**Instruction to Tenderers**

for

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*The*

*Project*

using the

**Procedure for WORKS CONTRACTORS**

**where the Contract to be awarded is PW-CF2, PW-CF4, PW-CF7 or PW-CF8**

Office of Government Procurement

Instruction to Tenderers

for Works Contracts

under a Restricted/ Negotiated/ Competitive Dialogue Procedure

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#### Preface

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|  | The Employer 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. |

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|  | The Employer makes no representation, warranty, or undertaking in or in connection with these documents. The Employer 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 Employer’s behalf in connection with them. Neither the Employer 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. |

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|  | The Employer 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 Employer nor its officers, employees, or advisers will be liable to any Candidate or other person. The Employer also reserves the right to change any part of these documents, including the procedures and time limits described in them. The Employer 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. |

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|  | Neither the Employer nor its officers, employees, or advisers have any responsibility for Candidates’ costs or losses in connection with this competition. There will be no contract between any Candidate and the Employer 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 Contract has been entered by issue of a Letter of Acceptanceor Tender Acceptance*.* These Instructions to Tenderers will not be part of any Contract. |

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|  | 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. |

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|  | 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. |

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Preface, Continued

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|  | The Employer 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 Employer 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. |

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

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|  | It will be a condition of the award of the Contract that the Candidate must comply with the terms of Department of Finance Circular 43/2006[[1]](#footnote-1): Tax Clearance Procedures: Public Sector Contracts, or any replacement. (See section 10.3.)  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 National Employment Rights Authority (www.employmentrights.ie) |

#### 1. Introduction

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| 1.1 This procedure | The Employer has sent a contract notice for the Works to etenders and where appropriate a similar notice has been simultaneously sent to the Office for Official Publications of the EC for publication in the Official Journal of the European Union. The Candidates have submitted responses to the Suitability 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 Employer 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. |

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| 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 or Tender Acceptance, the Agreement (when relevant) and the Conditions of Contract which the Employer 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 or attached to the Tender Acceptance.  Documents not to be included in the Contract   * the invitation letter * these Instructions (other than Annex II Appendix 2 (if required to be submitted with tender)) * 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. |

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**1. Introduction** Continued

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| 1.3 The Contract | If the Employer enters a Contract for the Works, it will do so by issuing a Letter of Acceptance or Tender Acceptance. The Contractor and the Employer will subsequently execute an Agreement. The Contract, if formed, will consist of:   * the Agreement * the Letter of Acceptance or Tender Acceptance to be issued by the Employer 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) * Parent Company Guarantee (Annex II to Appendix 2 of these Instructions) * Where required, collateral warranties from Specialists.   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 (other than Annex II to Appendix 2 of these Instructions). * any other information submitted with Tenders and not called for in these Instructions or in post tender clarifications. |

#### 2. Communications

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| 2.1 Contact | All communications between a Candidate and the Employer concerning this competition must be in writing (which includes email if an address is provided in the Particulars), and must be between the Candidate’s contact person notified to the Employer in theCandidate’sSuitability Assessment submission for this competition and the Employer’s contact person identified in the Particulars, or any changed contact details notified by the Employer or the Candidate. The Employer will notify each Candidate of any changes to its contact details. Each Candidate must notify the Employer of any changes to its contact details. |

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| 2.2 Supplemental information | The Employer may issue supplemental information to all Candidates. 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 Employer will not normally issue supplemental information later than the date stated in the Particulars but is entitled to do so at any time. |

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| 2.3 Queries | Candidates may ask queries in writing by post (or email if an address is provided in the Particulars) using the Employer’s contact details for queries 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 Employer may at its discretion respond to queries raised after that date. The Employer has no obligation to respond to queries. If the Employer 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 Employer decides that the response should be sent to all Candidates, the Employer will so notify the Candidate asking the query, who will have the option of withdrawing the query or having any response sent to all Candidates. The Employer 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.  Responses to queries will not be part of the Contract, unless they state that they are amending the Contract documents.  If a Candidate becomes aware of any ambiguity, discrepancy, error, or omission in or between these documents, it must immediately notify the Employer, even after the time for submitting queries has expired. |

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| 2.4 Prequalification | A Candidate wishing to change any of the information in its prequalification submission for this competition must do so by written request to the Employer. The Employer may decide, in its discretion, whether to accept or reject the change. |

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| 2.5 Other | As indicated in the Particulars |

#### 3. Candidates

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| 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. |

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| 3.2 Parent company | If a Candidate has relied on the capacity or qualifications of a parent company in its suitability assessment submission for this competition the Candidate must state in Schedule, Part 2B submitted with its Tender that the parent company will supply a parent company guarantee in the form in the Works Requirements, and must include with the Tender an undertaking of the parent company to give that guarantee, as set out in Annex II Appendix 2 to these Instructions. |

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| 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). Where the role of Health and Safety Supervisor is to be provided the party providing that skill for the Candidate must be an individual or a company (i.e. a body corporate) that constitutes an acceptable entity. |

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| 3.4 Mandatory Exclusion | Although invited to tender, a Candidate shall be excluded if, to the Employer’s knowledge at the time of the award decision, it has been convicted of an offence involving   * participation in a proscribed criminal organisation or * corruption or * fraud or * money laundering. |

