <p><i>Detailed Pre-tender Cost Check</i></p> <p><i>Whole Life Cost Update</i></p> <p><i>Contractor List Selection</i></p>
		<p>Project Review 6: Approve detailed design solution; review pre-tender cost check; review risk (Report to Sanctioning Authority and await approval prior to proceeding)</p>					
	<p>Manage the Tender Process</p>	<p>Issue tender documents</p> <p>Assess tender returns</p> <p>Recommend successful tenderer</p>	<p>Issue tender documents</p> <p>Assess tender returns</p> <p>Recommend successful tenderer</p>	<p>Develop <i>Tender Cost Analysis</i></p> <p>Develop <i>Tender Report</i></p>	<p>VM: Assess tender returns for VM potential</p> <p>RM: Assess tender returns for risk impact</p>	<p><i>Tender Assessment Criteria</i></p> <p><i>Tender Analysis And Report</i></p> <p><i>Contractor Recommendation</i></p>	
<p>Project Review 7: Review tender returns in advance of awarding the contract (Report to Sanctioning Authority and await approval prior to proceeding)</p>							
Stage 4 Review		<p>Manage the implementation / construction process</p> <p>Manage change control</p> <p>Manage contract</p>	<p>Develop Detailed Design (Design and Build)</p> <p>Implement design</p>	<p>Develop Detailed Planning (Design and Build)</p> <p>Implement design</p>	<p>Manage change control for costs</p> <p>Prepare final account</p>	<p>VM: Carry out value engineering (for design and build projects only)</p> <p>RM: Manage residual risk</p> <p>Manage construction risk</p>	<p>Various contract management reports</p>
		<p>Manage the Project Review</p>	<p>Conduct design review</p>	<p>Conduct design review</p>	<p>Develop <i>Analysis of Outturn Cost</i></p>	<p>VM: Evaluate value achieved</p> <p>RM: Evaluate the risk management and risk mitigation process</p> <p>Consider operational risk reviews</p>	<p><i>Project Outturn Review</i></p>



1: About the Procurement of Services

1.1 Overview

Introduction

The activities covered by this guidance are expert technical service activities which include those listed under Category 12 in Annex XVII of Directive 2004/17/EC (Schedule 6 of SI No 50 of 2007) and Annex II of Directive 2004/18/EC (Schedule 2 of SI No 329 of 2006).

Sponsoring agencies should adopt a broad interpretation of this category of activity as described in the Directive. This means that the services of a wide range of consultants come within the scope of this guidance – including planners, process engineers, interior designers, archaeologists and geologists.

Each of the principal construction-related consultants employed as a member of a design team for a single requirement should be engaged directly by the Contracting Authority. Where the services of specialist sub-consultants are required, these sub-consultants may be contracted directly or via the principal consultants, at the discretion of the Contracting Authority.

Note: A ‘single requirement’ means the Sponsoring Agency’s overall requirement in service terms for capital works. This requirement may be met by one or more professional disciplines whose collective input is necessary to produce the desired result.

1.2 Project Stages

Stages in capital works management

The four strategic stages in the delivery process of a public works project are set out in the Department of Finance’s *Guidelines for the Appraisal and Management of Capital Expenditure Proposals in the Public Sector* (February 2005). The four stages are:

	Stage	What happens
Capital Works Management Framework	1. Appraisal	The needs are identified, the broad parameters of a solution are agreed, and a decision-in-principle is made to proceed.
	2. Planning	The needs are quantified and assumptions verified, the desired outputs are specified, and the solution is comprehensively designed.
	3. Implementation	The solution is constructed.
	4. Project review	An assessment is carried out of how successfully the delivered solution addresses the needs. Performance is also accessed

The Capital Works Management Framework is a structure developed to complement in more detail stages 2 to 4 of the *Guidelines for the Appraisal and Management of Capital Expenditure Proposals in the Public Sector*. It begins once the Approval in Principle is granted and runs until the facility is complete at review stage.

Steps in project planning

The planning stage involves the following eight steps:

Step	Description
1	Establishing a project management structure.
2	Project definition and development of the definitive project brief.
3	Budget development.
4	Procurement and Contract strategy.
5	Appointment of Technical Experts (Consultants).
6	Design process.
7	Planning and Control of Capital costs.
8	Tender process.

Continued on next page

1.2 Project Stages, Continued

Steps in project planning (continued)

This document is concerned with the fifth of these steps – which involves the appointment of technical experts where the services are being outsourced to private sector consultants. It is at this stage, early in planning at outline design stage, that the largest single impact on costs can be made, and value-for-money decisions are at their most important. It is therefore important that competent experienced experts are engaged by the Sponsoring Agency.

Note: The planning stage does not involve placing construction contracts or making any irrevocable commitment to undertake the project.

Defining the stages of a service requirement

A specific service requirement may be broken down into five discrete stages that can, at the discretion of the Contracting Authority, be combined into a single Request for Tenders or issued as multiple Requests for Tenders.

It is not permitted, however, to split a single requirement into a number of contracts in order to use a negotiated procedure or to avoid compliance with the Directives.

The extent to which these stages apply to a particular project will depend on whether the project is traditional (Employer-designed) or design-and-build (Contractor-designed). Contracting authorities may elect to introduce other intermediate sub-stages in the design stage.

Stage	Description
(i)	<p>Feasibility study or preliminary report stage</p> <p>This involves a Contracting Authority engaging experts to carry out a study/report so that all its requirements are defined in output specification terms before consultants are commissioned to carry out the formal design work on a project.</p>
(ii)	<p>Design stage</p> <p>There are normally two key parts to the Design stage:</p> <ol style="list-style-type: none"> 1 The first usually involves a Contracting Authority commissioning designers to develop sketch scheme designs / preliminary planning designs which meet its requirements and are in line with results approved at Stage 1, and advancing these designs up to and including Planning/ Statutory Approval for both Traditional and Design & Build projects. <p>In the case of design and build projects where the design risk is not transferred to the contractor at Stage I above then the design may be advanced as far as this point before being transferred to the contractor.</p> <ol style="list-style-type: none"> 2 The second usually involves a Contracting Authority having detailed designs developed after receipt of Planning/Statutory Approval and up to tender document stage for Traditional projects.

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1.2 Project Stages, Continued

Defining the stages of a service requirement (continued)

Stage	Description
(iii)	Tender action / evaluation / award stage
(iv)	Construction stage
(v)	<p>Handover stage and Final Completion</p> <p>Prior to handover, outstanding issues are dealt with, including delivery of operating and maintenance manuals, of the Safety File, of commissioning certificates and the preparation of a snag list. After handover, the final account is prepared, and all snags are rectified within the Defects Period. Final Completion will only occur when a Defects Certificate is issued (under clause 8.7 of PW-CF1 to PW-CF5 or Clause 3.15 of PW-CF6). There is no Defects Certificate in PW-CF7 and PW-CF8.</p>

1.3 Government Policy

Underlying procurement principles

Government procurement policy seeks to maintain high standards and to ensure value for money. In meeting these requirements, sponsoring agencies are required to ensure that:

- The consultants they employ can deliver high standards in the planning, design and supervision of the construction projects;
- Good consultancy advice is sought from professionals with relevant competency and experience;
- The procedure used for the procurement of such services is conducted in a transparent, fair and equitable manner;
- Competitive tendering is used which allows quality to be assessed in a way that achieves best value for money;
- The estimates for project designs submitted by consultants or by in-house design teams are subjected to independent scrutiny to confirm that they are reasonable to within acceptable margins of accuracy, and to confirm that the proposed designs represent good value for money; and
- Design information is subjected to independent examination *before* tenders are sought to verify its completeness and to fill in any gaps identified.

Fixed-price lump-sum

It is a basic principle of Government policy in relation to construction procurement that **fixed-price lump-sum consultancy contracts are tendered on a competitive basis** as the norm.

Types of procurement procedure

The four types of procurement procedures available for awarding contracts by contracting authorities are:

- **Restricted**, which is a two-stage process: a Request for Expressions of Interest is published on the eTenders website and where appropriate in the OJEU, and the resulting expressions of interest are subjected to a Suitability Assessment. An Instructions to Tender for Service [ITTS 1 (a)³ or (b)⁴] is then issued to qualifying service providers (normally a number of those that have met the minimum qualification criteria and have then been chosen by Qualitative Selection); the tenders are then evaluated and a contract is then usually awarded.

Note: all further references throughout this document to ITTS1 means ITTS1 (a) and ITTS1 (b).

Continued on next page

³ ITTS1 (a) can be used where hourly rates for extra services need to be identified. These rates are a formula in ITTS1 (a).

⁴ ITTS1 (b) can be used where tendered hourly rates for extra services need to be identified.

