**Instruction to Tenderers**

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*The*

*Project*

using the

**Restricted Procedure for WORKS CONTRACTORS**

**where the Contract to be awarded is PW-CF1, PW-CF3 or PW-CF5**

Office of Government Procurement

Instruction to Tenderers

for Works Contractors

under a Restricted Procedure

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# Preface

The Contracting Authority is making these documents available to Candidates for the contract identified in the Particulars, for tendering purposes only. These documents must not be used for any other purpose.

The Contracting Authority makes no representation, warranty, or undertaking in or in connection with these documents. The Contracting Authority has not authorised anyone to make any representation in connection with these documents on its behalf, and Candidates should not rely on any representation purportedly made on the Contracting Authority’s behalf in connection with them. Neither the Contracting Authority nor its officers, employees, or advisers will have any liability in connection with these documents. Candidates must make their own assessment of the adequacy, accuracy, and completeness of these documents.

The Contracting Authority reserves the right not to proceed with the procurement process or any part of it and may terminate the process or any part of it at any time, with or without procuring the Works in another way. If this happens, neither the Contracting Authority nor its officers, employees, or advisers will be liable to any Candidate or other person. The Contracting Authority also reserves the right to change any part of these documents, including the procedures and time limits described in them. The Contracting Authority does not bind itself to accept any outcome of the process described in these documents and is not obliged to enter into a contract for the Works with anyone.

Neither the Contracting Authority nor its officers, employees, or advisers have any responsibility for Candidates’ costs or losses in connection with this competition. These Instructions do not create a contract or legal relationship (including for the avoidance of doubt, any contract about the competition itself) between any Candidate and the Contracting Authority (except for the Candidate’s irrevocable offer to be bound by its Tender for the period stated), unless and until the Contract has been entered by issue of a Letter of Acceptance and any conditions precedent to its effectiveness have been met*.* The exception to this is the obligation upon a Tenderer with regard to confidentiality. These Instructions to Tenderers will not be part of any Contract unless explicitly stated otherwise.

These documents are being made available to the Candidates on the terms stated in these Instructions to Tenderers. They are not being distributed to the public, and have not been filed, registered, or approved in any jurisdiction. Possession or use of these documents contrary to any law is prohibited. Candidates must inform themselves of and observe all laws concerning the possession and use of these documents.

Candidates must treat these documents, their Tenders, and their participation in this competition as confidential. Candidates must not disclose any information about this competition to anyone other than as required for tendering purposes, or as required by law.

The Contracting Authority is entitled to disclose information about this competition, including the identity of the Candidates, to any person. If a Candidate considers that information in its Tender is commercially sensitive or confidential, this should be clearly stated and clear and substantive reasons should be given. The Contracting Authority will have regard to such a statement in considering a request for access to the information under the Freedom of Information Acts 2014 (or any other legislation relating to the disclosure of information), but is not bound by the Candidate’s view and will take such steps as it considers necessary to comply with its obligations under applicable law.

Any conflict of interest or potential conflict of interest must be fully disclosed to the Contracting Authority as soon as such conflict or potential conflict becomes apparent. This includes, but is not limited to, situations where a Candidate or any of the members of a Candidate which is a consortium, joint venture or partnership, or any entity being relied upon by a Candidate, or any of their advisers, contractors, consultants, servants or agents which are currently or have been in the past an adviser, contractor, consultant, servant or agent to the Contracting Authority, or any local or other relevant authority in relation to the Works which are the subject matter of this Competition.

Without prejudice to the foregoing, any ‘registrable interest’ involving the Candidate and the Contracting Authority, (and where applicable any elected members of the Contracting Authority or members of the Board of the Contracting Authority), members of the Government, members of the Oireachtas or employees of the Contracting Authority or their relatives must be fully disclosed to the Contracting Authority immediately upon such information becoming known to the Candidate.

The terms 'registrable interest' and 'relatives' shall be interpreted in line with the Ethics in Public Office Act 1995 and the Standards in Public Office Act 2001.

The Contracting Authority will, at its absolute discretion, decide on the appropriate course of action in relation to any actual or perceived conflict of interest which may include (but is not limited to) excluding the Candidate from the Competition, or permitting the Candidate to continue subject to safeguards determined by the Contracting Authority being put in place and observed.

It will be a condition of the award of the Contract that the successful Tenderer shall, for the term of the contract, comply with all applicable EU and domestic tax laws. Prior to the award of the Contract arising out of this competition the successful Tenderer shall be required to supply its Tax Clearance Access Number and Tax Reference Number to facilitate online verification of their tax status by the Contracting Authority. By supplying these numbers the successful Tenderer acknowledges and agrees that the Contracting Authority has the permission of the successful Tenderer to verify its tax cleared position online.

Candidates 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)
* employment protection and working conditions from the Workplace Relations Commission ([www.workplacerelations.ie](http://www.workplacerelations.ie))

Irish law is applicable to these Instructions and the Irish courts shall have exclusive jurisdiction in relation to any disputes arising from or in connection with these documents.

The Candidate’s attention is drawn to the Competition Act 2002 - 2019 (as may be amended from time to time) which makes it a criminal offence to collude on prices or terms in a public procurement competition.

Candidates must not make any assumptions that the Contracting Authority has prior knowledge of their organisation or service provision. Tenderers will only be evaluated on the information contained in their Tender (as may be clarified in accordance with these Instructions).

# 1 Introduction

## 1.1 This procedure

The Contracting Authority has sent a contract notice for the Works to etenders and where appropriate a similar notice has been simultaneously sent to the Publications Office of the EU for publication in the Official Journal of the European Union. The Candidates have submitted responses to the Suitability Assessment Questionnaires and those that have been pre-qualified and shortlisted are being invited to participate in a tender competition.

These documents set out the award criteria and the award process which will be followed by the Contracting Authority in making the assessment of which tender is either the lowest price or the most economically advantageous. The documents also set out the information which must be supplied by Candidates. Tenders must be submitted in accordance with these Instructions. Any tenders not complying with these Instructions may be rejected by the Contracting Authority, whose decision in the matter shall be final.

## 1.2 These documents

These documents are being sent to all the Candidates.

Documents (when fully completed by the relevant parties) to be included in the Contract:

* Volume A: Works Requirements
* Volume B: Form of Tender and Schedule
* Volume C: Pricing Document
* Volume D: Novated Design Documents

Also included in the contract but not part of the documentation being sent to Candidates at the start of tendering period is the Letter of Acceptance, the Agreement, and the Conditions of Contract which the Contracting Authority issues at award stage. The successful Tenderer’s Works Proposals will also be part of the Contract. Furthermore, any post tender clarifications that are part of the contract will be included in the letter of Acceptance.

Documents not to be included in the Contract:

* the invitation letter
* these Instructions
* the information referred to in Appendix 3 to these Instructions
* any other information issued to Candidates not stated to amend the Contract documents
* any other information submitted with Tenders and not called for in these Instructions

Further information may be issued as described in the information referred to in Appendix 3 of these Instructions.

## 1.3 The Contract

If the Contracting Authority enters a Contract for the Works, it will do so by issuing a Letter of Acceptance. The Contractor and the Contracting Authority will subsequently execute an Agreement. The Contract, if formed, will consist of:

* the Agreement
* the Letter of Acceptance to be issued by the Contracting Authority and any post-tender clarifications listed in it or attached.
* the form of Conditions identified in the Particulars,
* the Works Requirements (Volume A)
* Form of Tender and Schedule (Volume B)
* the completed Pricing Document (Volume C)

* Novated Design Documents (Volume D)
* Works Proposals to be submitted with the Tender (where required)

Where required by the Contract, collateral warranties from Specialists, a performance bond, reliance guarantee or reliance warranties will be required.

