**Instruction to Tenderers**

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*The*

*Project*

using the

**Restricted Procedure for RESERVED SPECIALISTS**

Department of Public Expenditure, Infrastructure, Public Service Reform and Digitalisation

Instruction to Tenderers

for Reserved Specialists

under a Restricted Procedure

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# Preface

This tender competition is being run by the Contracting Authority to identify a successful tenderer for the specified Reserved Specialist works. Subject to the conditions set out in these Instructions, the successful tenderer will be awarded a sub-contract by the successful tenderer for the main contract (Contractor).

The Contracting Authority is making these documents available to Candidates for the sub-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.

Neither the Contracting Authority nor the Contractor and their officers, employees, or advisers have any responsibility for Candidates’ costs or losses in connection with this competition. There will be no sub-contract between any Candidate and the Contractor concerning the subject of these documents (except for the Candidate’s irrevocable offer to be bound by its Tender for the period stated) unless and until the Sub-Contract has been entered by issue of a Letter of Acceptance*.* These Instructions to Tenderers will not be part of any Sub-Contract.

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, but is not bound by the Candidate’s view.

If a Candidate, or its personnel involved in this competition, or its management, or its proposed consultants or subcontractors, have or have had any other interest in or involvement in relation to the Works (including any involvement with the Contracting Authority or any involvement with another Candidate’s Tender), the Candidate must disclose this to the Contracting Authority as soon as it becomes apparent to the Candidate. The Contracting Authority will decide on the appropriate course of action.

It will be a condition of the award of the Sub-Contract that the successful Tenderer shall, for the term of the contract, comply with all EU and domestic tax laws. Prior to the award of the Contract arising out of this competition the successful Candidate 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 Candidate acknowledges and agrees that the Contracting Authority has the permission of the successful Candidate 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.workplacerealtions.ie](http://www.workplacerealtions.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.

**The Sub-Contract that may be awarded at the conclusion of this procedure to the Successful Tenderer will not be awarded by the Contracting Authority but by a main contractor (Contractor) who has been identified through a separate tender competition. In accordance with the conditions of public works contract governing the main contract works, the Contractor is required to engage those Specialists who are named in the Contract.**

## 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 Sub-Contract

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

Also included in the Sub-Contract but not part of the documentation being sent to Candidates at the start of tendering period is the Letter of Acceptance, the Agreement (when relevant) and the Conditions of Sub-Contract which the Contractor issues at award stage. The successful Tenderer’s Works Proposals will also be part of the Sub-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 Sub-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 Sub-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 Sub-contract

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

* the Agreement
* the Letter of Acceptance to be issued by the Contractor and any post-tender clarifications listed in it or attached.
* the form of Conditions identified in the Particulars (unamended),
* the Works Requirements (Volume A)
* Form of Tender and Appendix (Volume B)
* the completed Pricing Document (Volume C)
* Novated Design Documents (Volume D)
* Works Proposals to be submitted with the Tender (where required)

None of the following will form part of any Sub-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 Sub-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 Contact

All communications between a Candidate and the Contracting Authority concerning this competition must be in writing in accordance with the details provided 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 Sub-Contract if it is stated to amend the Sub-Contract documents.

The Contracting Authority will issue the following information to all Candidates at least 14 calendar days prior to the Tender Date stated in the Particulars (Section 5.1):

1. the identity of the successful tenderer for the main contract works once identified; and
2. the programme prepared by the successful tenderer for the main contract works.

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, 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 Sub- 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, at its discretion, whether to accept or reject the change.

## 2.5 Other

As indicated in the Particulars.

# 3 Candidates

## 3.1 Name

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

Where, in its SAQ Response, a Candidate has relied on the capacity 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 Appendix, 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. 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 Appendix, 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 5.14 below).

## 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 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 this Competition.

# 4 Tender Design (not used)

# 5 Requirements for Tenders

## 5.1 Delivery

Tenders must be received in accordance with the means of tender delivery[[2]](#footnote-2) 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 Sub-Contract* or any amendment to them which have been issued will form part of the Sub-Contract. These will include:

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

All other documents, including *Documents for information purposes only* issued to Candidates will not form part of the Sub-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 Sub-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 Appendix (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 part 2 of the Appendix reserved for the 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 2.4, tenders must be consistent with the Candidate’s SAQ Response for this competition. Otherwise, the tender 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.

Amounts must be included wherever required in the Form of Tender, part 2 of the Appendix 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(b)(5) or 10(c) 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.

All items and quantities in any Bill of Quantities must be priced.

Candidates must not use negative rates or prices, or omit rates, or use zero rates, in any Bill of Quantities.

If a Bill of Quantities includes an item described as an 'adjustment item', the amount inserted must not exceed \_\_\_\_\_\_ % of the tendered Contract Sum.

If a Bill of Quantities includes method-related charges, the total amount of method-related charges must not exceed \_\_\_\_% of the tendered Contract Sum.

