

EMPLOYERS NOTE

Term Maintenance and Refurbishment Contract

Introduction The Term Maintenance and Refurbishment Works Contract is a new addition to the suite of public works contracts published as part of the Capital Works Management Framework. While it is different to the other forms of public works contracts (PW-CF1 to PW-CF6) in that it is not a fixed price lump sum contract, it adheres to the key principle on which all the Government contracts are based. This objective is that the contract sum included in a contract at award stage is not exceeded when the outturn costs are finalised upon completion.

This contract has been developed in response to the request for a public works contract suited to the needs of contracting authorities trying to respond to urgent maintenance requirements, or where certain types of planned maintenance and refurbishment are envisaged, in a way that is cost affective, provides value for money and does not involve a new procurement process each time unscheduled or certain types of planned maintenance and refurbishment works, have to be carried out. The type of planned and refurbishment work that this contract may be used for are those where the work cannot be accurately defined and one of the other fixed price lump sum contracts (i.e. PW-CF1 to PW-CF6) is not suitable for the project.

General principles

Contract

There are two key components to the contract. These are: (i) a maximum lump sum is included at award stage that expenditure is not permitted to exceed and (ii) a maximum time is included at award stage and after its expiry no further work can be ordered under the contract. A key feature of this contract is that it has framework qualities while at the same time it permits call-off contracts - in the form of Task Orders - to be awarded at short notice to the contractor. This can be of great value to contracting authorities having to deal with urgent and other work associated with existing structures (as described above).

Procurement

In the context of procurement, care needs to be exercised when using the contract - particularly in relation to its framework qualities - to ensure that SMEs are not disadvantaged in tendering and winning maintenance and refurbishment work. It has always been the case that maintenance work has been a particular preserve of the SMEs.

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General principles continued

This should not change with the introduction of this form of contract. It is important that maintenance and refurbishment work is tendered for in a manner that ensures that the key objective of Government as set out in Circular 10/10 to ensure that SME participation in public procurement is not undermined in any way. The two key elements in ensuring that this does not happen are that (i) the scope of work awarded under a single contract is not so large as to prevent an SME having the capacity to carry out the works, and (ii) that the duration of a contract does not preclude SMEs from competing for other work in a particular area over an extended period of time.

Consideration should be given to dividing the works that are envisaged as being carried out into contract lots, for example work could be allocated on the basis of defined geographic areas to ensure that it is procured and executed in manageable sizes that suits SMEs. This has the advantage of facilitating effective competition, even from smaller contractors, and it will also help ensure both a level of flexibility and the quick response times that SMEs can provide.

Other principles

Other underlying principles that are a main feature of this contract are that there is: (i) a competitive tendering process, based on notional quantified works described in the pricing document, and (ii) the issuing of a Task Order to the Contractor to carry out specific items of work.

There is no obligation under the contract for a contracting authority to order any work that the contract covers. The contractual obligation only becomes effective when a Task Order is issued.

Limits

The limits that apply to the use of this contract are:

- (i) The Maximum Sum included in the contract shall **not exceed €1.5 million**, and
- (ii) The maximum duration shall **not exceed 2 years**.

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