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| 3.5 Discretionary Exclusion | Although invited to tender, a Candidate may be excluded if, at the time of the award decision, it   * is subject to a bankruptcy or insolvency procedure or process of a kind specified in Regulation 53, paragraph (5) of the European Communities (Award of Public Authorities’ Contracts) Regulations 2006 or * has been found guilty of professional misconduct by a competent authority that is authorised by law to hear and determine allegations of professional misconduct against persons that include the Candidate or * has committed grave professional misconduct provable by means that the Employer can demonstrate or * has not fulfilled an obligation to pay a social security contribution as required by a law of Ireland or the country or territory where the Candidate ordinarily resides or carries on business or * has not fulfilled an obligation to pay a tax or levy imposed by or under a law of Ireland or the country or territory where the Candidate ordinarily resides or carries on business or * has provided a statement or information to the Employer or another contracting authority knowing it to be false or misleading, or has failed to provide to the Employer or another such authority a statement or information that is reasonably required by the Employer or other authority for the purpose of awarding the public contract concerned. |

#### 4. Tender Design (if applicable)

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| 4.1 Health and safety coordinator | This section 4.1 applies if the Particulars (under H&S Coordinator) state a date by which each Candidate is to have a health and safety coordinator for design appointed for the Candidate’s pre-contract design.  The Employer has appointed a project supervisor for the design process. Each Candidate must supply a competent health and safety coordinator for the Candidate’s pre-contract design, to be appointed at the Candidate’s expense by the project supervisor for the design process. Each Candidate must ensure that its health and safety coordinator accepts the appointment before any design by or for the Candidate starts, and in any event on or before the date stated in the Particulars.  The appointment must be in the form in Appendix 4 to these Instructions to Tenderers, or another form agreed between the parties to the appointment. Clause 9 of the form of appointment in Appendix 4 states the insurances that the health and safety coordinator must have.  If a health and safety coordinator for pre-contract design is named in the Candidate’s prequalification submission for this competition, the Candidate must ensure that the person so named, or an alternative person acceptable to the project supervisor for the design process, accepts the appointment. If no health and safety co-ordinator is named in the Candidate’s prequalification submission, the Candidate’s health and safety coordinator must be acceptable to the project supervisor for the design process.  If the Candidate proposes a health and safety co-ordinator before the last date for submission of queries (as stated in the Particulars) and submits a suitability questionnaire for the proposed health and safety co-ordinator (either because none was previously submitted or because the Contractor wishes to make a change) the Employer will endeavour to notify the Candidate of the decision of the project supervisor for the design process before date for submitting tenders.  The Candidate must ensure that, within 10 days after the final date for submission of Tenders, the Candidate’s health and safety coordinator for pre-contract design submits to the project supervisor for the design process appointed by the Employer a report demonstrating that the health and safety-coordinator has complied with its obligations under its appointment.  The party providing the Health and Safety Coordinators skill for the Candidate must be an individual or a company (i.e. a body corporate) that constitutes an acceptable entity. |

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| 4.2 Resources | If the Candidate does any design for the competition, or if any design is done for the Candidate for the competition, the Candidate must allocate resources to enable the designer to comply with regulation 15 of the Safety, Health and Welfare at Work (Construction) Regulations 2013. This must include any resources described in the Candidate’s prequalification submission for the competition. |

#### 5. Requirements for Tenders

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| 5.1 Delivery | Tenders must be received at the place stated in the Particulars, at or before the latest time stated in the Particulars (or a later date and time advised by the Employer 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.  The completed tender documents should be sent in the manner described in the Particulars i.e. by registered post or delivered by hand [Faxed or emailed submissions will not be accepted] to the address stated in the Particulars. It is the responsibility of Candidates to obtain a receipt, indicating time when submission was received, from the Contracting Authority.  Tenders received late will not be considered.  All Tenders received on time will be opened promptly after receipt. |

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| 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 * Form of Tender and Schedule * the Pricing Document * Novated Design Documents (Volume D) * the Letter of Acceptance or Tender Acceptance issued by the Employer and any post-tender clarifications listed in the letter or attached to the Tender Acceptance * Form of Collateral warranty from Specialists (where required) fully completed. * Works Proposals to be submitted with the Tender (where required) * Parent Company Guarantee to be submitted with tender (where 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 (other than Annex II to Appendix 2 of these Instructions). * any other information submitted with Tenders and not called for in these Instructions or in post tender clarifications. |

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5. Requirements for Tenders, Continued

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| 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. |

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| 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   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. If replacement pages are issued as supplemental information, Candidates must insert the most recently issued pages in place of the replaced pages.  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. Any such amendments/alterations may result in the Candidate’s tender being rejected. |

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| 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. |

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| 5.6 Qualification | Tenders must not be qualified. They must not be accompanied by a cover letter or any other information not included in Volume B or Volume C or specified in these documents. |

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| 5.7 Consistency with suitability assessment | Subject to 2.4, tenders must be consistent with the Candidate’s and where applicable its Specialist’s suitability assessment submissions for this competition. Otherwise, the tender may be disqualified at any time during the competition at the Employer’s discretion. |

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5. Requirements for Tenders, Continued

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| 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 Employer 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 Specialists are to be novated 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 Employer 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 5 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 Employer controlled sums such the Reserved Sum (if applicable), Contract Sums for Novated Specialists, nor to any associated amounts as referred to at 1 – 4 above. |