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

## 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 part 2 of the Appendix 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 Employer may invoke section 8.2.

## 5.10 Date for Substantial Completion

This is the date set for the completion of the main contract works and is as set out in part 1 G of the Schedule to the main contract and is included in Appendix 3 to these Instructions.

## 5.11 Not used

## 5.12 Project Supervisor

Part 1 C of the Form of Tender and Schedule to the main contract [provided at Appendix 3 to these Instructions] states whether the Contractor is to be appointed Project Supervisor for the Construction Stage in accordance with the Safety, Health and Welfare at Work (Construction) Regulations 2013.

## 5.13 Other

Not 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 to 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.

Where the Particulars state that electronic submission is the required means of delivery, the signature (and if applicable, the seal) must be visible on the electronic form of Tender. The Contracting Authority reserves the right to seek a hard copy of the Form of Tender at a later date.

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

## 5.15 Deposits

The Deposit[[3]](#footnote-3) 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 of 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:
   1. seeking clarification from the Tenderer in respect of the relevant submissions by way of a meeting or written submission;
   2. requesting the Tenderer to provide information or items which has/have not been provided or has/have been provided in an incorrect form;
   3. waiving a requirement which in the Contracting Authority’s opinion is minor or procedural; and/or
   4. take any other step permitted by law;

in accordance with applicable law and principles.

# 8. Corrections, unbalanced and abnormal tenders and rates

## 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, at 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 part 2 of the Appendix) 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 Authorities 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)].

# 9 Assessment of Tenders

## 9.1 Award Criteria

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 Clarification

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 above 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 whichever is appropriate.

## 9.4 Review[[4]](#footnote-4)

Important Note: Any review procedure available in this Competition (other than legal proceedings under Order 84A of the rules of Superior Courts[[5]](#footnote-5)) 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.

## 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 Change 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 10.2 of the Instructions, the Contractor 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.*

Where a contract is regulated by the European Procurement Regulations the Contractor 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.

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

## 10.3 Letter to Successful Tender

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:

* confirmation from a surety who is authorised to do guarantee business in Ireland that they will provide the performance bond required under the Sub-Contract
* evidence of the insurances required by the Sub-Contract
* evidence of tax compliance from the Revenue Commissioners
* the agreement of the Tenderer to enter into the Sub-Contract with the successful tenderer for the main contract
* the agreement of the Tenderer to the [main] Contractor’s programme issued during the course of the tender competition

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 the 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

instruct the Contractor to 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)[[6]](#footnote-6).

## 10.4 Letter of Acceptance

The Contractor may issue the Letter of Acceptance at any time during the Tender validity period referred to in section 10.1 above.

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 include in the Sub- Contract.

## 10.5 Agreement

Following issue of the *Letter of Acceptance* the Contractor will inform the Reserved Specialist of the arrangements for the execution of the Agreement. The Reserved Specialist will be required to execute the Agreement under seal unless the Particulars say that the Sub-Contract may 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 Sub-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 unless otherwise indicated.

|  |  |
| --- | --- |
| **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 |
| European 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. |
| Sub-Contract | the contract that may be awarded by the Contractor for the Reserved Specialist Works at the end of the competition |
| Reserved Specialists | Reserved Specialists are those who are to be appointed by the Contractor following a tender competition administered by the Employer. |
| 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 Sub-Contract documents |
| Tender | a tender for the Sub-Contract, including the completed Form of Tender, completed Appendix 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 | Specialist Sub-Contract for Title of Sub-Contract |
| comprising | General description of the Sub-Contract Works |
| which form part of | General description of the Main Contract Works |
| At | Location of the works |
| Employer for the Main Contract | Name of Contracting Authority  The name of the Successful Tenderer for the main contract works who will, once appointed, award the Sub-Contract will be provided to the Candidate 14 days prior to the Tender Date. A shortlist of candidates invited to tender for the main contract is provided at Appendix 3 to these Instructions. |
| Using  (Instructions section 1.3) | The Agreement and Conditions of Sub-Contract (NN) published on the Construction Industry Federation’s website on the date 10 days before the latest date for the submission of Tenders (disregarding any amendments posted on that date) available at : <https://cif.ie/download/pwc-cif-nn-sub-contract-4th-edition-mar-2024-price-variation-mechanisms/?wpdmdl=63966&refresh=673b74f124d271731949809> |

|  |  |
| --- | --- |
| 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. |

|  |  |  |
| --- | --- | --- |
| 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) |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Timetable for Competition | Contract Notice date: | *(insert date or Not Applicable)* | | Reference: | *(insert reference or Not Applicable)* |
|  | Issue Tender Documents: | | *(insert date)* | | |
|  | Receipt of Tenders: | | As indicated under “Tender Date” | | |
|  | Interviews (if required): | | *(insert date or timeframe e.g. within subsequent 2 weeks)* | | |
|  | Decision on Contract Award: | | *(insert date)* | | |

|  |  |
| --- | --- |
| Tender Date (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[[7]](#footnote-7): | |  |
| 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 Sub-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 Sub-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 Sub-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 |

