

# Employer Instructions

## Letter of Intent

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### Introduction

The *Letter of Intent* is a letter based on Model Letter MF 1.3 in the Capital Works Management Framework that issues to the tenderer whose tender is considered to be the most economically advantageous tender or the lowest price where the Treaty principles or EU procurement rules under the Directive do not apply.

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### Model Letter MF 1.3

If a construction contract is below the EU threshold and there is no cross-border interest<sup>1</sup>, a *Letter of Intent* can issue near the end of a tender evaluation exercise. There is no legal obligation on a contracting authority to issue a Letter of Intent. This is very different to works contracts that are governed by the EU procurement rules and principles where a *Letter to Successful Tenderer* MF 1.2d must be issued. The period of 14 days in the *Letter of Intent* Model Form MF 1.3 is discretionary and can be a shorter if required by the contracting authority.

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### When to use and not to use a Letter of Intent

A *Letter of Intent* can be used when the value of a works contract is below the EU threshold and there is no cross-border interest in the works contract. It is recommended as good practice to use a *Letter of Intent*. This is because it allows a contracting authority time to ask for particular information to be provided well in advance of the award of the contract. Furthermore there is a transparent procedure, that the preferred tenderer has been informed of and which a contracting authority can follow should the tenderer fail to provide the information on time. Also this is a very effective way to getting vital information well in advance of awarding a contract. The table below identifies the various circumstances where the letters should be used.

Letter to Unsuccessful Tenderer	
Model Form MF1.2a	Letter issues when EU Directive 2004/18/EC applies
Model Form MF1.2b	Letter issues for below EU threshold contracts where Treaty principles apply because of cross-border interest
Model Form MF1.2c	Letter issues for below EU threshold contracts where there is no cross-border interest and national rules apply
Letter to Successful Tenderer	
Model Form MF1.2d	Letter issues when EU Directive 2004/18/EC applies
Model Form MF1.2e	Letter issues for below EU threshold contracts where Treaty principles apply because of cross-border interest
Letter of Intent	
Model Form MF1.3	Letter issues for below EU threshold contracts where there is no cross-border activity and national rules apply

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<sup>1</sup> i.e. MF 1.2(e) is not required to be issued.  
MF1.3 26/11/2010

### Content of Letter of Intent

It is important that the Letter of Intent specifies what information and other matters should be provided and addressed before the Letter of Acceptance/Tender Acceptance is issued. The type of matters that might be sought are:

- Performance Bond (if required),
- Parent company guarantee (if required)
- Required contract insurance,
- Tax clearance certificate or C2 certificate,
- Appointment of Project Supervisor for the Construction Stage and Project Supervisor for the Design Process (if appropriate),
- Other appropriate documentary conditions.

Failure by the Tenderer to meet a request within the stipulated period of time in the Letter can result in the Employer exercising its right to use one of the three options stated under section 10.3 of ITTW1 or ITTW2 to deal with the situation

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