None of the following will form part of any Contract:

* the invitation letter
* these Instructions
* the information referred to in Appendix 3 to these Instructions
* any other information issued to Candidates not stated to amend the Contract documents.
* additional information to be submitted with Tenders, as specified in Appendix 2 to these Instructions

any other information submitted with Tenders and not called for in these Instructions or in post tender clarifications.

## 1.4 Data Protection Notice

Candidates are reminded that a Data Protection Notice was included in the SAQ which applies to any personal data provided at various stages of the competition; and, that they have provided a declaration as part of their SAQ Response confirming that all data subjects whose personal data has been provided have consented to the processing of such personal data by the Candidate, the Contracting Authority, the evaluation team and the supplier of the eTenders.gov.ie platform for the purposes of their participation in this competition, or, that they otherwise have a legal basis for providing such personal data to the Contracting Authority for the purposes of their participation in this competition and that they will, upon request, provide evidence of such consent and/or legal basis to the Contracting Authority.

# 2 Communications

## 2.1 Means of Communication

All communications between a Candidate and the Contracting Authority concerning this competition must be in writing in accordance with the means of communication stated in the Particulars.

## 2.2 Supplemental information

The Contracting Authority may issue supplemental information to all Candidates at any time (including where prompted by a query, confidential or otherwise). Supplemental information may amend any of the information in these documents, including by deleting and adding to it, and by extending time limits. Supplemental information will only become part of the Contract if it is stated to amend the Contract documents.

The Contracting Authority will not normally issue supplemental information later than the date stated in the Particulars but is entitled to do so at any time.

## 2.3 Queries

Candidates may ask queries in writing in accordance with the means of communication stated in the Particulars. Queries must be raised as soon as possible, and should be raised in any event no later than when stated in the Particulars although the Contracting Authority may at its discretion respond to queries raised after that date. The Contracting Authority has no obligation to respond to queries. If the Contracting Authority responds to a query, it will send the response to each Candidate [and to the candidates for the Reserved Specialist tender(s)], unless the Candidate has clearly designated the query as confidential. If the Candidate has designated the query as confidential, and the Contracting Authority decides that the response should be issued to all Candidates, the Contracting Authority will so notify the Candidate asking the query, who will have the option of withdrawing the query or having any response issued to all Candidates. The Contracting Authority may exercise its rights under section 2.2 of these Instructions and issue any information it considers appropriate to all Candidates following withdrawal of the query.

As with these Instructions, responses to queries will not create any contractual relationship between the Contracting Authority and Candidates, or form part of the Contract, unless explicitly stated otherwise.

It is the responsibility of the Candidate to monitor the means of communication stated in the Particulars for any correspondence or clarifications in relation to this competition.

If a Candidate becomes aware of any ambiguity, discrepancy, error, or omission in or between these documents, it must immediately notify the Contracting Authority, even after the time for submitting queries has expired.

## 2.4 Prequalification

A Candidate wishing to change any of the information in its SAQ Response for this Competition must do so by written request to the Contracting Authority. The Contracting Authority may decide, in its discretion, whether to accept or reject the change.

## 2.5 Other

As indicated in the Particulars.

# 3 Candidates

## 3.1 Names

Each Candidate must sign the Form of Tender using the Candidate’s full correct legal name. This must be the name in which the Candidate pre-qualified, and was invited to tender. Those signing shall be authorised to sign on behalf of the Candidate and this signature must be witnessed.

## 3.2 Reliance on Resources (PW-CF1 and PW-CF3 only)

Where, in its SAQ Response, a Candidate has relied on the capacity or qualifications of an entity, the Candidate is reminded that a contractual commitment must be entered into by such at contract execution stage where required by the Contracting Authority. Candidates must name entities that they relied upon in the Schedule Part 2B.

At contract award stage, the Contracting Authority reserves the right to require the following from any entity relied upon with regard to:

1. any of the Economic or Financial Standing sub-criteria, the entity relied upon may be required by the Contracting Authority at contract stage, to enter into a guarantee in the form of the Reliance Guarantee in respect of the performance of the contract by the Tenderer[[1]](#footnote-1);
2. any of the Technical Capability selection sub-criteria, the entity may be required by the Contracting Authority at contract stage, to enter into a either a Reliance Warranty or a Collateral Warranty for Specialists (as appropriate to the nature of the resource relied upon by the Tenderer) with regard to the making available the resources relied upon by the Tenderer[[2]](#footnote-2). Note that where a Tenderer relies on another entity for educational or professional qualifications (sub-criteria 3.4a and 3.4b in the SAQ), or with regard to relevant professional experience (sub-criteria 3.4c in the SAQ), the entity being relied upon must perform the works or services to which those qualifications or experiences relate;
3. further evidence of the availability of the resources relied upon may be required by the Contracting Authority at any stage in the competition and/or upon award of the Contract.

Candidates must name entities relied upon in the Schedule Part 2B.

## 3.3 Joint Ventures

If a Candidate is one or more human or legal persons (such as a partnership, joint venture or consortium), each of them must execute the Form of Tender (See also Section 5.14 of these Instructions).

## 3.4 Exclusion Grounds

Candidates are reminded that where the grounds for exclusion in Regulation 57 of SI 284/2016 (European Union (Award of Public Contracts) Regulations apply to this competition, the Contracting Authority may undated information in this regard at any time prior to the award decision. If such updated information discloses that, or to the Contracting Authority’s knowledge, any of the circumstances outlined in Regulation 57 apply to the Candidate, the Candidate may (subject to the provisions of the SAQ in relation to grounds for exclusion) be excluded from the competition.

## 3.5 Other

The Contracting Authority reserves the right to exclude any Tenderer from the competition should the Contracting Authority be of the view that entry into the Contract with such Tenderer (bearing in mind any consortium members, entities relied upon or subcontractors) be contrary to any applicable law or regulation, including any applicable sanctions regime. Tenderers were asked to declare this in their SAQ Response. To the extent that there has been any change since the SAQ Response, or if there is any issue giving rise to possible sanctions application that shall be declared in the Tender.

## 3.6 Compliance with environmental, social and labour law

Where the Contract is subject to the European Procurement Regulations, the successful Tenderer shall be required to comply with all applicable environmental, social and labour law established by European Union law, national law, collective agreements or by the international, social and labour law provisions listed in Annex X of Directive 2014/24/EU.

## 3.7 Measures under the International Procurement Instrument

Candidates are reminded of the provisions of the SAQ in relation to measures under the International Procurement Instrument. Where an IPI Measure applies to this competition, Candidates have provided a declaration regarding their country of origin in their SAQ Response. Candidates are reminded that the Contracting Authority may, at any stage,  seek information from Candidates, should it deem appropriate to do so, to ascertain the country of origin of any Candidate (pursuant to the rules on determining origin set out in Regulation 2022/1031) for the purposes of verifying whether it is subject to an IPI measure. Candidates are also reminded that where their circumstances have, or may, subsequently change, in relation to any IPI Measure, they must advise the Contracting Authority in writing under section 9.7 (Change in Circumstances) of these Instructions.

## 3.8 Application of the Foreign Subsidies Regulation

Where the Suitability Assessment Questionnaire states that the Foreign Subsidies Regulation applies to this Competition, the FSR Annex forms part of these Instructions.

# 4 Tender Design- Not Used

# 5 Requirements for Tenders

## 5.1 Means of Tender Delivery

Tenders must be received in accordance with the means of tender delivery[[3]](#footnote-3) stated in the Particulars, at or before the latest time stated in the Particulars (or a later date and time advised by the Contracting Authority to all Candidates) in the manner described in the Particulars. Time is taken as standard time according to the Standard Time Act 1968 as amended by the Standard Time (Amendment) Act 1971 and any subsequent amendment or re-enactment thereof.