1.3 Government Policy, Continued

Types of procurement procedure (continued)

- **Open**, in which an Instructions to Tender for Service [ITTS 2 (a)⁵ or (b)⁶] is published on the eTenders website and where appropriate in the OJEU. As part of the tender submission evidence in relation to suitability must be included. All tender submissions first undergo a **Suitability Assessment** to determine which tenderers meet the minimum suitability standards and then (for those who meet the minimum standards) their tenders are evaluated on the basis of pre set and disclosed award criteria (which include quality as well as price).
Note: all further references throughout this document to ITTS2 means ITTS2 (a) and ITTS2 (b).
- **Negotiated** (exceptional procedure), in which the Contracting Authority negotiates the services required and the fees for those services with a number of competing service providers (competitive negotiated procedure) or with one service provider (non-competitive negotiated procedure). The principal of transparency must be observed. This is done by publishing the procurement opportunity on the eTenders website and where appropriate in the OJEU.
- **Competitive dialogue**: this procedure is available for particularly complex contracts where neither the open nor the restricted procedure will allow the award of a contract. It will rarely, if ever, be used for technical service contracts. (It is not detailed any further in this guidance.) However, if ever used the principal of transparency must be observed. This is done by publishing the procurement opportunity on the eTenders website and where appropriate in the OJEU.

Under most circumstances, the **Restricted** procurement procedure should be used. Other procedures may on occasion be appropriate – see Chapter 2.

⁵ ITTS2 (a) can be used where hourly rates for extra services need to be identified. These rates are a formula in ITTS2 (a).

⁶ ITTS2 (b) can be used where tendered hourly rates for extra services need to be identified.

2: Choosing the Correct Procurement Procedure

2.1 Rules Governing Public Procurement

EU rules and national guidelines

There are two sets of rules governing the conduct of public procurement:

- **EU rules** (as outlined in Directives 2004/17/EC and SI No 50 of 2007 and 2004/18/EC and SI No 329 of 2006) apply to contracts for services where the value of the *service* is (or is expected to be) above a particular threshold value.
- **National guidelines** apply to all other contracts for services.

In this document, where procurement advice relates to EU rules, this is so indicated; all other guidance relates to national requirements.

Selecting the appropriate procedure

The procurement rules that apply to a particular contract⁷ depends on the nature of the Contracting Authority, the value of the service contract and/or the expected value of the construction contract, as follows:

If the Contracting Authority is and the value ⁸ of the service contract is greater than then ...
In the Utilities sector (water, energy, transport or postal services)	€400,000	EU rules apply, and Contract Notice must be published in the <i>Official Journal of the European Union</i> (OJEU).
A Government Department or Office	€130,000	
Other public sector body (local or regional authority, public body outside the utilities sector)	€200,000	

Note: If the above criteria do *not* apply, **national guidelines** apply, as described on the next page.

Continued on next page

⁷ Except in the case of a contract following a design contest, in which case negotiated procedures are permitted, irrespective of the value of the construction contract. See page 29.

⁸ EU Thresholds with effect from January 2012 to 31 December 2013. Thresholds are revised every two years. Full and up to date thresholds can be checked on the EU public procurement website <http://simap.europa.eu/>.

2.1 Rules Governing Public Procurement, Continued

Selecting the appropriate procedure (continued)

If the value of the *service contract* falls below the thresholds given on the previous page (where EU rules apply), the procurement procedure to be used is determined by **national guidelines**, as follows:

If the expected value of construction (ex-VAT) is...	... then use...	... and ...
Over €500,000	Competitive tendering (open or restricted)	Publish contract notice on eTenders website.
Below €500,000	Competitive tendering (open or restricted), or, exceptionally, competitive or non-competitive negotiation	Consider publishing contract notice on eTenders website.

Preferred option

It is a basic principle of Government policy that a competitive process should always be used for technical services for capital works projects, unless there are justifiable exceptional reasons for not doing so. The **Restricted** procurement procedure is the procedure that should normally be used. However, there may be circumstances where the open procedure is more appropriate to use.

The **Negotiated** procedures should be used only in exceptional circumstances, as outlined below and in Chapter 3.

Using negotiated procedures

While the restricted or (to a lesser extent) the open procurement procedure is to be used normally, negotiated procedures are permissible in the following circumstances:

- For projects where the construction costs (ex VAT) are (or are expected to be) below €500,000;
- In the exceptional circumstances listed in Article 30 of Directive 2004/18/EC and SI No 329 of 2006;
- When Article 40 of Directive 2004/18/EC (Utilities Directive) and SI No 50 of 2007 allows a free choice of Open, Restricted or Negotiated procedures; or
- In the case of a contract following a design contest under EU rules (that is, a contract for design development and construction supervision) – see also Chapter 3.

Note: The fact that construction-related services may be classified as intellectual services is not grounds for the use of the negotiated procedure.

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2.1 Rules Governing Public Procurement, Continued

Aggregation of value

In determining the value of the contract to be awarded and thus whether or not the applicable threshold is reached, the Contracting Authority must aggregate the value of services to be provided by all of the professional disciplines involved in the delivery of the complete construction project. In other words, where consultants in a design team independently tender for the professional services and subsequently enter into separate contracts with a Contracting Authority to meet a single requirement, the value of each of their contracts must be aggregated to establish if the value thresholds are reached.

The aggregation rules apply to consultancy contracts for a single requirement, whether they are placed on the market and awarded at the same time, or they are placed on the market at different times and awarded at different times.

Exception to aggregation rule

If, out of a number of contracts which together form a single requirement, a particular contract or group of contracts has a value of not more than €80,000 and the aggregated value of all such contracts does not exceed 20% of the aggregate value of the total single requirement, the EU rules need not be applied to the contract or group of contracts. National rules will apply to such contracts. See example on next page.

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2.1 Rules Governing Public Procurement, Continued

Example of exception

A design team of five consultancy firms is required to provide construction-related services for a project valued at €2.5m (excluding VAT). The total fee is €337,500⁹ (excluding VAT) made up as follows:

Services	Value (ex. VAT)	% of total
Architectural	€150,000	44%
Quantity Surveying	€75,000	22%
Mechanical and Electrical	€50,000	15%
Civil Engineering	€37,500	11%
Landscape Architectural	€25,000	8%
Total	€337,500	100%

As the value of the **architectural** services exceeds €80,000, the tender must always be advertised in the OJEU. Similarly, as the value of the **quantity surveying** services exceeds 20% of the total service requirement, the tender must always be advertised in the OJEU.

In relation to the three remaining services contracts:

- If the **mechanical and electrical** services are advertised, it is not mandatory to advertise the **civil engineering** and **landscape architectural** services (as the value of each contract is less than €80,000 and the aggregate value of the two is less than 20% of the total).
- If any two of the three contracts are advertised, it is not mandatory to advertise the third (as the value of each contract is both less than €80,000 and less than 20% of the total).

Framework agreements

Technical services for capital works contracts (irrespective of value) under an existing framework agreement are not subject to the aggregation rules a second time round. However, their value is to be taken into account to establish the threshold of a single requirement where other technical services are required that are not covered by a framework agreement. Framework agreements should be used wherever possible to achieve greater efficiency and reduce administrative overheads.

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⁹ See EU threshold for public body on page 20.

2.1 Rules Governing Public Procurement, Continued

Framework agreements and collusion

Contracting authorities should regularly monitor the panels of consultancy firms on Framework Agreements to see that there is no unusual or suspicious behaviour by those on the panel particularly during mini-competitions for draw-down contracts. Any suspicion of collusion or anti-competitive practices should be immediately investigated and if necessary all competitions should be suspended until the investigation is completed and the Contracting Authority is in a position to determine the course of action to take – i.e. to cancel the competitions altogether and abandon the Framework Agreement or, if satisfied that there is nothing to be concerned about, to proceed with the competitions.

2.2 Suitability Assessment

Introduction The purpose of Suitability Assessment is to identify suitably qualified and competent candidates to invite to tender (restricted procedure – use of a short list) or who have submitted tenders (open procedure).

Contract notice The Contracting Authority initiates the process by publishing a Contract Notice in the OJEU and/or on the eTenders website (as appropriate to the value of the contract). This Notice will invite interested parties to either:

- (i) submit suitability material in response to a questionnaire (QC 1) to determine which of them qualify as candidates to participate in a tender competition for a specific service requirement; or
- (ii) to submit tenders with evidence of suitability in response to a questionnaire (QC 2, QC 3 and QC 4) to allow a Contracting Authority determine which tenderers are competent to carry out the service.

All submissions should be kept confidential and should not be opened until after the latest closing date and time for receipt of that material.

Note: From the eTenders website, the Contracting Authority can choose to send a notice automatically to the OJEU for publication.

Selection criteria Details of the suitability criteria must be included in the Contract Notice and may be also included in supporting documentation made available to applicants.

Applicants / tenderers must submit appropriate evidence to demonstrate that they meet the minimum standards set for the suitability criteria (QC 1 to QC 4), including the identification of adequate resources. Those who fail to submit such evidence, where required to do so, may be eliminated from the procedure.

Submissions from groups In relation to submissions from groups, the contract notice should clearly state:

- Whether it is permitted for consultants from the same or different disciplines to group together to put themselves forward as candidates or tenderers for a competition; or
- Whether a group of consultancy businesses tendering for a project (if not already a legal entity) is required to assume a legal form prior to execution of a contract with them.

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2.2 Suitability Assessment, Continued

Participation in more than one submission – open and restricted procedure

Where consultants put themselves forward more than once for the same contract, as individuals or as members of one or more groups of consultants, they (the individual or the lead consultant in the group, as appropriate) should provide a statement that they are aware of this multiple participation, and that it has been brought to the attention of all concerned.

