

Information Note on amendments to the Public Works Contract

4 July 2023

On 3 July 2023, the Minister for Public Expenditure, NDP Delivery and Reform and his colleague the Minister of State for Public Procurement and eGovernment announced forthcoming amendments to the suite of Public Works Contracts, including the introduction, for the first time, of Liability Caps, further amendments to the price variation clauses and amendments to the template tender documentation. The amendments will be published in line with the publishing schedule outlined at Appendix 1 of this note commencing on 17 July 2023.

The Ministers' announcement also addressed important developments with respect to the adoption of Building Information Modelling (BIM) and the International Construction Management Standard (ICMS) into the Capital Works Management Framework within the next 6 months. Further details are available [here](#).

This information note:

- Summarises the key forthcoming amendments in further detail;
- Outlines when the amended contracts and associated documents will be made available;
- Advises contracting authorities of the important actions they should take to ensure these amendments are incorporated into tenders.

This Information Note contains important information in relation to forthcoming amendments to the public works contracts. Contracting authorities are asked to take note of these amendments and the scheduled dates for publication, as these have implications on the management of live and planned tenders.

Summary of amendments

Liability Caps – PW-CF1 to PW-CF8

For the first time since their introduction, public works contracts PW-CF1 – PW-CF8 will contain a provision whereby the liability of a contractor to the Employer will be limited to a monetary amount (“the Liability Cap”). Contracting Authorities must state the amount of the Liability Cap in tender documents.

New sub-clauses entitled “Limit on Liability” will be incorporated into public works contracts (**PW-CF1 to PW-CF8**) that provide that the Contractor’s liability to the Employer arising out of or under the contract is limited, to a monetary amount to be stated by the Employer in the Schedule (“the Liability Cap”). The Schedule will provide a default that will apply where the Employer does not state an amount for the Liability Cap – in such instances, the amount of the Liability Cap shall be equal to the Contract Sum. The Liability Cap does not apply in all circumstances and is subject to exclusions (such as death, personal injury or illness, wilful default or gross negligence), and which are stated in the new sub-clauses.

A new Guidance Note, **GN 1.6.5 Liability Caps: Application in the Public Works Contract** will be provided in Pillar 4. The note will describe the operation of the Liability Cap and outline a recommended framework (based on an assessment of risk of loss/damages to the contracting authority and considering relevant value for money considerations) to arrive at an appropriate monetary amount to apply to the Liability Cap for the contract concerned. When setting the amount of the Liability Cap, a contracting authority should conduct a considered assessment of the potential risks associated with the contract, combined with consideration of factors that may influence value for money in the tender process in relation to the value of the project.

Price Variation Clauses – PW-CF1 to PW-CF8

Key Points:

In PW-CF1 – PW-CF5, clause PV1 is removed, and instead a revised and simplified price variation clause based on a simplified version of the former PV2 is included.

The Applicable Factor (and its equivalent in PW-CF6) is removed and instead, the new price variation clause will apply from the Designated Date.

The fixed price period of 24 months for variations in the price of materials and fuel is removed.

The threshold of 15% for recovery for variation in prices of materials and fuel is removed and has been replaced with a range between 3 and 10% which must be set by the contracting authority.

A new price variation clause is included in the short form of the public works contract (PW-CF6).

The amendments in more detail:

For PW-CF1 to PW-CF4

There is no longer an option to use clause PV1 (which uses a proven cost method) for a contract. Instead, only one clause (Clause 15 Price Variation) will apply for adjusting the contract sum in respect of fluctuations in the price of materials, fuel and labour. This new clause 15, based on a simplified and amended version of the former clause PV2, operates on the basis of movements in the specified categories and sub-categories in Table 3 of the CSO's Wholesale Price Indices (ex VAT) for Building and Construction Materials and specified indices covering energy and fuel. The main changes are summarised as follows:

In respect of fluctuations in the price of materials and energy categories:

- The Applicable Factor no longer applies in respect of fluctuations in material prices between the Designated Date (10 days prior to the tender submission) and the Contract Date (the date the contract is awarded) and instead, the new clause applies from Designated Date onwards.
- The fixed price period of 24 months from the Tender Inflation Indexation Date and the adjustment for fluctuations in the prices of materials and fuel after 24 months no longer applies. Instead, the new clause applies for the duration of the contract.
- The 15% recovery threshold no longer applies, and instead contracting authorities must select a threshold value to apply for increases in the price of materials and fuel categories in the contract (which must be between 3% and 10%). The clause will provide that the Employer may recover for downward movements in the indices which are below minus 10%.

