

Capital Works Management Framework

Guidance Note

Procurement Process for Works Contractors

GN 2.3

Procurement Process for Works Contractors
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Foreword

Public Procurement 1994 Edition

The 1994 edition 'Public Procurement' dealt with, in addition to supplies and non-construction services, guidance for the procurement of public works and construction-related services. The 1994 publication is superseded by guidance in this document and elsewhere throughout the Capital Works Management Framework which now forms the current national procurement rules for public works and construction-related services.

Purpose of this document

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

The purpose of the document is to provide guidance on the procurement process for building and civil engineering projects.

Updates to this Guidance Note

The Government Construction Contracts Committee (GCCC) will review the operation of procurement process periodically in the light of experience. Changes to contracts, practice, procedures and guidelines will be incorporated in an updated version of this document and published at regular intervals on constructionprocurement.gov.ie website.

Terminology in this guidance note

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

Audience

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

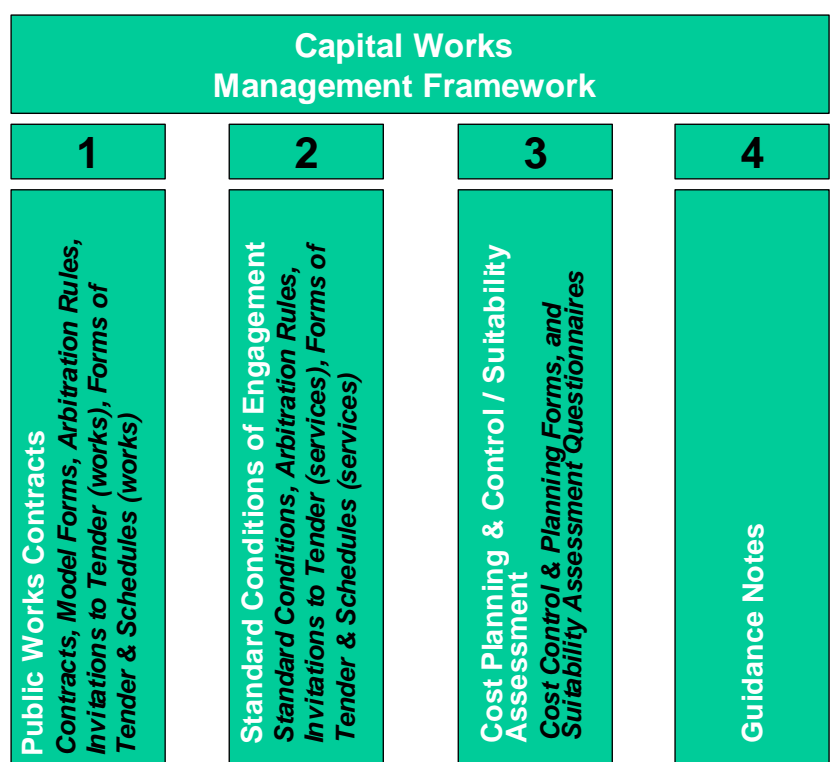
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What is the Capital Works Framework

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 invitations to tender, forms of tender and schedules;
2. The standard conditions of engagement for consultants, dispute resolution rules, model invitations 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	Invitation To Tender, Services	ITTW	Invitation 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, Invitations 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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CWMF Pillar 1 (continued)

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

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Foreword, Continued

CWMF Pillar 2 **Standard Conditions**

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

<i>Standard Conditions</i>	
COE 1	<i>Standard Conditions of Engagement for Consultancy Services (Technical)</i>
COE 2	<i>Standard Conditions of Engagement for Archaeology Services</i>
<i>Arbitration Rules</i>	
AR 1.0	<i>Arbitration Rules</i>
<i>Invitations to Tender (services)</i>	
ITTS 1	<i>Invitation to Tender for Services, Restricted Procedure</i>
ITTS 2	<i>Invitation to Tender for Services, Open Procedure</i>
<i>Forms of Tender & Schedule (services)</i>	
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>
GN 1.6.1	<i>Suitability Assessment of Construction Service Providers, Restricted Procedure</i>
GN 1.6.2	<i>Suitability 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 Process for Works Contractors¹</i>
GN 2.3.1	<i>Suitability Assessment of Works Contractors, Restricted Procedure</i>
GN 2.3.2	<i>Suitability 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>

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¹ 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 and over stage; and
- More efficient delivery of a project.

Provided there is a comprehensive definition of the Client's requirements in terms of output specifications, and adequate pre-tender detail design input (in the cast of traditional contracts), 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 complete and detailed information in the tender documentation:

- For design-and-build projects, the Employer must provide detailed output specifications; and
- For traditional projects, the Employer must provide comprehensive input designs and specifications.

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

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Foreword, Continued

Stages in capital works management

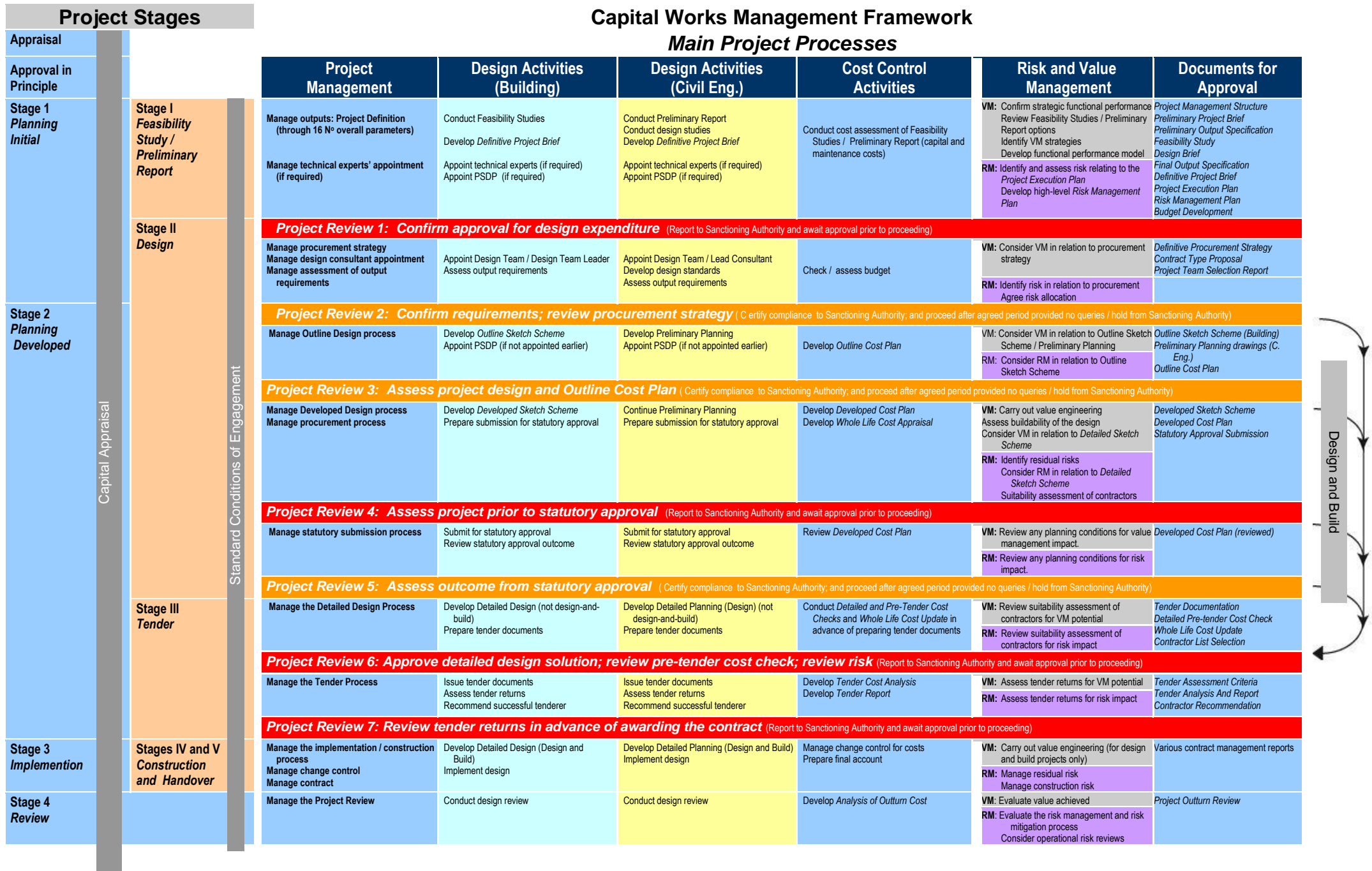
The four major stages in the delivery life cycle of a public works project are set out in the Department of Finance's *Guidelines for the Appraisal and Management of Capital Expenditure Proposals in the Public Sector* (February 2005) and any subsequent addendum. The four stages are:

Capital Works Management	Stage	What happens
	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 designed.
	3. Implementation	The solution is constructed.
	4. Project review	An assessment is carried out of how successfully the delivered solution addresses the needs.

Content

This document deals with the following topics:

Topic	See Page
1: About the Public Works Procurement Process Presents the different types of procurement procedure, and outlines the process of competitive tendering, with a summary of the roles and responsibilities of those involved.	13
2: Preparing Tender Documentation Describes the steps involved in preparing tender documentation in advance of a tender competition.	27
3: Inviting Tender Submissions Describes the procedures for inviting tender submissions for public works contracts.	36
4: Evaluating Tender Submissions and Awarding the Contract Describes the procedures for evaluating tender submissions, making any necessary adjustments to tender prices, and awarding the contract to the successful tenderer.	41



1: About the Public Works Procurement Process

1.1 Overview

Introduction

Government procurement policy seeks to maintain high standards and to ensure value for money in the delivery of public works projects. In meeting these requirements, Sponsoring Agencies are required to ensure that:

- The procedure used for the procurement of public works projects is conducted in an open, objective and transparent manner;
 - Competitive tendering is used in a manner that allows quality and best value for money to be assessed; and
 - The principles of all EU and national public procurement rules are adhered to; and that procedures are in place to ensure compliance with all such guidelines.
-

Contents

This chapter deals with the following topics:

Topic	See Page
1.2 Types of Public Procurement Procedure Describes how the chosen procurement strategy impacts on the tender process.	14
1.3 Competitive Tendering Presents an overview of the tender process for the procurement of public works.	21
1.4 Public Procurement and the Tender Process Outlines the key activities in public procurement procedures and their timing, and also looks at some issues around governance.	18
1.5 Roles and Responsibilities in the Tender Process Outlines the roles and responsibilities of the Sanctioning Authority, the Sponsoring Agency, the Project Coordinator, the Design Team, and the Cost Adviser in relation to the tender process.	21
1.6 Management of the Tender Process Describes the importance of programme management, documentation management and communication management throughout the tender process.	24

1.2 Types of Public Procurement Procedure

Procurement procedures

Under EU and national procurement rules, procurement procedures may be one of the following:

- Open procedure,
- Restricted procedure,
- Competitive dialogue, or
- Negotiated procedure.