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5. Requirements for Tenders, Continued

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| 5.8 Pricing(continued) | 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 Employer may proceed according to sections 7 or 8. |

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| 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 Employer’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. |

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| 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. |

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| 5.11 Specialists | Candidates must name in the Schedule, part 2E any Specialists called for in that part. Works Proposals must also include any details about Specialists called for in Appendix 1 to these Instructions.  Ifa Candidate has named Specialists in its pre-qualification submission for this competition, the Candidate must name those same Specialists (having met the suitability standard) in the Schedule, part 2E.  Candidates must also provide a letter from each Specialist named in the Works Requirements or in the Schedule, part 2E, agreeing to enter a contract with the Candidate to perform the identified element if the Candidate is awarded the Contract.  When a Candidate wishes to change a Specialist (1) with which it was initially pre-qualified by offering an alternative or substitute or (2) an alternative to a panel of Specialists named by the Employer. [The Candidate may not offer an alternative to a Specialist that is to be novated to the successful tenderer.] In the case of (1) it should indicate this in writing with a new suitability assessment questionnaire for the proposed new Specialist to the Employer before the last date stated in the Particulars. Furthermore, it should also clearly name the proposed alternative or substitute Specialist in the Schedule, part 2E provided the alternative or substitute has not already been rejected by the Employer. |

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5. Requirements for Tenders, Continued

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| 5.11 Specialists(continued) | If a change is being proposed the Candidate must submit a completed Suitability Assessment Questionnaire for the alternative or substitute Specialist providing the same level of information as was required for the Specialists at the Candidate’s prequalification stage. The Employer will conduct a suitability assessment of the alternative Specialist on the same basis as the original procedure used for the initial Specialists.  Following the assessment, if the Employer concludes that the Candidate would not have been invited to tender with the alternative or substitute Specialist (for example because the alternative Specialist does not meet the suitability standard i.e. the minimum standards required for initial Specialists pre-qualified with Candidate), the Candidate will be excluded from further participation in the competition.  When a Candidate wishes to change a Specialist listed in the Works Requirements ((2) above), by offering an alternative or substitute, it should indicate this in writing with a new suitability assessment questionnaire for the proposed new Specialist to the Employer before the last date stated in the Particulars. Furthermore, it should also clearly name the proposed alternative or substitute Specialist in the Schedule, part 2E provided the alternative or substitute has not already been rejected by the Employer. If a change is being proposed the Candidate must submit a completed Suitability Assessment Questionnaire for the alternative or substitute Specialist providing the same level of information as was required for the listed Specialists in the Works Requirements. The Employer will conduct a suitability assessment of the alternative Specialist on the same basis as the original procedure used for the listed Specialists in the Works Requirements. Following the assessment, if the Employer concludes that the Candidate would not have been invited to tender with the alternative or substitute Specialist (for example because the alternative Specialist does not receive marks that are equal to or greater than the marks obtained by the panel Specialist with lowest marks), the Candidate may not include that Specialist in the tender submission. However it may opt to include one of the panel Specialists provided it has named the panel Specialist in Schedule Part 2E and has included a letter from that Specialist named in Schedule Part 2E agreeing to enter a contract with the Tenderer to perform the identified element if the Tenderer is awarded the contract.  If the Candidate proposes a Specialist as an alternative to one on a panel before the last date to make such a proposal (as stated in the Particulars) including submitting a Suitability Assessment Questionnaire for the proposed Specialist, the Employer shall notify the Candidate of the decision on the Specialist before the last date for submitting tenders.  After Tender submission and before issue of a Letter of Acceptance or Tender Acceptance, if a Tenderer demonstrates to the Employer’s satisfaction that any of the insolvency events listed in sub-clause 12.1.1(11) of the Conditions has occurred to a Specialist whose letter of agreement was submitted with the Tender, or that such a Specialist has repudiated the letter of agreement (a letter from the Specialist setting out the reasons for the repudiation will be required), the Tenderer may, with the Employer’s consent, propose a substitute Specialist, and the above provisions for substitution apply.  Note: If Specialists are not required for a particular project the words ‘not applicable’ should be entered by the Contracting Authority opposite the relevant reference (i.e. section 5.11) in the Particulars. |

5. Requirements for Tenders, Continued

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| 5.12 Project Supervisor | The Contractor or its nominee will be appointed as project supervisor for the construction stage (or for both the design process and 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 (or for the design process and the construction stage) in its suitability assessment submission for this competition, the Candidate must name in Works Proposals the project supervisor(s) so named, subject to section 5.11. Where a Candidate wishes to change a project supervisor that had been named in its suitability assessment submission by offering a substitute it must indicate this in writing with the appropriate Health and Safety Supplement (3.4.2 (HS) or QC1 (PSDP)) for the proposed project supervisor before the last date stated in the Particulars.  If the Candidate has not named a nominee in its prequalification submission for appointment as project supervisor for the construction stage (or for the design process and the construction stage, if required by the Works Requirements) 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. |

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| 5.13 Other | Not applicable |

5. Requirements for Tenders, Continued

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| 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 Employer; * 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 Employer 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. |

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| 5.15 Deposits | The Deposit 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

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| 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. |

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| 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. |

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| 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. |

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| 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

