

Ref: OGPPO026-001-2016

24 May 2018

**Circular 08/2018: Construction Procurement Reform – amendments to the Capital Works Management Framework to reflect the introduction of Sectoral Employment Orders in the construction sector and amend the Comparative Cost of Tender exercise.**

A Dhuine Uasail

1. I am directed by the Minister for Public Expenditure and Reform to inform you that amendments have been undertaken to the Capital Works Management Framework (CWMF) to
  - a) reflect certain legal provisions that may be implemented under the Industrial Relations (Amendment) Act 2015 (the Act); and
  - b) change the manner in which the Comparative Cost of Tender exercise is undertaken under certain forms of contract.

In order to facilitate an orderly transition to the use of the amended Comparative Cost of Tender exercise in particular, this circular sets out a phased arrangement for the introduction of these amendments to the CWMF which are to be published on the Construction Procurement Reform website [www.constructionprocurement.gov.ie](http://www.constructionprocurement.gov.ie)

Department of Finance Circulars 33/06 (Ref: S9/71/06), 04/08 (Ref: S9/12/08) and 06/10 (Ref: S9/03/10) introduced the CWMF suite of standard contracts, template procurement documents and guidance. These Circulars continue to apply to works and works-related services.

**Sectoral Employment Order**

2. A Sectoral Employment Order (SEO) is established in accordance with Chapter 3 of Part 2 of the Act. An SEO imposes obligations on employers with regards to the rates of pay and conditions of employment for those categories of worker covered by the SEO.

To date, two SEOs that cover certain categories of workers in the construction sector have been signed into law by the Minister of State at the Department of Business, Enterprise and Innovation, being:

- SI 455 of 2017 covering the construction sector was signed into law on 19 October 2017; and
- SI 59 of 2018 covering the mechanical engineering building services contracting sector was signed into law on 6 March 2018.

**Public Works Contracts**

3. Notwithstanding the obligations on employers imposed by the SEO's, the conditions of public works contract being used determine the commercial

arrangement that has been entered into between a Contractor and a Contracting Authority for a project.

These conditions set out the circumstances where the Contract Sum may be adjusted to take account of changes to the tendered input costs (including labour costs) during the term of the Contract. The circumstances where the Contract Sum may be adjusted vary depending on the form of public works contract being used for the project.

Cost increases associated with an increase in labour costs are only recoverable under forms of contract PW-CF1 – PW-CF5<sup>1</sup> inclusive and are covered by the Price Variation (PV) clause included in these contracts. Sub-clause 10.8 of the applicable contract will determine which of the two options, either PV1 or PV2<sup>2</sup>, applies.

Where PW-CF1 – PW-CF5 inclusive are being used and the period to Substantial Completion exceeds the period stated<sup>3</sup> in the applicable Price Variation (PV) clause then an adjustment is permitted to the Contract Sum, provided the stated conditions within the applicable PV clause are met.

Where PW-CF1 – PW-CF6 inclusive are being used and the tendered input costs change due to a change in law made either after the Designated Date<sup>4</sup> (where PW-CF1 – PW-CF5 inclusive apply) or the Contract Date (in the case of PW-CF6), an adjustment to the Contract Sum is permitted from the date that the legislation comes into force but only for those legislative areas specified in the applicable clause<sup>5</sup> and provided the stated conditions therein are met. The Act is not one of the legislative areas specified in the applicable clause.

#### **Amendments to the Capital Works Management Framework**

4. The amendments that have been undertaken to the CWMF fall into two separate categories
  - a) Updating legislative references and including references to the new legal provisions introduced under the Act. These primarily affect the contract administration stage; and will be introduced by respective forms of contract on 24 May 2018 and 27 June 2018 as outlined in Section 7;
  - b) In addition to the amendments under 4 a), a change is also made to the manner in which the Comparative Cost of Tender exercise is undertaken where the applicable form of contract is PW-CF1 – PW-CF5 inclusive. This affects the tender submission, evaluation and award stages and potentially the contract administration stage. Amended Forms of Tender and

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<sup>1</sup> References starting with PW-CF are to the suite of public works contracts published under Pillar 1 of the Capital Works Management Framework. The numerical reference is to a specific contract in that suite. The latest versions are available to download at <https://constructionprocurement.gov.ie/contracts/>

<sup>2</sup> PV1 or PV2 may be used with PW-CF1 – PW-CF4 whereas PV1 is only available with PW-CF5.

<sup>3</sup> The PV period is 30 months from the Contract Date for PV1. In PV2 the period is 36 months from the Designated Date.

<sup>4</sup> As defined in sub-clause 1.1 of PW-CF1 – PW-CF5 inclusive

<sup>5</sup> PV1.1.4 or PV2.4 applies to forms PW-CF1 – PW-CF4 inclusive depending whether PV1 or PV2 is chosen as the Price Variation clause; PV1.1.4 will always apply to PW-CF5; and sub-clause 4.17 applies to PW-CF6.

