



# DTP-2025 Construction (Stage 4)

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## 1. Introduction

### 1.1 Application

This procedure document sets out the reporting requirements to both the Client and the Department and the Department's requirements for Post Contract Cost Control (in conjunction with the **DTP-2025 Cost Control Procedures**).

It also gives guidance on the administration of the Contract. Where a conflict exists between this guidance and the conditions of Contract, **the conditions of contract take first precedence.**

### 1.2 Public Works Contracts

The applicable contracts are:

- **PW-CF1** – Public Works Contract for Building Works designed by the Employer
- **PW-CF2** – Public Works Contract for Building Works designed by the Contractor (Design & Build)
- **PW-CF5** – Contract for Minor Building & Civil Engineering works designed by the Employer
- **PW-CF6** – Public Works Short Form of Contract

In all the above contracts the Works Requirements set out the building requirements and, in conjunction with the Contract, are the building requirements agreed between the Client and the Design Team. Change Orders **should only be required for exceptional reasons** (i.e. unforeseeable circumstances).

The intent of the Contract is that these are Employer designed projects which requires that the project is fully co-ordinated by the design team members and fully designed and detailed before being issued to tender. There should be no design changes resulting in Contractor Claims that could have been foreseen or that are due to lack of co-ordination or lack of detailed design information.

### 1.3 General

All members of the Design Team **are individually and collectively responsible for contract administration, post contract cost control, and complying with the reporting requirements set out in this document.** Regular communication and information exchange between all members of the Design Team and with the Client is essential.

**The Design Team Leader's duties include overall Management /Coordination of the Construction Stage including ensuring that any information, communications documentation and/or reports are channelled through the Design Team Leader. In addition, the Design Team Leader must also ensure effective communications between the relevant DT disciplines, and where such communications or responses are not effective implement corrective action including Client notification (if required).**

### 1.4 Construction Cost Control

**Cost control during the construction stage is a continuous process, dictated in part by the quality and completeness of the design and tender documentation, and in part by the capacity of the Design Team and in particular the Employer's Representative to minimise change and to anticipate any Contractual requirements for information.**

Overall cost control during construction should be co-ordinated by the Design Team's Quantity Surveyor in consultation with the other members of the Design Team and in particular the Employer's Representative (usually the Architect). The Quantity Surveyor is responsible for the preparation of the Progress Reviews, Interim Valuations, cost review and recommendation on Contractors Claims and Change Orders, recommendation and assessment of Contractor Claims, inflation mechanism calculations and Carbon and Cost Reporting as per the Capital Works Management Framework Cost and Carbon reporting templates and Final Accounts.

**The Consultant Mechanical and Electrical Engineer must provide information and advice (including relevant cost data) to the Employer's Representative and Quantity Surveyor with respect to the mechanical and electrical services, including for the purposes of preparing Progress Reviews, Interim Valuations cost review and recommendation on Change Orders, Interim Valuations cost review and recommendation on Contractors Mechanical and Electrical Claims and the Final Account for these works.**

**The Design Team (individually and collectively) are required to comply with the Post-Contract Cost Control procedures set out in DTP-2025 Cost Control Procedures**

In particular:

- Client requested changes are **not** permitted (whether within the ER's authority or not) without prior Department authorisation.
- **No changes** are allowed which would affect the Schedule of Accommodation, Room Layouts, or materially change the Works Requirements unless previously discussed and agreed with the Department.
- The Employer's Representative [ER] **does not have any discretion** to authorise any change order (whether within the ER's authority or not) for non-essential works or works which could have been reasonably foreseen
- The ER **must** obtain both Client and Department authorisation (in writing) for any change outside the ER's authority. The procedure for Department Communications (See **Design Team Procedures 2025 5th Edition**) must be followed.
- While Department officials (either Administrative or Technical) may communicate with the client, Design Team and/or individual members of the design team and may provide advice and/or make suggestions, such advice and/or suggestions **do not constitute** authorisation or approval for additional funding
- Requests for additional funding must be on the Department's **DTP-2025 Request for Additional Funding form** sent into the appropriate Department Officer electronically.
- **Adequate time** must be allowed for a considered response from the Client and Department. All authorisations for Additional Funding must come in writing from the appropriate Department Officer. All timelines within the contract must be observed and followed at all times in relation to the administration of claims.
- The Design Team (individually and collectively) are responsible for any change orders or contractors claims arising from incomplete design and/or inadequate detailing (the standard required is that of reasonable skill and care) which either generate a compensation event and/or cause delays (whether within the 1st or 2nd threshold for delays or not).
- Where the standard of reasonable skill and care was not applied, the Client reserves the right to recoup such costs (including consequential costs arising from such delays) from the Design Team and/or their Professional Indemnity insurance.

## 2. Pre-Contract Consultations

### 2.1 Discussion/meetings with Contractor

The ER and the Design Team **are not permitted** to enter **any post-tender negotiations** with the Contractor which have the effect of changing the Tender Sum or scope of works.

**EXTRACT FROM GUIDANCE NOTE GN 2.3 v1.4 28/03/2023 (CWMF guidance notes are subject to ongoing updates so the most up to date version should always be used for reference)**

*The procurement difficulties that arise if a Contracting Authority seeks agreement at the pre-award stage of a contract with the winning tenderer on the value of the omission of non-essential work which would be deducted by means of a change order post contract award and that agreement is included in the contract would amount to negotiation post tender which is not permitted under the EU procurement rules and therefore such an agreement is not permitted*

The Design Team may however meet with the Contractor to discuss the project and matters relating thereto. (Refer to **DTP-2025 Tender Action Stage 3**)

### 2.2 Post-Tender Clarifications

Care should be taken to ensure that nothing in the listed post-tender clarifications constitutes post-tender negotiations. In particular there should be no change to the Contract Sum or scope of work. Proposed post-award change orders must not be included as clarification (Refer to **DTP-2025 Tender Action Stage 3**)

The Employer may seek clarification from a tenderer regarding a submitted tender. This is to ensure that tenders are not rejected on matters which can be easily clarified, without a risk to transparency or equal treatment of tenders.

The Employer may meet with a tenderer for the purposes of clarification. The Employer will confirm to the Tenderer concerned in written minutes any clarification arising from a meeting and the Tenderer will be required to confirm or correct the minutes in writing.