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| --- | --- |
|  | If a Tenderer fails to comply in any way with these Instructions, the Employer may (but is not obliged to) disqualify the Tenderer concerned and reject any Tender concerned as non-compliant, and, without prejudice to this right, the Employer may (but is not obliged to) seek clarification or further information (that does not materially alter a Tender) from the Tenderer in respect of the relevant tender or take any other step permitted by law, including the principles of equal treatment, non-discrimination, transparency and proportionality. |

#### 8. Corrections, unbalanced, abnormal tenders and rates and permitted adjustments for Specialist Works

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| --- | --- |
| 8.1 Errors | The Employer 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 Employer will decide which amounts and rates are to be adjusted.  Instead of adjusting the amounts added, the Employer 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 Employer reserves the right to open all Pricing Documents from tenderers without the need to revert to the tenderers for permission. |

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| 8.2 Unbalanced Tenders | If, in the Employer’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 Employer 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 Employer 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 Employer 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 Employer may reject the tender. |

*Continued on next page*

#### 8. Corrections, unbalanced, abnormal tenders and rates and permitted adjustments for Specialist Works, Continued

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| --- | --- |
| 8.3 Abnormally low tenders, abnormally high or low rates or prices | If, in the Employer’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 Employer 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(1) of the European Communities (Award of Public Authorities’ Contracts) Regulations 2006. Any failure to provide such information, when requested, may exclude the tender from further consideration. If, having considered the information provided, the Employer is of the view that either the Contract Sum is abnormally low or any tendered amounts are abnormally low or abnormally high, the Employer 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.  [Employers 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)].*.* |

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| --- | --- |
| 8.4 Permitted adjustment 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 Tender Sum of the Successful Tenderer will be adjusted to arrive at the final Tender Sum for the Works by deleting the Reserved Sum in the Pricing Document and replacing it with the agreed lump sum fee for the Standing Conciliator. |

#### 9. Assessment of Tenders

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| --- | --- |
| 9.1 Award Criteria | The award criterion is: (i) the most economically advantageous Tender meeting the specified minimum criteria (if any) or (ii) the lowest price only as stated in the Particulars.  The assessment of the Most Economically Advantageous Tender (where applicable) 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. |

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| 9.2 Clarification | The Employer may seek clarification or further information or both from one or more Tenderer in relation to its tender submission. The Employer may meet with one or more Tenderer for these purposes. The Employer will confirm to the Tenderer concerned in written minutes any clarification arising from a meeting and the Tenderer will be required to confirm or correct the minutes in writing. See also section 10.4. |

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| 9.3 Compliance | The Employer may assess whether any of the grounds for exclusion in section 3.4 or 3.5 above apply. The Employer may assess whether Tenderers continue to meet the criteria on which they were selected for invitation to tender.  The Employer 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 Employer may proceed according to sections 7 or 10 whichever is appropriate. |

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| --- | --- |
| 9.4 Review | A Tenderer who disputes a decision of the Employer about whether a Tender complies with these Instructions must in the first instance raise the matter with the Employer within 7 days of the matter coming to its attention. Failing resolution of the matter, the Tenderer may, within 7 days after receiving the Employer's response, request the Employer in writing to refer the matter to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the Sanctioning Authority) for review and recommendation.  Within 7 days of receiving the Tenderer's request, the Employer should submit to the Sanctioning Authority a statement giving reasons for the initial decision together with a copy of the Tenderer written request. A copy of the Employer's statement should also be forwarded at the same time to the Tenderer. The Tenderer may then make a further written submission to the Sanctioning Authority within 7 days.  Any review or recommendation by the Sanctioning Authority will not be binding on the Employer or the Tenderer, and will not affect their rights or obligations. |

Continued on next page

#### 9. Assessment of Tenders, Continued

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| --- | --- |
| 9.5 Assessment of comparative cost | The Employer will assess the Comparative Cost of each Tender using the template in Appendix 5 to these Instructions.  For the purpose of assessing the Comparative Cost of Tenders only, the Employer will assume that there will be Compensation Events involving payment of the amounts stated in Appendix 5 to these Instructions.  The Comparative Cost of Tender will be carried out to each Tender before the adjustment referenced in section 8.4 is carried out for the agreed lump sum fee for the Standing Conciliator (where applicable). |

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| 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 price only MEAT criteria are used. |

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| --- | --- |
| 9.7 Change in circumstances | If, as a result of a change in circumstances or otherwise, any information given by a Candidate to the Employer, in a Tender or otherwise, including in a prequalification questionnaire, 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 Employer as soon as it becomes aware of this. If appropriate, the Candidate may make a request under section 2.4 to change information in its prequalification submission.  If it comes to the Employer’s attention that   * there has been a change in circumstances concerning a Candidate that could affect the Employer’s assessment of that Candidate’s Tender or the Employer’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 Employer may (but is not required to) revise its assessment of the Candidate’s Tender or prequalification on the basis of the information then available to the Employer. |

#### 9a. Negotiated Procedure

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| 9a. Negotiated Procedure | **Note:** Negotiated Procedure should only be used in limited/ exceptional circumstances where negotiation is permitted by the EU Procurement Rules. |

#### 10. Award Process

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| --- | --- |
| 10.1 Tender validity period | The Employer may accept a Tender any time within the time stated in the Particulars. |