Where the Particulars state that the required means of tender delivery is to the eTenders platform, Candidates are advised to ensure that they give sufficient time to allow for the successful upload of all tender documents and that they have a reliable, continual connection speed available for this purpose. Candidates should ensure that their operating system has sufficient capacity to execute the upload of all the documents included in the tender submission before the deadline stated in the Particulars (or a later date and time advised by the Contracting Authority to all Candidates). The timely and complete upload of documents is the responsibility of each Candidate. All files submitted electronically must be capable of being readily viewed in their entirety in the format stated in the Particulars. It is the responsibility of the Candidate to ensure that electronic documents submitted are not corrupt.

**Candidates are advised to consult eTenders.gov.ie for information on uploading electronic submissions.**

Completed delivery of the tender in advance of the submission deadline is the responsibility of each Tenderer.

All Tenders received on time will be opened promptly after receipt.

## 5.2 Tender Documents

Attached to these Instructions are the documents listed in the Particulars under *Tender Documents*. Documents listed in the Particulars as Documents to be included in the Contract or any amendment to them which have been issued will form part of the Contract. These will include:

* the Agreement
* the form of Conditions identified in the Particulars
* Works Requirements (Volume A)
* Form of Tender and Schedule (Volume B)
* the Pricing Document (Volume C)
* Novated Design Documents (Volume D)
* the Letter of Acceptance issued by the Contracting Authority and any post-tender clarifications listed in the letter
* Works Proposals to be submitted with the Tender (where required)

Where required by the Contract, collateral warranties from Specialists, a performance bond, reliance guarantee or reliance warranties will be required.

All other documents, including *Documents for information purposes only* issued to Candidates will not form part of the Contract such as:

* The invitation letter
* These Instructions
* the information referred to in Appendix 3 to these Instructions
* any other information issued to Candidates not stated to amend the Contract documents
* additional information to be submitted with Tenders, as specified in Appendix 2 to these Instructions.
* any other information submitted with Tenders and not called for in these Instructions or in post tender clarifications.

## 5.3 Copies

Tenders must include the number and type of paper and electronic copies stated in the Particulars and must be packed and marked as stated in the Particulars.

## 5.4 Format

Tenders will consist of:

* the completed Form of Tender and attached completed Schedule (Volume B) executed as indicated in the Particulars
* the completed Pricing Document (Volume C)
* Works Proposals containing the information specified in Appendix 1 to these Instructions
* additional information specified in Appendix 2 to these Instructions

Where delivery is required by hand or prepaid registered post, the originals of Volume B and Volume C must be returned completed in ink.

If Volumes B or C have been amended by supplemental information, Candidates must use the most recently issued versions.

Candidates must fill in all the spaces in the Schedule (i.e. Works Proposals in Part 1 and all of Part 2) reserved for Candidate to fill in. No amendments or alterations to the Form of Tender or attached Schedule are permitted save for (i) completing them in accordance with their terms and (ii) the inclusion of alternative signature blocks in the event that the template signature blocks are not suitable having regard to the characteristics of the Tenderer or the circumstances of the signing. Any other amendments/alterations may result in the Candidate’s tender being rejected.

## 5.5 Language

Tenders and all information included with them must be in the language stated in the Particulars. Any original document in another language must include an accurate translation into the language stated in the Particulars. Queries and other communications must be in the same language.

## 5.6 Qualification

Tenders must not be qualified in any way but must be submitted in accordance with these Instructions. Without prejudice to the generality of the foregoing, Tenders must not include or be accompanied by a cover letter or any other information not included in Volume B, or Volume C, or specified in these documents, or by any statement that could be construed as rendering the Tender equivocal and/or placing it on a different footing from other Tenders.

## 5.7 Consistency with SAQ Response

Subject to section 2.4 of these Instructions, Tenders must be consistent with the Candidate’s SAQ Response for this competition. Otherwise, the Candidate may be disqualified at any time during the competition at the Contracting Authority’s discretion.

## 5.8 Pricing

Unless otherwise stated, all sums given in Tenders must be in euro, to two decimal places.

Candidates must not insert additional items in the Pricing Document, except where permitted to do so by the Pricing Document, or make any alterations to the Pricing Document.

Candidates must not amend (lump sums or Reserved Sums) inserted in the Pricing Document by the Contracting Authority that are associated with named Specialist works set out in Part 1F (iii) of the Form of Tender and Schedule and Standing Conciliator services (if required) at Part 1N of the Form of Tender and Schedule.

Where named Specialists (novated or Reserved) are required under the Contract, Candidates will be required to price lump sum items in the Pricing Document to cover:

1. General attendances;
2. Special attendances; and
3. Management, to incorporate the Contractor’s management, risk acceptance and indirect overhead costs associated with the employment of each of the named Specialists to be engaged for the Works.
4. In the Pricing Document Candidates will also be required to include an item for main contractor’s profit on each of the named Specialist’s Sums, rated as a percentage. Candidates will apply their tendered percentages to each of the named Specialists’ Sums to create lump sum items for profit on each named Specialists’ works. The tendered percentage for the main contractor’s profit on each named Specialist Sum will not be less than zero.

The percentage items for profit relating to each of the named Specialist’s works will be transferred to Part 3B of the Form of Tender and Schedule prior to the award of the Contract.

A Reserved Sum will also be provided by the Contracting Authority where the Contract requires the appointment of a Standing Conciliator. In this case the items listed 1 – 4 above will not apply.

Amounts must be included wherever required in the Form of Tender, the Schedule, Part 2, and the Pricing Document. Blank spaces, the terms ‘nil’ or ‘included’, or dashes or zero or the like must not be used. Where zero is a permitted entry, it must be stated as ‘0.00’ (see also “Tender Evaluation” at Appendix 4 if applicable). Each amount must properly cover the full inclusive value of the work to which the amount relates.

Candidates must not use abnormally high or low rates or prices. This prohibition includes using strategies that might allow the Candidate to benefit disproportionately from clauses 10.6.4 or 10.7 of the Conditions or, if it would be a compensation event under the Contract, a difference between the Contract value of the Works according to the quantities and descriptions in the Bill of Quantities and the Contract value of the Works described in the Works Requirements.

Each amount in the Pricing Document except an item described as an ‘adjustment item’ must cover the full inclusive value (excluding value-added tax) of the relevant work, and, where applicable, a fair allocation of the tendered Contract Sum.

Any adjustment item that a tenderer may apply to their final total in a Pricing Document does not apply to Contracting Authority controlled sums such as Reserved Sums, Contract Sums for Novated Specialists, nor to any associated amounts as referred to at 1 – 4 above.

All items in the Pricing Document must be priced. Candidates must not use negative rates or prices, or omit rates, or use zero rates, in the Pricing Document.

If the Pricing Document includes an item described as an ‘adjustment item’, the amount inserted must not exceed CA Entry % of the tendered Contract Sum.

If the Pricing Document includes method-related charges, the total of method-related charges must not exceed CA Entry % of the tendered Contract Sum

The Contracting Authority may provide the Pricing Document in a *.csv* and native file formats to Candidates.

Where the Particulars state that the required means of tender delivery is electronic submission (including the eTenders platform) , Tenderers must submit a read only PDF copy of their fully completed Pricing Document with their Tender. In accordance with Section 9.2 of these Instructions, the Contracting Authority may request that Tenderers provide a copy of the submitted Pricing Document in its native file and/or .csv file format(s). Where requested, Tenders must provide the Pricing Document in the requested file formats promptly and within the stated timeframe. In the event of inconsistencies between the submitted read only PDF Pricing Document and either the native file format and/or .csv file format, the read only PDF Pricing Document shall take precedence.