Any written clarifications of a tender, including extracts from minutes of a pre-award clarification meeting that have contractual significance will be referred to in the Letter of Acceptance and will form part of the Contract.

### **Substantive alterations not allowed**

Substantive alteration to tender bids **is not allowed** after the deadline for submission has passed and in particular, any adjustment to price that could improve the competitive position of a particular tender. The EU Council and Commission has stated clearly that: ...all negotiations with candidates or tenderers on fundamental aspects of contracts, variations in which are likely to distort competition, in particular on prices, shall be ruled out.

All tender bids should remain completely unamended and as submitted in compliance with the ITT and tender requirements. No changes are permitted

## **3. Employer's Representative [ER]**

### **3.1 ER's Authority**

The Design Team Leader (**The Architect**) will normally, but not necessarily, be the Employer's Representative [ER]. The ER is identified in Schedule Part 1A of the works requirements

The limitations on the authority of the Employer's Representative to perform its functions or powers under the Contract are as stated in the Conditions of Engagement for that consultant.

- Unless otherwise stated, the maximum adjustment to the Contract Sum for **a single Change Order/Contractor Claim must not exceed €2,000**, and the maximum cumulative value over whole contract of adjustments to the Contract Sum for **Change Orders/Contractors claims in any 3-month period must not exceed 0.25% of the Contract Sum**.
- Likewise (Schedule Part 1A) the ER **is not permitted** to issue a change order causing or contributing to a reduction in safety, quality, usefulness, of the Project; or to waive any of the Client's rights or the Contractor's obligations under a Project construction contract without limitation to notice periods such as those set out in sub-clause 10.3 of the Public Works Contracts (PW-CF1 to PW-CF5).
- The above limits to the ER's authority are stated in the contract for the Contractor's information only. (Under Clause 4.3.2 the Contractor must comply with any ER's instruction whether within the limits or not.)
- If the Employer's Representative deliberately exceeds these limits (specified in the COE schedule) it is a breach of their Conditions of Engagement, and the ER may be liable for costs arising there-from

The Employer's Representative may delegate in writing to named representatives any functions or powers under the Contract and revoke any delegation. For example, the Employer's Representative may delegate limited powers to the Building Services Engineer to liaise with the Contractor in connection with the Mechanical and Electrical Installation.

**However, the Employer's Representative may not delegate the power to issue instructions, change orders or determination of contractor claims.**

**Again, for example where the Building Services Engineer has discussed and agreed in principle a recommended course of action with the Contractor, the Building Services Engineer must report to the Employer's Representative who, if he/she deems fit (within his/her limitations of €2,000), may issue the requisite instruction or change order. This process does not apply for discussions which may result in additional costs in excess of the ERs limit of Authority. There should be no commitments made to a Contractor in relation to any additional costs without first seeking the required funding approval regardless of where the claim is deemed valid or not.**

### 3.2 Before the Starting Date

**Before the Starting Date [unless already given by the Contractor before the Contract Date, for example in response to a letter of intent] the Contractor shall give the Employer all of the following, all executed, as relevant, by the relevant persons:**

- (1) The Agreement
- (2) A performance bond, if required by the Contract
- (3) Any Reliance Documents, if required by the Contract
- (4) If the Works Requirements state that the Contractor or the Contractor's nominee is to be appointed as project supervisor for the construction stage, the required appointment, and the developed safety and health plan required by the Construction Regulations
- (5) Evidence that the insurances required by the Contract are in effect
- (6) Any collateral warranties required by the Contract. However, collateral warranties may be given on a later date that the Employer's Representative has agreed to
- (7) Copies of signed agreements and unamended form of sub-contract as identified in Schedule Part 1F(iii)

### 3.3 Instructions

Under **Clause 4.5** the Employer's Representative may give the contractor instructions, (in writing), which the Contractor must comply with, up to the date the Defects Certificate is issued. Instructions can be in the form of:

- a direction (in accordance with the contract), or
- a change order (changing the works requirements)

**Instructions of the Employer's Representative must be given in writing** (Clause 4.5.5) except when there is imminent danger to safety or health or of damage to property, in which case the Employer's Representative may give oral instructions, and shall confirm them in writing as soon as practicable.

It is very important to be clear as to the difference between a direction, a proposal and change order. **A direction is an instruction within the contract (i.e. not changing the works requirements). A direction does not trigger a compensation event or a delay event.**

If the ER gives an instruction and calls it a direction, but the Contractor considers that it is a Change Order, **the Contractor must give notice** (under sub-clause 10.3) **before implementing the instruction**, or otherwise (under the contract) it will be taken to be a direction.

**If the ER gives an instruction that changes the Works Requirements, it is a Change Order.**

The Employer's Representative is not allowed give a Change Order under the contract (Clause 4.5.3) after Substantial Completion has been certified, except concerning defects or work to be done after Substantial Completion.

### 3.4 ER requested Proposals

The ER may direct the Contractor to make proposals for a proposed instruction (Clause 10.4). **It is important to do this in writing and to make it clear that this is not an instruction and that the Contractor has no authority to carry out the works** (being the subject of the proposal) at that time.

It is important to make sure that the ER gives the Contractor adequate time to make the proposal and for the **ER to consider those proposals without causing a delay to the project** (if implemented).

It is also important to consider Contractor Submissions (arising from such requests for proposals) promptly. If the ER fails to respond within 10 days (**Clause 4.7** - see below), the Contractor may take the view that there is no objection to the proposal and proceed to implement the submission whether agreed or not (Clause 4.7.7).

### 3.5 Change Orders/Contractors Claims

The Department's authorisation for increased funding is required **for all** Change Orders/Contractors claims outside the Employer's Representative's authority. This includes additional funding requirements arising from Contractor Claims and Employer Claims. This also includes delay claims. Such authorisation must be **sought in a timely manner and within the parameters of the timelines** provided for within the Contract to allow the Department to give a considered response.

All proposed adjustments to the Contractors Programme and the Substantial date completion should be submitted on an additional funding request form for Department review as adjustments to Contract completion dates have a significant impact to the financial planning of a project. This includes situations where the Contractors Daily Delay Rate tendered is zero.

