

Ref: OGPPO026-001-2016

18 January 2016

Circular 01/16: Construction Procurement – revision of arrangements for the procurement of public works projects

A Dhuine Uasail,

1. I am directed by the Minister for Public Expenditure and Reform to inform you that revised arrangements are being put in place with effect **from 4 April 2016** for the procurement of public works projects using the following forms of Public Works Contracts: PW-CF1 – PW-CF5 inclusive.

Review of the Performance of the Public Works Contract

2. In accordance with Department of Finance Circular 33/06 it continues to be a requirement that the Public Works Contracts be used on Employer designed and “design and build” public works projects in Ireland that are procured directly by a government department, bodies under its aegis, including local authorities or other relevant bodies that provide public services (e.g. schools, voluntary hospitals, etc.). The use of the Capital Works Management Framework (CWMF)¹ also continues to be a mandatory requirement for those same bodies.

A review of the performance of the Public Works Contract was undertaken by the Government Contracts Committee for Construction (GCCC) in 2014. A report² on the review was published by the Office of Government Procurement in December 2014, setting out a series of recommendations followed by a number of stakeholder engagements during 2015. Three interim amendments to the conditions of contract were amongst the recommendations. These amendments have now been incorporated into forms PW-CF1 – PW-CF5 inclusive and the arrangements to be undertaken by contracting authorities are the subject of this Circular.

Revised Requirements

3. Forms of Public Works Contract referenced PW-CF1 – PW-CF5 inclusive have been amended to varying degrees depending on whether they are Employer or Contractor design forms. The significant changes are as follows:

- The Pricing Document is now a Compensation Event to the extent defined in the revised Form of Tender and Schedule, part 1K (17)³ associated with the Employer-designed forms PW-CF1, PW-CF3 and PW-CF5 only.
- A procedure for the contracting authority to directly obtain tenders from Specialist works subcontractors who are to be appointed by the Contractor (Reserved Specialists) is introduced in the Employer-designed forms PW-CF1, PW-CF3 and PW-CF5 only. This is in addition to the existing process of novation which continues to be available on forms PW-CF1 – PW-CF5 inclusive.⁴
- The introduction of a dispute management procedure under forms PW-CF1 – PW-CF4 inclusive.

¹ The Capital Works Management Framework (CWMF) was introduced in Department of Finance Circular 33/06 and its use formally mandated in Department of Finance Circular 06/10.

² “Report on the Performance Review of the Public Works Contract” was published on <http://constructionprocurement.gov.ie> as a News Item on 11 December 2014.

³ FTS 1, FTS 3 and FTS 5.

⁴ The Reserved Specialist procedure replaces the procedure where Specialists proposed by tendering Contractors could be determined by the contracting authority as being suitable for appointment on Employer design contracts. Whilst the Reserved Specialist procedure is not available on Contractor design contracts, pre-qualification of Specialists continues to be available.

- The introduction of a Standing Conciliator under forms PW-CF1 – PW-CF4 inclusive. This is mandatory for projects with a value in excess of €10 million (it is optional for projects between €5m and €10m).

The amended forms of Public Works Contract are those with a cited revision reference of v2.0 or later and are published on www.constructionprocurement.gov.ie

Guidance

4. Three new guidance notes relating to each of the amendments are published on www.constructionprocurement.gov.ie :

GN 1.5.3 – The Pricing Document

GN 2.3.3 – Specialists and the Public Works Contracts

GN 3.1.1 – Dispute Resolution

Implementation

5. Implementation of Amended Forms of Public Works Contracts

(a) Contracting authorities are to use the amended forms of Public Works Contract set out at 3. above on all works procurements commencing from **4 April 2016** onwards unless the circumstance set out at 6. applies. The amended forms may be used prior to 4 April 2016 if the contracting authority is satisfied that the scope of services upon which the service providers have been engaged meets the requirements of the amended conditions of the Public Works Contract and the tender documents have been prepared in accordance with the new requirements.

(b) The implementation arrangements outlined below recognise the importance of the scope of services forming the basis of the Design Team’s brief reflecting the procedures provided for in the Contract revisions.

(i) Where contracting authorities are commencing a procurement from **4 April 2016** onwards seeking service providers for the provision of services in respect of any or all of *Service Stages (ii) to (v) of Schedule B to the Standard Conditions of Engagement (Technical)*, the scope of services outlined in the briefing documents and in the Schedule must reference the services necessary to meet the requirements of the amended conditions of the Public Works Contract.

(ii) Where the procurement of services cited at 5. (b)(i) has commenced before **4 April 2016** but the specified tender return date is after that date, contracting authorities should amend the scope of service in accordance with 5. (b)(i) and provide an appropriate extension to the tender period.

Derogation

6. Circumstances where contracting authorities may avail of a limited derogation

(a) Where service providers have either been engaged before **4 April 2016** or where the deadline for receipt of tenders to provide services under any or all *Service Stages (ii) to (v) of Schedule B to the Standard Conditions of Engagement (Technical)* is prior to **4 April 2016** and the scope of service required does not extend to the requirements of the amended conditions of the Public Works Contract, contracting authorities may avail of a limited derogation up until **8 January 2017**.

- (b) The derogation permits the use of the latest versions of the conditions of the Public Works Contracts (PW-CF1 – PW-CF5 inclusive), their associated Instructions to Tenderers and Forms of Tender and Schedule with a cited revision reference commencing with v1. published under Pillar 1 of the CWMF on www.constructionprocurement.gov.ie until **8 January 2017**.
- (c) The versions of the Public Works Contracts referred to at 6(b) may not be used in any tender where the deadline for receipt of tenders for works is after **8 January 2017** unless sanction has been formally applied for and obtained from the Government Contracts Committee for Construction.

Further Information

7. For further information/clarifications in relation to the measures set out in this circular the Office of Government Procurement should be contacted at the following email address construction@per.gov.ie

Mise le meas,

Paul Quinn
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Office of Government Procurement