Of these, the two most commonly used under the CWMF are the open and restricted procedures which between them account for nearly all public works procurement opportunities. An Employer should choose a negotiated procedure or competitive dialogue only in very exceptional circumstances, which must be documented comprehensively.

Each of these types of procedure is described in turn.

Open Procedure

In an open procedure, an Invitation to Tender (ITTW 2) is published concurrently with the advertisement / Contract Notice. The tender competition is open to any individual or company who wishes to participate.

Tender submissions are first evaluated under the suitability assessment criteria included in the questionnaire issued with tender documents to ascertain whether or not the tenderers meet the minimum pass/fail standards. See *Suitability Assessment of Works Contractors, Open Procedure* (GN 2.3.2) for more information.

Tenderers who pass the suitability assessment may then have their tenders evaluated under the tender evaluation criteria – see page 45.

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1.2 Types of Public Procurement Procedure, Continued

Restricted Procedure

A restricted procedure is in two stages:

Stage 1	An advertisement / contract notice is published on the eTenders website (and where appropriate in the <i>OJEU</i>) inviting interested parties to submit evidence of their suitability (in a suitability questionnaire). The submitted evidence is then evaluated to determine which applicants meet the minimum standard; those that do, as a general rule, are then qualitatively assessed for a place on a short list; and those on the short list may subsequently be invited to tender. <i>See Suitability Assessment of Works Contractors, Restricted Procedure (GN 2.3.1) for more information.</i>
Stage 2	An Invitation to Tender (ITTW 1) is issued to the qualifying candidates on the short list. Their tender submissions are evaluated under the tender evaluation criteria – see page 45.

Restricted procedures are nearly always used with Contractor-designed contracts – that is, where only those contractors that have passed Stage 1 (i.e. suitability assessment) and have the required competence in design are invited to tender for the design-and-build works contract.

Competitive Dialogue

Competitive dialogue procedures are used in exceptional circumstances, such as very complex projects that demand more flexibility in the procurement process than in either the restricted or open procedure – for example, those that involve public–private partnerships.

In a competitive dialogue, the Employer enters into dialogue with a number of suitable candidates with a view to establishing what is the best way to meet its requirements. Once this has been established, the Employer may invite candidates (at least three) to make tender submissions. This procedure also involves the publication of a Contract Notice on eTenders or where appropriate in the *OJEU*.

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1.2 Types of Public Procurement Procedure, Continued

Negotiated Procedure

Negotiated procedures are also for use in exceptional limited situations as set out in article 31 of the EU Directive 2004/18/EC. These include the following:

- Cases of extreme urgency (not caused by the Contracting Authority);
- Cases where for artistic or technical reasons only one possible supplier is available;
- Cases where an open or restricted procedure cannot attract appropriate tenders; and
- Extensions to existing contracts, and repeat contracts (subject to certain conditions).

In a negotiated procedure, the Employer negotiates with a number of contractors (usually at least three) – where, for instance, it would not otherwise be possible to price a particular project accurately or where specifications cannot be developed with sufficient accuracy to enable tenderers to provide fixed-price lump sum tenders. This would only happen on very rare occasions with the approval of the Sanctioning Authority.

The Employer must be entirely certain that the circumstances warrant proceeding with a negotiated procedure. For example, a case of ‘extreme urgency’ must be one that could not have been reasonably expected and is not as a result of any fault on the part of the Contracting Authority.

1.3 Competitive Tendering

Purpose of tendering

The purpose of tendering is to establish in a competitive environment, the market price of a works project. An acceptable tender is an affordable bona fide (authentic and genuine) competitive tender determined by the criteria of the competition, which meets the core objectives as described in the tender documents that have been developed from the Definitive Project Brief.

This chapter will detail the fundamentals of the tendering process, including different contract types, how to manage the tender schedule, roles and responsibilities, procurement strategies and documentation requirements.

Strategic objective of the tender process

One of the Government's key strategic objectives is to eliminate (in all contract types) undefined design information and detail that were entirely foreseeable during planning and which were previously covered by provisional sums and quantities, in tender documents. To achieve this objective, Sponsoring Agencies need to:

- Be clear about the project output requirements (for design-and-build contracts); or
 - Translate the output requirements into detailed drawings, specifications, schedules, calculations and other relevant documents (for traditional Employer-designed contracts).
-

Achieving value for money

The most economically advantageous tender (MEAT) is the tender which, following assessment of its technical, management and commercial criteria, is the most beneficial to the Contracting Authority and represents value for money. For a tender to represent value for money (in regards to Government spending) the design should be economical and affordable by comparison with the pre-tender budget and the Sponsoring Agency's output requirements. Unnecessary design enhancements are usually costly and should be avoided.

At the end of the tender process the project designs, tender price, specifications, method statements, management arrangements and programmes are collated to form a key part of the binding Contract between Employer and Contractor. Therefore, the tendering process has a significant impact in establishing whether the project represents value for money and the Contracting Authority should proceed only if it does.

1.4 Public Procurement and the Tender Process

Key procurement activities

The key activities involved in the restricted and open procurement processes are summarised in the following table:

Restricted	Open
1 Invite expressions of interest	1 Invite tenders
2 Assess suitability	2 Assess suitability
3 Notify results	3 Evaluate tenders
4 Debrief those that did not get a place on tender list	4 Notify unsuccessful tenderers
5 Invite tenders	5 Notify intention to award
6 Evaluate tenders	6 Award contract
7 Notify unsuccessful tenderers	7 Publish notice of award
8 Notify intention to award	8 Execute contract documents
9 Award contract	
10 Publish notice of award	
11 Execute contract documents	

These activities must comply with the EU's public procurement directives².

Tender validity period

The maximum time limits governing tender evaluation and contract award depend on the tender validity period stated in the Tender. This is expressed as follows:

In consideration of your providing us with the contract documents, we agree not to withdraw this offer until the later of:

- (a) 180 days (default period) after the end of the last day for submission of this Tender.
- (b) Expiry of at least 21 days' written notice to terminate this Tender given by us, which may not issue prior to the expiry period at (a).

Period from Designated Date to Date of Award

There should be no short cuts to the period covering tender evaluation and contract award for traditional and design-and-build contracts as there is the risk that something crucial will be overlooked which could be costly to the Employer later on.

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² Available at http://ec.europa.eu/internal_market/publicprocurement/legislation_en.htm

1.4 Public Procurement and the Tender Process, Continued

Timing of the tender process

The timing of when tenders should be sought will depend on whether the procurement and contract strategy agreed by the Employer is for an Employer-designed or a Contractor-designed project.

- With traditional, Employer-designed projects, the tender process takes place near the end of the Planning Developed stage (after Project Review 6).
 - For Contractor-designed projects (i.e. design-and-build), the tender process takes place at the point where the Contracting Authority decides to transfer the design risk to the Contractor. This may be at the end of Project Review 2 when the Contracting Authority's consultants confirm that the Output Requirements and budget are realistic and consistent with the Definitive Project Brief; or, alternatively, the design may progress through the Planning Developed stage and exit at the end of Project Review 3, or 4 or 5 depending on when the Client wishes to transfer the design risk to the tendering contractors.
-

Governance of procurement

Sponsoring Agencies need to have well defined corporate governance policies that safeguard against improper or unethical practices, and that ensure a high standard of integrity and honesty when procuring public works contracts that involve Exchequer funds.

Corporate procurement governance policies should include policies on:

- The grade of personnel who have delegated authority for procurement;
- Authorisation thresholds;
- Independent evaluation and award teams;
- Internal reporting structure;
- Transparency of the selection process; and
- Robustness of the contract award verification system; and
- Debriefing unsuccessful applicants.

Best practice

To ensure a smooth passage through all stages of the procurement process, all decisions must be fair, based on facts and transparent in keeping with best practice.

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1.4 Public Procurement and the Tender Process, Continued

Procurement strategy

The chosen procurement strategy for the project, will have a significant impact on the tender process, as it can affect:

- The length of the tendering period;
- Who has responsibility for project design;
- Who has responsibility for design cost control;
- The extent to which optimal risk transfer can be achieved; and
- The role of the design consultants.

Note: The contract type chosen (employer-design or contractor-design) will dictate the programme management tasks required to implement the tender process.

1.5 Roles and Responsibilities in the Tender Process

Introduction

The roles and responsibilities of the Sanctioning Authority, the Sponsoring Agency (Contracting Authority), the Project Coordinator, the Design Team and the Cost Adviser in relation to the tender process are outlined below.

The Sanctioning Authority

Before the tender process for a project can begin, the Sanctioning Authority must give its formal approval.

- In Employer-designed projects, the approval takes place following Project Review 6.
- In Contractor-designed projects, the approval can take place just after completion of Project review 1 or of any of the intervening stages up to and including Project Review 5.

At the end of Project Review 1 the Sanctioning Authority should have evaluated and approved the detailed business case for a particular project which has been developed and refined on the basis of the business case made at project appraisal stage. The detailed business case should include a clear expression of the Contracting Authority's output requirements, the project budget, the project's key objectives, and when service requirements are expected to be addressed. The Sanctioning Authority's role in subsequent pre-tender stages is to give approval where appropriate so that the project can proceed.

The Contracting Authority

The Sponsoring Agency / Contracting Authority has the overall responsibility for planning, managing and overseeing the design and construction of the project. This includes seeking approval from the Sanctioning Authority to go to tender and to award a formal contract, before proceeding to the Implementation stage.

Note: The Sponsoring Agency becomes the Contracting Authority for a project once it becomes a party to a technical services contract relating to the project. And once it becomes a party to any construction contract relating to the project, it is referred to as the Employer.