All claims where the Contractor has submitted the costs which are that are in excess of the ERs authority, but the ER intends to determine the claim invalid or at zero should also be submitted for Department for review and information purposes. It is critically important that the Department are aware of all potential financial exposure which may exist as its within the Contractors remit to dispute these determinations and refer them to the Project Board or Conciliation. There should not be a situation where the Department become aware of a funding commitment after an item is referred to the Project Board or Conciliation.

Comprehensive and accurate financial reporting of contractor claims, and the status of all claims is required on all projects regardless of the potential intent to reject the validity of a claim. This also includes claims for extension of time to the Substantial Completion date.

**Where (due to a failure to act with due diligence) a request for authorisation for increased funding is presented too late for a considered response or after the event the Design Team may be held responsible for costs arising there-from including costs consequential to the delay caused**

Any such requests for authorisation must be presented on the Department's **Request for Additional Funding Request Form**. The reason for the additional funding requirement whether that be for a Change Order or Contractors Claim must be fully explained and justified with comment from the relevant Design Team member included as appropriate. In particular, the Design Team must state whether the additional funding requirement arises from a client requested change, a contractor claim, an employer claim (a credit), unforeseeable circumstances, a design team mistake or omission, Issues with the pricing document or the inadequacy of the Works Requirements. The additional funding request form must be fully filled out with a detailed level of information to allow the content to be given due consideration to the content of the form. The relevant design team discipline should provide a high level of detail on the item claimed in order to justify its validity under the contract. All funding requests must have a schedule 1K compensation event reference and all contractor claims should also have an appropriate schedule 1K event referenced as this determines the basis/validity of the claim. If all of this is and the relevant information to demonstrate an entitlement is no not provided the request should be rejected. There are provisions in the Contract in relation to requesting additional information and in relation to the Contractors obligations. It is the Contractors sole responsibility to provide the relevant information to substantiate a claim and an entitlement to the adjustment of the Contract sum.

**Other than in exceptional circumstances, an additional funding requirement or change order arising from a client requested change will not be authorised (unless fully funded by the Client).**

Such circumstances may include Department authorised Brief changes. Work which could reasonable have been foreseen and included in the Tender Documents will not be authorised. The additional funding request form should be filled out in a similar manner for all Employer claims to ensure the procedure is replicated where there is an intention to reduce the Contract Sum.

- Where an additional funding requirement arises from a [contractor claim](#), the circumstances must be explained.
  - It must also be stated whether the amount requested is based on a final adjustment to the Contract Sum and Date for Substantial Completion of the Works (and any affected Section) or whether the amount is a determination by the ER in the absence of such agreement (Clause 10.6.3).
  - It is also necessary to state whether the claim arises from a Client Requested change, unforeseeable circumstances, a Design Team mistake, issues with the pricing document or the inadequacy of the Works Requirements.
- Where an additional funding requirement arises from [unforeseeable](#) circumstances the nature of those circumstances must be explained and why they could not have been foreseen.
- In the case of [Employer's Claims](#), the reason why the work is not required should be stated.
  - It should also be confirmed that the omission of that work will not materially cause or contribute to a reduction in safety, quality, usefulness, of the Project (Schedule Part 1A); or have the effect of waiving any of the Client's rights or the Contractor's obligations under the contract

- Where an additional funding requirements or claim arises from a Design Team mistake, issues with the pricing document or the inadequacy of the Works Requirements the circumstances in which this arose must be explained.
  - In the absence of a clear indication of fault the cause will be attributed equally between all the design team members.
  - The agreement of all the Design Team members to the explanation should be confirmed.

#### **Impact where Reserved Specialists are involved in the Project:**

- A change order or valid claim determination may be issued during the course of the Works that increases (or decreases) the Contract Sum. Should this change order or valid determination impact on a Reserved Specialist's works, the percentage figure tendered by the Contractor for profit on the Reserved Specialist's works (and listed in part 3B of the Form of Tender and Schedule) will be applied to calculate the adjustment to the Contract Sum. (Sub-clause 10.6).
- In the circumstances where sub-clause 10.6.4 is used to determine the value of additional or substituted work which includes Reserved Specialist Works, the determined value shall be based on the tendered hourly rates, the tendered percentage addition for costs of materials and the tendered percentage addition/deduction for costs of plant as tendered by the respective Reserved Specialist
- In the circumstances where clause 10.7 is used to determine delay costs, the amount that may be added to the Contract Sum (where sub-clause 10.7.1 (1) applies) shall also include any amounts due for delays to named Specialists' Works to the extent that their Works are delayed by a Compensation Event under the Contract between the Employer and Contractor. The rates used to calculate the delay costs due for named Specialists' Works shall be those tendered by the respective named Specialists.

## **4. Project Administration**

### **4.1 Contractor Programme**

The Employer's Representative (as provided for in the Letter of Intent, and in **Clause 4.9** of the Contract) should receive from the Contractor, before the Starting Date:

Before the Starting Date, the Contractor shall submit to the Employer's Representative and the Project Board members, [and the Standing Conciliator where appointed] a detailed programme having regard to the requirements of the Inspection Plan and Inspection Notification Framework. If there is a programme in the Works Proposals that complies with the Contract, the Contractor shall submit that programme, with any required additional information [such as the actual programmed dates and any Inspection Plan requirements]. The programme shall be of a quality that will permit effective monitoring of the Works and shall, except to the extent that the Works Requirements say or the Employer's Representative agrees that anything may be omitted, include details of all of the following:

- (1) When the Contractor will require any instructions, Works Items or other things to be given by the Employer, or anything else the Contract requires the Employer, the Employer's Representative or others to give the Contractor
- (2) the order in which and times at which the Contractor proposes to execute the Works, including details of procurement, manufacture, delivery, installation, construction, testing, commissioning and trial operation of Works Items and the sequencing and timing of inspections and of tests
- (3) When Contractor's Documents will be submitted to the Employer's Representative
- (4) the Contractor's estimate of each category of Contractor's Personnel and Contractor's Things expected to be on Site for each period
- (5) Work to be carried out at the Site by Employer's Personnel and others as provided in the Works Requirements

- (6) Current critical path, critical resources, floats and other flexibility
- (7) Details of last review made of programme logic and durations, and of the purposes of any changes
- (8) Anything else required by the Works Requirements.

The programme must allow reasonable periods of time for the Employer and the Employer's Personnel to comply with their obligations under the Contract (the ER should check this prior to issuing a Letter of Acceptance).