If any tender does not comply with this section 5.8, the Contracting Authority may proceed according to sections 7 or 8 of these Instructions.

## 5.9 Value Added Tax

The Form of Tender states whether and to what extent, the tendered Contract Sum includes value-added tax (VAT). The amounts in the Schedule, Part 2 exclude VAT. The Pricing Document excludes VAT unless otherwise stated in the Pricing Document.

If the Pricing Document includes a schedule of items that are not construction operations subject to Relevant Contracts Tax (and therefore to reverse-charge VAT), and, in the Contracting Authority’s opinion, the categorisation of an item, the VAT rate stated, or the value stated is not correct, the Contracting Authority may invoke section 8.2.

## 5.10 Date for Substantial Completion

The Particulars state whether the Date for Substantial Completion of the Works (and any Sections) is stated in Schedule, Part 1 or is to be tendered. If the Date for Substantial Completion of the Works (or Sections) is to be tendered, the tendered dates must be between any earliest and latest dates stated in the Particulars.

## 5.11 Named Specialists

This section applies where the Contracting Authority has listed Novated and/or Reserved Specialists (named Specialists) in Part 1F (iii) of the Form of Tender and Schedule.

The Suitability Assessment Questionnaire issued for both Novated and Reserved Specialists is provided to Candidates as part of the Works Requirements.

### 5.11.1 Novated Specialists

Novated Specialists will normally be named in Part 1F (iii) of the Form of Tender and Schedule, a description of their works and the contract sums for Novated Specialists will be provided in the Pricing Document.

Where the identity of the Novated Specialist is not known at the time that the main contract tender is issued (because the tender competition for that Novated Specialist has not concluded) the category of Novated Specialist works will be identified, a summary of the work content for each Novated Specialist provided in the Works Requirements and an unpriced item provided by the Contracting Authority in the Pricing Document to cover the Novated Specialist works.

Where they are outstanding at the commencement of the main contract tender, the identities and contract sums of Novated Specialists shall be finalised during the main contract tender period, at the latest they shall be notified to Candidates before the latest date set for the issue of tender document amendments.

Upon award of the Contract, the Contractor is required to accept the novation of a Novated Specialist for the relevant package of works in accordance with sub-clause 5.4.3 of the Contract.

### 5.11.2 Reserved Specialists

The identity of Reserved Specialists will not be known prior to the deadline for the receipt of tenders identified in the Particulars to these Instructions.

Where Reserved Specialist works are set out in Part 1F (iii) of the Form of Tender and Schedule, the Contracting Authority will provide a Reserved Sum in the Pricing Document. Reserved Sums are for tender evaluation purposes and each will be substituted with the tender sums of the relevant successful Reserved Specialist tenderer prior to the award of the [main] Contract unless that Contract makes provision for the later appointment of a Specialist.

The shortlists of Candidates invited to tender for each of the Reserved Specialist works categories are provided as Background Information.

A copy of Part 1 of the Form of Tender and Schedule to the [main] Contract will be provided to those invited to tender for the Reserved Specialist works categories.

The shortlist of those Candidates who have been invited to tender for the [main] Contract will be provided to those invited to tender for the Reserved Specialist work packages as Background Information.

At the point at which the Successful Tenderer (for the [main] Contract) is notified in the manner set out in section 10.2 of these Instructions, Reserved Specialist candidates will be advised of the identity of the Successful Tenderer and will be provided with a copy of the Successful Tenderer’s programme as referred to in Appendix 1 to these Instructions.

In accordance with sub-clause 5.4.3 of the Contract, the Contractor is required to award the subcontracts specified in Part 1F (iii) of the Form of Tender and Schedule to the Reserved Specialists named in Part 3B of the Form of Tender and Schedule.

Reserved Specialists selected from the sub-contract tender competitions will be named in Part 3B of the Form of Tender and Schedule prior to the award of the [main] Contract subject to each Reserved Specialist meeting the ‘Conditions Precedent’ set out below and 1) confirming their acceptance of the programme prepared by the Successful Tenderer for the [main] Contract works; and 2) confirming by way of a letter to the Contracting Authority that they are satisfied to enter a contract with the Successful Tenderer for the [main] Contract works.

The Contracting Authority will also require a letter from the Successful Tenderer for the [main] Contract works, in respect of each of the Reserved Specialist works categories, stating that they are prepared to award the sub-contract to the Reserved Specialist named at Part 3B of the Schedule and enter into an agreement with them using the specified Conditions of Sub-contract.

The ‘Conditions Precedent’ to be met by a Reserved Specialist and referred to above are:

* The presentation of a Tax Clearance Certificate in the name of the relevant Specialist in accordance with the requirements of the Revenue Commissioners current at the date of award;
* The provision of statements in the name of the relevant Specialist evidencing that the insurances required under the terms of the sub-contract being awarded are held;
* Where the provision of a performance bond was required in the Specialist works tender, confirmation from a surety authorised to engage in guarantee business in Ireland that they are in a position to issue a performance bond to the Reserved Specialist in the format specified in the Reserved Specialist’s Works Requirements ;
* The provision of evidence to demonstrate continuing compliance with the Reserved Specialist’s prequalification criteria;

Should the apparently successful tenderer for the Reserved Specialist works category fail to meet the above requirements the Contracting Authority will repeat the process above with the next ranked tenderer for the Reserved Specialist works category and, subject to their meeting the requirements set out above, they will be named in Part 3B of the Form of Tender and Schedule. The Successful Tenderer for the [main] Contract works will also be required to provide a new letter confirming their willingness to contract with the replacement Reserved Specialist works tenderer, as set out above

Once the successful tenderers for the Reserved Specialist works categories are identified and named in Part 3B of the Form of Tender and Schedule their tender sums will be substituted for the relevant Reserved Sums in the Pricing Document of the Successful Tenderer and the percentage additions tendered by the Successful Tenderer for the [main] Contract will be applied in the manner set out at section 8.4 of these Instructions.

## 5.12 Project Supervisor

The Contractor or its nominee will be appointed as project supervisor for the construction stage under the Safety, Health and Welfare at Work (Construction) Regulations 2013, if so stated in the Schedule.

If the Candidate has named a proposed project supervisor for the construction stage in its SAQ Response for this competition, the Candidate must name in Works Proposals the project supervisor so named. Where a Candidate wishes to change a project supervisor named in its SAQ Response by offering a substitute it must indicate this in writing in accordance with section 2.4 of these Instructions and submit the appropriate Health and Safety Supplement (3.4.2 (HS)) for the proposed project supervisor before the last date stated in the Particulars.

If the Candidate has not named a nominee in its SAQ Response for appointment as project supervisor for the construction stage the Candidate will be taken to offer to act in the role itself, and the Contract, if awarded to the Candidate, will require the Candidate to accept the role. In this case, the Candidate must be a competent individual or body corporate.

## 5.13 Other

CA Entry as applicable

## 5.14 Tender execution

When the Particulars indicate that the Form of Tender is to be sealed, this must be done as follows:

* if the Candidate is a company with a common seal, its common seal must be affixed to the Form of Tender and properly authenticated. If the Form of Tender is to be executed under a power of attorney, the attorney must affix his or her seal the Form of Tender, and the power of attorney must be provided if requested by the Contracting Authority;
* if the Candidate is an individual, he or she must sign , seal, and deliver the Form of Tender and the execution must be witnessed.