Continued on next page

1.5 Roles and Responsibilities in the Tender Process, Continued

The Project Coordinator

The Project Coordinator is responsible for monitoring and approving the delivery of the project to meet the Contracting Authority's requirements as set out in the Definitive Project Brief. The Project Coordinator's role should not be confused with the role of Health and Safety Coordinators that is required during the tendering period for a design-and-build project or the fulfillment of the Health and Safety role under an Employer or Contractor designed project during the construction phase where this role is required. The tender process is managed by the Project Coordinator, who is required to:

- Monitor and approve the development of the tender competition;
 - Approve a short-list of Contractors, if required (drawn up by the Design Team); and
 - Coordinate the production of tender documentation (including the tender report).
-

The Design Team

The Design Team is a team of professional consultants and experts who advise and support the Contracting Authority. They undertake various technical activities within their service disciplines to achieve a successful result which provides a facility that satisfies the Contracting Authority's output requirements. Design Team members have an individual and collective responsibility throughout the Planning stage including input into the tendering process. This responsibility includes:

- Adopting best practice to suit the chosen procurement strategy - when preparing design and specification information for tender documents for a tender competition;
 - Short-listing tenderers, if required, (in cooperation with the Project Coordinator) to establish the most suitable panel of tenderers;
 - Providing up-to-date market information to ensure that the latest approved budget reflects current market prices;
 - To structure the tender so that it is placed appropriately in the market;
 - Producing complete tender documentation in a comprehensive, coordinated and cohesive manner;
 - Dealing with tender queries during the tender period;
 - Analysing submitted bids and/or proposals; and
 - Preparing a tender report for consideration by the Contracting Authority with a clear recommendation to approve the most economically advantageous tender.
-

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1.5 Roles and Responsibilities in the Tender Process,

Continued

The Cost Adviser

The Cost Adviser is a member of the Design Team and is responsible for reporting the up-to-date status of the construction budget at formal intervals (i.e. Project Reviews) to the Contracting Authority. The Cost Adviser's other duties are to inform other members of the Design Team regularly of current project costs, and for advising (if necessary) ways to maintain cost control, in order to stay within the approved budget. The Cost Adviser is also responsible for the production of the Pricing Document as part of the tender documentation issued to tenderers for pricing.

1.6 Management of the Tender Process

Programme management

Once Project Review 6 is complete and approval is received from the Sanctioning Authority to proceed, the project should advance to the tender stage. However, before the tender process starts, the Project Coordinator, in conjunction with the appointed technical advisers, should as a matter of best practice draw up a detailed coherent programme setting out the activities involved in the tender process, which should then be managed and implemented appropriately. Furthermore, the programme should be consistent with the relevant part of the Gantt chart in the Project Execution Plan that deals with the tender process activity.

The period in the programme should also be consistent with the comparable period included in the Consultant's *Standard Conditions of Engagement*. The programme must clearly show:

- All of the activities in the tender process such as:
 - Confirm Contract Notice has been published on eTenders and where appropriate in *OJEU*, or if this has not been done already, do it now;
 - Issue tender documents to candidates/applicants;
 - Deal with queries during tender period including issue of supplementary information if necessary;
 - Grant an extension of time to the tender period if necessary;
 - Record receipt of tenders;
 - Open tenders;
 - Evaluate tenders; in the case of an open procedure evaluate suitability first before evaluating tenders;
 - Post tender clarifications
 - Issue Letter to Apparently Unsuccessful Tenderers (MF 1.2) including appropriate debriefing material;
 - Issue Letter of Intent (MF 1.3);
 - Issue Letter of Acceptance (MF 1.4);
 - Issue Letter to Tenderers Notifying Award (MF 1.5); and
 - Post award notice in *OJEU*.
- The objectives of the tender process and milestones to be achieved including the achievement of all critical goals;
- The sequence and timing of tendering activities;
- The party responsible for each activity;
- The reporting arrangements;
- The formal execution of the Contract; and
- The submission of a report on tenders, including details of the recommended tenderer to the Sanctioning Authority as part of Project Review 7.

Control over individual delivery periods of a project (within a total performance period), will vary according to the chosen procurement strategy:

Continued on next page

1.6 Management of the Tender Process, Continued

Programme management (continued)

- In traditional contracts (where the Contracting Authority retains the services of design consultants), there is greater control over the design as the Contracting Authority has closer contact with the Design Team. However, there can be some drift in the delivery time as the end date is easier to move out. Furthermore, there are certain other risks a Contracting Authority takes with this approach such as the contractor not being responsible for the design because the designers are not an integral part of the Contractor's team.
 - In design-and-build contracts, a Contracting Authority's control over the design is at arm's length, and there is little flexibility in the delivery period which is set by the Contracting Authority at the start of the tender competition and can only be changed if an extension to the tendering period is granted.
-

Performance Period

The individual delivery and total performance periods in traditional contracts, need to be detailed in Schedules A and B of the *Standard Conditions of Engagement*. The Sponsoring Agency / Contracting Authority may be able to make some reduction to these periods by:

- Being more efficient and pro-active with its Design Team during the tender process, particularly in relation to making the award; and
- Competitively tendering the part of the construction period which is more than the safe minimum period stated in tender documents.

The total performance period for design and supervision of the project in the case of Design and Build is the responsibility of the main contractor who must comply with the time that is set by the Employer in the Public Works Contract (PW-CF 2 or PW-CF 4). Also the performance period can be tendered for in the same way as at bullet point 2 above if this is what an Employer wishes at tender stage.

Continued on next page

1.6 Management of the Tender Process, Continued

Documentation management

All tender documentation should be prepared in such a way that it is consistent with the procurement strategy adopted and it enables tenderers to formulate competitive bids. The documentation should also be capable of assisting the tender evaluation team to easily examine and assess submissions in accordance with the conditions of the competition.

The comprehensiveness, completeness, accuracy and degree of risk transfer in the tender documentation will have significant impact on the level of cost certainty and value for money at tender stage and also the control that can be achieved during the Implementation.

- On Employer-designed projects, the design must be fully completed in advance of the tender process; and
- On Contractor-designed projects, the tender documents must (at the earliest) be based on a fully completed Definitive Project Brief with outputs that clearly and comprehensively define the Employer's requirements in advance of the tender process. The more normal approach for Contractor-design projects would be for some design work to be developed (perhaps to statutory approval stage) before invitations to tender are issued.

Communication management

All communications between a tenderer and the Contracting Authority during the tender process must be in writing (which includes email) – see section 2.1 of ITTW 1 and ITTW 2. They must also be between the tenderer's contact person and the Employer's contact person only – as stated in the Particulars to ITT 1 or ITT 2 or in any changed contact details notified by the Contracting Authority or the Contractor.

Changes to the contact person

If there are any changes to the stated contact people in the ITT, each party must notify the other party of the new contact details

2: Preparing Tender Documentation

2.1 Overview

Introduction

Before tenderers can be invited to compete for the works, the Sponsoring Agency needs to ensure that all the required component elements of the tender documentation are correctly completed.

Contents

This chapter contains the following topics:

Topic	See Page
2.2 Components of Tender Documentation	
Summarises the component elements of tender documentation.	28

2.2 Components of Tender Documentation

Introduction

The tender documentation consists of technical, administrative and contractual material some of which will subsequently be included in the contract.

Documents <i>not</i> to be included in the Contract	Documents to be included in the Contract
<ul style="list-style-type: none">▪ The Invitation to Tender (ITT) in the form of the letter attached to the Instructions to Tenderers;▪ Suitability Questionnaire(s), as appropriate; and▪ Any other background information, in addition to that indicated in Appendix 3 of the ITT (for PW-CF1 to PW-CF5) – for example, a site investigation report, or a Bid Bond.	<ul style="list-style-type: none">▪ Volume A: Works Requirements;▪ Volume B: Form of Tender and Schedule, referencing one of the standard forms of Contract Conditions;▪ Volume C: Pricing Document; and▪ Volume D: any novated design documents

Details of the requirements for each of these documents are given in turn below.

The Invitation to Tender

The Invitation to Tender (ITT) letter should be short and simple, and all information relating to the tender should be included in the attached Instructions to Tenderers.

The particular form of invitation to tender that should be used depends on whether the procurement procedure is open or restricted:

If the procurement procedure is ...	then use ...
Restricted	<i>Invitation to Tender for Works, Restricted Procedure</i> (ITTW 1)
Open	<i>Invitation to Tender for Works, Open Procedure</i> (ITTW 2)
Note: The third Invitation to Tender i.e. (ITTW 3) relates to the <i>Investigation Contract</i> and is the same as the ITTW 2 procedure.	

Continued on next page

2.2 Components of Tender Documentation, Continued

Suitability Questionnaire

The suitability assessment procedure, including the suitability assessment questionnaire, involves inviting applicants or tenderers to submit information about themselves (and their named specialists if requested) by responding to a questionnaire. The Employer should then use this information to determine which applicants (under a restricted procedure) or which tenderers (under an open procedure) meet the suitability standards and which do not.

Other Non-contractual documentation

Appendix 3 to the ITT can list documents that are intended as supplementary or background information relating to the contract. These are provided to aid tenderers price particular risks that have been transferred. Such documents are not to be included as part of the contract.

Works Requirements

The Works Requirements (for PW-CF1 to PW-CF5) define the Employer's requirements and the scope of the proposed works. The procurement strategy decided on – traditional or design-and-build – will determine the nature and degree of detail included in the Works Requirements. For traditional contracts, the fully developed design and descriptive specification are included as *input* specifications. For design-and-build contracts, the standards and functional requirements and (on occasions) specimen designs are included as *output* specifications. The content of the Works Requirements is summarised in the following table:

Employer Design	Contractor Design
<ul style="list-style-type: none">▪ A fully-developed design (including, for example, construction-quality drawings and bar-bending schedules)▪ Lists of specialists (where panels are set);▪ Contract details including restrictions and obligations▪ Plans and other technical information about the site▪ Any other documents the Employer regards as necessary to define the requirements▪ Planning and other consents obtained by the Contracting Authority <p>Note: It is important that the design information and pricing documents are accurate and complete, in order to protect the Employer's position in the resulting contract</p>	<ul style="list-style-type: none">▪ A detailed and comprehensive output specification stating the functional requirements▪ Details of the expected functional life and maintenance requirements of the facility▪ Any other documents the Employer regards as necessary to define the requirements – if a specimen design is to be provided it should be included▪ Contract details including Restrictions and Obligations▪ Plans and other technical information about the site▪ Planning and other consents obtained by the Contracting Authority <p>Note: The evaluation and award process for these contracts can be more complex than traditional contracts, so, the output specification should be as complete as possible.</p>

See Appendix B (page 68) for a detailed list of what should usually be included in Works Requirements.