In a restricted procedure the Contracting Authority at suitability assessment stage should investigate the circumstances to see if this multiple participation could result in a distortion of competition. Where it is felt that competition may be distorted, the consultant (or group of consultants) must be informed of this and instructed that if it still wishes to participate in the competition it must go forward as a single candidate or as a member of a group, as considered appropriate by the Contracting Authority.

In the case of an open procedure applicants should be warned in the tender documents of the dangers regarding multiple participation and the consequences that can result if it is of concern to a Contracting Authority which depending on the severity of the situation may lead to the disqualification of all those tenders affected. Contracting authorities must clearly express this cautionary note to all inquiring applicants when issuing the Suitability Assessment questionnaire in a restricted procedure, so that all applicants are aware of the rules. Following recent European case law, an outright ban on participation or elimination from a tender competition in more than one bidding team is not advised, as this could be viewed as disproportionate, depending on how important and influential the party is that is participating in multiple groups.

EU and National Rules

The EU rules governing selection are set out in the EC Directives. National rules follow the same principals and details as the EU rules and both are detailed in guidance notes *Suitability Assessment of Construction Service Providers, Restricted Procedure* (GN 1.6.1) and *Suitability Assessment of Construction Service Providers, Open Procedure* (GN 1.6.2).

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2.2 Suitability Assessment, Continued

Written clarification of submissions

The Contracting Authority can seek clarification on aspects of the applicants' / tenderers' evidence submitted in response to a Suitability Assessment questionnaire issued either separately (under a restricted procedure [QC 1]) or with tender documents (in an open procedure [QC 2, QC 3 and QC 4]). This can be in the form of written clarification from the applicant.

Under no circumstances should new material that changes a submission be accepted by contracting authorities as part of the clarification process, as this would put other applicants at a disadvantage and would constitute a breach of procedures.

Applicant / Tenderer interviews

As part of the selection process (qualitative or pass/fail) and where appropriate, all bona fide and eligible applicants / tenderers may be invited to attend an interview to clarify aspects of their response to the Suitability Assessment questionnaire (QC 1 to QC 4).

It may not be necessary to interview applicants / tenderers for particular projects, especially if a Contracting Authority is satisfied that the material in the submissions is adequate and from competent firms with proven track record.

Interviews can be conducted only if signalled in advance in the Contract Notice.

Interviewers should be careful not to invite or accept new information at interview, as consideration of new material would invalidate the whole procedure.

Recognition of qualifications

The EU Directives on mutual recognition of qualifications for consultants, including non-resident consultants should be observed. The current Directives¹⁰ are:

- Architects Directive 85/384/EEC; and
- The First General Directive on Professional Qualifications 89/48/EEC.

In the case of consultants whose professional title is required by Irish law¹¹ to be registered with a competent authority, by being so registered the consultant automatically qualifies as having met the minimum requirements set by contracting authorities for technical eligibility.

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¹⁰ Amended by Directives 85/614/EEC, 86/17/EEC, 90/658/EEC, 2001/19/EC, Corrigenda 2/4/86 and 21/03/96 to 86/17/EEC and 85/384/EEC; Act of Accession of Austria, Sweden and Finland [adopted by Council Decision 95/1/EC, Euratom, ECSC], and an Act concerning conditions of accession [23/9/03] of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia.

¹¹ It is a legal requirement under the Building Control Act 2003 for the *Registration of Building Professionals*, which gives statutory protection to the titles of 'Architect', 'Quantity Surveyor', and 'Building Surveyor'.

2.2 Suitability Assessment, Continued

Suitability assessment criteria and award criteria

The criteria used in Suitability Assessment are different from those used in contract award, and recent ECJ case law has ruled that they are not interchangeable under a restricted or open procedure.

Subsequent check for deficiencies – restricted procedure

Whilst a Contracting Authority in a restricted procedure cannot revisit its decisions on Suitability Assessment qualification in the absence of a change in the position of the applicant, it is permissible for a Contracting Authority at later stages in a procedure to check that the evidence supplied at Suitability Assessment stage is still valid.

If the candidate's position has changed, such that it would no longer have met the minimum criteria, or would not have been shortlisted to participate in the competition, the Contracting Authority can disqualify the candidate even at a later stage in a procedure.

While candidates can be excluded for failure to meet the qualifying criteria right up to the award of the contract, contracting authorities should make every effort to ensure that candidates who do not qualify do not pass the pre-qualification stage. Candidates who do not meet the minimum criteria for qualification, or do not make the pre-qualification short list, should not be admitted through to later stages in the competition.

Subsequent check for deficiencies- open procedure

If a Contracting Authority, in an open procedure, reaches a decision on a Tenderer's suitability to allow that applicant proceed to tender evaluation stage the decision cannot be revisited in the absence of a change in the position of the Tenderer. However, it is permissible right up to the award of a contract to check if a Tenderer's position has changed and if so does it warrant disqualification.

3: Negotiated Procedures

3.1 Competitive Selection of Candidates

Introduction

Article 40 of 2004/17/EC and SI N° 50 of 2007, and Articles 30 and 31 of 2004/18/EC and SI N° 329 of 2006 outline the circumstances in which the negotiated procedures may be used. These circumstances are set out in chapter 2, **Choosing the Correct Procurement Procedure**, above.

If a negotiated procedure is used, the Sponsoring Agency is required to demonstrate, by means of third-party verification, that the negotiated procedure is the *only option appropriate* for the proposed project.

For negotiated procedures, the Sponsoring Agency's Output Specification need not be that well defined, but the service required must be clearly defined.

Competitive negotiated procedures are those where the Contracting Authority consults parties of its choice (minimum of three), with or without prior advertising, and negotiates the service required and the associated fees with all those in the procedure before deciding on which party to chose.

Use of negotiated procedure in design contests

With regard to a contract following a design contest, if a Sponsoring Agency intends to use the negotiated procedure and to negotiate with more than one of the leading contestants, the Design Contest Notice and the design contest competition material must make that explicit, and also state that the winner(s) and runner(s)-up will be invited to negotiate to the exclusion of all other participants. However, in order to facilitate such a procedure a clear statement in the Design Contest Notice regarding the award criteria must be made. The award criteria may be similar to that set out in the example on page 59. The marking system to assess the award including the quality price ratio must also be stated in the Notice. If there is no clear link between the design contest and the design service contract that follows, the negotiated procedure cannot be used¹² and that service must be tendered for separately under either the open or restricted procedures.

Sponsoring Agencies, in indicating their intention to use the negotiated procedure, should be careful not commit themselves to a follow-on contract if it is not certain that a contract will be awarded.

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¹² European Court judgement C-340/02, *The Commission-v-France*

3.1 Competitive Selection of Candidates, Continued

Design contest notices

The following practical steps should be adopted in relation to design contests:

- The **subject matter** of all contracts to be awarded on the basis of the design contest should be fully described in the design contest notice;
 - The Sponsoring Agency should indicate, as part of the Design Contest Notice, that it reserves the right not to proceed with the award of any contract following the design contest, and that if it does proceed, the award will be made - after competitive negotiations have been conducted with the winner(s)/runner up(s) of the competition, to the candidate who emerged from the negotiations with the most economical advantageous offer.
 - There must be a **functional link** between the follow-on contract to be awarded and the original design contest contract awarded; and
 - The **award criteria** identified in the contract notice for the design competition must not only relate to the merits of the design, but also be appropriate to the award of any 'follow-on' contract. As part of the design process, participants must be asked to submit all information necessary to apply the full set of award criteria. The winner/runner(s)-up of the design contest must be determined by applying all of the stated award criteria using the published marking system.
-

Conduct of a competitive negotiated procedure

In competitive negotiation, at least three suitable service providers from each professional discipline are invited by the Sponsoring Agency (following a suitability assessment procedure conducted as per the suitability assessment stage of the restricted procedure [see above]) to negotiate on the basis of an outline preliminary service brief and the Sponsoring Agency's output specification for the project.

The negotiations should begin with an invitation for submissions, including fee proposals, from three or more firms. Discussions should then start simultaneously with each of the firms on their submissions and fee proposals. In addition to price, the discussions should cover the following general areas:

- The approach of the service provider to carrying out the project;
 - Knowledge of the Sponsoring Agency's procedures;
 - Project organisation; and
-

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3.1 Competitive Selection of Candidates, Continued

Conduct of a competitive negotiated procedure (continued)

In the case of design contests, the winners, or the winner and the runner(s)-up, as selected by a jury, can be invited by the Sponsoring Agency to negotiate the fees for the follow-on contracts where this has been indicated in the Design Contest Notice should include award criteria for the follow-on contracts. The jury must include these criteria in their considerations in deciding the winner(s) and the runner(s) up. If the criteria are not stated in this fashion, the negotiated procedure cannot be used for the award of the follow-on contract, and a separate restricted or open tendering competition must be held.

Conditions under which non-competitive negotiation is permitted

Negotiated procedures are permitted only in the limited circumstances set out in Chapter 2, above, and Sponsoring Agencies are required to demonstrate, by means of third-party verification, that the negotiated procedure is the *only option appropriate* for the proposed project.

The conditions governing non-competitive negotiated procedures are very strict and such procedures may be used only in very exceptional circumstances as determined by EU Directives and national rules.