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| 10.2 Notification | As soon as practicable after reaching the award decision, the Employer will inform all Tenderers of its decision.  If the EU procurement rules apply the notification to the Tenderer to whom the Employer 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 EU procurement rules do not apply the notification to the Tenderer to whom the Employer 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 EU procurement rules the Employer will not issue the *Letter of Acceptance (M.F. 1.4) or Tender Accepted* 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 Contract, or any contract or other obligation. The Contract will be formed only by issue of the *Letter of Acceptance or Tender Accepted.* |

|  |  |
| --- | --- |
| 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 Employer any or all of the following:   * the performance bond required under the Contract * evidence of the insurances required by the Contract * a Tax Clearance Certificate or demonstrate a satisfactory level of subcontractor tax compliance from the Revenue Commissioners[[2]](#footnote-2) * any required appointment as project supervisor for the construction stage or the design process and the construction stage |

*Continued on the next page*

**10. Award Process,** Continued

|  |  |
| --- | --- |
| 10.3 Letter to Successful Tenderer, Continued | 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 Employer 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* or *Tender Acceptance* to the Tenderer to whom the *Letter to Successful Tenderer* was addressed (even though the documents have not yet been provided)[[3]](#footnote-3). |

|  |  |
| --- | --- |
| 10.4 *Letter of* *Acceptance* or *Tender Accepted* | The Employer may issue the *Letter of Acceptance* or *Tender Accepted* 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* or *Tender Accepted* of the clarified Tender, and will be included in the Contract. |

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| --- | --- |
| 10.5 Agreement | Following issue of the *Letter of Acceptance* the Employer 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 may be executed under hand. |

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| --- | --- |
| 10.6 Award Notice | The Employer will, after award, send an award notice (if appropriate) to the Office for Official Publications of the EC, 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 Employer for the Works at the end of the competition | | Novated Specialists | Novated Specialists are those whose contract with the Employer is to be novated to the Contractor. They are listed in Part 1F (iii) to the Form of Tender and Schedule. | | Reserved Sum | The sum provided in the Pricing Document to cover the estimated fee for the service of Standing Conciliator. Where the identity of the Standing Conciliator and their lump sum fee is agreed between the parties prior to the issue of the Letter of Acceptance, the Reserved Sum will be adjusted in accordance with section 8.4. | | 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 Employer 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 Employer 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 [2004/18/EC Article 1(8) and SI No 329 0f 2006 Regulation 3(1)] | |

#### Particulars

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

|  |  |
| --- | --- |
| Tender for | Title of Contract |
| comprising | General description of the Works |
| At | Location of the works |
| For | Name of Employer |
| Using  (Instructions section 1.3) | 1. Where using the Contractor Designed forms of Public Works Contract the following shall apply:   The form of Conditions set out in the Public Works Contract with a cited revision reference commencing with v2 published on <http://constructionprocurement.gov.ie/circular-documents/> on the date 10 days before the latest date for receipt of Tenders (disregarding any amendments posted on that date)   1. Where using Investigation forms of Public Works Contract the following shall apply:   The form of Conditions set out in the Public Works Investigation Contract published on [http://constructionprocurement.gov.ie/ contracts/](http://constructionprocurement.gov.ie/circular-documents/) on the date 10 days before the latest date for receipt of Tenders (disregarding any amendments posted on that date). |

|  |  |  |
| --- | --- | --- |
| Employer’s contact details  (Instructions section 2.1) | Contact name | |
|  | Address | |
|  | Phone:        Email: | Fax: |

|  |  |  |
| --- | --- | --- |
| 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 Employer will not normally issue supplemental information or responses to queries | dd-mm-yyyy (8 days before latest time for receipt of Tender) |

|  |  |  |  |
| --- | --- | --- | --- |
| Employer’s contact details for queries  (Instructions section 2.3) | Contact name (or 'As above') | | |
| Address (or 'As above') | | |
| Phone:        Email: | Fax: | |
| Change Specialist [Instruction Section 5.11] | Latest date for request to change proposed panel/initial Specialist or Not 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)* |
|  | 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)* | | |

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| --- | --- | --- |
| H&S Coordinator (Instructions section 4.1) | If Candidate is to supply a health and safety coordinator for the Candidate’s design, the latest date for a competent healthy and safety coordinator to be put forward for appointment: | Not applicable. (If required, insert date, which should be soon after the invitation is issued, and before Candidates will start tender design.) |

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

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| --- | --- |
| Tender submissions (in writing) must be sent to (Instructions section 5.1) | Contact name |
|  | Address |

|  |  |
| --- | --- |
| Delivery by (Instructions section 5.1) | hand or registered prepaid post. Tenderers should obtain a signed receipt acknowledging delivery. |

|  |  |  |
| --- | --- | --- |
| Copies (Instructions section 5.3) | Number of Paper Copies of Tender | One |
|  | Number and type of Electronic Copies of Tender: | Not applicable |

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

|  |  |  |
| --- | --- | --- |
| 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 |

Details of how tenders are to be packed and marked

|  |  |
| --- | --- |
| Format of Tender Submissions (Instructions section 5.4) | Candidates should submit their tender in a sealed envelope or box (the “Outer Envelope[[4]](#footnote-4)”) 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. |

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| Language (Instructions section 5.5) | English |

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| --- | --- |
| Pricing  (Instructions section 5.8) | Pricing Format: Fixed Price, 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?  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 |