Where the Particulars do not indicate that the Form of Tender is to be sealed, the Form of Tender must be signed as follows:

* if the Candidate is a company, the signature must be that of a director and the execution must be witnessed;
* if the Candidate is an individual, he or she must sign the Form of Tender and the execution must be witnessed;
* if the Candidate is a partnership, joint venture or consortium, then each partner must sign the Form of Tender and the execution must be witnessed.
* if the Candidate is a company registered elsewhere than Ireland, it must execute the Form of Tender under hand according to the laws of its place of incorporation. If so requested by the Contracting Authority a legal opinion that the Form of Tender has been duly executed in accordance with the requirements of the jurisdiction in which the company is registered following the submission of tenders and must be provided at the Candidate’s cost.

The successful Tenderer will be required to execute the Agreement in the same manner as the Form of Tender.

## 5.15 Deposits

Where the Particulars state that a deposit[[4]](#footnote-4) is required for tender documents as stated in the Particulars will be refundable to all tenderers that submit *bona fide* tenders that are not subsequently withdrawn. The deposit is to cover the cost incurred by the Contracting Authority in preparing the relevant tender documents.

# 6 Number if Tenders, Mandatory Options and Variants

## 6.1 Terminology

* An **option** is a Tender *required* under section 6.2 below.
* A **variant tender** is a Tender complying with section 6.3 below and identified as a variant tender.
* A **standard tender** is a Tender that is not a variant tender.

## 6.2 Mandatory options

If the Particulars state that any mandatory options are required, the Candidate must submit a separate Tender for each option stated in the Particulars.

## 6.3 Variant tenders

Unless otherwise stated in the Particulars, variant tenders are not permitted.

If the Particulars state that any variant tenders are permitted, a variant tender must comply with the minimum requirements set out in the Particulars.

If so stated in the Particulars, variant tenders may be submitted only by a Candidate who also submits a standard tender.

If not so stated, variant tenders may be submitted without submitting a standard tender.

## 6.4 Number of tenders and marking

The maximum number of Tenders that a Candidate may submit is stated in the Particulars. If more than one Tender per Candidate is permitted, each Tender must be submitted separately and must, except as otherwise permitted or required by this section 6, be complete, without referring to the contents of any other Tender. Each Tender must have a unique identifier, which must be stated on each envelope or box containing the parts of the Tender. The identifier must state whether the Tender is standard, a mandatory option, or a variant tender, and if there are options, must identify the option.

# 7 Non- Compliant Tenders

If a Tenderer fails to comply in any way with these Instructions, the Contracting Authority may (but is not obliged to) take such steps as it deems appropriate including (but not limited to):

1. rejecting the Tender as non-compliant; and/or
2. without prejudice to the Contracting Authority’s right to reject the Tender:
3. seeking clarification from the Tenderer in respect of the relevant submissions by way of a meeting or written submission;
4. requesting the Tenderer to provide information or items which has/have not been provided or has/have been provided in an incorrect form;
5. waiving a requirement which in the Contracting Authority’s opinion is minor or procedural; and/or
6. take any other step permitted by law;

in accordance with applicable law and principles.

# 8 Corrections, unbalances and abnormal tenders and rates, and permitted adjustments

## 8.1 Errors

The Contracting Authority may, without any responsibility for this, examine the Pricing Document for errors in addition or extension.

If there is an error in extension, the rate will be adjusted, so that the extension remains the same.

If there is an error in addition, the amounts added (and the rates making them up) will be adjusted pro rata to the error, so that the total remains the same. This will apply if the total of the tendered rates and prices, with value-added tax added, does not add up to the tendered Contract Sum.

The Contracting Authority will decide which amounts and rates are to be adjusted.

Instead of adjusting the amounts added, the Contracting Authority may in its discretion adjust an item described in the Pricing Document as an ‘adjustment item’.

No adjustment made under this section 8.1 will affect the tendered Contract Sum or the Comparative Cost of the Tender.

The Contracting Authority reserves the right to open all Pricing Documents from tenderers without the need to revert to the tenderers for permission.

## 8.2 Unbalanced Tenders

If, in the Contracting Authority’s opinion, the tendered rates or prices in the Pricing Document (after adjustment under section 8.1 above) do not reflect a fair allocation of the tendered Contract Sum, or the last sentence of section 5.8 applies, the Contracting Authority may (but is not obliged to) do either or both of the following:

* require the Tenderer to provide a breakdown of any tendered amounts, to show that they reflect a fair allocation of the tendered Contract Sum and
* invite the Tenderer to adjust rates or prices tendered in the Pricing Document, but without adjusting the tendered Contract Sum or having any effect on the Comparative Cost of the Tender.

The Contracting Authority will pay particular attention to pricing that could result in the Tenderer, if successful, being paid too much of the Contract Sum disproportionately early in comparison with the amount of work done.

If, having considered the information provided (both in the tender and in response to a requirement under this section 8.2), the Contracting Authority is of the view that the Tenderer’s tendered rates or prices in the Pricing Document do not reflect a fair allocation of the tendered Contract Sum, the Contracting Authority may reject the tender.

## 8.3 Abnormally low tenders, abnormally high or low rates or prices

If, in the Contracting Authority’s opinion, the tendered Contract Sum is abnormally low or any tendered amounts (including the rates tendered in the Schedule, part 2) are abnormally low or abnormally high, the Contracting Authority may require the Tenderer to provide details of the constituent elements of the tendered Contract Sum or the tendered amounts. This may include (without limitation) the information listed in Regulation 69 of the European Union (Award of Public Authority Contracts) Regulations 2016. Any failure to provide such information, when requested, may exclude the tender from further consideration. If, having considered the information provided, the Contracting Authority is of the view that either the Contract Sum is abnormally low or any tendered amounts are abnormally low or abnormally high, the Contracting Authority may reject the Tender.

No adjustment made under this section 8.3 will affect the tendered Contract Sum or the Comparative Cost of the Tender.

Contracting Authoritys should exercise with caution the rights reserved by this section 8. In most cases, it is expected that Tenderers will be best judge of their own costs. (delete this note before issue of these Instructions)].

## 8.4 Permitted adjustments for Specialist Works

This section shall only apply where Reserved Sums are included in the Pricing Document to cover Reserved Specialist works in the Form of Tender and Schedule Part 1F (iii). The Tender Sum of the Successful Tenderer will be adjusted to arrive at the final Tender Sum for the Works by:

1. deleting any Reserved Sums in the Pricing Document and replacing them with the final tender sums for the relevant Reserved Specialist works packages; and
2. applying the percentage items for profit included in the Pricing Document of the Successful Tenderer to the Reserved Specialists’ tender sums.

## 8.5 Permitted adjustments for Standing Conciliator Fee

This section shall only apply where a Reserved Sum is included in the Pricing Document should a Standing Conciliator be required in part 1N of the Form of Tender and Schedule. The Tendered Contract Sum of the Successful Tenderer will be adjusted to arrive at the final Tendered Contract Sum for the Works by deleting the Reserved Sum in the Pricing Document and replacing it with 50% of the total agreed lump sum fee for the Standing Conciliator.

# 9 Assessment of Tenders

## 9.1 Award Criterion

The award criterion is the most economically advantageous Tender meeting the specified minimum criteria (if any).

The assessment of the Most Economically Advantageous Tender will be made on the basis of the award criteria in the Particulars.

Options, variant tenders, and standard tenders will be assessed according to these criteria.

## 9.2 Clarifications

The Contracting Authority may seek clarification or further information or both from one or more Tenderer in relation to its tender submission. The Contracting Authority may meet with one or more Tenderer for these purposes. The Contracting Authority 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. See also section 10.4 of these Instructions.