Even if the Contractor proposes a reduced time for completion, the ER should not permit the Contract Period to be reduced (see **DTP-2025 Tender Action**)

If directed by the Employer's Representative, the Contractor must submit a revised programme showing actual progress, and progress projected by the Contractor. Failure by the Contractor to submit the requested revised programme within 15 working days of being requested to do so will entitle the Employer to withhold from the Contractor 15% of any payment to be made to the Contractor until the revised programme is submitted (Clause 4.9.3).

As a general principle, the ER should think carefully before seeking a revised programme. Once the revised programme has been accepted (or noted) the ER and the Design Team are subject to the revised timelines for the provision of Information. The revised programme might also contain certain proposals for recouping lost time (such as overtime or weekend working) which may result in a [contractor claim](#) against the Employer. **The ER cannot reject a programme but may (Clause 4.9.3) require the Contractor to revise the programme to reflect actual or reasonably projected progress.**

## 4.2 Records

**Detailed, up-to date, chronological contract records are vital.** In particular, each request for a proposal (**Clause 10.4**), direction and change order (**Clause 4.5**) should be recorded. It is equally important to record actions, objections, Contractor claims, Contractors own issues, Contractors Minimisation measures and client change orders reducing the Contract sum, all as soon as practicable to ensure there are detailed and accurate contemporaneous records maintained at all times.

It should be possible (in the event of a dispute) for the ER to consult the sequential Contract Records and verify as to whether a direction, change order or request for a proposal was issued, track whether an objection was made and determine unequivocally whether the action was authorised under the Contract or not. The progress meeting minutes should reflect a detailed contemporaneous record on a period basis of the progress or lack of progress and the reasons for same. All items within the Contractors report should be discussed and recorded and the content disputed which is found to be incorrect.

## 4.3 Contractor Progress reports

The Contractor is obliged to submit to the Employer's Representative monthly progress reports, in the form set down in the Contract, within 7 days after the end of the month.

Each progress report (**Clause 4.10.2**) shall include all the following, except to the extent that the Works Requirements say or the Employer's Representative agrees that any of the following may be omitted

- 1) A detailed description of progress of each stage of the Works against the Contractor's current programme
- (2) the names of Specialists and the off-site suppliers of the main Works Items, and progress and location of the design, manufacture, fabrication, delivery, installation, testing and commissioning of Works Items (where applicable)
- (3) Details of the Contractor's Personnel and Contractor's Things on the Site
- (4) Status of preparation and review of Contractor's Documents
- (5) Copies of quality assurance documents and test results and certificates
- (6) Details of when any instructions to be given by the Employer's Representative will be required, and any that are outstanding
- (7) Details of when any Works Items or other things to be given by the Employer will be required, and any that are outstanding

- (8) Details of any Delay Events and Compensation Events that have occurred during the period, or are unresolved, including any disputes referred to the Project Board or to conciliation or to Adjudication or to arbitration
- (9) Details of any accidents, injuries, hazardous incidents, environmental incidents, labour relations problems and public relations problems concerning or affecting the Works
- (10) Details of anything that might have an adverse effect on the execution of the Works, the steps the Contractor is taking or proposes to take to reduce those risks, and any steps that the Contractor proposes that the Employer or the Employer's Personnel take to reduce those risks
- (11) Anything else that the Contractor considers relevant to a progress report (12) anything else relevant to a progress report that the Employer's Representative directs

Under anything else relevant the ER may request a statement showing the amount of wages and other payments due at the date of the request to and in respect of each worker, or, in respect of workers not employed by or otherwise working for the Contractor, ensure that their employer or the person for whom they are working does the same (Refer to **Clause 5.3.4**)

It's a good idea to synchronise these reports with the site meetings and to use the information therein to record instructions, proposals and claims (including where such instructions, proposals or claims did not occur). See also [Site Meetings](#) below:

#### 4.4 Site Meetings

The Employer's Representative **must schedule** regular meetings attended by the Contractor's Representative and the Employer's Representative and attended by the Employer's and Contractor's personnel, as required. Within 5 working days after each meeting the Employer's Representative shall issue minutes of the meeting to the Employer and the Contractor.

Where the Department is the Client copies of the minutes should issue to the Department also.

It is a matter for the ER (in co-operation with the other Design Team members) as to how site minutes and other contract records are kept. However the Design Team are reminded that the minutes of a site meeting **are de facto a chronological record** and that the opportunity exists to expand the meeting discussions and records to record all relevant information in terms of project progress including each instruction (whether a direction or a change order), each proposal (whether Value Engineering or ER requested), each Contractor request for information, and each Contractor claim; and to track the progress of each item until mutually resolved. The format of the site meetings should review all the information included within the Contractors Report and ensure that there is a proper and accurate record kept in relation to the items reported. The Contractors own issues in terms of progress, resources, procurement etc. should also be recorded within the meeting minute's record. Attention should be given to reviewing the programme and progress of works reported within the previous report to a current report to ensure that a progressive record is retained.

The minutes must record the names of those in attendance (both Contractor and Design Team personnel)

The meeting minutes should give a detailed overview of the current position of a project at a point in time including the recording of all types of issues.

## 5. Contractor Proposals

### 5.1 Value Engineering Proposals

The Contractor may give the Employer's Representative a written Value Engineering proposal (**Clause 4.8**) that will, if adopted, either:

- Reduce the contract sum
- Accelerate the execution of the works, or otherwise be of benefit to the Employer, with no increase to the Contract Sum

**The ER should make it clear to the Contractor (e.g. at 1st site minutes or as a post-tender clarification) that any Value Engineering proposal must be labelled as such.** The cost of Value

Engineering proposals should include design costs (by the Design Team), consequential costs and liability for delay.