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Award Criteria (Instructions section 9.1) | |  |  | | --- | --- | | **Most Economical 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**   |  |  | | --- | --- | | **Lowest Price Only** | | | *Enter Lowest (bona fide) Tender Price /Not Applicable* | **100%** | |

#### Appendix 1: Works Proposals

|  |  |
| --- | --- |
| Application | This appendix applies only if the subject of the tender is one of the following contract types:   * Public Works Contract for Civil Engineering Works designed by the Contractor; * Public Works Contract for Building Works designed by the Contractor;   It does not apply if the subject of the tender is the Public Works Investigation Contract. |

|  |  |
| --- | --- |
| Works Proposals to be submitted with Tender | 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 suitability assessment submission, the Works Proposals must be consistent with the suitability assessment submission, subject to sections of 2.4 , 4. 1 and 5.11 of these Instructions. |

#### Appendix 2: Additional Information

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| --- | --- |
| Application | This appendix applies only if the subject of the tender is one of the following contract types:   * Public Works Contract for Civil Engineering Works designed by the Contractor; * Public Works Contract for Building Works designed by the Contractor;   It does not apply if the subject of the tender is the Public Works Investigation Contract. |

|  |  |
| --- | --- |
| Additional Information to be submitted with Tender | A letter from each Specialist named in the Works Requirements or in the Schedule, part 2E, agreeing to enter a contract with the Candidate to perform the identified element if the Candidate is awarded the Contract. |

|  |  |
| --- | --- |
| Additional Information to be submitted with Tender where a Parent Company Guarantee is required | If the Schedule, Part 2B includes a commitment to provide a parent company guarantor, an undertaking of the parent company named in the Schedule, Part 2B in the form of Annex II to this Appendix should be submitted with tender. |

#### Annex I to Appendix 2 - Not Used

#### Annex II to Appendix 2

On Parent Company’s letterhead

|  |  |  |
| --- | --- | --- |
| **To:** | [Name and address of Candidate] | |
|  |  | |
| **Regarding:** | [Title of contract] | |
| **Date:** |  |  |

A Dhaoine Uaisle

We refer to the tender for the above contract submitted by our subsidiary

|  |  |
| --- | --- |
|  | *[Name of Candidate]* |

We confirm that, if the above contract is awarded to the above-named Candidate, we will execute and deliver to you the parent company guarantee required by the contract.

Is sinne, le meas

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#### Appendix III – Information Pack (Instructions sections 1.2, 1.3)

|  |  |
| --- | --- |
| Information Pack |  |

#### Appendix 4: Appointment of Health and Safety Coordinator for Pre-contract Design[[5]](#footnote-5) (Instructions section 4.1)

**THIS DEED** is made on  **BETWEEN**

|  |  |  |
| --- | --- | --- |
| 1. | *The Project Supervisor* |  |
|  | *Whose registered office is at* |  |

|  |  |  |
| --- | --- | --- |
| 2. | *The Health and Safety Coordinator* |  |
|  | *Whose registered office is at* |  |

and

|  |  |  |
| --- | --- | --- |
| 3. | *The Candidate* |  |
|  | *Whose registered office is at* |  |

##### BACKGROUND

A. The Candidate has been invited to submit a tender to

|  |  |  |
| --- | --- | --- |
|  | *Name of Employer* |  |

for

|  |  |  |
| --- | --- | --- |
|  | *Name of Contract* |  |

(the **Project**).

B. The Employer has appointed the Project Supervisor as project supervisor for the design process for the Project, under regulation 6(1)(a) of the Safety, Health and Welfare at Work (Construction) Regulations 2013 (the **Regulations**, which includes amendments and replacements).

C. The Tenderer needs to do design for its tender for the Project. The Candidate has nominated the Health and Safety Coordinator for appointment by the Project Supervisor as health and safety coordinator for the design process.

D. This Deed is for the Project Supervisor to appoint the Health and Safety Coordinator as health and safety coordinator for the design process for the Candidate’s tender design.

##### IT IS AGREED AS FOLLOWS:

1. The Candidate is liable for all the Health and Safety Coordinator’s fees and expenses for its duties under this Deed. The Project Supervisor has no liability to the Health and Safety Coordinator or the Candidate under or in connection with this Deed.
2. In this Deed, **Tender Design** means any design for the Project done by or for the Candidate before the Employer enters a contract with the Candidate or someone else for the execution of the Project.
3. The Project Supervisor appoints the Health and Safety Coordinator as health and safety coordinator for the design process for the Tender Design under regulation 11(2) of the Regulations. The Health and Safety Coordinator’s duties are to assist the Project Supervisor by performing for the Tender Design all of the duties of a project supervisor for the design process under the Regulation 11(1) of the Regulations and to report to the Project Supervisor according to paragraphs 6 and 7 below.
4. The Health and Safety Coordinator’s appointment starts on the date of this Deed and continues for as long as Tender Design is done, but ends if and when

* the Employer enters a contract for the Project with the Candidate or someone else or
* the Project Supervisor terminates the appointment.