Continued on next page

2.2 Components of Tender Documentation, Continued

Using the correct Form of Tender

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

For this Form of Contract ...	Use this Form of Tender...
PW-CF1 Public Works Contract for Building Works designed by the Employer	<i>FTS 1</i> Form of Tender and Schedule: Public Works Contract for Building Works designed by the Employer
PW-CF2 Public Works Contract for Building Works designed by the Contractor	<i>FTS 2</i> Form of Tender and Schedule: Public Works Contract for Building Works designed by the Contractor
PW-CF3 Public Works Contract for Civil Engineering Works designed by the Employer	<i>FTS 3</i> Form of Tender and Schedule: Public Works Contract for Civil Engineering Works designed by the Employer
PW-CF4 Public Works Contract for Civil Engineering Works designed by the Contractor	<i>FTS 4</i> Form of Tender and Schedule: Public Works Contract for Civil Engineering Works designed by the Contractor
PW-CF5 Public Works Contract for Minor Building and Civil Engineering works designed by the Employer	<i>FTS 5</i> Form of Tender and Schedule: Public Works Contract for Minor Building and Civil Engineering Works Designed by the Employer
PW-CF6 Public Works Short Form of Contract for Public Building and Civil Engineering Works	<i>FTS 6</i> Form of Tender and Schedule: Short Public Works Contract
PW-CF7 Public Works Investigation Contract	<i>FTS 7</i> Form of Tender and Schedule: Public Works Investigation Contract
PW-CF8 Public Works Short Investigation Contract	<i>FTS 8</i> Form of Tender and Schedule: Public Works Short Investigation Contract

Continued on next page

2.2 Components of Tender Documentation, Continued

Schedule

The Schedule is the part of the Contract that specifies the particular details that will be contractual and which relate to a specific project.

- In the case of contracts PW-CF1 to PW-CF5, the Schedule refers to the detail contained in the Contract Conditions, and is in two parts:
 - The Employer completes Part 1 and part of Part 2C (as appropriate) of the Schedule before tenders are invited and includes it with the tender documentation; and
 - The tenderer completes Part 2 and the Works Proposals in Part 1B of the Schedule and submits it with the tender response.
- In the case of PW-CF6, PW-CF7 and PW-CF8 the Schedule is in one part only; this is filled in by the Employer and is attached to the form of tender issued with the tender documentation.

See also

- *Public Works Contract* (GN 1.5), § 2.6.2. Filling in the Schedule

Contract Conditions

The standard Contract Conditions (PW-CF1 to PW-CF5) set out the legal obligations, roles and responsibilities of the parties (and those of their agents) in a contract. The Conditions have been drafted for each contract so that they are generic and to the greatest extent possible the provisions in them are the same in all five. The other Contract Conditions (PW-CF6, PW-CF7 and PW-CF8) are also standard contract conditions that, by virtue of the type of project they are used for, are less complex than those for PW-CF1 to PW-CF5.

The form of tender indicates which Contract Conditions apply to the project which is the subject of the tender. The following are the standard forms of contract that include the contract conditions:

Code	Form of Contract
PW-CF1	Public Works Contract for Building Works designed by the Employer
PW-CF2	Public Works Contract for Building Works designed by the Contractor
PW-CF3	Public Works Contract for Civil Engineering Works designed by the Employer
PW-CF4	Public Works Contract for Civil Engineering Works designed by the Contractor
PW-CF5	Public Works Contract for Minor Building and Civil Engineering works designed by the Employer

Continued on next page

2.2 Components of Tender Documentation, Continued

Contract Conditions (continued)

Code	Form of Contract
PW-CF6	Public Works Short Form of Contract for Public Building and Civil Engineering Works
PW-CF7	Public Works Investigation Contract
PW-CF8	Public Works Short Investigation Contract
PW-CF9	Public Works Framework Agreement

Pricing Document

The Pricing Document enables the Employer to prescribe to prospective candidates / applicants how they should break down their tendered lump-sum price. The different forms of contract have different requirements in relation to the Pricing Document, as set out in the following table:

PW-CF1 to PW-CF5	<p>The Pricing Document required for the Contract is identified by the Employer in Part 1 of the Schedule and is supplied as part of the tender documents issued to tenderers.</p> <p>The Pricing Document issued to tenderers should be clearly labelled 'Pricing Document' so that it or any part of it cannot be not confused with other contract or non-contract documents, particularly the Works Requirements</p>
PW-CF6, PW-CF7 and PW-CF8	<p>There is no reference to a Pricing Document in the Contract Conditions for PW-CF6, PW-CF7 or PW-CF8. However, a document with the same or a similar function (for example, a Bill of Quantities) could be included as one of the contract documents specified under Clause 1.2 (for PW-CF6) or Clause 1.2 (PW-CF7 or PW-CF8) in the Schedule.</p>

Continued on next page

2.2 Components of Tender Documentation, Continued

Compiling the Pricing Document

The Pricing Document may include one or more constituent documents that are bound together. The primary pricing document (which must be part of the labelled 'Pricing Document' [PW-CF1 to PW-CF5]) may be one of the following:

- A comprehensive and fully measured list of quantities and specifications drawn up in a formal Bill of Quantities; tenderers can then insert their rates against the categories specified by the Employer (this is appropriate for Employer-designed contracts only); or
- A multiple-page tender cost analysis detailing how the tender price is to be broken down – the Employer should follow best practice in specifying the headings under which price details are to be presented; or
- A single page primary price document on which the tenderer can enter the fixed-price lump-sum with some additional details of the amount broken down under a number of main headline headings; or
- Any other detail or format that the Employer requires tenderers to provide in relation to the proposed works.

The Employer should also include full instructions to tenderers on how to break down the price in the primary pricing document.

Works Requirements, the Pricing Document and the Schedule of Rates

The primary pricing document must not include items that are not in the Works Requirements.

- For items that are not included in the Works Requirements and for which tender rates are required, the Employer may include a separate Schedule of Rates document which should be included as part of the Pricing Document³, but clearly separate from the primary pricing document which is used to determine the fixed price lump sum tender. Furthermore, the fixed price lump sum tender in the primary pricing document is to be brought forward by tenderers to the Form of Tender and must not include any lump sum prices derived from the Schedule of Rates. See **2.6.3 Prescribing the Content of the Pricing Document** in *Public Works Contracts* (GN 1.5) for more information.

Continued on next page

³ The Pricing Document will always contain a primary pricing document (e.g. a Bill of Quantities) and sometimes may include a number of secondary independent documents such as a separate Schedule of Rates document.

2.2 Components of Tender Documentation, Continued

Compiling the Pricing Document (continued)

Single page primary price document on design-and-build projects

The single page primary price document should only arise on design-and-build contracts in very exceptional circumstances. This is because such a document does not contain sufficient detail to enable the valuation mechanisms in clauses 10.6.1 and 10.6.2 operate when evaluating compensation events. The only mechanisms that can be used are the two remaining ones in clauses 10.6.3 and 10.6.4 (PW-CF2 and PW-CF4 in both cases).

Also, in the case of bankruptcy, termination or where a performance bond is involved, it becomes very difficult to value the work done with any degree of accuracy in the absence of sufficient cost detail, and this can lead to disputes.

VAT and the Pricing Document

Where appropriate, the Pricing Document should (where the Contracting Authority is the ‘principal contractor’) indicate what items attract the standard, exempt and zero VAT rates. Only the VAT that the Contractor is liable for to the Revenue Commissioners should be added to the total figure in the Pricing Document being brought forward to the Form of Tender as the Contractor’s fixed price lump sum tender. If the Contracting Authority is the ‘principal contractor’ the reduced rate of VAT on the project will be remitted by the Contracting Authority directly to the Revenue Commissioners.

Novated design documents

Where the Employer has a pre-existing contract with design consultants that is not fully discharged, that contract can be novated to the successful tenderer for a works contract in the case of a design-and-build project. In this case, the all design and contract documents that relate to the design consultants must be included with the tender documentation and become novated design documents under the Contract. If the Consultants are not being novated to the Contractor but their designs are being handed over, the design documents should be included with the tender documents without any reference to novation in the tender documents or in the Schedule.

Supplemental information

The Sponsoring Agency under section 2.2 of the ITT (ITTW1 and ITTW2) can issue supplemental information to all applicants / candidates once the Invitation to Tender has been issued and before the latest date set (for issue of information) in the Particulars section of the ITT. Such information could include additions or deletions to the information already supplied, or it could indicate an extension of the time limit. The Employer should not normally issue supplemental information later than the date stated in the Particulars section of the ITT.

Supplemental information will only become part of the contract, if the Employer states that this will be the case.

Continued on next page

2.2 Components of Tender Documentation, Continued

Amendments to tender documentation

If it is within the best interests of the project to amend the tender documentation during the tender period, the Employer needs to consider the effect that this will have on the length of the tender period – as it could result in an extension of time being granted for the tender submission date.

All amendments to the tender documentation must be circulated simultaneously to all the tenderers, to ensure fairness in the tender competition.

Once tenders have been submitted during the tender evaluation stage, a detailed assessment of the impacts of any amendments should be considered and the conclusion should be included in the tender report – which should then be given to the Sponsoring Agency and the Sanctioning Authority to approve at Project Review 7. See page 57 for more information about the tender report.

3: Inviting Tender Submissions

3.1 Overview

Introduction

It is a basic principal of Government procurement policy that competitive tendering should always be used. Before inviting competitive tenders for a project, the Employer must:

- Ensure that all the required tender documentation is completed;
- Ensure that the Contract Notice has been correctly published;
- Decide the timeframes for the tendering period in accordance with the relevant procurement rules; and
- Consider the process for receipt of tender submissions.

This chapter summarises tasks relating to inviting tender submissions. It contains the following topics:

Topic	See Page
3.2 Advertising and Timeframes for the Tender Outlines the advertising options and the timeframes for the tendering period.	37
3.3 Administrative Procedures Outlines the procedures for acknowledging receipt of and opening tender submissions.	40
Note: Appendix A (page 62 ff) includes detailed pre-tender checklists for the Employer.	

Tax Compliance

As the Preface to the Invitation to Tender (ITTW 1 and ITTW 2) makes clear, it will be a condition of the award of the Contract that the Candidate/Applicants must comply with the terms of Department of Finance Circular 43/2006: Tax Clearance Procedures: Public Sector Contracts, or any replacement – see section 10.3. of the Invitation to Tender.

Candidates/Applicants may obtain information regarding their obligations concerning

- Taxation from the Revenue Commissioners (www.revenue.ie);
 - Environmental protection from the Environmental Protection Agency (www.epa.ie); and
 - Employment protection and working conditions from the National Employment Rights Authority (www.employmentrights.ie).
-

3.2 Advertising and Timeframes for the Tender

Planning

It is essential to have a coherent plan for advertising the Invitation to Tender. Factors to consider when developing the advertising strategy include:

- A clear understanding of the national and EU publishing requirements;
 - The appropriate media to use – *OJEU*, eTenders website;
 - When to place the advertisement; and
 - The organisational and personnel arrangements to deal with enquiries from interested tenderers.
-

National and EU rules

The publication requirements for the Contract Notice are determined by the value of the project in relation to national and EU thresholds, as summarised in the following table:

Contract Value	Mandatory Publication Requirements
Above the EU threshold – €4,845,000 (<i>excluding</i> VAT)	The Contract Notice must be published in the <i>OJEU</i> and on the eTenders website.
Above the national threshold –€50,000 (<i>including</i> VAT)	The Contract Notice must be published on the eTenders website.
Below the national threshold –€50,000 (<i>including</i> VAT)	No requirement to publish in the <i>OJEU</i> or on eTenders website.
Note: Thresholds shown above remain current to 31 December 2011 ⁴ .	