**There is no onus on the ER to accept any such proposal (or any proposal) whether there is a financial benefit or not.**

**All Value Engineering Proposals should include the following:**

The Contractor may give to the Employer's Representative a written value engineering proposal **that will**, if adopted, either

- (1) Reduce the Contract Sum or
- (2) Accelerate the execution of the Works, or otherwise be of benefit to the Employer, with no increase to the Contract Sum

The Contractor's proposal **shall include** all of the following:

- (1) Any proposed changes to the Contract
- (2) Any proposed changes to the Contractor's Documents [including other Consents]
- (3) A detailed breakdown of the Contractor's original tender cost for the relevant work and the projected cost of the proposal and any proposed adjustment to the Contract Sum to reflect a share of any saving
- (4) Details of any proposed changes to the programme

The Employer's Representative shall, as soon as practicable, notify the Contractor whether the Employer agrees to or rejects the proposal. If the Employer agrees to the proposal, the Employer's Representative shall, if agreed, determine a reduction to the Contract Sum or an adjustment to the Date for Substantial Completion of the Works and any affected Section (or both) in accordance with the agreed proposal and the Contractor shall implement the agreed proposal. If the proposal is rejected, this shall be conclusive

If the proposal includes a change in the design of the Works, unless otherwise agreed, the Contractor shall undertake and be liable to the Employer for that design, the impact of that design, all the knock on effects of that design and any other consents. The contract shall also be responsible for all delays associated with the re-design and additional design co-ordination and all potential additional design fees.

No proposal should be accepted which reduces the standard of construction from that specified in the Works Requirements. No proposal should be accepted that has an impact on the contract programme.

**Final approval should be sought from the Department of Education and Youth for all Value Engineering proposals submitted by a Contractor.**

**If the proposal is rejected this shall be conclusive (i.e. the Contractor cannot re-submit it for re-consideration).**

The ER (at his/her discretion) may indicate (in advance) that no value engineering proposals will be accepted, and that the Contractor is required to build the project fully in accordance with the Works requirements. This course of action should only be taken if the Design Team is satisfied that the project as designed and described in the Works Requirements represents the best value for the client.

## **5.2 Required Contractor Submissions**

Unless the Works Requirements say that a different procedure is to apply, whenever the Contract requires that a document or proposed course of action be submitted to the Employer's Representative, the following shall apply:

- **PWCF1 CL 4.7.1** - The Contractor shall give the document or a statement of the proposed action and all necessary supporting information to the Employer's Representative.
- **PWCF1 CL 4.7.2** - The Employer's Representative may [but is not bound to] make a written objection to a contractor's submission, giving reasons.
- **PWCF1 CL 4.7.3** - The Employer's Representative may request additional information.
- **PWCF1 CL 4.7.4** - The Employer's Representative's period for objection is 10 working days from when the Employer's Representative has received from the Contractor enough information to make a purposeful review of the matter submitted should it wish to make one.

- **PWCF1 CL 4.7.5** - The Contractor shall apply in writing for any reduction of the period that it considers desirable in the interests of the Works, which the Employer's Representative may agree if it thinks fit.
- **PWCF1 CL 4.7.6** - The Employer's Representative may alter or withdraw an objection.
- **PWCF1 CL 4.7.7** - The Contractor shall not implement any submission before the period has ended, or contrary to any outstanding objection given within the period.
- **PWCF1 CL 4.7.8** - The Contractor shall make a new submission to meet any objection given within the period.
- **PWCF1 CL 4.7.9** - The Contractor shall also make new submissions as necessary to perform its duties under the Contract [whether or not it has received any objection], and in particular so that its submitted programme shows actual and current planned progress.
- **PWCF1 CL 4.7.10** - The Employer's Representative may object on the grounds that to proceed according to the submission (1) would not comply with the Contract or (2) would have an adverse effect on the Employer or the public interest or (3) would impose an obligation on the Employer that the Contract does not require the Employer to bear or (4) would be contrary to a Legal Requirement or (5) would have an adverse effect on the Contractor's ability to comply with the Contract or any other ground stated in the Contract.
- **PWCF1 CL 4.7.11** - Neither the Employer's Representative's rights to object, nor objections or their absence, reduce any of the Employer's Representative's other powers, or reduce any of the Contractor's responsibilities.

Under **Clause 4.7**, objections may be made by the Employer's Representative to Contractor submissions **within 10 working days of receipt of sufficient information to make a purposeful review of the matter**. The Employer's Representative may alter or withdraw an objection. The Employer's Representative may make an objection on the grounds that to proceed:

- would not comply with the Contract or
- would have an adverse effect on the Employer or the public interest or
- would impose an obligation on the Employer that the Contract does not require the Employer to bear or
- would be contrary to a Legal Requirement or
- would have an adverse effect on the Contractor's ability to comply with the Contract or any other ground stated in the Contract

**The above grounds are very wide and should be used to the full** to ensure that proposals (whether ER requested or not) are rejected if they would cause a reduction in the standard or cause additional costs whether directly or indirectly (e.g. consequential delays)

### 5.3 Contractor Proposals

The Contract does not expressly provide for Contractor Proposals (other than Value Engineering Proposals and responses to the ER's requests for proposals).

**As with Value Engineering Proposals there is no onus on the ER to accept any proposal**, but it is still important to keep a record of such proposals and the date they were accepted or rejected. As with Value Engineering Proposals, the ER (at his/her discretion) may indicate (in advance) that no contractor proposals will be accepted and that the Contractor is required to build the project fully in accordance with the Works requirements.

### 5.4 Substitutions

The word substitution does not appear in the Contract, and it would therefore seem that contractually it does not exist. (If a material complies with the Works Requirements, it's not a substitution. If a material does not comply with the Works Requirements it's a proposal which will, if implemented, give rise to a Change Order).

The issue of substitutions arises because of the way some specifications are written:

- If the consultant states the name of a manufacturer's product (under procurement rules no products should be named) in the specification and adds the words "or equal approved", he/she are inviting requests for approval of alternative products meeting the specification and must respond in a timely manner as with requests for information.
- If the consultant states the output requirements of a material only or names of a manufacturer's product in the specification and adds the words "or equivalent", he/she is in effect stating to the

Contractor that an equivalent manufacturer's product (i.e. meeting the specification in all respects) is acceptable (without prior approval) and that the onus is on the Contractor to ensure that the material meets the standard required.

- Such output requirements might include a requirement for a test or Agrément Certificate or Insurance backed guarantee or other means of proof of compliance.
- For example, an Engineer specifies the quality of concrete used in terms of the output of compressive strength and provides for a cube test to measure this output. He does not state a manufacturer's name or the words "or equivalent". He also specifies other restrictions e.g. working temperature, constituent materials and a methodology for verifying same.