## 9.3 Compliance

The Contracting Authority may assess whether any of the grounds for exclusion in section 3.4 of these Instructions apply. The Contracting Authority may assess whether Tenderers continue to meet the criteria on which they were selected for invitation to tender.

The Contracting Authority will assess Tenders for compliance with these Instructions, including provision of all the information and documentation required, and the matters covered in section 8 above.

Following the assessments under this section 9.3, the Contracting Authority may proceed according to sections 7 or 10 of these Instructions, whichever is appropriate.

## 9.4 Review[[5]](#footnote-5)

**Important Note:** Any review procedure available in this Competition (other than legal proceedings under Order 84A of the rules of Superior Courts[[6]](#footnote-6)) set out in the Particulars is not mandatory. Tenderers should obtain legal advice as to the review procedures that may be available to them under law, as well as the timeframes in which such review procedures may be availed of.

## 9.5 Assessment of comparative cost

The Contracting Authority will assess the Comparative Cost of each Tender using the template in Appendix 4 to these Instructions.

For the purpose of assessing the Comparative Cost of Tenders only, the Contracting Authority will assume that there will be Compensation Events involving payment of the amounts stated in Appendix 4 to these Instructions.

The Comparative Cost of Tender will be carried out to each Tender before the adjustments referenced in section 8.4 and 8.5 of these Instructions are carried out for Reserved Specialist works packages and Standing Conciliator fees (where applicable).

## 9.6 Assessment of other criteria

Where Technical Merit criteria are entered in the Particulars, the Contracting Authority must enter the formulae used to arrive at the Price and Technical Merit scores here or write None where the Comparative Cost of Tender is the MEAT being used.

## 9.7 Changes in circumstances

If, as a result of a change in circumstances or otherwise, any information given by a Candidate to the Contracting Authority, in a Tender or otherwise, including in a SAQ Response(in particular but without limitation, regarding the structure of a Candidate and/or the members of a Candidate or any entity being relied upon by the Candidate), was (when submitted) or has become (by reference to the facts as they then stand) untrue, incomplete or misleading, the Candidate must so inform the Contracting Authority as soon as it becomes aware of this. If appropriate, the Candidate may make a request under section 2.4 of these Instruction to change information in its SAQ Response.

If it comes to the Contracting Authority’s attention that:

* there has been a change in circumstances concerning a Candidate that could affect the Contracting Authority’s assessment of that Candidate’s Tender or the Contracting Authority’s decision to invite the Candidate to submit a Tender, or
* information submitted by a Candidate was (when submitted) or has become (by reference to the facts as they then stand) untrue, incomplete or misleading,

the Contracting Authority may (but is not required to) take such steps as it considers necessary to revise its assessment of the Tenderer’s Tender (including revising its assessment of the Tenderer’s SAQ Response) on the basis of the information then available to the Contracting Authority and/or exclude the Tenderer from further participation in the Competition. The Contracting Authority may clarify this with the Tenderer and may seek further information and/or evidence from the Tenderer.

# 10 Award Process

## 10.1 Tender validity period

Subject to section 10.4 of these Instructions, the Contracting Authority may accept a Tender any time within the time stated in the Form of Tender and Schedule.

## 10.2 Notification

As soon as practicable after reaching the award decision, the Contracting Authority will inform all Tenderers of its decision.

If the European Procurement Regulations apply the notification to the Tenderer to whom the Contracting Authority has decided to make an award should be in the form of Model Letter R.eu7 *Letter to Successful Tenderer.* The notification to the other compliant Tenderers should be in the form of Model Letter R.eu.8 *Letter to Unsuccessful Tenderer* and should issue at the same time as the Letter to Successful Tenderer.

If the European Procurement Regulations do not apply the notification to the Tenderer to whom the Contracting Authority has decided to make an award should be in the form of Model Letter R.na.7 *Letter to Successful Tenderer*. The notification to the other compliant Tenderers should be in the form of Model Letter R.na.8 *Letter to Unsuccessful Tenderer* and should issue at the same time as the Letter to Successful Tenderer.

Reserved Specialist candidates will be advised of the identity of the Successful Tenderer and will be provided with a copy of the Successful Tenderer’s programme identified at Appendix 1 to these Instructions.

The Letter to Successful Tenderer will not form the Contract, or any contract or other obligation. The Contract will be formed only by issue of the Letter of Acceptance.

Where a contract is regulated by the European Procurement Regulations the Contracting Authority will not issue the Letter of Acceptance (M.F. 1.4) earlier than 14 days in the case of communicating electronically, or 16 days in the case of ordinary post after notifying all Tenderers of the award decision.

## 10.3 Letter to Successful Tenderer

Whichever Letter to Successful Tenderer issues (R.eu.7 or R.na.7) it should request the Tenderer to submit to the Contracting Authority any or all of the following:

* the performance bond required under the Contract
* evidence of the insurances required by the Contract
* evidence of tax compliance from the Revenue Commissioners
* any required appointment as project supervisor for the construction stage

If the Tenderer to whom such a Letter to Successful Tenderer is addressed does not submit the documents as required within the time allowed, the Contracting Authority may:

* proceed according to the process in Section 10.2 above to initiate award to the Tenderer who submitted the next most economically advantageous Tender, or lowest priced, or
* allow the Tenderer to whom the Letter to Successful Tenderer was addressed additional time to provide the documents, or
* issue the Letter of Acceptance to the Tenderer to whom the Letter to Successful Tenderer was addressed (even though the documents have not yet been provided)[[7]](#footnote-7).

## 10.4 Letter of Acceptance

The Contracting Authority may issue theLetter of Acceptanceat any time during the Tender validity period in the Form of Tender and Schedule. Where a contract is regulated by the EU procurement rules the Contracting Authority will not issue the Letter of Acceptance earlier than 14 days in the case of communicating electronically, or 16 days in the case of ordinary post after notifying all Tenderers of the award decision.

Any written clarifications of a Tender (including minutes of a meeting clarifying the Tender, see section 9.2), will be referred to in any *Letter of Acceptance* of the clarified Tender, and will be included in the Contract.

## 10.5 Agreement

Following issue of the *Letter of Acceptance* the Contracting Authority will inform the Contractor of the arrangements for the execution of the Agreement. The Contractor will be required to execute the Agreement under seal unless the Particulars say that the Contract is to be executed under hand.

## 10.6 Award Notice

The Contracting Authority will, after award, send an award notice (if appropriate) to the Publications Office of the European Union, if so required by law. This notice may include disclosure of the contract price.