Prior Indicative Notice

In order to ensure compliance with the principles of transparency and non-discrimination, consideration should be given to publishing a Prior Indicative Notice in the *OJEU* at the start of the year stating that individual advertisements for small works contracts (above €50,000) will be published from time to time during the year on the eTenders website, and at the appropriate time interested parties will be invited to participate in a prequalification / tender competition for such works.

Projects below the national threshold

In relation to works projects below €50,000 (including VAT), while there is no requirement to advertise on eTenders or elsewhere, the principle of transparency and non-discrimination still needs to be satisfied. So the Contracting Authority should give serious consideration to publishing the Contract Notice for such projects on the eTenders website, bearing in mind that the response might be disproportionate with regard to the value of the project.

Where a Contracting Authority does not advertise for projects below €50,000 and has satisfied the principles in some other way, five firms should be invited to tender with the expectation that five tenders will be submitted. If fewer than five firms submit tenders, the Contracting Authority may only proceed with the award if it considers that there has been genuine competition and that the tender selected represents value for money.

Continued on next page

⁴The thresholds are revised every two years. Complete and up to date thresholds can be checked on the EU public procurement website <http://simap.europa.eu> which can be accessed via a link on www.etenders.gov.ie.

3.2 Advertising and Timeframes for the Tender, Continued

Deposits

Where deposits are sought they must be based on the cost incurred in preparing the relevant tender documents (i.e. the costs in reproducing and issuing the documents including overheads such as labour, material reproduction costs, postage etc., but should not include development costs of the documents). These deposits should always be returned in full (when an award is made, or if no award is made as soon as possible) to the unsuccessful tenderers that submitted bona fide tenders that were not subsequently withdrawn.

Timeframes for the tendering period

Contracting Authority must allow tenderers adequate time to submit their bids. When considering the minimum timelines for tender submissions, the Sponsoring Agency / Contracting Authority should have regard for the EC Directives and must take the complexities of the project into account.

The latest date for receipt of tenders is stated in the Particulars section of the ITT.

For projects above the EU threshold

The main minimum time limits, which are reckoned from the date of dispatching the notice to the *OJEU*, are outlined in the following table:

Type of Procedure	Time Limits
Open	<ul style="list-style-type: none">▪ For receipt of tender, 52 days; or If a Prior Information Notice (PIN) has been published, this may be reduced to 22 days in particular circumstances⁵; or▪ If the notice is transmitted electronically time for receipt of tenders may be reduced to 45 days, or where a PIN▪ has been published the time may be reduced to 15 days.▪ Where unrestricted and full direct access by electronic means is provided to all tender and supplementary documents the tender time may be reduced by a further 5 days.
Restricted	<ul style="list-style-type: none">▪ For receipt of expressions of interest / requests to participate, 37 days (with no allowable reduction); or▪ If the notice is transmitted electronically the time for receipt of expressions of interest may be reduced to 30 days. or▪ In cases of genuine urgency⁶, 15 days, or▪ If a notice is transmitted electronically the time for receipt of expressions of interest may be reduced to 30 days.

Continued on next page

⁵ Regulation 4 of SI No 329 of 2006, which transposes Directive 2004/18/EC into Irish law, states that "(4) A contracting authority that has published a prior information notice in accordance with Regulation 38 may reduce the deadline for receipt of tenders fixed in accordance with paragraphs (2) and 3(b) to not less than 22 days."

⁶ The use of urgent procedures must be justified and have been caused by unforeseeable events outside the control of the Contracting Authority. Delay or inaction on the part of the Contracting Authority is not sufficient reason for applying exceptional procedures.

3.2 Advertising and Timeframes for the Tender, Continued

**Timeframes
for the
tendering
period
(continued)**

Type of Procedure	Time Limits
Restricted (Continued)	<ul style="list-style-type: none">▪ For receipt of tenders under restricted procedure, 40 days from date invitation to tender is sent; or If a Prior Information Notice has been published, this may be reduced to 36 days and under no circumstances be less than 22 days in particular circumstances.▪ In cases of genuine urgency, 10 days.▪ Where unrestricted and full direct access by electronic means is provided to all tender and supplementary documents the tender time may be reduced by a further 5 days.
Negotiated and Competitive Dialogue	<ul style="list-style-type: none">▪ For receipt of tenders, time to be agreed between the parties.

For projects below the EU threshold

Under national procurement rules the minimum time period for receipt of tenders for works projects above €50,000 (including VAT) and below the EU threshold, as a general rule, is 21 calendar days. In certain circumstances shorter time periods may be used, where justified, provided the time allowed is adequate to ensure genuine competition.

For projects below €50,000 (including VAT) or for mini-competitions under a Framework agreement as a general rule shorter time periods may be set. However, as a matter of best practice, Sponsoring Agencies / Contracting Authorities should allow adequate time for interested parties to respond to a request for tenders or for expressions of interest whether or not the request is published on eTenders.

Continued on next page

3.3 Administrative Procedures

Custody of tenders

The Employer must ensure that adequate procedures are in place for the safe custody of tenders received until those authorised to open the tenders are in a position to carry out that duty.

Opening the tenders

All tenders must be opened together, as soon as possible after the time and date set for receipt of tenders. There should be internal procedures which require the tenders to be opened in the presence of at least two authorised officials of the Employer. These internal procedures will ensure that if any disputes arise, there is a formal and transparent report of the received tenders signed by the two authorised officials. Once tenders have been opened, a formal record should be made, which identifies tenders received and the values of their bids, and summary details of any rejected tenders.

Labelling of tenders

The Particulars section of the ITT must clearly state any requirements regarding the labelling and numbering of tender responses. Any such requirements must be followed exactly by tenderers.

Late tenders

The Particulars section of the ITT must clearly state the latest date and time for the submission of tenders. Tenders received after this date and time should not be evaluated, and should be returned to the sender unopened.

4: Evaluating Tender Submissions and Awarding the Contract

4.1 Overview

Introduction

It is the responsibility of the Design Team to consider and evaluate all tenders that are submitted by prospective contractors on time. This chapter contains the following topics relating to tender evaluation:

Topic	See Page
4.2 About Tender Evaluation Details some general considerations relating to tender evaluation	42
4.3 Tender Evaluation Criteria Sets out the tender evaluation criteria based on the 'most economically advantageous tender'	45
4.4 Adjusting Details within Tender Pricing Explains why pricing may need to be rebalanced and how to do this.	47
4.5 Considering VAT Describes how to consider VAT and rebalance the tender price if necessary.	49
4.6 Evaluating Insurance Options Explains the pros and cons of Contractor versus Employer-controlled insurances	52
4.7 Tender Evaluation Example Gives an example of tender evaluation adjustments and calculations.	53
4.8 Awarding the Contract Outlines the procedures for the tender report and awarding the contract to the successful tenderer	57

4.2 About Tender Evaluation

Establishing a tender evaluation panel

Once the closing date and time for receipt of tenders has passed the next step (after opening and recording of all tenders received on time) is to set up a tender evaluation panel (if not already set up) which progresses the evaluation through the following stages

Stage	Action
1: Compliance check	Examine all tenders received on time to determine whether or not they are compliant
2: Suitability assessment	Determine suitability (open procedures only) of compliant tenders. <i>(In a restricted procedure, applicants have already passed the suitability assessment.)</i>
3: Tender evaluation	Determine which is the most economically advantageous tender.

The evaluation panel should in considering the tenders assess the comparative cost of each tender using the template in Appendix 5 of ITTW 1 and ITTW 2. It should also assess any other criteria and sub-criteria identified in the Particulars section of ITTW 1 and ITTW 2. All criteria and sub-criteria that have weightings or marks should be disclosed in the Particulars section of ITTW 1 and ITTW 2 at time of issue of the relevant ITT.

Managing tender queries

The procedure for raising a tender query is set out in section 2.3 of the ITT (ITTW 1 and ITTW 2).

Tenderers' queries

Tenderers can raise queries in writing, by post or email. Queries must be raised as soon as possible, and no later than when stated in the Particulars section of the relevant ITT. All queries must be managed in the same way – all tenderers must be given the same documentation and replies and have the same access to further information.

The Employer's or the Design Team's responses

Neither the Employer or the Design Team have any obligation to respond to tender queries; but if they choose to do so, they must follow defined procedures such as:

- Responding to requests for clarification;
- Evaluating the queries;
- Amending tender documentation (see section 2.2 of the ITT), if required;
- Providing formal receipts to tenderers making queries; and
- Making each query response or clarification available to all tenderers (see section 2.3 of the ITT).

Continued on next page

4.2 About Tender Evaluation, Continued

Managing tender queries (continued)

Confidential queries

If the applicant / candidate has clearly marked a query as confidential, the response can be sent to that applicant / candidate only. However, the Employer or the Design Team may at its discretion decide that the response should be sent to all applicants / candidates, and advise the applicant / candidate accordingly. The applicant / candidate then has the option of withdrawing the query. However even if the applicant / candidate withdraws its query, the Contracting Authority may still under section 2.2 of the ITT issue the information (if considered important enough) to all applicants / candidates.

Tender qualifications

Qualifications to tenders or to any Pricing Document should not be accepted under any circumstances. For more information see the Requirements for Tenders section in the ITT.

If ...	Then ...
the applicant / candidate has included qualifications with its tender	... the Employer may ask the applicant / candidate to withdraw the qualifications.
The applicant / candidate is asked to withdraw the qualifications, and fails to do so	... the applicant / candidate must be rejected.
all applicants / candidates have qualifications attached to their tenders	... the tender procedure should be formally closed and the applicants / candidates notified; a new procurement procedure should then be initiated (if appropriate).

Tender clarifications

The Employer may seek clarification from a tenderer regarding a submitted tender. This is to ensure that tenders are not rejected on matters which can be easily clarified, without a risk to transparency or equal treatment of tenders.

The Employer may meet with a tenderer for the purposes of clarification. The Employer will confirm to the Tenderer concerned in written minutes any clarification arising from a meeting and the Tenderer will be required to confirm or correct the minutes in writing.

Any written clarifications of a tender, including extracts from minutes of a pre-award clarification meeting that have contractual significance will be referred to in the Letter of Acceptance and will form part of the Contract.

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4.2 About Tender Evaluation, Continued

Tender clarifications (continued)

Substantive alterations not allowed

Substantive alteration to tender bids is not allowed after the deadline for submission has passed. In particular, any adjustment to price that could improve the competitive position of a particular tender. The EU Council and Commission has stated clearly that:

...all negotiations with candidates or tenderers on fundamental aspects of contracts, variations in which are likely to distort competition, in particular on prices, shall be ruled out.