See also **DTP-2025 Preparation of Tender Documents**

Where specifications are performance based (as above) the issue of substitutions and "approvals" does not arise. If the material complies with the specification in the Works Requirements, approval isn't necessary (and should not be given).

As long as the Design Team are confident that the specification is clear and robust (and in accordance with the EU Directive on Technical Specifications), the ER may wish to respond to all contractor proposals (which are in effect substitutions) as follows:

- the Contractor is required to construct the project in accordance with the Works Requirements
- The Contractor must use materials that comply with the specification in all respect.
- The ER will not issue "approvals" for proprietary materials or construction methods. A proprietary material or construction method in accordance with the Works Requirements does not need an approval.
- Where the Contractor installs a proprietary material not in accordance with the Works Requirement (including not passing the specified test or not having the required certification and/or guarantee) the ER may issue a Direction to the Contractor to remove the defective material and/or work and to reinstate the relevant element with a material and method of construction in accordance with the Works Requirement at the Contractor's expense

However, where the ER fails to respond, or responds as above to a genuine request for information, or where (due to an inadequate specification) the consequences of such a response having the effect of reducing the standard, safety, quality, or usefulness of the Project, the ER shall be responsible for any consequential cost or delay arising there-from. The applicable standard for the Employer's Representative is that of reasonable skill and care

## 5.5 Requests for Information

The Works Requirements should provide sufficient information to the Contractor to construct the building without requests for additional information. However, there is no requirement to furnish full detailed drawings for every part of the building particularly where the method of construction is self-evident. The Contractor and the Contractor's Representative are expected to be competent and experienced in constructing buildings (They were pre-qualified or met the minimum suitability standard on that basis).

Requests for information should be presented in a timely manner (Clause 4.1.2.(4)). It is reasonable to refer to the detailed programme provided by the Contract, and from that determine whether a reasonable period of time has been allowed for the Employer and the Employer's Personnel to comply with their obligations. It is also reasonable to note that in certain cases the latest reasonable time for delivery of the necessary information is later than stated by the Contractor.

The Contract states:

**4.11.1** The Contractor shall give the Employer's Representative **at least 10 working days advance notice** of the date by which the Contractor requires any instructions that the Employer's Representative is to give, or Works Items or other things that the Employer is to give.

**4.11.2** The latest date for the Employer's Representative to give required instructions, or the Employer to give the Contractor any required Works Item or other thing **shall be the latest of the following**:

- the date stated in the Contract, if any
- the date shown in the Contractor's current programme
- the date for which the Contractor first notifies the Employer's Representative under this sub-clause that it is required

- the date the Contractor requires the instruction,

Where a request for information is justified (i.e. the information is needed to carry out the work) and the time provided for the Employer and the Employer's Personnel to comply with their obligations is reasonable, **the ER must respond in a timely manner.**

Where the information is already available in the Works Requirements), the (prompt) response should be limited to stating that the information is already in the Works Requirements. Where a request for information is justified but the time provided is too short, (i.e. the Contractor asked for the information/instruction too late) the Contractor should be informed of the earliest reasonable date by which the information can be provided and every effort made to achieve that date. Any subsequent claims for delays/compensation events should have reference to the timing of the original request.

**In all cases it is important to record such requests and such judgements (see [Site Meetings](#)) as well as the basis for any such decisions**

## 6. Contract Conditions

### 6.1 Co-operation

Under the contract (**Clause 4.1**) the Employer, and his personnel, and the Contractor are obliged to support reciprocal cooperation for the contract purposes in respect of all aspects of the contract but particularly to any of the following:

- Negotiation and agreements
- Value Engineering
- Use of effective communications
- Efficient order and timing of information
- Minimizing the effects of suspension
- Minimizing delay and Compensation events
- Contractor's flexible management

### 6.2 Inspection

The Contractor (Clause 8.3) shall ensure that the Employer's Representative, and anyone authorised by the Employer's Representative, is able at all reasonable times to have access to all places where the Works are being executed [whether or not at the Site] and any place where any Works Items are produced, stored, extracted or prepared, or any other obligation of the Contractor under the Contract is being performed, and are able there to inspect, test, observe and examine all such items and activities.

### 6.3 Pay and Conditions

**Clause 5.3** places an onus on the Contractor to comply with any Sectoral Employment Orders, Employment Regulation orders or Registered Employment Agreements rates of pay and conditions of employment. The ER has a number of resultant duties (both under the contract and as part of their duties under these Design Team Procedures) including withholding payment where the Contractor has failed to provide a certificate showing that the Contractor has fully complied with Clause 5.3 (Clause 11.4.4).

These are described further in **DTP-2025 Pay and Conditions of Employment** available at [www.education.ie](http://www.education.ie)

The ER should also note **Clause 5.3.9** setting out the Contractor's duties to engage constructively with trade union officials party to a registered employment agreement affecting workers having concerns in relation to the Contractors or Contractor's Personnel's compliance with the agreement and Clause 5.7 requiring the Contractor to give the ER weekly a list of the name of each worker who worked the previous week and details of the category of and hours worked by each worker on the list

### 6.4 Defects

The Employer's Representative may direct the Contractor to search for a Defect or suspected Defect or its cause (**Clause 8.5.1**). This may include uncovering, dismantling, re-covering and re-erecting work, providing facilities for tests, testing and inspecting. If, through searching or otherwise, the Contractor discovers a Defect, the Contractor shall notify the Employer's Representative as soon as practicable.

**If the Employer's Representative notifies the Contractor that the Employer will not accept a Defect, this shall be conclusive.**

## 6.5 Contractor's Personnel

The Employer's Representative may direct the removal from site of any Contractor's personnel (**Clause 5.6**) because of negligence or incompetence, or on the basis that the Contractor's Personnel's presence on the Site is not conducive to safety, health or good order. See also **DTP-2025 Preparation of Tender Documents**.

At the beginning of each week the Contractor shall give the Employer's Representative a list of the name of each worker who worked the week ending the previous Sunday and details of the category of and hours worked by each worker on the list (**Clause 5.7**).

## 6.6 Suspension

The Employer's Representative may at any time direct the Contractor to suspend all or part of the work under the Contract (Clause 9.2). The Contractor shall comply with the direction and, during suspension, shall protect, store and secure the affected Works Items against deterioration, loss and damage and maintain the Insurances.