The exceptional circumstances in which non-competitive negotiated procedures may be used are all set out in Article 31 of Directive 2004/18/EC and SI No 329 of 2006. Of these, the most frequent are:

- In cases where a Contracting Authority, due to unforeseen circumstances, is forced to extend a service under an existing contract, and the value of the additional services provided do not exceed 50% of the original contract value. If additional services of the same nature do exceed 50% of the original contract value, new award procedures should be initiated.
 - or –
 - In circumstances of extreme urgency – under National Rules and EU Rules [i.e. Directives 2004/17/EC Article 40(3) (d) and 2004/18/EC Article 31(1) (c)] the use of ‘extreme urgency’ should be very narrowly and strictly interpreted. It must be justified and brought about by events unforeseeable by a Contracting Authority that precludes the use of an open or restricted procedure. Delay or inaction attributable to a Contracting Authority is not sufficient to justify invoking extreme urgency.
-

Conduct of a non-competitive negotiated procedure

In a non-competitive negotiated procedure, a single service provider is selected and negotiations proceed on the basis of an outline preliminary service brief and the Sponsoring Agency’s output specification for the project. If no agreement is reached, negotiations must end definitively and the firm involved should be advised of the outcome. Another firm should then be selected and the same procedure followed.

4: Tender Process

4.1 Tender Documents

Call for competition

The tender documents issued must include the following information:

Document	See
Invitation to tender	<i>Instructions to Tender for Services, Restricted Procedure, ITTS 1; or Open Procedure, ITTS 2</i>
Instruction to tenderers	
Award criteria	
Form of tender	<i>Form of Tender and Schedule, FTS 9 and FTS 10</i>
Schedule for service	
Specification of service	<i>Definitive Project Brief</i>

Fee tenders options

There are two ways in which competitive tenders can be obtained for consultants' fees:

- By asking for a fixed-price lump-sum fee, which is described hereinafter as a **service contract for well-defined services**. This approach, which is to be the norm, is where a fixed-price lump-sum fee is competitively tendered on the basis of a comprehensively defined project brief and well-defined service requirements.
- By asking for a percentage fee, which is to be capped at the earliest opportune time, which is described hereinafter as a **service contract that cannot be clearly defined**. This approach, which should be used *only in exceptional circumstances*, is where a percentage fee is competitively tendered based on the notional capital value of the project stated in the Particulars in ITTS 1 and ITTS 2. It should be used only where project briefs and service requirements cannot be clearly defined, and must not be used for well-defined services. Before adopting this approach Sponsoring Agencies must demonstrate by means of approved third-party verification that the use of this procedure is the only option appropriate for the proposed project, and that the justification is recorded on the project file.

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4.1 Tender Documents, Continued

Service contracts for well-defined services

Where the service being tendered for is well-defined, Sponsoring Agencies must be able to describe the specific time frame and scope of the service in unambiguous, comprehensive and well-defined terms. If in-house resources are not available to draw up such a scope document, the use of a scoping contract to clearly define the needs should be considered. This information should be part of the material conveyed to candidates / applicants, so that they can tender for the provision of the service on a *fixed-price, lump-sum* basis with a considerable degree of pricing certainty.

A breakdown of the lump sum, at a minimum into the five stages indicated on page 16 above, should always be supplied by the tenderers. The overall lump sum tender price should also be disaggregated in the form of time estimates and hourly/daily rates, so that the resourcing aspects of the tender can be properly assessed (if this is required it will be stated in the Particulars of ITTS 1 or ITTS 2. However, the Contracting Authority must ensure that this does not undermine the integrity of the lump sum and leave the way open for a subsequent tender price increase without change in service or circumstances. A Contracting Authority can, if it wishes, request tenders for discrete single service packages at any stage. If there is significant uncertainty as to when the service is to be provided, consideration should be given to awarding the contract for those stages where there is time certainty.

Service contracts that cannot be clearly defined

Where the service being tendered for cannot be sufficiently well defined to enable candidates / applicants to tender on a *fixed-price lump-sum* basis, they may instead tender on a *percentage fee* basis. The percentage rate tendered should be for four of the five project stages listed on page 16 above (i.e. excluding Feasibility Study/Preliminary Report). In such cases, the Particulars in ITTS 1 or ITTS 2 should show a Notional Capital Value for the project.

Conversion to fixed-price lump-sum

The percentage rate tendered should, at the earliest opportunity after the extent of the project brief and/or service requirements have been fully defined (or, at the latest, at the end of the first part of design Stage (ii), as described on page 16), be converted to an overall fixed-price lump-sum and capped for each of the remainder of the stages for which services are to be provided. There should be no subsequent adjustment to the competitive percentage tendered.

The arrangements relating to the application of the percentage rate to a Contracting Authority's budget estimate/final cost is also set out in section 5.2 Fee Agreement, page 41. In all cases, these procedures should be clearly stated in the consultancy tender documents.

4.2 Contract Award Procedure

Allow adequate time for responses

The Contracting Authority must allow candidates / applicants adequate time to submit tenders, and the latest date and time for receipt of tenders should be stated in the Particulars in the instructions to tender (ITTS 1 and ITTS 2). Contracting authorities should have regard for the minimum timelines for tender submissions as set out in the EC Directive. In considering the minimum timelines, contracting authorities must take the complexities of a contract into account.

All tenders should be kept confidential and should not be opened until after the latest closing date and time for receipt of tenders.

Note: Tenderers whose submissions omit information that is vital to their tender should be eliminated from the award procedure.

Submission from groups

In relation to submissions from groups, the tender documents or contract notice should clearly state:

- Whether it is permitted for consultants from the same or different disciplines to group together to put themselves forward (in an open procedure) as applicants for a tender competition (note in a restricted procedure the issue grouping together should have been addressed at suitability assessment stage and that decision remains); and
 - Whether a group of economic operators tendering for a project (if not already a legal entity) is required to assume a legal form prior to execution of a contract with them.
-

Interviewing tenderers

As part of the tender process and where appropriate, bona fide tenderers may be invited to attend an interview to clarify aspects of their tender.

It may not be necessary to interview tenderers for particular projects, especially if the Contracting Authority is satisfied that the material in the tender submission is adequate to assess the tender and that it is from a competent firm with a proven track record.

Interviewers should be careful not to invite or accept new information at interview, as consideration of new material would invalidate the whole procedure.

The clarification procedure (described on page 27) in relation to Suitability Assessment evidence in the case of the open procedure may be combined with an interview (if an interview is thought necessary).

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4.2 Contract Award Procedure, Continued

Tender evaluation criteria example

In all cases price must be included as an important criterion. The following example illustrates typical headings under each criterion:

Criterion	Description
Quality	<ul style="list-style-type: none"> ▪ Firm's management systems; ▪ Project delivery; ▪ Workload and resources; ▪ Technical ability of project staff; and ▪ Approach to health and safety.
Price	<ul style="list-style-type: none"> ▪ Cost of the project.
Time	<ul style="list-style-type: none"> ▪ Delivery date; and ▪ Delivery period or period of completion.

Note: See Appendix B for an expanded example of how quality criteria might be applied and scored in a project.

Note: The period of completion for technical services for a stage or for all stages within the total Performance Period should be stated in Schedule B 'Stage Services' and Schedule A at Clause 4.6 of the *Standard Conditions of Engagement* which should be attached to FTS 9, or FTS 10, as appropriate. Therefore time in the case of a service contract is not a competitive issue.

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4.2 Contract Award Procedure, Continued

Quality/Price Ratio

In awarding public service contracts where the award criteria is *MEAT*, robust criteria must be developed for both quality and price, and in a balanced way to ensure best value for money¹³.

The weighting of quality against price will be influenced by the complexity and nature of the project and the degree of creativity or flexibility that is required in its execution.

Contracting authorities should therefore always ensure that the precise relationship between quality and price is established prior to any call for competition and that this is stated in the Particulars of the ITT. In determining the correct relationship between quality and price, the principle of proportionality should be observed.

While the quality/price ratio will differ across project types, the policy approach and core principle is that price must be given significant weighting without undermining quality.

The Qualitative Price Assessment Mechanism set out here should be used as a guide to evaluate quality and price in order to identify the most economically advantageous tender.

¹³ Recital 46 of Directive 2004/18/EC states “Where contracting authorities choose to award a contract to the most economically advantageous tender, they shall assess the tenders in order to determine which one offers the best value for money.”

4.3 Tender Evaluation

Tender evaluation criteria

Tenders can be submitted on the basis of price or on price and quality, with the following award criteria:

Tender Basis	Award Criteria
<ul style="list-style-type: none"> ▪ On price 	The lowest price
<ul style="list-style-type: none"> ▪ On price and quality 	Most economically advantageous tender (<i>MEAT</i>)

The Contracting Authority is obliged to identify the award criteria including any sub-criteria clearly and in sufficient detail in the instructions to tender (ITTS 1 and ITTS 2). In most consultancy contracts the quality of the technical services features highly and therefore the *MEAT* criteria will normally be used. Where appropriate, this must be set out in the ITT.

The criteria should be relevant to the specific contract and appropriate to the nature, type and complexity of the project particularly for the specific technical services for that project, and, where no weightings are allocated, they should be stated in descending order of importance. If weightings have been allocated, they should be stated. Contracting authorities should follow equitable, fair and transparent procedures in assessing quality and price in a tender.