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 to the Employer. This should be exceptional as written clarification should be the normal way of dealing with any issue.

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

4.3 Tender Evaluation Criteria

Introduction

The tender assessment process must be objective, transparent, and based solely on the award criteria stated in the tender documents which would normally be the ‘most economically advantageous tender’ (MEAT).

The contract should be awarded to the highest scoring tender measured against MEAT criteria unless Lowest Price Only is the criteria in which price will decide who should be awarded the contract.

Establishing the criteria

In the case of MEAT the tender award criteria should be relevant to the specific contract and appropriate to the nature, type and complexity of the project. If no weightings are allocated to the criteria, they should be stated in descending order of importance in the Particulars section of the ITT. The Employer should follow equitable, fair and transparent procedures in assessing quality and price in a tender.

Considerations for comparing tenders

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

- The values in the Pricing Document;
 - The tenderer’s Works Proposals;
 - The tenderer’s management and supervision structure (if requested);
 - The tenderer’s proposed working methods(if requested);
 - The tenderer’s initial programme (if requested);
 - Rates for labour and delay costs with the percentage adjustment for material and plant costs and any other items to be tendered in the Works Proposals. Where a tendered daily rate(s) for delay has been submitted, the tender assessment must include the evaluation of the tendered delay cost and rates using the stated delay periods;
 - Rates in a Schedule of Rates;
 - Variant tender options;
 - Credits offered for owner-controlled insurance; and
 - If time is tendered, its impact on tender prices.
-

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4.3 Tender Evaluation Criteria, Continued

Quality (technical merit) for Award Criteria

Award criteria that relates to technical merit should include the following:

- Methodology for carrying out the works on the project;
 - Deployment of resources being made available for a particular project;
 - Understanding and knowledge of the tender requirements;
 - Detail as to how the Works will be delivered on time;
 - Risk management;
 - Communication skills and systems that are to be used to deliver the Works; and
 - Approach to health and safety.
-

Other Award Criteria

The award criteria can also include other things as listed in Article 53 (1) (a) of Directive 2004/18/EEC on public procurement and should take account of SI N° 329 of EC (Award of Public Authority Contracts) Regulations 2006 and Directive 2004/17/EC and SI N° 50 (Award of Utilities Contracts) Regulations 2007.

For more detailed information on comparing tender submissions, see *Public Works Contracts* (GN 1.5) § 2.7.1 Comparing Tender Costs. In particular, see the section on Adjusting the tender sum, which deals with how to adjust the tender sum of competing tenders by reference to **a) provisional values** the Employer has included in the Invitation to Tender and **b) details of rates and percentages** that the Tenderer has supplied in Part 2D of the Schedule.

Exceptionally low tenders

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 regarding the low price 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 consistency with suitability assessment material

Tenders must be consistent with the applicants' / candidates' suitability assessment submission relating to the current competition. Changes can be made only with the express written approval of the Employer.

4.4 Adjusting Details within Tender Pricing

Breakdown of the Pricing Document

Any individual lump-sum included in the make-up of the winning tenderer's price should be broken down in sufficient detail to be of use during the award stage. For example, a single sum for the complete heating installation should be broken down into individual work packages or particular components with separate prices for supply and installation. This applies as much to traditional contracts as it does to design-and-build projects.

In traditional Employer-designed projects, the Bill of Quantities (principal pricing document) is a key part of the Pricing Document. On design-and-build projects or in other cases where a Bill of Quantities is not provided as a key part of the Pricing Document, it should be replaced by some other document – such as an activity schedule, a list of milestone payments, or an analysis of the Contract Sum broken down into convenient lump sums.

Adjustments to the Pricing Document

When a successful tenderer is selected and prior to the issue of the Letter to Apparently Unsuccessful Tenderers (MF 1.3), it may be necessary to adjust the Pricing Document to correct errors in the computation of the detailed tender figure, to deal with inconsistencies between rates (for example, front loading of rates or imbalance between rates throughout the Pricing Document), and to rebalance the distribution of costs across elements of the Pricing Document. The outcome of this adjustment exercise must not alter the fixed-price lump-sum tendered by the Contractor.

This exercise is undertaken so that the valuation of interim payments and the valuation of any future compensation events are fair to both the Employer and the Contractor. Furthermore, the exercise is also undertaken to enable realistic cash-flow projections.

The preferred tenderer is invited to make the necessary adjustment in consultation with the Contracting Authority. If this activity is successful, then the notice of the Contracting Authority's intention to award the contract to a particular contractor may be issued. If the outcome of the consultation process is not satisfactory, the Contracting Authority should carefully consider the next step with the option to go to the next most suitable tenderer if it is thought that this is the most appropriate action.

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4.4 Adjusting Details within Tender Pricing, Continued

Rebalancing rates

In determining what the balanced or corrected rates should be (during the consultation process), the Contracting Authority should consider using the following as a basis for discussion:

- Rates for similar work which the Contracting Authority or its consultants have access to on other projects, adjusted as necessary;
- Rates for the same work that are different in separate locations in the Bill of Quantities;
- Rates in the Schedule of Rates;
- Rates for similar work published in construction industry pricing books, adjusted as appropriate for currency, time and location;
- Rates built up from first principles using labour constants, market prices of materials, labour hourly rates (based on REA) and an allowance for overheads and profit; and
- Rates derived from a combination of some or all of the foregoing four points.

It is important that the rationale behind the establishment of balanced or corrected rates is worked out logically and can be demonstrated, if necessary.

Pricing Document without breakdown

In limited circumstances – only in the case of some design-and-build contracts – the Pricing Document may be very general and include a fixed-price lump-sum without a detailed breakdown. In such cases, however, the Employer should set down milestones for interim payments in the Works Requirements – for example when 10%, 20%, 30% (and so on) of a project is completed the cost of the project should be appropriately apportioned and when that milestone is reached the relevant portion should be paid to the Contractor (less retention). Where this is done, any lump sum figures in a tender should, if necessary, be broken down and reflected in the milestone figures.

EU procurement requirement

In dealing with inconsistencies between rates, balancing of rates and errors, the Employer must ensure that the tendered lump-sum figure is not changed. Any change would be regarded as post-tender negotiations, and would be in violation of the EU procurement rules. The rules around rebalancing rates are included under section 8.2 of ITTW 1 and ITTW 2. Furthermore details of how the Employer intends to rebalance rates or milestone values (as above) may be included in the tender documents or alternatively in the Contract Notice or both.

Continued on next page

4.5 Considering VAT

Introduction

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

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

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

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

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4.5 Considering VAT, Continued

Correcting VAT errors

When a successful tenderer is selected, but not yet accepted, the Pricing Document should be examined for inconsistencies, errors and imbalances in rates. If VAT has been calculated incorrectly (for example, using the wrong rate), the pre-VAT tender price should be adjusted by the Contractor so that the correct VAT calculation yields the submitted tender lump-sum price. This will probably require adjustments elsewhere in the Pricing Document for consistency. These adjustments should be carried out during the consultation stage when rebalancing of rates is being carried out.

For example, the following table shows an extract from a tender submission that includes VAT at all rates – i.e. where the Employer is not a principal contractor for VAT purposes:

Pricing	Amount
Tender Price excluding VAT	€22,491,224
VAT on €5,442,818 at 21%	€1,142,992
VAT on €16,034,976 at 12.5%	€2,004,372
VAT on €850,430 at 0%	€0
VAT exempt, €129,000	€0
VAT Subtotal	€3,147,364
Total Tender Price including VAT	€25,604,588

In this example the Contractor is a 'Principal Contractor' for VAT, so the

In this example submission, the tenderer made a number of errors:

- The middle (building) rate for VAT should have been 13.5%, not 12.5%; and
- The standard rate for VAT should have been 21.5%, not 21%;

Where this is the winning tender and these errors are in the tender, the Employer should consult with the tenderer after adjusting the make-up of the Total Tender Price including VAT to get agreement to the adjustment. The table below shows how the figures might be adjusted following this:

Pricing	Amount
Tender Price excluding VAT	€22,300,549
VAT on €5,321,096 at 21.5%	€1,144,036
VAT on €16,000,023 at 13.5%	€2,160,003
VAT on €850,430 at 0%	€0
VAT exempt, €129,000	€0
VAT Subtotal	€3,147,364
Total Tender Price including VAT	€25,604,588

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4.5 Considering VAT, Continued

Adjustments to the Contract Sum

In adjusting the tender sum, VAT calculations must be corrected without changing the fixed-price lump-sum (where the Contractor is liable to Revenue for VAT) in the same way as described for adjustments in 4.4 Adjusting Details within Tender Pricing (page 47).

Clause 11.7.1 of the Contract Conditions states that *'The Contractor's completed Form of Tender states, and to what extent, the Contract Sum includes VAT.'* All other amounts stated in the Contract are exclusive of VAT. Post-contract adjustments to the Contract Sum are made on a net-of-VAT basis, and in line with clause 11.7.2 and the appropriate sum for VAT where applicable should be added to or deducted from the Contract Sum.

4.6 Evaluating Insurance Options

Options

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

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

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

Disadvantages of owner-controlled insurance

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

- There is no reduction to Contractor's general insurance policy premium when one project is excluded from insurance cover. This is because contractors normally carry a block of insurance for all of their projects and the premiums charged will not significantly change because one project is excluded.
 - There is no claims history and therefore the insurer is likely to load the premiums charged to the Employer as the policy taken out is a once-off owner-controlled insurance policy. Alternatively, if the insurer makes the premium for owner-controlled insurance economical Employer carries very high excesses.
 - Similarly, the benefit of a discount for bulk continuous business, as a Contractor would likely get, will not arise.
 - The cost of site security tends to be higher on owner-controlled insurance. This is because insurers will seek to minimise their risk exposure as much as possible in a situation where an Employer has very little commercial leverage because of the once-off nature of the insurance requirement.
 - Owner-controlled insurances must be tendered for separately in an open transparent and competitive way which will involve an additional administrative function and cost.
 - The scope of the insurance contract may be very difficult to define at tender stage as the Contractor will not be known and additional costs will probably arise later when the insurers know who the Contractor and sub-contractors are, or else a very significant premium will be charged for such unknowns at the outset.
-

4.7 Tender Evaluation Example

Introduction

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

Sample project

The working assumption is a public works project:

- The contract is the Public Works for Civil Engineering Works Designed by the Employer (PW-CF3);
- An estimated value of €25 million; and
- The construction period is 30 months.
- The following contingent items are included in the tender documents:
 - 40 delay days;
 - 1,800 hours for a craftsman;
 - 1,800 hours for an apprentice;
 - 2,400 hours for a general operative;
 - €250,000 estimate for materials; and
 - €100,000⁷ estimate for plant, including rates of €120.30 per hour for special plant item 'A' and €125.30 per hour for special plant item 'B'.