Details of how tenders are to be packed and marked

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| --- | --- |
| Format of Tender Submissions (Instructions section 5.4) | Where delivery is by hand or registered prepaid post, Candidates should submit their tender in a sealed envelope or box (the “Outer Envelope[[8]](#footnote-8)”) 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 Sub-Contract, and the content, and, if more than one copy is required, the copy number: for example “Tender of ABC Limited for [sub-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". |

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| --- | --- |
| 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 of main contract works | As Part 1 G of the Form of Tender and Schedule to the main contract provided at Appendix 3 to these Instructions |

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

|  |  |
| --- | --- |
| Mandatory Options  (Instructions section 6.2) | Are mandatory options required?  List the options that a Candidate must tender) |
| 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.) |

|  |  |
| --- | --- |
| Tender validity period (Instructions section 10.1) | As stated in Form of Tender in volume B. |
| Agreement (Instructions section 10.5) | To be executed under |

|  |  |
| --- | --- |
| 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. |

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Award Criterion (Instructions section 9.1) | |  |  | | --- | --- | | **Most Economically Advantageous Tender** | | | **Price** | | | *Enter Price Criterion/Not Applicable* | **0% / Not applicable** | | *Enter Price Criterion/Not Applicable* | **0% / Not applicable** | | *Enter Price Criterion/Not Applicable* | **0% / Not applicable** | | **Technical Merit** | | | *Enter Technical Criterion/ Not Applicable* | **0% / Not applicable** | | *Enter Technical Criterion/ Not Applicable* | **0% / Not applicable** | | *Enter Technical Criterion/ Not Applicable* | **0% / Not applicable** | | *Enter Technical Criterion/ Not Applicable* | **0% / Not applicable** | | *Enter Technical Criterion/ Not Applicable* | **0% / Not applicable** | | *Enter Technical Criterion/ Not Applicable* | **0% / Not applicable** | | *Enter Technical Criterion/ Not Applicable* | **0% / 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 Tender

An outline programme for the Reserved Specialist works which must have regard to the Preliminary Safety and Health Plan provided with these Instructions.

Details of the Reserved Specialist’s initial management arrangements for performing its Sub-Contract responsibilities, including systems, methods, planning and other preparations for providing personnel and resources, programming, recording, consultation, co-ordination and co-operation, and for flexibility, as referred to in the Sub-Contract.

(The list of Works Proposals here should match the list in part 1B of the Appendix to the Form of Tender).

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 sections of 2.4 of these Instructions.

## Appendix 2 Additional Information

## Additional Information to be submitted with Tender

*CA Note: Include any additonal information not already specified in the Particulars, required of Tenderers to complete their submission.*

# Appendix 3 Information Pack

(Instructions sections 1.2, 1.3)

## Information Pack

The identities of those candidates shortlisted and invited to tender for the main contract;

A copy of part 1 of the Form of Tender and Schedule to the main contract issued as part of the main contract tender;

A copy of the Collateral Warranty (MF 1.12) completed as necessary by the Contracting Authority;

# Appendix 4 Template to be used by Employer to calculate Comparative Cost of Tender

## Tender Evaluation

For the purpose of tender evaluation (in relation to clause 10(b)(5)):

1. If the tendered percentage addition to costs of labour is negative, blank or less than 35%, 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.

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

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Sub- Contract Sum | | | | € |
| Tendered Sub- Contract Sum (Form of Tender) | | | |  |
| **Tendered Compensation Events Charges** | | | |  |
| € | labour | x | % adjustment (Appendix, part 2C) |  |
| € | materials | x | % adjustment (Appendix, part 2C) |  |
| € | plant | x | % adjustment (Appendix, part 2C) |  |
| days | Site Working Days’ delay | x | tendered rate (Appendix, part 2C)[[9]](#footnote-9) |  |
|  |  | 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. 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-2)
3. 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-3)
4. 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-4)
5. Where the Competition is subject to the European Procurement Regulations. [↑](#footnote-ref-5)
6. A sub-contract should not be awarded to any firm which cannot produce a tax clearance certificate except as a last resort. In such a case, the advance approval of the Department of Finance must be obtained. [↑](#footnote-ref-6)
7. where the competition is subject to the European Procurement Regulations, either “electronic submission“ or “the eTenders platform” must be entered. [↑](#footnote-ref-7)
8. This may be an outer box with sealed wrapping. [↑](#footnote-ref-8)
9. Only to be used where Sub-clause 10.7.1 (2) – ‘Tendered rate of delay costs’ is selected in the Schedule, part 1K of the Main Contract. [↑](#footnote-ref-9)