5: Service Contract

5.1 Standard Conditions of Engagement

Written agreements

The Standard Conditions of Engagement for Consultancy Services (Technical), (COE 1), and the Standard Conditions of Engagement for Archaeology Services (COE 2) should be signed or sealed, with Schedule B completed setting out the service and fee arrangements, as well as other material which should be in place before commencement of service. Separate agreements and conditions of engagement should be drawn up for the following:

- Feasibility study/preliminary report; and
- The combined pre-construction (i.e. excluding feasibility study / preliminary report) and construction stages of the project.

In some cases it may be appropriate to have separate service agreements for pre- construction and construction stages of the project.

Extent of consultant's liability

Where the consultant just signs the Standard Conditions of Engagement (COE 1 or COE 2) (without seal) the consultant's liability is limited to 6 years. Where a consultant signs the Standard Conditions of Engagement (COE 1 or COE 2) under seal, the consultant's liability is 12 years; this should only be done in circumstances where the Client considers it absolutely necessary.

In the rare case of a consultant with no design responsibility, the Contracting Authority may waive the 6 years' liability by separate letter to the consultant at appointment stage. An example of such a consultant would be a Quantity Surveyor whose Bills of Quantities do not include any design or specification material. However where design or specification material is included in Bills of Quantities, the Quantity Surveyor's liability should be no different from that of the other design consultants.

Continued on next page

5.1 Standard Conditions of Engagement, Continued

Termination/ Suspension/ Prolongation

In relation to Termination, Suspension or Prolongation, the following key provisions are included in the Standard Conditions of Engagement (COE 1 and COE 2) between Client and Consultant:

- **Termination-at-will:** this provision allows for termination-at-will of a contract prior to the completion of the service. Termination takes effect 14 to 28 days after the notice to terminate is served. Compensation is payable only in the event of a project proceeding without the Consultant. Where a project does not proceed, the Consultant is paid for work done up to the date of termination-at-will, with a reasonable apportionment for any incomplete, unsatisfactory, performance. Where termination-at-will arises during a stage and the project proceeds, the compensation shall be the Scheduled percentage applied to the fees for the stage in which the termination occurs. This is additional to the Fee for work done up to the date of termination, with a reasonable apportionment for any incomplete, unsatisfactory, performance.
- **Termination with cause:** this provision allows either party to terminate a contract for substantial breach of contract by the other and provides compensation to the party terminating the contract. A minimum of 14 days and a maximum of 28 days must elapse after the warning notice is served before the termination notice may be served. This is to allow time for the breach to be remedied to prevent termination.
- **Suspension:** this provision allows a Contracting Authority formally to suspend the Consultant's performance of services, but only during a stage. The compensation payable for suspension is a percentage of the fees payable for the stage in which the suspension starts. (The percentage that applies to each stage is specified in Schedule B of the Standard Conditions of Engagement). Direct costs shall also be paid for any specific actions requested by the client.
- **Prolongation:** this provision deals with what happens when completion of a stage is delayed by a client. Where completion of a stage overruns the Total Performance Period less all remaining Stage Performance Periods, the Consumer Price Index applies to all remaining fees after the start of the over-run. In relation to the stage in which the over-run occurred, a reasonable apportionment is to be allowed for the outstanding service fees for that stage.

Furthermore, specific payment rules and service adjustment provisions should be clearly expressed in any agreement, as below, see **5.2 Fee Agreement on page 41**.

Continued on next page

5.1 Standard Conditions of Engagement, Continued

Copyright

Contracting Authorities should be aware that there are two options in the Standard Conditions of Engagement in relation to ownership of intellectual property rights (copyright) in design documents:

- The first is where a royalty-free license is granted to the Contracting Authority.
- The second is where the copyright is owned outright by the Contracting Authority.

If outright ownership of the copyright is required by the Contracting Authority, this should be clearly stated in the tender documents, so that the design consultants can provide for the cost of this arrangement in their tender prices when tendering for the service.

Contracting authorities should state clearly in the tender documents what specific aspects of copyright they require – for instance, whether it is the iconic visual image of a facility, or the detailed designs of a facility, or both.

Similarly if a royalty-free, perpetual, non-exclusive, irrevocable, assignable license to reproduce and/or use the documents is required by a Contracting Authority, this should be clearly stated in the tender documents, so that the design consultants can provide for this arrangement in their tender prices when tendering for the service.

In relation to sub-paragraph 11 (9) of the Standard Conditions of Engagement, the number of times the design documents can be reused under the royalty-free licence is restricted by the Services referred to in sub-paragraph 11 (7). These Services are identified in Schedule B, and the project(s) that they apply to are the project(s) identified in 1.2 'Project' Schedule A, which will normally be only one project. If this is the case, the client is not entitled to use the consultant's design documents on any other project. If more than one project is identified, the extent of use will be determined by the number of projects identified.

Once ownership of copyright is transferred to the client, there is no limit on the number of times or the time period in which it can be used.

5.2 Fee Agreement

Introduction

Contracting authorities should state clearly in the instructions to tender (ITTS 1 or ITTS 2) and in the Schedule B attached to the Form of Tender what fee arrangements and payment procedures are to be applied to the consultancy service contract. Appendix A of this document sets out a worked example of a model fee payment mechanism. This Chapter deals with the following:

- Fee Agreement; and
- Fee Structure.

Fee adjustments are dealt with in Chapter 6.

General points regarding payment of fees

Contracting authorities should note the following in relation to fee payment.

Prompt Payment

The Prompt Payment of Accounts Act 1997 and The European Communities (Late Payment in Commercial Transactions) Regulations 2002 (SI 388 of 2002) apply; contracting authorities should therefore ensure that all undisputed outstanding fee claims due to consultants are paid promptly.

Withholding Tax and VAT

Fee payments are to be subject to the deduction of withholding tax current at time of payment. In exceptional circumstances, where there are percentage fees (subject to being capped at earliest opportune time), the percentage fee payments should be calculated by reference to the VAT-exclusive value of the approved construction project.

Travelling and Other Incidental Expenses

Travelling and other incidental expenses should be included as part of a tender price – this should normally be a fixed price supported with appropriate backup detail to cover all expenses that will arise in connection with the service to be provided, insofar as they can be foreseen by the consultant. The actual outgoings on expenses is a consultant's risk.

Fee Payment Stages

Payments for services on a traditional, Employer-design project should be divided so that they correspond to at least four of the five discrete project stages listed below. This is the case where services for all stages except the first stage (Feasibility Study / Preliminary Report) are awarded in a single contract :

- (i) Feasibility study or preliminary report stage;
- (ii) Design stage;
- (iii) Tender action/evaluation/award stage;
- (iv) Construction stage (i.e. Implementation stage); and
- (v) Handover stage.

Contracting authorities may opt to introduce other intermediate planning and payment stages for design services as indicated in Schedule B 'sub-stages (ii) a to (ii) c of Stage (ii) Design.

Continued on next page

5.2 Fee Agreement Continued

Fixed-price, lump-sum payments

Agreed fixed-price, lump-sum payments (which cumulatively equal the tendered fixed price lump sum for the service) are payable on delivery of the approved project stage (corresponding to the five discrete project stages outlined above). The Contracting Authority can subdivide the lump sum even further based on milestones within a stage as referred to in Clause 4.3 of the Standard Conditions of Engagement.

Fees for Stage (i) (Feasibility Study / Preliminary Report Stage)

These fees should always be on a fixed-price, lump-sum basis and should only be paid on delivery of client-approved documentation. This provision should be clearly stated in the consultancy tender documents.

Fees for Stages II to V (Design stage, Tender action / Evaluation / Award Stage, Construction Stage, Handover Stage)

Fees on a fixed-price lump-sum basis for provision of services at Stages II to V should be subdivided into milestone payments (particularly those relating to Stage (ii)). Additions approved by the Contracting Authority for such issues as unforeseen client-approved extras should be added to the relevant milestone payment and the contract sum adjusted accordingly.

Percentage fee payments

Contract percentage fees are payable on delivery of the approved project stages (corresponding to the five discrete project stages outlined above). The Contracting Authority can subdivide the percentage payment for a stage even further into payment for sub-stages within a stage as referred to in Clause 4.7 of the Standard Conditions of Engagement.

Fees for Stage (i) (Feasibility Study / Preliminary Report Stage)

This is always a fixed-price lump-sum, and it is payable on delivery of the agreed project stage.

Fees for part of Stage (ii) (part of Design Stage)

Fees for part of Stage (ii) are based on the *tendered percentage fee* by the *portion of the contract accounted for by this part of Stage (ii) (expressed as a percentage)*, as applied to the *approved project budget*.

the tendered percentage fee (%)	x	portion of the contract accounted for by this part of Stage (ii) (%)	x	the approved project budget
---------------------------------	---	--	---	-----------------------------

These should be converted to fixed-price lump sums and capped as soon as the project brief and the service requirements are clearly defined (at latest, at the end of the first part of Design Stage (ii), as described on page 16). For information on adjustment of the capped fees for 'Budgetary Control' (Clause 12 Standard Conditions of Engagement) see section 6.1 and Tender Action Stage (iii) at Appendix A.

Continued on next page

5.2 Fee Agreement, Continued

Percentage fee payments (continued)

Fees for Stage (ii) (part) and Stage (iii) (remainder of Design Stage and Tender Action Stage)

Fees have been calculated and capped early in Stage (ii) for part of Stage (ii) and for Stage (iii) as fixed-price lump sums.