- The formula for material prices variations is removed and instead, the same formula now applies for both materials and fuel categories.

In respect of fluctuations in the price of labour –

- The fixed price period for labour is reduced to 2 years applicable from the Designated Date;
- The adjustment for fluctuations in the price of labour using the Consumer Price Index is removed, and instead a revised formula that uses changes in the rates of sectoral employment orders made after 2 years from the Designated Date now applies;

PW-CF5 – Public Works Contract for Minor Building & Civil Engineering Works

- The use of the Applicable Factor is discontinued as per forms PW-CF1 – PW-CF4.
- PV1 is removed and replaced by a new clause 15 – Price Variation, the provisions of which are the same as described for PW-C1 to PW-CF4.
- In addition, in recognition that this form of contract may be used for relatively low value contracts, an option to use a simpler adjustment to the Contract Sum for fluctuations in the price of materials using only the “All Materials” category of Table 3 of the Wholesale Price Indices is provided.

PW-CF6 – the Short Public Works Contract:

- The price adjustment mechanism used to adjust the tendered price for material price increases between the submission of the tender and the award of contract is discontinued and replaced with the amendments to the clause as follows.
- A new clause 18 Price Variation is now included in the contract, that permits adjustments to be made to the Price (for the contract) in respect of fluctuations in the prices of materials and fuel energy sources. The permitted categories of materials that may be used are restricted to [11] main categories in Table 3 of the CSO Wholesale Price Indices.
- In addition, similar to PW-CF5, an option to use fluctuations in only the ‘All Materials’ category of Table 3 of the CSO Wholesale Price Indices is included.
- Similarly, to PW-CF1 to PW-CF5, the contracting authority states the threshold value to apply for increases and the contract provides the threshold value for decreases in excess of 10%.
- There is no adjustment permitted for fluctuations in the price of labour.

Inflation/Supply Chain Co-operation Framework

- In tandem with the above amendments, the Inflation/Supply Chain Co-operation Framework published in May 2022 will no longer be available to contracts to which these amendments will apply and instead, a revised Framework Agreement called the Supply Chain Co-operation Framework will be provided. Employers and Contractors by mutual agreement may continue to use the new Framework in respect of supply chain delay that meets the conditions within the Framework with the amended forms of public works contracts.
- The original Framework published in May 2022 will continue to be available for those projects using public works contracts with a publication date that is prior to 17 July 2023 for forms PW-CF1 – PW-CF5 and 19 July 2023 for PW-CF6.

Amendments to the SAQ

The Suitability Assessment Questionnaires for Works (QW1 to QW4) have also been amended. The amendments include:

- The SAQ is now issued in two separate parts – Part 1 contains Instructions for Applicants, Project Particulars and Suitability assessment Questionnaire. Part 2 is completed and submitted by the Applicant and contains details about the Applicant and a declaration by the Applicant in respect of its submission.
- General updating of provisions for conducting a competition.
- The Reliance on Resources is included in respect of above threshold contract.
- The Grounds for Exclusion are updated.
- Additional Grounds for Exclusion: Sanctions (Russia) are included
- International Procurement Instrument: IPI Measures are included
- Two new Suitability Criteria, Environmental Management Measures and Supply Chain Tracking are included.
- The amount of self-declaration documentation is reduced and replaced by a single declaration in Part 2 of the Questionnaire
- QW4 (Reserved Specialist) is withdrawn and QW1 may now be used to conduct Reserved Specialist competitions.

Amendments to the Instructions to Tenderers

Amendments are also made to corresponding Instructions to Tenders (ITT-Ws) to reflect both amendments made to the contracts and the suitability assessment questionnaires.