Schedule and Instructions to Tenderers will be introduced on 6 June 2018 followed by the amended forms of contract on 27 June 2018 as outlined in Section 7.

5. Category 4 a) amendments affect the following documents:
  - The standard conditions of public works contract PW-CF1 – PW-CF8 inclusive, PW-CF10 and PW-CF11;
  - Model Form MF 1.13 Rates of Pay and Conditions of Employment Certificate and the equivalent for PW-CF6, PW-CF7, PW-CF8 and PW-CF11;
  - Guidance notes.
  
6. Category 4 b) amendments affect the following documents:
  - The standard conditions of public works contract PW-CF1 – PW-CF5 inclusive;
  - FTS1 – FTS5 inclusive: the forms of tender and schedule for use with the standard conditions of public works contract PW-CF1 – PW-CF5 inclusive;
  - FTS 13: the form of tender and schedule for use with the Conditions of Sub-Contract (NN) published by the Construction Industry Federation (the NN Sub-contract);
  - Instructions to Tenderers ITT-W1, ITT-W1a, ITT-W2 and ITT-W8;
  - Guidance notes.

#### **Transitional arrangements**

7. a) As noted above, the amendments to the CWMF documents affect the contract administration stage under all forms of the public works contract and the tender stage for PW-CF-1 - PW-CF-5 inclusive. In order to facilitate an orderly transition to the use of the amended documents, and in particular the use of the Comparative Cost of Tender exercise, it is considered necessary to phase the introduction of the amendments, as outlined in this Section 7.

The arrangements set out in this Section 7 establish a period of approximately six weeks within which Contracting Authorities are expected to transition to the amended documents.

#### **Amendments published on 24 May 2018**

7. b) On 24 May 2018 amended forms of PW-CF6 – PW-CF8 inclusive, PW-CF10 and PW-CF11 and their associated Rates of Pay and Conditions of Employment Certificates will be published<sup>6</sup>. In accordance with the tendering rules set out in Particulars to the Instructions to Tenderers documents these amended forms of contract will apply to all tenders using PW-CF6 – PW-CF8 inclusive, PW-CF10 and PW-CF11 which are to be submitted on or after the **3 June 2018**.

The amendments published primarily affect the contract administration stage as set out in Section 4 a) above. Contracting Authorities are not required to take any specific action and may continue and award the contract in accordance with the provisions set out in the applicable Instructions to Tenderers document.

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<sup>6</sup> For this Section 7, 'published' means published on the Construction Procurement Reform website [www.constructionprocurement.gov.ie](http://www.constructionprocurement.gov.ie)

#### **Amendments published on 6 June 2018**

- 7. c)** On 6 June 2018 amended forms of FTS1 – FTS5 inclusive, FTS13 and ITT-W1, ITT-W1a, ITT-W2 and ITT-W8 will be published. These amendments include the revised Comparative Cost of Tender exercise referred to in Section 4 b) above. These amendments affect the tender submission, evaluation, award and contract administration stages where the forms of contract used are PW-CF1 – PW-CF5 inclusive and the NN Sub-contract. These documents are being introduced in advance of amendments to the contracts themselves to facilitate an orderly transition to the revised Comparative Cost of Tender exercise which is to be undertaken on all tenders using PW-CF1 – PW-CF5 inclusive and the NN Sub-contract submitted on or after **7 July 2018**.

Where the forms PW-CF1 – PW-CF5 inclusive and the NN Sub-contract are to be used and the tender submission date is prior to **7 July 2018** Contracting Authorities are not required to take any specific action and may continue and award the contract in accordance with the provisions set out in the applicable Instructions to Tenderers document. However Contracting Authorities should confirm that the Form of Tender and Schedule and Instructions to Tenderers that was issued with the tender documents was that published prior to **6 June 2018**.

#### **Amendments published on 27 June 2018**

- 7. d)** On 27 June 2018 amended forms of PW-CF1 – PW-CF5 inclusive and MF 1.13 will be published. In accordance with the tendering rules set out in the Particulars to the Instructions to Tenderers documents these amended forms of contract will apply to all tenders using PW-CF1 – PW-CF5 inclusive which are to be submitted on or after the **7 July 2018**. These amendments reflect the amendments made in the Form of Tender and Schedule and Instructions to Tenderers published on 6 June 2018 and the amendments as set out in Sections 4 – 6 above.

Where the forms PW-CF1 – PW-CF5 inclusive and the NN Sub-contract are used and the tender submission date is on or after **7 July 2018** Contracting Authorities must ensure that the applicable Form of Tender and Schedule and the Instructions to Tenderers issued to prospective tenderers are those that are published on or after 6 June 2018. Where this is not the case, the forms published on or after 6 June 2018 should be completed and issued to prospective tenderers and, where necessary, an appropriate extension applied to the tender submission date.

**Queries**

8. For any queries in relation to the use of the amendments outlined above the Construction Policy Unit at the Office of Government Procurement should be contacted at the following email address: [construction@per.gov.ie](mailto:construction@per.gov.ie)

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