In relation to adjustment of the fixed price lump sum capped fee for 'Budgetary Control' reasons (under Clause 12 of the Standard Conditions of Engagement), see **6.1 Deviation from Pre-tender Budget** (page 45) and **Tender Action Stage** in Appendix A (page 53).

Fees for Stages (iv) and (v) – Construction Stage and Handover Stage)

Fees for Stages (iv) and (v) are fixed-price lump sums, as by this stage they have already been calculated and capped early in Stage (ii).

Any additional fees for client-approved extra works that may arise under the construction contract, excluding approved price variation increases are converted to lump sums and added to the overall fixed price lump sum fee.

Examining and checking price variation claims

Where the period for a public works project from the Designated / Contract Date to the Completion Date is more than 36 months, the Contractor is entitled to recover increases caused by inflation in the costs of labour and materials purchased after the 36th month on that contract. This is referred to as recovery of price variation. Consultancy services for examining, checking and agreeing price variation claims, where such services are required, should be procured on a competitive basis, either by way of:

- A separate competition which envisages an independent expert being engaged to do the work;
- or –
- As part of a larger service requirement put out to tender as a package which envisages the successful tenderer doing the work.

Where the services are included in a larger requirement and tendered as a package, it should be a requirement that tenderers show in their tenders a separate lump sum fixed price for this work along with details of how it was made up, based on the estimated number of hours and hourly rates. This is a consultant's risk – so, if the hours change, the consultant's tendered fixed-price lump sum remains unchanged.

Continued on next page

5.2 Fee Agreement, Continued

Interim payments

Where a fixed-price lump-sum payment is agreed for Stage (i) and where a percentage fee has been agreed and capped for part of Stage (ii) and all of Stage (iii), interim progress payments are permissible at the end of each stage, provided the service for those stages has been satisfactorily completed. Stage (ii) can be divided into further sub-stages with payments linked to each of these sub-stages. Interim progress payments for the Construction / Stage (iv) and Handover / Stage (v) stages may be made by agreement provided the service for those portions of the supervision work has been satisfactorily completed.

Milestone payments for each milestone within Stage (ii) of a project should only be paid if these are linked to satisfactory completion of service. A proportion of the Stage payment for the Construction / Stage (iv) and Handover / Stage (v) can be paid provided the same proportion of the service for the supervision work has been satisfactorily completed.

Note: See Appendix A of this document for a worked example of a model fee payment mechanism.

6: Fee Adjustments

6.1 Deviation from Pre-tender Budget

How to calculate fee adjustments

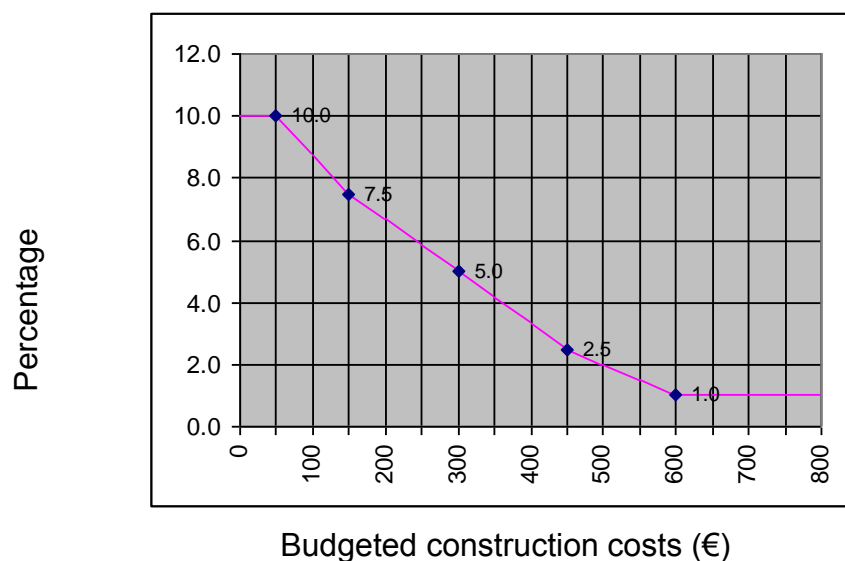
In the case of fees tendered on a **fixed-price lump sum** basis, the fee payable to the consultant should be reduced if the approved construction contract tender price deviates from the approved pre-tender budget price by more than a fixed percentage. Where the approved construction tender price deviates from the approved pre-tender budget by more than the percentage/amount shown below, the consultant's fee is reduced by the percentage that is in excess of the allowed percentage deviation. For example:

- On a project valued at €50m, the approved tender price is 12% **higher** than the pre-tender budget: consultant's fees may be reduced by 2% (i.e. 12 – 10).
- On a project valued at €300m, the approved tender price is 12% **lower** than the pre-tender budget: consultant's fees may be reduced by 7% (i.e. 12 – 5).

Note: The approved project pre-tender estimate should be current i.e. calculated or refreshed not later than a month prior to tenders being sought. The pre-tender estimate should be based on pricing the final tender documents before issue to tenderers. Where there are Bills of Quantities, these should be priced by the consultant.

For projects with budgeted construction costs of the deviation beyond which reduced fees apply is ...
Up to €50m	10% (fixed)
€50m to €150m	10% to 7.5% (on a sliding scale)
€150m to €450m	7.5% to 2.5% (on sliding scale)
€450m to €600m	2.5% to 1% (on sliding scale)
Above €600m	1% (fixed)

Intermediate values can be determined by reference to the following chart.



Continued on next page

6.1 Deviation from Pre-tender Budget, Continued

Where to apply fee adjustments

The fee adjustment mechanism should be applied only to the consultant(s) at fault in relation to fees earned up to end of the Design Stage. This adjustment mechanism is only used at Tender Action Stage (iii). See the examples below.

- *Example 1:* If the **Quantity Surveyor** is negligent, then only the Quantity Surveyor's fees may be reduced using the fee adjustment mechanism.
- *Example 2:* The **Architect**, unknown to the Quantity Surveyor, fails to include vital design/specification information in the tender documents. The Quantity Surveyor prices the Bill of Quantities pre-tender based on the flawed documents to arrive at the pre-tender estimate. The Contracting Authority approves the estimate and allows the project go to tender. The error is discovered during the tendering period and revised material is issued to tenderers, resulting in the lowest recommended tender price being greater than expected and bringing it outside the margin of tolerance acceptable to the Contracting Authority. In this situation as the Architect is at fault, it is the Architect's fees that may be reduced using the fee adjustment mechanism. Alternatively if the error is discovered during the Construction Stage, no extra fees should be paid; even though the Contractor has to carry out the work and has to be paid for such work by the Contracting Authority under the contract. Note that such a scenario indicates a serious error on the part of the Consultant(s), and should be recorded for future reference.)
- *Example 3:* A consultant **Engineer** obtains tenders for specialist mechanical and electrical works on behalf of the client after completion of the pre-tender estimate, but before return of main contract tenders, and the recommended tender for specialist works is passed to the tendering contractors for the main construction contract, with the requirement that it be included as part of their overall tender price for the project. If the recommended main contractor's tender price deviates from the pre-tender budget by more than the client's tolerance margin, and this deviation is due to a deviation of the cost of the mechanical and electrical specialist works, the Engineer is at fault, and it is the Engineer's fees that may be reduced using the fee adjustment mechanism.

Continued on next page

6.1 Deviation from Pre-tender Budget, Continued

Waive of fee adjustments

If there is a genuine, reasonable and justifiable case why the lowest valid tender received is outside the margin of tolerance stated in the fee agreement, a Contracting Authority may waive the application of the fee adjustments in the following circumstances:

Where ...	and...	... then:
A tender is received that is significantly less than the pre-tender estimate	The relevant Design Team member(s): <ul style="list-style-type: none"> ▪ Recommend acceptance of it; and ▪ State that it is exceptionally low and the Design Team are satisfied that the Contractor can do the work even though its tender is abnormally low (due to an error or because of strategic pricing); and ▪ Simultaneously submit a valid reasoned argument supporting their contention; and ▪ Ask that the fee adjustment not be applied. 	The client should waive the fee adjustment providing that the client's in-house professional staff or other advisory staff are satisfied with the reason given by the Design Team.

An exceptionally low tender price might be submitted, for example, if a tenderer mistakenly does not price a significant risk or part of the work, or prices it very low. The fee adjustment can be waived if:

- The tender price lies outside the margin of tolerance set by the client;
- Supporting correspondence from the tenderer confirms that the risk has been priced low or not at all and that it accepts the risk;
- The tenderer agrees to stand over the tender; and

The Design Team demonstrates that its calculation of what the risk should have cost accounts for the difference between estimate and the tender price and that the Design Team confirms that the Contractor accepts the risk. Furthermore, the Design Team confirm that the risk associated with the exceptionally low tender for the Contracting Authority is safe to accept.

Continued on next page

6.1 Deviation from Pre-tender Budget, Continued

Recouping fees If it is necessary to recoup fees, this should be done from monies due or to become due to the consultants under the contract in question or, where insufficient monies are due, from any other contract the consultant has with the Contracting Authority, or they may be recoverable as a debt from the consultant - see Clause 10 of the COE 1 and COE 2.