1. The Health and Safety Coordinator accepts the appointment.
2. Within 10 days after the final date for submission of tenders for the Project, the Health and Safety Coordinator must submit to the Project Supervisor a report demonstrating that the health and Safety-coordinator has complied with its obligations under this Appointment.
3. The Health and Safety Coordinator must give the Project Supervisor any information, documents, and access the Project Supervisor requires for doing the Project Supervisor’s duties under the regulations.
4. The Health and Safety Coordinator represents and warrants to the Project Supervisor that the Health and Safety Coordinator is and will continue to be a competent person to do its duties under this Deed and has allocated and will allocate sufficient resources to enable itself to do those duties. **Competent person** is construed according to section 2 of the Safety, Health and Welfare at Work Act 2005, and any amendment or replacement.
5. The Health and Safety Coordinator must keep in place, from the date of this Deed until at least six years after the appointment ends, professional indemnity, public liability and employer’s liability insurance with a limit of at least €\_\_\_\_\_\_\_\_\_\_\_\_\_\_ for each and every claim. The insurance must include cover for death or injury resulting from the Health and Safety Coordinator’s performance or non-performance of its duties under this Deed.
6. This Deed is governed by and construed according to Irish law. The parties submit to the jurisdiction of the Irish courts in relation to all matters concerning it.

|  |  |
| --- | --- |
| **Given under the Project Supervisor’s common seal** | |
| *Affix Project Supervisor’s common seal* |  |
| *Signatures of persons authorised to authenticate the seal* |  |
| OR | | |
| **Signed, sealed and delivered by:** | | |
| *Name of attorney:* | |  |
| *Signature of attorney:* | |  |
| *As lawful attorney of the Project Supervisor under a power of attorney dated* | |  |
| *Affix attorney’s personal seal* | |  |
| **In the presence of:** | |  |
| *Name of witness:* | |  |
| *Signature of witness:* | |  |
| *Witness’s occupation:* | |  |
| *Witness’s address:* | |  |
| OR | |
| **Signed on behalf of** | |
| *Name of the Project Supervisor* |  |
| *Signature of authorised person* |  |
| **In the presence of** |  |
| *Name of witness* |  |
| *Signature of witness* |  |
| *Witness’s occupation* |  |
| *Witness’s address* |  |

OR (if the Project Supervisor is an individual)

|  |  |
| --- | --- |
| **Signed, sealed and delivered by:** | |
| *Name of Project Supervisor* |  |
| *Signature of Project Supervisor* |  |
| *Affix personal seal* |  |
| **In the presence of** |  |
| *Signature of witness* |  |
| *Name of witness* |  |
| *Witness’s occupation* |  |
| *Witness’s address* |  |

OR

|  |  |  |
| --- | --- | --- |
| **Signed by** | |  |
| *Name of Project Supervisor* |  | |
| *Signature of Project Supervisor* |  | |
| **In the presence of** |  | |
| *Name of witness* |  | |
| *Signature of witness* |  | |
| *Witness’s occupation* |  | |
| *Witness’s address* |  | |

|  |  |
| --- | --- |
| **Given under the Health & Safety Coordinator’s common seal** | |
| *Affix* **Health & Safety Coordinator***’s common seal* |  |
| *Signatures of persons authorised to authenticate the seal* |  |
| OR | | |
| **Signed, sealed and delivered by:** | | |
| *Name of attorney:* | |  |
| *Signature of attorney:* | |  |
| *As lawful attorney of the* **Health & Safety Coordinator** *under a power of attorney dated* | |  |
| *Affix attorney’s personal seal* | |  |
| **In the presence of:** | |  |
| *Name of witness:* | |  |
| *Signature of witness:* | |  |
| *Witness’s occupation:* | |  |
| *Witness’s address:* | |  |
| OR | |
| **Signed on behalf of** | |
| *Name of the* **Health & Safety Coordinator** |  |
| *Signature of authorised person* |  |
| **In the presence of** |  |
| *Name of witness* |  |
| *Signature of witness* |  |
| *Witness’s occupation* |  |
| *Witness’s address* |  |

OR (if the **Health & Safety Coordinator** is an individual)

|  |  |
| --- | --- |
| **Signed, sealed and delivered by:** | |
| *Name of* **Health & Safety Coordinator** |  |
| *Signature of* **Health & Safety Coordinator** |  |
| *Affix personal seal* |  |
| **In the presence of** |  |
| *Signature of witness* |  |
| *Name of witness* |  |
| *Witness’s occupation* |  |
| *Witness’s address* |  |

OR

|  |  |  |
| --- | --- | --- |
| **Signed by** | |  |
| *Name of* **Health & Safety Coordinator** |  | |
| *Signature of* **Health & Safety Coordinator** |  | |
| **In the presence of** |  | |
| *Name of witness* |  | |
| *Signature of witness* |  | |
| *Witness’s occupation* |  | |
| *Witness’s address* |  | |

|  |  |
| --- | --- |
| **Given under the Candidate’s common seal** | |
| *Affix* **Candidate***’s common seal* |  |
| *Signatures of persons authorised to authenticate the seal* |  |
| OR | | |
| **Signed, sealed and delivered by:** | | |
| *Name of attorney:* | |  |
| *Signature of attorney:* | |  |
| *As lawful attorney of the* **Candidate** *under a power of attorney dated* | |  |
| *Affix attorney’s personal seal* | |  |
| **In the presence of:** | |  |
| *Name of witness:* | |  |
| *Signature of witness:* | |  |
| *Witness’s occupation:* | |  |
| *Witness’s address:* | |  |

|  |  |
| --- | --- |
| OR | |
| **Signed on behalf of** | |
| *Name of the* **Candidate** |  |
| *Signature of authorised person* |  |
| **In the presence of** |  |
| *Name of witness* |  |
| *Signature of witness* |  |
| *Witness’s occupation* |  |
| *Witness’s address* |  |