# Glossary of terms used in these Instructions

Terms defined in the Conditions of the Contract identified in the Particulars have the same meaning in these Instructions. References to clauses are to clauses or sub-clauses of those Conditions. Unless otherwise indicated, references to sections and Appendices are to sections of and Appendices to these Instructions.

|  |  |
| --- | --- |
| Term | Meaning |
| Candidate | a person (or group of persons) that has been invited to submit a Tender |
| Comparative Cost | a tendered Contract Sum adjusted, for tender assessment purposes only, according to section 9.5, above |
| Contract | the contract that may be awarded by the Contracting Authority for the Works at the end of the competition |
| European Union Procurement Regulations | If applicable, the particular European Union procurement regulations under which this Competition is being conducted (and which will be stated in the OJEU Contract Notice issued by the Contracting Authority) being either the:   * European Union (Award of Public Authority Contracts) Regulations 2016; or * European Union (Award of Contracts by Utility Undertakings) Regulations 2016. |
| Foreign Subsidies  Regulation | Regulation (EU) 2022/2560 of the European Parliament and of the Council on foreign subsidies distorting the internal market - the Foreign Subsidies Regulation (the “FSR”). |
| FSR Annex | Annex to these Instructions, issued when the Foreign Subsidies Regulation applies to this Competition. |
| IPI Measure | A measure adopted by the European Commission pursuant to the International Procurement Instrument, that limits the access of businesses, goods or services originating in a third country to the EU public procurement or concession markets by means of an implementing act. |
| Novated Specialists | Novated Specialists are those whose contract with the Contracting Authority is to be novated to the Contractor. They are listed in Part 1F (iii) to the Form of Tender and Schedule. |
| Reserved Specialists | Reserved Specialists are those who are to be appointed by the Contractor following a tender competition administered by the Contracting Authority. The categories of Reserved Specialist works are listed in Part 1F (iii) of the Form of Tender and Schedule. After the tender evaluation, the successful tenderers for the Reserved Specialist works will be named in Part 3B of the Form of Tender and Schedule. |
| Reserved Sums | Those sums provided in the Pricing Document to cover Reserved Specialist works as identified in the Works Requirements where the Specialist and their associated tender sum has not been identified in advance of the main contract tender. Such sums will be adjusted in accordance with section 8.4. |
| SAQ | The suitability assessment questionnaire issued for the competition |
| SAQ Response | The Candidates response to the SAQ |
| Specialist sub-contract Conditions | The conditions of contract under which the Contractor appoints a Specialist named by the Contracting Authority in the Tender and Schedule, part 3B. |
| this competition | the award process for which these Instructions are issued |
| these documents | These Instructions and the invitation letter and other documents issued with it and any additional information issued by the Contracting Authority to Candidates in connection with the competition |
| These Instructions | * this volume, including the Preface at the start, Particulars and Appendices * other information or instructions issued by the Contracting Authority to Candidates in connection with the competition not stated to amend the Contract documents |
| Tender | a tender for the Contract, including the completed Form of Tender, completed Schedule and completed Pricing Document |
| Tenderer | A Candidate that has submitted a tender is designated a tenderer [2014/24/EU Article 2(1)(11) & (12) and SI No 284 0f 2016 Regulation 2(1)] . |

# Particulars

These are the Particulars referred to in the Instructions. They are part of the Invitation to Tender.

|  |  |  |
| --- | --- | --- |
| Tender for | Title of Contract | |
| comprising | General description of the Works | |
| At | Location of the works | |
| For | Name of Contracting Authority | |
| Using  (Instructions section 1.3) | The form of Conditions set out in the Public Works Contract designed by the Contracting Authority with a cited revision reference commencing with v2 published on <http://constructionprocurement.gov.ie/contracts/> on the date 10 days before the latest date for receipt of Tenders (disregarding any amendments posted on that date). | |
| Novation | Contract to be novated as a Specialist contract |  |

|  |  |
| --- | --- |
| Means of Communication (Instructions section 2.1, 2.3 ) | The means of communications between the Candidate and the Contracting authority in relation to the competition shall be by |
| Insert additional details if required here. |

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| --- | --- | --- |
| Supplemental Information and Queries (Instructions sections 2.2, 2.3) | Latest date for queries | dd-mm-yyyy (14 days before latest time for receipt of Tender) |
| Date after which Contracting Authority will not normally issue supplemental information or responses to queries | dd-mm-yyyy (8 days before latest time for receipt of Tender) |

|  |  |  |
| --- | --- | --- |
| Change project supervisor [Instruction section 5.12] | Latest date for request to change project supervisor proposed by the Tenderer (where applicable) | *21 days before latest time for receipt of tenders or Not Applicable* |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Timetable for Competition | Contract Notice date: | *(insert date or Not Applicable)* | | Reference: | *(insert reference or Not Applicable)* |
|  | Interviews (if required): | | *(insert date or timeframe e.g. within subsequent 2 weeks)* | | |
|  | Decision on Contract Award: | | *(insert date)* | | |

|  |  |
| --- | --- |
| Tender Deadline  (Instructions section 5.1) | Latest date and time for submission of Tenders: dd-mm-yyyy hh:mm |

|  |  |  |  |
| --- | --- | --- | --- |
| Means of Tender delivery (Instructions section 5.1) | Means of Tender delivery[[8]](#footnote-8): | |  |
|  | CA: Insert additional details if required here or Not Applicable | | |
| Copies (Instructions section 5.3) | ***Note to CA: Where tender submissions are to be recieved by hand or registered pre-paid post enter the details below.*** | | |
|  | Number of Paper Copies of Tender required | One | |
|  | Number and type of Electronic Copies of Tender required: | Not applicable | |
|  | Where delivery is by hand or registered prepaid post, Tenderers should obtain a signed receipt acknowledging delivery. | | |

|  |  |
| --- | --- |
| Other (Instructions section 2.5) | Not Applicable |

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| --- | --- | --- |
| Tender Documents (Instructions section 5.2) | Attached to these Instructions are the following documents, divided into the two categories set out below:  **Documents to be included in the Contract**  Insert as appropriate. The list of documents to be included in the contract must accord with the documents listed in the Agreement when relevant (which ultimately may include any post-tender clarifications that are considered appropriate by the Contracting Authority).  **Documents for information purposes only** (*not* to be included in the Contract)  Insert as appropriate. For example, statutory consents, such as an environmental impact statement, or site information that the Authority does not want to become part of the Contract. | |
|  | Further information may be issued as described in these Instructions | |
| Deposit  (Instructions section 5.15) | Deposit required on issue of tender documents | €............................./ Not Applicable |

|  |  |
| --- | --- |
| Format of Tender Submissions (Instructions section 5.4) | Where tender submission is by hand or registered prepaid post, Candidates should submit their tender in a sealed envelope or box (the “Outer Envelope[[9]](#footnote-9)”) containing one or a series of separate sealed envelopes or boxes, each containing one or more separate bound folder for each of:  completed volume B  completed volume C  Works Proposals  Additional information specified in Appendix 2 to these Instructions  Each envelope or box within the Outer Envelope must be clearly marked with the name of the Candidate, the name of the Contract, and the content, and, if more than one copy is required, the copy number: for example “Tender of ABC Limited for [contract title], Volume C; Pricing Document copy 1, master”. If more than one tender is permitted or required, each envelope or box should also be marked with the unique identifier required under Section 6.4 of these Instructions |
|  | Where the means of tender delivery is by the eTenders platform or other electronic submission:  Candidates should upload their Tender in clearly named separate documents for each of:  completed volume B  completed volume C  Works Proposals  Additional information specified in Appendix 2 to these Instructions  All uploaded documents should be clearly identified in their saved title.  All uploaded documents (other than the Pricing Document, which must be submitted in a *read only* PDF format) should be saved in the format stated below. The *read only* PDF Pricing Document must be marked “Master Pricing Document”. All documents that require signature must be signed prior to converting to the required file format stated below.  All documents should be clearly marked with the name of the Tenderer, name of the Contract and the content. For example: “Tender of ABC Limited for [contract title], Volume C, Pricing Document”. If more than one Tender is permitted or required, each document must also be marked with the unique identifier required under Section 6.4 of these Instructions.  The required file format for electronic documents is:  Enter required format eg PDF/.docx etc |
|  | CA: If using electronic submission, other than the eTenders platform, enter details here or enter "Not Applicable". |

|  |  |
| --- | --- |
| Language (Instructions section 5.5) | English |

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| --- | --- |
| Pricing  (Instructions section 5.8) | Pricing Format: Lump Sum |

|  |  |  |
| --- | --- | --- |
| Substantial Completion (Instructions section 5.10) | Substantial Completion | As Schedule, Part 1 (or, As tendered, with earliest and latest dates stated here) |

|  |  |
| --- | --- |
| Form of Tender to be sealed (Instructions section 5.14) |  |

|  |  |
| --- | --- |
| Mandatory Options  (Instructions section 6.2) | Are mandatory options required?  If mandatory options are required: list the options that a Candidate must tender here or Not Applicable |
| Variants (Instructions section 6.3) | Are variant tenders permitted?  If variant tenders are permitted, is a standard tender also required?  Minimum requirements for variants: Not applicable. (If applicable, give minimum requirements.) |
| Number of Tenders (Instructions section 6.4) | Maximum number of Tenders per Candidate: One (Amend if required - for example, for Design and Build or Variants.) |

|  |  |
| --- | --- |
| Agreement (Instructions section 10.5) | To be executed |

|  |  |
| --- | --- |
| Review Procedure (Instructions Section 9.4) | Enter Review Procedure or Not Applicable |
|  | **Important Note to Tenderers**: Where a process is set out above, the process is not mandatory. Tenderers should obtain legal advice as to the review procedures that may be available to them under law, as well as the timeframes in which such review procedures may be availed of. |