Additional payments to the contractor If additional payments due to the works contractor arise during the Construction Stage (in addition to the construction contract sum) for reasons for which the Contracting Authority is not responsible, these extra costs shall not lead to additional fee entitlements to the consultant.

Construction inflation Where a service contract is awarded on a fixed-price lump sum or percentage fee basis and the project estimate increases (due to construction inflation) there shall be no change to the fixed price or the capped percentage fee payable to consultants. In other words, inflation-driven increases in construction costs shall not trigger corresponding or retrospective increases in design fees.

6.2 Percentage Fee Adjustment no change in Service

Percentage Fee adjustments

There is no adjustment to the consultant's capped fees (i.e. capped at latest at end of first part of Design Stage (ii)) if the construction tendered amount is higher than the pre-tender budgeted costs. If, however, the approved construction tender price is lower than the approved pre-tender budget price, the fees payable to consultants (with no change in service) should be reduced. The mechanism by which the reduction is calculated is by applying the percentage fee to the lower approved construction tender price. The construction tender priced now becomes the new budget on which all fees are calculated (including those paid for services already provided).

Percentage adjustment to percentage fees

If the lowest construction tender price is outside the parameters set at the start of this Section consideration should be given to applying an additional reduction to the percentage fee by using the fixed price lump sum rules at the start of this Section.

6.3 Service Adjustments

Introduction (Service Adjustments)

A service adjustment is a change initiated by the Contracting Authority in the level of service or the scope of works that is required *after* the appointment of the consultants and after approval of the project scope.

Such adjustments usually require changes to be made in the level of fees to be paid to consultants. The sections below outline how such changes are to be handled for both reduced payments and increased payments.

Reduced payments

How reduced payment adjustments are made will depend on whether the service adjustment occurs at Design Stage or at Construction Stage.

Service adjustment occurs at Design stage

Where a lump-sum fixed-price fee is agreed at appointment and a decision is taken to reduce the scope of the project for which services are to be rendered at the start or near start of the Design Stage (i.e. Stage (ii)), the fee for the reduced services is calculated by adjusting the lump-sum figure on a proportionate basis to reflect the work yet to be completed by reference to the Stage (ii) fee. A new value is set for the services that are to be provided for the remaining work up to and including the main construction contract award stage, Stage (iii).

Where a percentage fee has been agreed at appointment and a decision is taken to reduce services at the start or near start of the Design Stage (i.e. Stage (ii)), the percentage rate should be applied to the reduced value of the project, even where the fee has been capped for services yet to be provided, and new values for revised caps should be established for the remaining work up to and including contract award, Stage (iii).

Service adjustment occurs at Construction stage

Where a lump sum fixed price fee is agreed at appointment and a decision is taken to reduce services in the construction (implementation) stage it should be adjusted on a proportionate basis to reflect the work yet to be completed by reference to the Stage (iv) fee. A new milestone payment based on the agreed revised figure should be set for the remainder of the construction and handover stages.

Where there is a contract percentage fee agreed at appointment which has subsequently been capped early in Stage (ii) and a decision is taken to reduce services in the Construction (Implementation) stage, the original percentage rate should be applied to the reduced value of the project and revised caps should be established for the remainder of the construction and handover stages.

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6.3 Service Adjustments, Continued

Increased payments

Where a capped percentage or a lump-sum fixed-price fee has been agreed at appointment and the provision of extra services has been approved, the fee for the additional services should be recalculated as follows.

Lump-sum payments

Pay the lesser of:

- The tendered lump-sum fee adjusted proportionately;
- or –
- The actual additional costs (based on hourly / daily rates) incurred by the consultant.

New stage payments based on the agreed revised figure should be established for those stages or part of a stage that have yet to be completed.

Percentage fee payments

The percentage rate should be applied to the increased value of the project where the additional work has been approved and the fee capped. The capped amount should be added to the original capped amount so as to adjust the overall lump sum figure for fees.

Appendix A: Worked Example of Model Fee Payment Mechanism

Introduction This example is for a construction project on a green field site, with a building budget of €30.27m (€26.67m plus VAT), and an agreed fee of 5.5% for design services on the VAT-exclusive capital cost of the project. This example illustrates how the fee would be calculated for each capped stage of a project.

Note: Contracting Authorities in deciding on the fee apportionment at various stages in the project delivery process should ensure that the apportionment is not structured in such a way that an overpayment might occur when main contract tenders are received particularly in a market where prices are falling and the project budget is only verified when tenders received. The fee apportionment in the example below may not be appropriate in a highly competitive market where construction prices are falling dramatically.

Stage	Fee apportionment	Worked Example
i) Feasibility Study / Preliminary Report	Lump-sum, fixed-price	A tender cost of €25,000 for a report/study as a lump-sum fixed-price (see paragraph 4.2[i]). If the study/report becomes part of an ongoing commission awarded on a percentage basis, even though separate contracts may have been entered into, the fee for the report/study should be subsumed into the general fee for the project. Net amount payable for Stage (i) = €25,000 plus VAT @ 21.5% = €30,375
ii) Design Stage		
Subdivision ii.a. Outline sketch scheme; Design proposal	20% of fee (cumulative)	5.5% of €26.67m x 20%, less Stage 1 fees where this is part of an ongoing commission. = €293,370 – €25,000 = €268,370 +VAT @ 21.5% = €326,070 Net amount payable for subdivision (ii.a)
Subdivision ii.b. Developed sketch scheme	15% of fee (35% cumulative) <i>Fees are capped at the end of subdivision ii.b</i>	5.5% of €26.67m x 35%, less amount paid to date. = €513,398 – €293,370 = €220,028 +VAT @ 21.5% = €267,334 Net amount payable for subdivision (ii.b)
Subdivision ii.c Tender Documents (Detail design, specifications, bill of quantities, latest approved cost estimate)	35% of fee (70% cumulative)	Total capped fee is €1,466,850 and 70% of the capped fee is €1,026,795. Therefore €1,026,795 (less amount paid to date) – €513,398 = €513,398 +VAT @ 21.5% = €623,779 this is the net amount payable for subdivision (ii.c)

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Appendix A: Worked Example of Model Fee Payment Mechanism, Continued

Scenario

At the end of this stage, a delay of 6 months occurs, and over that period, there was construction inflation of 8%. However the 6 month delay period was still within the Total Performance Period set out in 4.4 of Schedule A of the *Standard Conditions of Engagement*.

The gross capped fee of €1,466,850 is fixed at the end of this subdivision stage (ii c).

The new approved pre-tender cost estimate (one month prior to tenders being sought) is €28,000,000 (excluding VAT).

Note: Works contracts tenders in this example are sought on the basis of a VAT exclusive price.

Stage	Fee agreed	Worked Example
iii) Tender Action / Evaluation /Award Stage Issue tender documents; examine tenders received; make recommendations; appoint Contractor.	5% of fee (75% cumulative) <i>Fees capped at the end of Stage (ii).</i> Note: Where tenders deviate from approved pre-tender budget by more than 10%, see page 41 ff.	The total capped fee is €1,466,850 and 75% of the capped fee is €1,100,138. Therefore €1,100,138 (less amount paid to date) – €1,026,795 = €73,343 +VAT @ 21.5%= €89,111 Net amount payable for Stage (iii).

Scenario

The lowest most suitable tender comes in at €34.76 million. As this is more than the approved pre-tender estimate of €28.8 million, fees are not payable either on the inflation increase or on the tender increase. Moreover, as the tender deviates from the approved budget by more than 10%, a deduction is to be made from the Stage (ii), fee. The result is a revised Stage (ii) fee, calculated as below:

Original Stage (ii) fee: $5.5\% \times €26.67\text{m} \times 70\% = €1,466,850$

This was capped at the end of Stage (ii).

The deviation from the approved pre-tender budget is 20.7%. The percentage in excess of 10% is 10.7%. The Stage (ii) fee is thus reduced by:

$€1,466,850 \times 10.7\% = €156,953$

If the total capped fee is €1,466,840 then the revised total capped fee is $(€1,466,850 - €156,953) = €1,309,897$

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Appendix A: Worked Example of Model Fee Payment Mechanism, Continued

Stage	Fee agreed	Worked Example
iv) Construction Stage Contract administration and supervision during construction	20% of fee on adjusted contract price (approved) (95% cumulative)	If the total revised capped fee is €1,275,983 then 95% is €1,212,184 and the net amount due is (less amount paid to date) – €1,100,138 = €112,046 plus VAT at 21.5% which equals €136,136
v) Handover Stage Documentation preparation and hand-over, including advice on use of documentation	5% of fee on adjusted contract price (approved) (100% cumulative)	If the total revised capped fee is €1,275,983 then the net amount due is (less amount paid to date) – €1,212,184 = €63,799 plus VAT at 21.5% which equals €77,516

Summary of payments

The following table summarises the fee payments (ex VAT) used in this example.