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

Continued on next page

⁷ The €100,000 estimate for plant in this example has been calculated by the Employer's designer as follows:

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

4.7 Tender Evaluation Example, Continued

Sample pricing

The following tender prices were received:

	Contractor A	Contractor B	Contractor C
Tender Price €	25,100,000	25,200,000	24,900,000
Delay cost €	8,200	4,800	12,000
Craftsman's cost € ⁸	35 per hour	23 per hour	28 per hour
Apprentice's cost € ⁹	26 per hour	13 per hour	17 per hour
General Operatives €	30 per hour	18 per hour	21 per hour
Percentage on Materials	31%	18%	25%
Percentage on Plant	20%	8%	10%

Sample calculations

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

Pricing	Contractor A	Contractor B	Contractor C
Tender Price €	25,100,000	25,200,000	24,900,000
Daily rate € * delay days = € Delay cost	8200 * 40 = 328,000	4800 * 40 = 192,000	12,000 * 40 = 680,000
Hourly rate € * no. of hours = € Craftsman's cost €	35 * 1800 = 63,000	23 * 1800 = 41,400	28 * 1800 = 50,400
Hourly rate € * no. of hours = € Apprentice's cost	26 * 1800 = 46,800	13 * 1800 = 23,400	17 * 1800 = 30,600
Hourly rate € * no. of hours = € General Operative's cost	2,400 * 30 = 72,000	2,400 * 18 = 43,200	21 * 2400 = 50,400
Materials cost € * % tendered = € Materials contingency	250,000 * 31% = 77,500	250,000 * 18% = 45,000	250,000 * 25% = 62,500
Plant cost € * % tendered = € Plant contingency	100,000 * 20% = 20,000	100,000 * 8% = 8,000	100,000 * 10% = 10,000
Total €	25,707,300	25,553,000	25,583,900

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⁸ For the purpose of this exercise the tendered hourly rates quoted by all tenders are above 75% of the REA rate current at the Designated Date.

⁹ The apprentice's rate is an hourly rate average paid for different levels of apprenticeship served for the purpose of this exercise the rates quoted by all tenderers are above 75% of the REA rate current at the Designated Date.

4.7 Tender Evaluation Example, Continued

Traditional contract tender evaluation

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

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

Award Rates and percentages to be listed

The following tendered rates and percentages of the winning tender were included in Part 2D of the completed Schedule attached to the Form of Tender (e.g. FTS1) which included the fixed price lump sum tender price:

- €4,800 for the daily delay rate;
 - €23 for a craftsman's hourly rate;
 - €13 for an apprentice's hourly rate;
 - €18 for a general operative's hourly rate;
 - 18% on material costs; and
 - 8% on plant costs to be applied to the value of plant as authorised under clause 10.6.4 (3) of the Contract. Plant costs are based on:
 - The plant rates set out in the Civil Engineering Contractors' Association (CECA) publication *Schedules of Day works Carried Out Incidental to Contract Work*¹⁰. The rates in this publication are in GBP, and for tender evaluation are converted at par (GBP1.00 = EUR1.00), as the Contractor is deemed to have included a percentage adjustment in the overall price to cover expected differences in the EUR–GBP exchange rate during the project.
 - The rates of €120.30 per hour for special plant item 'A' and €125.30 per hour for special plant item 'B' that were supplied with the tender invitation.
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¹⁰ www.ceca.co.uk/Publications.aspx

4.7 Tender Evaluation Example, Continued

Design-and-build tender evaluation

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

4.8 Awarding the Contract

The tender report

At the conclusion of the tender process, the Design Team produces a tender report that confirms (and places on the record) the process used and the basis for the tender competition and makes a final recommendation for acceptance of a particular tender for consideration by the Employer. The tender report should normally include the following:

- An explanation as to the tender process used including full particulars of the recommended tender and all the tender documentation issued;
- Details any special requirements included in the form of tender; and
- Include a MEAT assessment of all tenders and identifying the winning tender with a recommendation to accept it.
- Includes a commentary on any salient issues raised by the tender process.

The tender report should also incorporate copies of all of the forms of tender and attached completed Schedules received.

Following the completion of the tender report the case for proceeding with the recommended winning tender should be reviewed by the Sponsoring Agency. The analysis contained in the detailed project appraisal provides the framework for undertaking this review.

Before seeking approval from the Sanctioning Authority, the Employer must address and resolve any outstanding issues in the tender report. The Employer must either endorse the recommendation in the report, or clearly state a different recommendation to the Sanctioning Authority. This action takes place at Project Review 7 stage and is the last gateway before the project proceeds to the award of the contract.

Procedures

The Capital Works Management Framework incorporates a number of standard letters that are used to facilitate the contract award process:

Letter to apparently unsuccessful tenderers (MF 1.2)	Sent by Employer to all tenderers 14 days before issue Letter of Acceptance other than to the tenderer deemed to be the most economically advantageous (MEAT).
Letter of intent (MF 1.3)	Sent by Employer to the Tenderer deemed to be the most economically advantageous (MEAT). Note: This letter is sent at the same time as issue of letter to apparently unsuccessful tenderers.
Letter of acceptance (MF 1.4)	Sent by Employer to the successful Tenderer (the Contractor) (not earlier than fourteen days after issue of MF 1.2 above), to form the Contract.
Letter to tenderers notifying award (MF 1.5)	Sent by Employer to the unsuccessful Tenderers after the Contract has been awarded.

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4.8 Awarding the Contract, Continued

Letter to apparently unsuccessful tenderers (MF 1.2)

Tenderers that are not being considered further in the evaluation stage because their bids are not the most competitive should at a minimum be informed of their position (with a summary of where their tenders were not as competitive as the winning tender) through the issue of a letter i.e. the Letter to Apparently Unsuccessful Tenderers (MF1.2). This letter is issued 14 days before the Letter of Acceptance is issued to the winning tenderer.

Approval of funding

For the project to proceed to the implementation stage, the Sanctioning Authority needs to give explicit approval of funding. This happens at Project Review 7 stage.

If the budget is exceeded

If all bona fide tenders received exceed the approved budget to the extent that, even though the winning tender continues to represent value-for-money, the Employer still cannot afford it, the Employer will have to re-examine the project costs to identify non-essential works which can be omitted to bring the project costs back within the approved budget or else find additional funding.

Works that are essential should not be omitted if they will have to be re-introduced at a later stage after contract award. Even with the removal of non-essential work (or any works) the question in relation to compliance with the procurement rules and staying with the existing procurement procedure will turn on if such omissions materially alter the contract that was originally advertised. Even post-award variations are subject to this analysis. In the *Presstext* case, the Court of Justice held that changes to a public contract may amount to the award of a new contract requiring a new call for competition if those changes are sufficiently material to demonstrate an intention by the parties to re-negotiate the essential terms of the contract. Therefore, any amendments to remove non-essential works must not materially amend the contract that was originally advertised. Factors that could be considered materially might be (i) the value of the contract and the value of the work being removed; (ii) whether there is any amendment to the duration of the contract (this can only happen by agreement); (iii) whether there is any amendment to the start date (this should not happen); (iv) whether the removal of the non-essential works would favour some bidders over others; (v) whether the removal of the non-essential works would make a difference to the overall result in the competition i.e. to the identity of the successful tenderer.

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4.8 Awarding the Contract, Continued

If the budget is exceeded – action pre-award continued

If the Employer feels that the removal of non-essential work in a particular case would constitute a material change and therefore not be consistent with EU procurement rules and if there is no additional funding available, the process should be brought to a halt and a new procurement procedure embarked on.

If, having re-examined the project costs, the Employer forms the opinion that there is no room for bringing project costs back within the approved budget, the Employer should either seek funding from other sources or consider initiating a new procurement procedure.

Requests for additional budget

Requests for additional capital expenditure should only be made if:

- All alternatives have been considered; or
- Serious programme or market issues justify the increase in order to achieve the best value for money.

Note: The Sanctioning Authority must be informed of any significant deviation from the approved budget at Project Review 7, as the viability of the project may have to be called into question at this stage.

If the budget is exceeded – action post-award

The procurement difficulties that arise if a Contracting Authority seeks agreement at the pre-award stage of a contract with the winning tenderer on the value of the omission of non-essential work which would be deducted by means of a *change order* post contract award and that agreement is included in the contract would amount to negotiation post tender which is not permitted under the EU procurement rules and therefore such an agreement is not permitted.

Tender Cost Analysis

The Tender Cost Analysis is carried out by the Cost Adviser on the tender price submitted by the winning tenderer. Its purpose is to show how the tender costs have been distributed over the various components in a project so as to determine if they are adequate or otherwise. The Tender Cost Analysis should be a key document in the Design Team's tender report.

4.9 Debriefing Post Contract Award

Voluntary debriefing

Apart from observing the legal obligations where the provisions of the procurement Directives apply, it is good practice to adopt a voluntary constructive policy on de-briefing unsuccessful tenderers particularly where contracts are awarded on the basis of the most economically advantageous tender. Unsuccessful tenderers should be given an objective assessment of the comparative strengths and weaknesses of their tenders having due regard to commercial sensitivity and the need to avoid compromising the rights or the competitive situation of other tenderers. Debriefing may be in writing, verbally over the telephone or at a special meeting.

Benefits of constructive debriefing

There are important benefits to giving constructive feedback to unsuccessful bidders for both the contracting authority and the tenderer. They are:

For contracting authorities it can

- identify ways of improving the process for the future
- encourage better bids in the future
- help establish the public sector as a fair, open and ethical procurers and
- encourage continued participation by contractors which promotes competition.

For tenderers it can

- generate confidence and reassurance about the integrity of the process
- help improve future performance
- help them understand and operate the different procedures and practices that apply in the public sector.

Note: It should also be borne in mind that voluntary disclosure of information can avoid the need for recourse to formal measures such as the Freedom of Information Act or EU Remedies Directives.

It should be noted that arising out of a recent ECJ case contracting authorities must provide a summary of the reasons why a tenderer was not successful in a particular competition.

Works contract above the EU threshold

Unsuccessful tenderers should be notified by letter using the model form i.e. Letter to Tenderers Notifying Award (MF1.5) which is issued after an award has been made. In any debriefing it is good practice to give tenderers the reason for the unsuccessful bid by reference to their relative performance under the relevant evaluation criteria used in the competition, for example, uncompetitive on price.

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4.9 Debriefing Post Contract Award, Continued

Debriefing meetings

Where a debriefing meeting is arranged, a structured approach to the meeting should be adopted. It would be prudent to have at least two officers from the contracting authority in attendance and a note of the proceedings kept for the records. The process should address the particular contractor's tender in question against the evaluation criteria. It should focus on the relevant strengths and weaknesses of that contractor's tender without it being an explicit comparison between that offer and the successful tenderer's offer, or any other tender.