Scheduled Dates of Publication

The amended documents will be published on the construction procurement reform website [<link>](#) in three tranches, as summarised below and outlined in further detail in Appendix 1.

Tranche	Date	Documents
1	17 July 2023	PW-CF1 to PW-CF5 and associated documents
2	19 July 2023	PW-CF6 to PW-CF8 and associated documents
3	25 July 2023	SAQ's and associated documents

What Contracting Authorities need to do now

It is essential to use the correct version of tender documents

The new clauses for the Liability Cap and Price Variation will apply to those tenders received on or after 27 July 2023 (27 July being the date 10 days after the date of publication of the amendments, disregarding the day of publication). For those tenders, Contracting Authorities should arrange to issue tenderers with the revised Form of the Tender and Schedule, applicable to the contract being used, and may consider extending their tender deadline(s) to accommodate the implementation of the amendments. Tenderers attention should be drawn to the publication of the revised contracts on the Capital Works Management Framework website.

Contracting Authorities are reminded to use the most recently published version of documents when conducting tenders. In particular, the Instructions to Tenders provides that it is that version of

the relevant contract published **ten days** before the Designated Date on the Capital Works Management Framework website applies to the tender procedure.

The changes outlined in this note have particular implications for live tenders. Where the tender submission dates fall on or after those dates listed below, to ensure that the amendments will be incorporated into the tender procedure, the contracting authority **must** reissue the appropriate amended documentation (as identified below) to tenderers.

Form of Contract	Tender Submission Date	Action Required
PW-CF1 – PW-CF5	On or after 27 July 2023	Reissue the ITT and the FTS with the new versions selecting the threshold above which price adjustments for inflation will take place and the monetary amount for the liability cap. Consider extending the tender deadline if appropriate.
PW-CF6	On or after 29 July 2023	Reissue the ITT and the FTS with the new versions selecting the threshold above which price adjustments for inflation will take place and the monetary amount for the liability cap. Consider extending the tender deadline if appropriate.
PW-CF7 & PW-CF8	On or after 29 July 2023	Reissue the FTS with the new versions stating the monetary amount for the liability cap. Consider extending the tender deadline if appropriate.

Note that each published document has a unique version number and date of publication. The date of publication should be consistent across all documents used. For example, the form of the public works contract to be used in the tender and the corresponding Forms of Tender and Schedules are updated in tandem. Both documents are to be read together, as together they form part of the contract. It is essential that the publication dates match for both these two documents, as must the corresponding Instructions to Tenderers.

To avoid a delay to tender stages, contracting authorities should also commence undertaking a considered assessments of their risk appetite when setting the values for both a Liability Cap and thresholds for recovery for price variation increases and which should be considered in relation to the complexity and scale of the project in question.

Queries

Should you have any questions, please visit the guidance section on our website, or email your query to construction@per.gov.ie.

Appendix 1 - Publishing schedule

17 July 2023

The documents will be published on the construction procurement reform website in three tranches, as described following

1. 17th July 2023, for contract PW-CF1 to PW-CF5:

Contract	Corresponding FTS	Corresponding ITT (Restricted)	Corresponding ITT (Open)
PW-CF1	FTS-1	ITT-W1	ITT-W2
PW-CF2	FTS-2	ITT-W1a	ITT-W2
PW-CF3	FTS-3	ITT-W1	ITT-W2
PW-CF4	FTS-4	ITT-W1a	ITT-W2
PW-CF5	FTS-5	ITT-W1	ITT-W2

- a) Guidance Note 1.6.5 – Liability Caps in the Public Works Contracts
- b) A revised version of Guidance Note 1.5.2 - Price Variation in the Public Works Contracts

2. 19 July 2023, for contracts PW-CF6 to PW-CF8

Form of Contract	Corresponding FTS	Corresponding ITT (Restricted)	Corresponding ITT (Open)
PW-CF6	FTS-6	ITT-W5	ITT-W4
PW-CF7	FTS-7	ITT-W1a (tranche 1)	ITT-W3
PW-CF8	FTS-8	ITT-W1a (tranche 1)	ITT-W3

3. 24 July 2023 - Tranche 3, Suitability Assessment Questionnaires QW1 to QW 3 & Associated Documentation