Stage	Calculation	Amount	Cumulative
Stage (i)	(fixed)	€25,000	€25,000
Stage (ii) a	(€1,466,850 x 20%) – (paid to date)	€268,370	€293,370
Stage (ii) b	(€1,466,850 x 35%) – (paid to date)	€220,028	€513,398
Stage (ii) c	(€1,466,850 x 70%) – (paid to date)	€513,398	€1,026,795
Stage (iii)	(€1,466,850 x 75%) – (paid to date)	€73,343	€1,100,138
Stage (iv)	(€1,275,983 x 95%) – (paid to date)	€112,046	€1,212,184
Stage (v)	(€1,275,983 x 100%) – (paid to date)	€63,799	€1,275,983

Appendix B: Determining the Most Economically Advantageous Tender

Introduction

In public service contracts where the criterion is the most economically advantageous tender, an appropriate mechanism should be used to evaluate quality and price. In restricted and negotiated procedures, there is a pre-qualification stage and a tender evaluation stage; in an open procedure, there is a qualification assessment before tenders are evaluated.

The balance between quality and price will vary depending on the type and complexity of the project. The mechanism in the guidance document covers all types of public sector projects. It is flexible enough to meet the need of any particular circumstance and deals with quality and price in an objective way.

Preliminaries (Quality)

Before embarking on an evaluation, the contracting authority should establish the following:

Award criteria

Award criteria include the following (not an exhaustive list.)

- Methodology for carrying out the service on the project;
- Knowledge of the Contracting Authorities approval procedures applicable to the service required;
- Approach to Design, Planning, Planning and Control of Costs and Project Supervision in relation to the service required for the project;
- Proficiency in Design and Specification of durable low maintenance, cost efficient, sustainable physical structures in relation to the project;
- Ability to work with other technical experts in an integrated team;
- Resources to deliver the services;
- Share of the service contract that the tenderer intends to subcontract (Article 25 of 2004/18/EC);
- Tenderer's understanding and knowledge of the service-brief;
- Detail as to how the service will be delivered on time;
- Risk management;
- Communication skills and systems that are to be used to deliver the service;
- Approach to health and safety;
- Technical assistance with after-sales service (as relevant);
- Delivery Date; and
- Delivery period or period for completion.

Maximum marks and percentages for award criteria

The relative importance of each award criterion should be established by giving it a maximum mark and percentage so that the sum of all percentages equals 100. The maximum marks and percentages are the benchmark against which all tenderers will be evaluated. They should be decided and recorded in the contract notice or tender documents before a call for a qualification competition.

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Appendix B: Determining the Most Economically Advantageous Tender, Continued

Preliminaries (continued)

Quality thresholds

Quality threshold is the minimum level of percentage in the quality evaluation exercise necessary for a bid to be considered further. This threshold should be set before the call for a tender competition (more details below).

Quality/price ratio:

The quality/price ratio appropriate to the type of project under consideration should be determined. The ratio should be decided and officially recorded before a call for competition (more details below).

Award mechanism

A structured approach to the evaluation of bids for both quality and price.

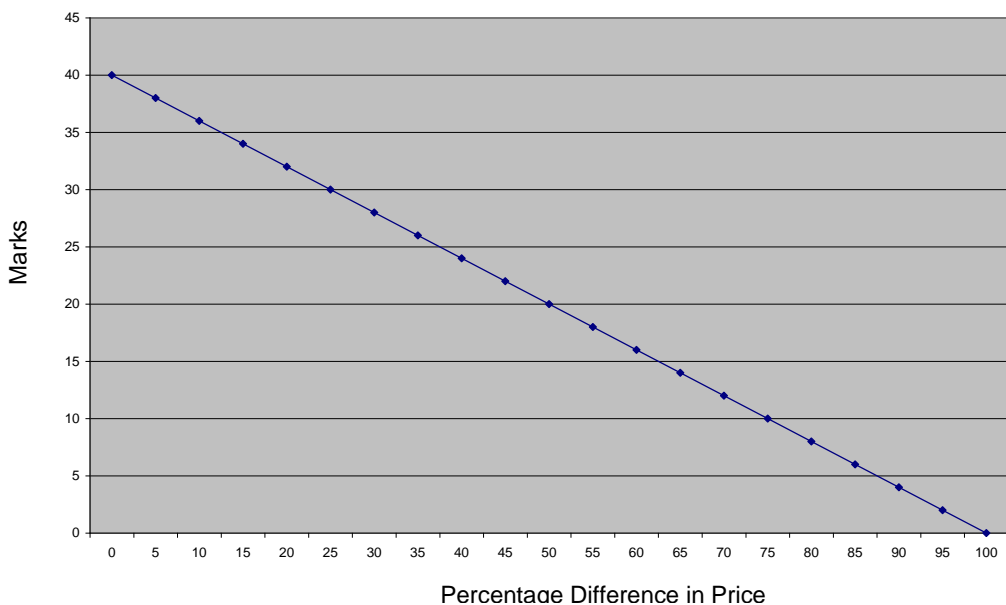
Bid basis

Choosing the most economically advantageous tender criteria

Price scoring

The tender with the lowest tender price will be awarded the maximum marks available for price. Other tenders are then scored by deducting one percent of the total marks for price for each percentage point difference between the lowest price and the tender price. The lowest price mark which can be obtained is zero.

The chart below illustrates how total marks are influenced using this method of price scoring (assuming that the price criterion is allocated 40 marks).



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Appendix B: Determining the Most Economically Advantageous Tender, Continued

Quality scoring In the quality assessment, the tender considered to have the highest technical merit in each criterion being assessed (or sub-criterion, where used) will normally be given the maximum marks available for that criterion (or sub-criterion, where used). All other tenders will be marked for each criterion (or sub-criterion (where used)) relative to the tender assessed as having the highest technical merit for that criterion (or sub-criterion, where used).

Award Process The following is a summary of the various steps involved in the award process:

Step	Action
1	Draw up tender list.
2	Prepare instruction to tenderers; decide on the appropriate balance between price and quality and include this in the tender documents.
3	Invite tenders.
4	Evaluate tenders for quality and price and compute results.
5	Notify successful candidate; issue contracts; debrief.

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Appendix B: Determining the Most Economically Advantageous Tender, Continued

Quality Threshold

To establish the minimum quality threshold, a contracting authority should set the overall quality threshold prior to inviting firms to tender for the service. The figures should be in the range 0 – 100, and the marking system should be included in the ITTS document issued to those tendering for the service. Once chosen, the threshold must not be changed, as it sets the minimum standard that must be met or exceeded by all tenderers wishing to have the price part of their tender evaluated – see model award mechanism, below.

Quality / Price Ratio

An assessment panel should be established to determine the quality/price ratio appropriate to the complexity of the project in relation to technical services to be provided. The mechanism developed for the selection and award processes should ensure that the tenderer providing best value for money is appointed. It is essential that the quality/price assessments are established very early on in the process and in any event before tenders are invited. If this is not possible, it must be completed not later than the latest date set for receipt of tenders, so that the ratio is not influenced by subjective decisions during the tender evaluation process.

The weighting of quality against price can vary significantly between projects depending on how complex, imaginative and flexible their delivery needs to be. The following sets out the range within which quality and price can fluctuate:

- **Price** from as low as 20% to as high as 80%
- **Quality** from as low as 20% to as high as 80%

Note: The Quality/Price Ratio is project-specific, and once decided is not subject to change for different Design Team members on the same project.

Range of Quality / Price Ratios

Indicative range of quality/price ratios for various categories of projects are as follows:

Category of project	Ratio	
	Quality	Price
Feasibility report and investigations	80	20
Innovative and imaginative design projects; Major conservation and restoration projects	80	20
Most construction projects	70	30
Repeat ¹⁴ and straightforward projects	40	60
Straightforward repairs and maintenance projects	20	80

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¹⁴ An example of a repeat project would be a standard school building design built in several locations. The initial design may be in a higher category, but subsequent implementations would be in the lower category.

Appendix B: Determining the Most Economically Advantageous Tender, Continued

Assessment of Tenders

Tender information relating to both quality and price must be simultaneously available to the assessors at the beginning of the tender assessment exercise. Quality should be marked and the total marks for quality should then be merged with the marks for price using the quality/price ratio mechanism, resulting in the establishment of the offer which represents the most economically advantageous tender. A worked example of this model is illustrated on the following pages.

Note that the evaluation is based on the actual proposal for the project. Evaluation of the firm should already have been carried out at pre-qualification stage.

Time spent on careful evaluation during the award processes will pay dividends during delivery of the service.

Exceptionally low tender

Where an exceptionally low tender price is received, it should be fully investigated and only if it is found to be bona fide and acceptable should it be allowed into the price evaluation part of the procedure. In the case of tenders covered by EU Directives, exceptionally low tenders should be investigated following the procedures set out in those Directives.

Tender Evaluation Panel

A tender evaluation panel should be set up at a very early stage, and certainly no later than the latest date set for receipt of tenders.

It should be responsible for the following:

- Setting up the quality/price mechanism;
- Ensuring that the ITTS document issued is so structured as to elicit appropriate responses to which the mechanism can be applied; and
- Applying the mechanism to all bona fide tenders returned.

The tender evaluation panel should consist of personnel who are able to establish an informed view on the issues before them. In the best interest of transparency and openness, the tender evaluation panel should be formally constituted. For construction projects over €5m (including VAT), the formally constituted panel should have at least one impartial outside member from a public body.

This procedure may be adopted for contracts of lower value if a contracting authority so desires, particularly for prestigious or complex projects. For ethical reasons, members from professional bodies who act in a consultancy capacity for commercial gain should not be appointed to panels. If a contracting authority deems it necessary to have different personnel on the qualitative assessment panel and the tender assessment panel it may do so, provided the requirement is officially recorded.