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| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Award Criterion (Instructions section 9.1) | |  |  | | --- | --- | | **Most Economically Advantageous Tender** | | | **Price** | | | *Enter Price Criterion/Not Applicable* | **% / Not applicable** | | *Enter Price Criterion/Not Applicable* | **% / Not applicable** | | *Enter Price Criterion/Not Applicable* | **% / Not applicable** | | **Technical Merit** | | | *Enter Technical Criterion/ Not Applicable* | **% / Not applicable** | | *Enter Technical Criterion/ Not Applicable* | **% / Not applicable** | | *Enter Technical Criterion/ Not Applicable* | **% / Not applicable** | | *Enter Technical Criterion/ Not Applicable* | **% / Not applicable** | | *Enter Technical Criterion/ Not Applicable* | **% / Not applicable** | | *Enter Technical Criterion/ Not Applicable* | **% / Not applicable** | | *Enter Technical Criterion/ Not Applicable* | **% / Not applicable** | | **Total:** | **100%** |   Note: The combined total weightings for ‘Price’ and ‘Technical Merit’ must equal 100%.  The formulae for assessment purposes are provided under Section 9.6 of these Instructions.  **Or**   |  |  | | --- | --- | | **Most Economically Advantageous Tender** | | |  | **100% / Not applicable** | |

# Appendix 1: Works Proposals

## Works Proposals to be submitted with the Tender

An outline programme for the Works in accordance with the Form of Tender and Schedule, Part 1 G which must separately identify the Named Specialist Works categories listed in the Form of Tender and Schedule Part 1F (iii)

Details of the Contractor's initial management arrangements for performing its Contract responsibilities, including systems, methods, planning and other preparations for providing personnel and resources, programming, recording, consultation, coordination and cooperation, and for flexibility, as referred to in the Contract.

Other specific matters that can be called for include details of the Candidate's project supervisor(s) different from the Candidate (clause 2.4), representative and supervisor (4.2.3), programme (4.9), Specialists (5.4.2), methods, designs.

(The list of Works Proposals here should match the list in the Schedule, part 1B.)

When Works Proposals are to contain information that was previously included in a SAQ Response, the Works Proposals must be consistent with the SAQ Response, subject to section 2.4 of these Instructions.

# Appendix 2: Additional Information

## Additional Information to be submitted with Tender

# Appendix 3: Information Pack

Instruction sections 1.2, 1.3

## Information Pack

# Appendix 4: Template to be used by the Contracting Authority to calculate Comparative Cost of Tender

## Tender Evaluation

For the purpose of tender evaluation (in relation to clause 10.6.4):

1. If the tendered percentage addition to costs of labour is negative or blank, the percentage adjustment to the costs of labour that will be used is 35%.
2. If the tendered percentage addition to costs of materials is negative or blank, the percentage adjustment to the costs of materials that will be used will be 0%.

If the tendered percentage deduction to the costs of plant is more than 50% it will be read as a deduction of 50% and so used in the evaluation. If the entry is left blank it will be read as 0% and so used in the evaluation.

*Continued on next page*

*For Information Purposes Only: Candidates are not to complete this table*

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Contract Sum | | | | € |
| Tendered Contract Sum (Form of Tender[[10]](#footnote-10)) | | | |  |
| **Tendered Compensation Events Charges** | | | |  |
| € | labour | x | % adjustment (Schedule, part 2D |  |
| € | materials | x | % adjustment (Schedule, part 2D) |  |
| € | plant | x | % adjustment (Schedule, part 2D) |  |
| days |  | x | tendered rate (Schedule, part 2D)[[11]](#footnote-11) |  |
|  |  |  | SUB-TOTAL |  |
| **Tendered date for Substantial Completion (if used)** | | | |  |
| € |  | x | days in excess of the earliest date for substantial completion[[12]](#footnote-12) |  |
|  |  |  | SUB-TOTAL |  |
|  |  | x |  |  |
|  |  | x |  |  |
|  |  | x |  |  |
| **TOTAL COMPARATIVE COST OF TENDER** | | | |  |

1. in the form of MF 1.7 Reliance Guarantee. The Contracting Authority may accept alternate arrangements, in place of a guarantee, at its discretion. [↑](#footnote-ref-1)
2. in the form of MF 1.30 Reliance Warranty [↑](#footnote-ref-2)
3. Note to Contracting Authority: EU Directive 2014/24/EU and the European Union (Award of Public Authority Contracts) Regulations 2016 mandate that all tender submissions to which the directive and regulations apply shall be made by electronic means except where the reasons specified in Regulation 22(3) apply or where the Contracting Authority intends to apply Regulation 21(3). [↑](#footnote-ref-3)
4. Note to Contracting Authority: Regulation 53 of S.I. No. 284 of 2016, European Union (Award of Public Authority Contracts) Regulations 2016, requires a Contracting Authority to offer unrestricted and full direct access free of charge to procurement documents electronically, except where the reasons specified in Regulation 22(3) apply or where the Contracting Authority intend to apply Regulation 21(3). [↑](#footnote-ref-4)
5. CA Note: Contracting Authorities may include here a provision for review procedure whereby Tenderer who disputes a decision of the Contracting Authority about whether a Tenderer complies with this ITT may raise the matter with the Contracting Authority. The review procedure should include appropriate timelines for the submission of the query and responses. [↑](#footnote-ref-5)
6. Where the Competition is subject to the European Procurement Regulations. [↑](#footnote-ref-6)
7. A contract should not be awarded to any firm which cannot produce evidence of tax clearance from the Revenue Commissioners except as a last resort. In such a case, the advance approval of the Department of Finance must be obtained. [↑](#footnote-ref-7)
8. where the competition is subject to the European Procurement Regulations, either “electronic submission“ or “the eTenders platform” must be entered. [↑](#footnote-ref-8)
9. This may be an outer box with sealed wrapping. [↑](#footnote-ref-9)
10. The Tender Sum on the Form of Tender and Schedule will be adjusted in accordance with these Instructions where Reserved Sums are used in the Pricing Document. Section 8.4 applies to Specialist works packages where the tender for those Specialist works packages has not concluded in advance of the main contract tender. Section 8.5 applies where a Standing Conciliator is required in part 1N of the Form of Tender and Schedule. (See also Section 9.5) [↑](#footnote-ref-10)
11. Only to be used where Sub-clause 10.7.1 (2) – ‘Tendered rate of delay costs’ is selected in the Schedule, part 1K [↑](#footnote-ref-11)
12. Only to be used where Tenderers are to complete the Schedule part 2C. [↑](#footnote-ref-12)