After a suspension, the Contractor shall resume work when so directed by the Employer's Representative. When a direction to resume is given, the Contractor and the Employer's Representative shall jointly examine the Works and Works Items, affected by the suspension.

If the Contractor is entitled to an adjustment of the Contract Sum or an extension of time because of the suspension, the Contractor's cost of rectifying any deterioration in or loss of the Works or Work Items that the Contractor could not have avoided shall be included in the determination of the adjustment, and any resulting delay shall be taken into account in determining the extension.

# 7. Payments and Claims

## 7.1 Payments

Interim Certificates, based on the interim recommendations prepared by the Quantity Surveyor, must be prepared and issued by the Employer's Representative to the Contractor and then submitted by the Contractor, through the Client, to the Department for processing and payment. (The Department will forward the certificate to the Building Unit Financial Section.)

Original Certificates only, signed by the Employer's Representative, must be presented to the Client for payment. Photocopies, or copies in electronic format will not be accepted.

The Employer, when issuing the certificate for payment referred to in sub-clause 11.1.3, will detail the amount for named Specialist works that has been included in the certificate and these will be copied to the relevant named Specialists. The information to be provided is set out in Model Form MF 1.20

**There is no provision for the separate identification of the amount due to Sub-Contractors as all sub-contractors are domestic.**

At the discretion of the Employer's Representative, but only when so provided in the Schedule, part 1L, interim payments may include any amount, not exceeding the percentage of value stated in the Schedule, part 1L, the Employer's Representative considers proper for each of the following:

- The Contract value of any Works Items delivered to site, to the satisfaction of the Employer's Representative,
- The Contract value of any Work Items not delivered to the Site, to the satisfaction of the Employer's Representative

### Unfixed Works Items

**At the discretion of the Employer's Representative, but only when so provided in the Schedule, part 1L, interim payments may include any amount, not exceeding the percentage of value stated in the Schedule, part 1L, the Employer's Representative considers proper for each of the following:**

**Stored On Site: (delivered to site)**

The Contract value of any Works Items that comply with all the following requirements, all to the satisfaction of the Employer's Representative:

- a) They have been completed and are substantially ready to be incorporated in the Works
- b) Title to them has been vested in the Employer
- c) They are stored suitably at the Site
- d) They have not been delivered to the Site prematurely

#### **Stored off Site (not delivered to the Site)**

The Contract value of any Work Items not delivered to the Site that comply with all of the following requirements, all to the satisfaction of the Employer's Representative:

- a) They have been completed and are substantially ready to be incorporated in the Works
- b) Title to them has been vested in the Employer
- c) They are stored suitably and set aside and marked to show clearly that their destination is the Site and that they are the property of the Employer
- d) They are clearly identified in a list given to the Employer's Representative, together with documentary evidence that title is vested in the Employer
- e) They are insured as required by the Contract, and will be insured as required while in transit
- f) The Contractor has given the Employer a bond in the form for such bonds in the Works Requirements, or if there is none, a form approved by the Employer, executed by a surety approved by the Employer's Representative, for the amount to be paid.

The Contract value of a Works Item means a portion of the Contract Sum the Employer's Representative determines is for supplying of the Works Item, having regard to the Pricing Document. The ER cannot pay for unfixed works items not listed under the **Schedule, part 1L**.

If the contractor does not give the **Rates of Pay and Conditions of Employment Certificate**, required by **Clause 5.3.7** with an interim statement, there shall be no payment due under **Sub-clause 11.4** for the relevant work until the certificate is given.

## **7.2 Contractor Claims**

If the Contractor considers that under the Contract there should be an extension of time or an adjustment to the Contract Sum, or that it has any other entitlement under or in connection with the Contract, notice must be given under **Clauses 9.3 or 10.3** as appropriate.

Under Clause 9.3 notice it must be as soon as practicable after the Contractor becomes aware of delay with full details of the delay and its effect on progress being provided not later than forty days after the Contractor become aware of the delay.

Under sub-clause 10.3 of the Contract notice must be given within 20 working days) with all relevant facts provided within a further 20 working days

The ER must manage Contractor Claims and co-operate with the Contractor (**Clause 4.1**) in ensuring that valid claims are submitted and processed within the time periods specified by the Contract.

While the ER does not have the discretion to relax the time periods stated, he/she should make the Contractor aware in writing of the limitations imposed by this clause at the start of the Contract, and at each site meeting remind the Contractor to submit any valid claims within the time allowed. All new claims should be recorded at each site meeting (see [Site Meetings](#)) as well as the current status of existing claims and the ER's determination of same.

If the cause of the claim has a continuing effect, the Contractor shall update the information at monthly intervals

- **stating the extension of time and adjustment to the Contract Sum claimed for delay and cost already incurred, and**
- **so far as practicable, proposing a final adjustment to the Contract Sum and Date for Substantial Completion of the Works and any affected Section, and**
- **providing any other information the Employer's Representative reasonably requires**

If the Contractor has made a claim under sub-clauses 10.3 or (proposal under 10.4), the Employer's Representative must, within 20 working days of receiving it, do one of the following:

- direct the Contractor to give additional information or revised proposals, in which case the Contractor shall do so within 10 working days and the Employer's Representative shall reply in accordance with this sub-clause within a further 10 working days, but that reply must not require the Contractor to give additional information or a revised proposal
- notify the Contractor and the Employer that the Contractor's proposals are agreed and make any resulting adjustments to the Contract Sum, use of the programme contingency referred to in sub-clause 9.4 or extension to the Date for Substantial Completion of the Works and any affected Section
- make a determination of any adjustments to the Contract Sum, use of the programme contingency referred to in sub-clause 9.4 or extension to the Date for Substantial Completion of the Works and any affected Section, and notify the Contractor and the Employer
- in response to a proposal under sub-clause 10.4, notify the Contractor that the proposed instruction will not be given.

The Employer's Representative must process any claims within the permitted time limits in accordance with Clause 10.5 of the Contract. Contractual claims arising from the failure of the Employer's Representative to comply with Clause 10.4 (exercising reasonable skill and care) shall be deemed to be a breach of Contract between the Employer's Representative and the Client.

### 7.3 Employer Claims

Under **Clause 10.9 Employer's Claims**, if the Employer or the Employer's Representative considers that, under the Contract, there should be a reduction of the Contract Sum, or that any amount is due to the Employer from the Contractor under the Contract, the Employer or the Employer's Representative shall, as soon as practicable, give notice and particulars of the event or circumstances to the other, and to the Contractor.