OR (if the **Candidate** is an individual)

|  |  |
| --- | --- |
| **Signed, sealed and delivered by:** | |
| *Name of* **Candidate** |  |
| *Signature of* **Candidate** |  |
| *Affix personal seal* |  |
| **In the presence of** |  |
| *Signature of witness* |  |
| *Name of witness* |  |
| *Witness’s occupation* |  |
| *Witness’s address* |  |

OR

|  |  |  |
| --- | --- | --- |
| **Signed by** | |  |
| *Name of* **Candidate** |  | |
| *Signature of* **Candidate** |  | |
| **In the presence of** |  | |
| *Name of witness* |  | |
| *Signature of witness* |  | |
| *Witness’s occupation* |  | |
| *Witness’s address* |  | |

#### Appendix 5: Template to be used by Employer to calculate Comparative Cost of Tender

|  |  |
| --- | --- |
| Application | This appendix applies only if the subject of the tender is one of the following contract types:   * Public Works Contract for Civil Engineering Works designed by the Contractor; * Public Works Contract for Building Works designed by the Contractor;   It does not apply if the subject of the tender is the Public Works Investigation Contract. |

|  |  |
| --- | --- |
| Tender Evaluation | For the purpose of tender evaluation (in relation to clause 10.6.4):   1. If any of the tendered hourly rates are left blank or stated less than 75% of the relevant hourly rate (in the case of Craftspersons this means 75% of the Craftsman’s rate, or in the case of General Operatives, 75% x 88% of the Craftsman’s rate, or in the case of Apprentices, 75% x 62% of the Craftsman’s rate) in the Construction Industry Wages and Conditions of Employment Registered Employment Agreement current on the Designated Date, then the hourly rate that will be used will be 75% of the relevant rate (in the case of Craftspersons this means 75% of the Craftsman’s rate, or in the case of General Operatives, 75% x 88% of the Craftsman’s rate, or in the case of Apprentices, 75% x 62% of the Craftsman’s rate) in the agreement. 2. If the tendered percentage addition for costs of materials is negative or blank, the percentage adjustment to the cost of materials that will be used will be 0%. 3. If the tendered percentage deduction for the cost of plant is more than 100% it will be read as a deduction of 100% 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*

#### Appendix 5: Template to be used by Employer to calculate Comparative Cost of Tender, Continued

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

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Contract Sum** | | | | € |
| Tendered Contract Sum (Form of Tender[[6]](#footnote-6)) | | | |  |
| **Tendered Compensation Events Charges** | | | |  |
| hours | craftsperson | x | tendered rate (Schedule, part 2D) |  |
| hours | general operative | x | tendered rate (Schedule, part 2D) |  |
| hours | apprentice | x | tendered rate (Schedule, part 2D) |  |
| € | materials | x | % adjustment (Schedule, part 2D) |  |
| € | plant | x | % adjustment (Schedule, part 2D) |  |
| days | Site Working Days’ delay | x | tendered rate (Schedule, part 2D) |  |
| € | Value per calendar day | x | days in excess of the earliest date for substantial completion[[7]](#footnote-7) |  |
|  |  | x |  |  |
|  |  | x |  |  |
|  |  | x |  |  |
| **TOTAL** | | | |  |

1. As a result of the introduction of the new electronic Relevant Contracts tax (e-RCT) system by the Revenue Commissioners in January 2012 the C2 certificate is no longer in use by subcontractors. This change will require to be reflected in the Department of Finance procedures for tax clearance in relation to public sector contracts and grants. Accordingly Circular 43/2006 is being revised and a replacement will issue shortly. In the interim, more details are available at <http://www.revenue.ie/en/tax/rct/subcontractor.html>  Note that the changes relate to use of the C2 only. [↑](#footnote-ref-1)
2. As a result of the introduction of the new electronic Relevant Contracts tax (e-RCT) system by the Revenue Commissioners in January 2012 the C2 certificate is no longer in use by subcontractors. This change will require to be reflected in the Department of Finance procedures for tax clearance in relation to public sector contracts. Accordingly Circular 43/2006 is being revised and a replacement will issue shortly. In the interim, more details are available at <http://www.revenue.ie/en/tax/rct/subcontractor.html>  Note that the changes relate to use of the C2 only. [↑](#footnote-ref-2)
3. A 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-3)
4. This may be an outer box with sealed wrapping. [↑](#footnote-ref-4)
5. Applies only where the subject of the tender is a Public Works Contract for Civil Engineering Works designed by the Contractor or a Public Works Contract for Building Works designed by the Contractor. [↑](#footnote-ref-5)
6. Where a Standing Conciliator is required in part 1N of the Form of Tender and Schedule a Reserved Sum is used in the Pricing Document to cover the estimated fee for the service. The Tender Sum on the Form of Tender and Schedule will be adjusted in accordance with section 8.4 of these Instructions where the identity of the Standing Conciliator and their lump sum fee is agreed between the parties prior to the issue of the Letter of Acceptance. [↑](#footnote-ref-6)
7. This relates to the Tendered Date in Schedule part 2C. [↑](#footnote-ref-7)