The debriefing should not be a forum to debate the process of how tenders were evaluated or discuss the merits of the award decision. Constructive and effective debriefing will be very much assisted if clear, objective criteria for award of the contract have been pre – established and applied objectively. In general if there has been an objective and properly conducted tendering process, an open constructive debriefing should provide reassurance to unsuccessful tenderers.

It is important to ensure that officials, at the close of the meeting, do not make general comment that might lead to the debriefing discussion being reopened by the unsuccessful tenderer.

Confidentiality

Care should be taken to ensure that information such as the identity of other tenderers, the prices or pricing strategies of other tenderers or information that could compromise the competitive situation, or commercially sensitive information, or infringe the intellectual property rights of others, is not disclosed. However, it should be noted that the Freedom of Information principles on the disclosure of records relating to a tender competition summarised by the Information Commissioner, reproduced at Appendix C, may also be relevant.

Appendix A: Pre-Tender Checklists

A1 Invitation to Tender Checklist – Employer's Choices

High level checklist

As early as possible, and in any event before the ITTW 1 or ITTW 2 for any public works is published, the Employer should be satisfied he has answers to the following questions:

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

Note: Only when the Employer is satisfied that all the above-mentioned questions have been addressed to his complete satisfaction (and taking into account the appropriate guidance) should the invitation to tender (ITTW1 or ITTW2) be published.

A2 Consents and Licences Checklists

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

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

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A2 Consents and Licences Checklists, Continued

Main Checklist (continued)

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

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A2 Consents and Licences Checklists, Continued

Operation Licences

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

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

A3 Invitation to Tender Checklists

General Checklist

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

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

A4 Tender Evaluation Checklist

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

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

Appendix B: Works Requirements Content

The documents containing the Work Requirements provided by the Employer are identified in Part One of the Schedule. The following table lists items that the Employer should consider including in the Works Requirements.

Traditional Contracts	Design-and-build Contracts
Preliminary Particulars <ol style="list-style-type: none">1. The name, nature and location of the Works;2. A general description of the Works;3. The names and addresses of the Employer and Consultants. Consents <p>Planning and other consents obtained or to be obtained by the Employer. See also Appendix 3 to Standard Instruction To Tenderers.</p>	Preliminary Particulars <ol style="list-style-type: none">4. The name, nature and location of the Works;5. A general description of the Works;6. The names and addresses of the Employer and Consultants. Consents <p>Where Planning and other consents are referred to or are identified as ‘to be obtained by the Employer’. See also Appendix 3 to Standard Instruction To Tenderers.</p>
The Site¹¹ <ol style="list-style-type: none">1. Site boundaries;2. Means of access;3. Restrictions on access;4. Position of the Works;5. Information on adjacent / abutting structures;6. Limitations (if any) on use of the Site;7. Other work on the Site to be carried out** concurrent with the Works by the Employer’s Personnel or others;8. Facilities of the Employer to be operated and maintained by the Contractor;9. Specific site rules and regulations.	The Site <ol style="list-style-type: none">1. Site boundaries;2. Means of access;3. Restrictions on access;4. Position of the Works;5. Information on adjacent / abutting structures;6. Limitations (if any) on use of the Site;7. Other work on the Site to be carried out concurrent with the Works by the Employer’s Personnel or others;8. Facilities of the Employer to be operated and maintained by the Contractor;9. Specific site rules and regulations.

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¹¹ The Employer may, if appropriate, wish to include the following or alternatively refer to them in the Works Requirements as background information:
Site surveys including locations of any utilities;
Site investigation report;
Archaeology and other reports.

Appendix B: Works Requirements Content, Continued

Traditional Contracts	Design-and-build Contracts
Sections Definition of sections into which the Works are divided for purposes of sectional completion.	Sections Definition of sections into which the Works are divided for purposes of sectional completion.
Drawings, Specifications, Schedules and Reports <ol style="list-style-type: none"> 1. General arrangement, working and construction drawings; 2. Materials and Workmanship specifications; 3. Performance specifications applicable to Contractor-designed or specialist-designed elements of the works. 	Drawings, Specifications, Schedules and Reports Note that for Design-and-build Contracts, such information can consist of an output specification setting out the functional requirements that the facility should accommodate together with the expected functional life, maintenance requirements, etc. or it can contain a full specimen design. A number of options exist: <ol style="list-style-type: none"> 1. Pure output specification; 2. Output specification and specimen design; 3. Output specification and specimen design which cannot be changed; 4. More developed decision.
Specialists <ol style="list-style-type: none"> 1. Designs to be prepared and/or works to be undertaken by Specialists; 2. Novated specialists including details of the original appointment and form of novation agreement; 3. Names and all relevant details of Specialists selected by the Employer. 	Specialists <ol style="list-style-type: none"> 1. Designs to be prepared and/or works to be undertaken by Specialists 2. Novated specialists including details of the original appointment and form of novation agreement.

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Appendix B: Works Requirements Content, Continued

Traditional Contracts	Design-and-build Contracts
Restrictions and Obligations <ol style="list-style-type: none">1. Limitations on working hours;2. Hoardings, fences, screens, temporary roofs, advertising rights;3. Maintenance and protection of existing services on, under or over the site;4. Execution of work in a specific order;5. Road closure restrictions, alternative route restrictions;6. Maintenance of specific temperature or humidity levels;7. Temporary accommodation and facilities for the use of the Employer including heating, lighting, furnishing and attendance details;8. Installation of telephones and facsimile machines for the use of the Employer;9. Any other obligation or restriction.	Restrictions and Obligations <ol style="list-style-type: none">1. Limitations on working hours;2. Hoardings, fences, screens, temporary roofs, advertising rights;3. Maintenance and protection of existing services on, under or over the site;4. Execution of work in a specific order5. Road closure restrictions, alternative route restrictions;6. Maintenance of specific temperature or humidity levels;7. Temporary accommodation and facilities for the use of the Employer including heating, lighting, furnishing and attendance;8. Installation of telephones and facsimile machines for the use of the Employer;9. Any other obligation or restriction.
Health and Safety <p>Appointment of Project Supervisor for the Construction Stage</p>	Health and Safety <ol style="list-style-type: none">1. Appointment of Project Supervisor for the Design Phase;2. Appointment or Project Supervisor for the Construction Stage.

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Appendix B: Works Requirements Content, Continued

Traditional Contracts	Design-and-build Contracts
Contract <ol style="list-style-type: none"> 1. Form of performance bond; 2. Form of parent company guarantee; 3. Form of appointment of Contractor as PSCS; 4. Certificate in respect of professional indemnity insurance; 5. Owner controlled insurances (if required); 6. Certificate in respect of Pay and Conditions of Employment; 7. Form of collateral warranty; 8. Form of bond for payment in respect of materials off-site; 9. Terms of appointment of Conciliator; 10. Form of conciliation payment bond; 11. Arbitration rules. 	Contract <ol style="list-style-type: none"> 1. Form of performance bond; 2. Form of parent company guarantee; 3. Form of appointment of Contractor as PSDP and PSCS; 4. Certificate in respect of professional indemnity insurance; 5. Owner controlled insurances (if required); 6. Certificate in respect of Pay and Conditions of Employment; 7. Form of collateral warranty; 8. Form of bond for payment in respect of materials off-site; 9. Terms of appointment of Conciliator; 10. Form of conciliation payment bond; 11. Arbitration rules.
Contractor's Documents <ol style="list-style-type: none"> 1. Documents to be provided; 2. Submission procedures; 3. Provision of data to facilitate the Employer and /or other contractors and its timing; 4. Procedures that the Contractor is to follow in carrying out his design. 	Contractor's Documents <ol style="list-style-type: none"> 1. Documents to be provided; 2. Submission procedures; 3. Provision of data to facilitate the Employer and /or other contractors and its timing; 4. Procedures that the Contractor is to follow in carrying out his design.
Reporting Special reporting requirements, for example planning software to be used.	Reporting Special reporting requirements, for example, planning software to be used.
Confidential Matters	Confidential Matters
Title Statement of any materials from excavation and demolition to which the Contractor will have title.	Title Statement of any materials from excavation and demolition to which the Contractor will have title.

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Appendix B: Works Requirements Content, Continued

Traditional Contracts	Design-and-build Contracts
QA and Testing (not already in specifications) <ol style="list-style-type: none">1. Quality Assurance procedures;2. Quality Assurance inspections;3. Items to be inspected or tested before delivery to the Site, including details;.4. Tests and test descriptions of tests to be carried out by the Contractor, the ER and others, including tests to be passed before Substantial Completion.	QA and Testing (not already in specifications) <ol style="list-style-type: none">1. Quality Assurance procedures;2. Quality Assurance inspections;3. Items to be inspected or tested before delivery to the Site, including details;4. Tests and test descriptions of tests to be carried out by the Contractor, the ER and others, including tests to be passed before Substantial Completion.

Appendix C: Disclosure of records relating to a Tender Competition

Summary of the Information Commissioner views regarding disclosure of records relating to a tender competition given at conclusion of a ruling under Section 34(2)m of the Freedom of Information Act 1997 in Case 98188.

- First, public bodies are obliged to treat all tenders as confidential at least until the time that the contract is awarded.
- Second, tender prices may be trade secrets during the currency of a tender competition, but only in exceptional circumstances, would historic prices remain trade secrets, As a general proposition, however, I accept that tender documents which “would reveal detailed information about a company's current pricing strategy” or about otherwise unavailable product information could fall within the scope of Section 27(I)(a) of the FOI Act even following the conclusion of a tender competition.
- Third, tender prices generally qualify as commercially sensitive information for the purposes of Sections 27(I)(b) and (c) of the FOI Act, Depending on the circumstances, product information can also be considered commercially sensitive under Section 27(I)(b).
- Fourth, when a contract is awarded, successful tender information loses confidentiality with respect to price and the type and quantity of the goods supplied. The public interest also favours the release of such information, but exceptions may arise (see *Telecom Eireann and Mr. Mark Henry, Case Number 98114*, to be published (13 Jan 2000)).
- Fifth, other successful tender information which is commercially sensitive (for example, details of the internal organisation of a tenderer's business, analysis of the requirements of the public body, or detailed explanations as to how the tenderer proposed to meet these requirements) may remain confidential. Disclosure in the public interest ordinarily would not be required, unless it were necessary to explain the nature of goods or services purchased by the public body.
- Sixth, unsuccessful tender information which is commercially sensitive generally remains confidential after the award of a contract, and the public interest lies in protecting that information from disclosure.

I must stress, however, that no tender-related records are subject to either release or exemption as a class. Therefore each record must be examined on its own merits in light of the relevant circumstances.