This covers Adjustments to the Contract Sum for a Compensation Event for the value of any additional, substituted, and omitted work required as a result of the Compensation Event

The Department recommends that the risk of **Event 17 (schedule PART 1 K)**, a difference between the Contract value of the Works according to the Pricing Document and the Contract value of the Works described in the Works Requirements should always be a compensation event.

This has the effect of permitting either a Contractor Claim or an Employer Claim where the Pricing Document, when compared with the Works Requirements:

- includes an incorrect quantity or
- includes an item that should not have been included or
- excludes an item that should have been included or
- gives an incorrect item description

AND the difference for an item in, or that should have been in, the Pricing Document is more than €500.

The notice to the Contractor must include:

- details of the event or circumstances giving rise to the notice, and all relevant facts and
- a calculation, and a proposal based on that calculation, of any adjustment to be made to the Contract Sum or any amount due by the Contractor to the Employer.

The procedure in this Sub-clause 10.9 applies until either the Defects Certificate or the certificates required following termination have been issued, but this does not limit the Employer's rights after then.

While the Contract does not specify the timing for Employer's claims arising from a difference in the Bill of Quantities, when compared with the Works Requirements, the Contract does state that there shall be support for reciprocal co-operation which includes efficient order and timing of information provided for in the Contract.

It is reasonable therefore that the ER should give notice under 10.9 of Employer's claims arising from a difference in the Bill of Quantities (when compared with the Works Requirements) as soon as is practicable after the ER becomes aware of the nature and extent of that difference. It is not reasonable to defer such claims to the end of the Contract (The Contractor is obliged to make his claims within 20 days).

## 7.4 Informal Dispute Resolution Procedures

### Projects with anticipated Contract Sum > €5 million

A Project Board is required to be established (see CWMF Guidance Note 3.1.1, available at [www.constructionprocurement.gov.ie](http://www.constructionprocurement.gov.ie), for information on the establishment and operation of a Project Board). Neither the Architect, acting as Employer's Representative under the contract, nor any other member of the Design Team will be a member of the Project Board. However, the Architect/ER and the Quantity Surveyor should allow for:

- Attending a Project Board meeting at least every 60 days for the duration of the construction stage and following up on any actions as required.

All members of the Design Team are required (as part of normal service) to:

- Provide information and supporting documentation in relation to items in dispute

### Projects with anticipated Contract Sum > €10 million

A Project Board is required to be established a Standing Conciliator is required to be appointed (see CWMF Guidance Note 3.1.1, available at [www.constructionprocurement.gov.ie](http://www.constructionprocurement.gov.ie) for information on the establishment and operation of a Project Board and on the appointment of a Standing Conciliator). Neither the Architect, acting as Employer's Representative under the contract, nor any other member of the Design Team will be a member of the Project Board or can act as Standing Conciliator. However, the Architect/ER and the Quantity Surveyor should allow for:

- Attending a Project Board meeting at least every 60 days for the duration of the construction stage and following up on any actions as required.

All members of the Design Team are required (as part of normal service) to:

- Provide information and supporting documentation in relation to items in dispute.

The Architect/ER is required to and should allow for:

- Ensuring that the Standing Conciliator is issued with a complete set of Contract Documents upon appointment of the Standing Conciliator.
- Co-operating with the Standing Conciliator and facilitating him/her with regard to site visits that may be necessary in order to gain an understanding of issues arising in relation to disputes.
- Including the Standing Conciliator in all correspondence surrounding Clauses 4.9, 4.10 and 4.15 of the Contract.

## 7.5 Liquidated Damages

If the Works do not reach Substantial Completion by the due date, liquidated damages at the rate stated in the **Schedule, part 1G**, become due for the period from the Date for Substantial Completion of the Works to the date of actual substantial completion of the Works.

**Just as the Contractor is entitled to recompense for a valid Contractor Claim, the Employer is entitled to recoup the cost of Liquidated Damages when the project is not completed on time. During all discussions on extension of time costs and non-delivery of the project within the prescribed contract duration the Department should be consulted and provided with advice in relation to the actions which need to be taken in relation to the application of LADs**

The Contractor should be made aware (at the beginning of the works) that Liquidated Damages may be applied (at the discretion of the Employer) in accordance with the Contract for all delays to the date for Substantial Completion (as adjusted in accordance with the Contract)

## 7.6 Termination

**Clause 12.1 Termination on Contractor Default** states that the Employer may terminate the Contractor's obligation to complete the Works by notice to the Contractor if (inter alia) the Contractor (if an individual) dies, becomes insolvent or fails to comply with its obligations under the Contract:

Any communications in relation to Clause 12 must be sent by the Employer and not the ER.

## 8. Project Review

### 8.1 Client Report

A Project Review Report **must** be prepared by the Employer's Representative and Quantity Surveyor jointly on the Template Progress Report Letter/Form and submitted to the Client monthly i.e. as the same time but separately to the submission of each Interim Certificate. An electronic copy of same must also be sent (by the ER) to both the Client and to the appropriate Department Officer under a separate email. Failure to comply with the requirement will result in the delay in payment of fees as this is an extremely important part of the delivery of the service which has been procured

- Each Progress Review Report must be completed in full and must contain all Change Orders since the previous certificate.
- Where any change orders or contractor claims outside the Employer's Representative's limitations of Authority were authorised by the Employer's Representative without approval a full explanation must be submitted. (Refer also to [Change Orders](#))
- The **Employer's Representative must report** on any critical delays in the Contract Programme and the causes of any such delays, implications for the Client i.e. alternative temporary accommodation requirements, and what actions have been/are being taken under the contract to mitigate such delays. It should (where appropriate) include brief statements from the Civil/Structural Engineer and Services Engineer, comparing progress to date with the agreed Contract Programme.
- The **Quantity Surveyor must comment** in the Progress Report Letter/Form on actual cash-flow and compare it to the forecast/programmed cash flow. Any significant variance between actual cash flow and forecast cash flow, and its relationship with works progress relative to the Contract Programme must be fully explained

**The Client must in turn send a digital copy of each monthly Progress Review Report directly to the Department separately to the certificate**