



# DTP-2025

## Tender Action (Stage 3)

### (Main Contractors & Specialists)

3rd Edition, January 2026

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## 1. Application

This Practice Note sets out the procedures to be followed by Design Teams in relation to Tender Action, the evaluation of tender submissions, tender reporting and Contract Award which applies to tender processes both Main Contractors and Reserved Specialists (where applicable).

- This Practice Note sets out the Department's requirements in relation to Tender Action, tender reporting and Contract Award. It forms part of the Design Team Procedures [5th Edition 2025] and these requirements must be complied with. It also gives guidance on the evaluation of tender submissions.

The **Design Team Procedures [5th Edition 2025]** and any associated Practice Notes (published at [www.education.ie](http://www.education.ie)) apply to all schools construction projects funded in part or in total by the Department of Education & Skills unless otherwise stated.

## 2. Tender Documents

### 2.1 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 Public Works Building 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.
- Requests for change orders or additional funding should only be required for exceptional reasons (i.e. unforeseeable circumstances) as all projects are required to be fully designed and coordinated before proceeding to tender.

#### Note: (Reserved Specialist Sub-Contract)

- There is no standard Public Works Version of the Reserved Specialist Contract but the Reserved Specialist – Conditions of Sub-Contract (NN) published by the Construction Industry Federation can be accessed on the CIF website. While the client does not enter contract with Specialists directly the Design Team are expected to be familiar with the version of document which applies to the tender competition and a copy of the NN Subcontract form issued by the CIF is required to be provided with FTS13 when tendering a Reserved Specialist package.

### 2.2 Standard Contract Documents

In addition to the Public Works Forms of Contract, the Public Works Forms of Tender and Schedules, standard Model Forms and standard Invitation-to-Tender must be used for both Main Contractors and Reserved Specialist Tender competitions.

To ensure that the correct form is used Design Teams should access all documents for the tendering of construction contracts through the Capital Works Management Framework website. There are some minor exceptions in relation to Works SAQ documentation for which there are DoEY specific forms which should be used as part of the tender process. The up-to-date versions of the CWMF documentation as provided by the OGP should be used in all remaining instances. Design Teams should refer to the CWMF regularly to ensure they are familiar with the ever-changing documentation.

**The following DoEY specific documents remain in use for SAQ processes as they are linked to the scoring approach for the qualitative assessment:**

- Appendix B2: Certificate of Satisfactory Execution - Works Only (Reserved Specialists)
- Appendix B2 Certificate of Satisfactory Execution – Main Contractors
- Appendix M - Marking Scheme Explanatory Notes (Reserved Specialists)
- Appendix M - Marking Scheme Explanatory Notes (Main Contractors)
- QW1 Appendix L CV Template (Reserved Specialists)
- QW1 Appendix L CV Template (Main Contractors)

### 2.3 DTP 2025 – Preparation of Tender Documents

**DTP 2025– Preparation of Tender Documents** provides a guide to the preparation of Tender Documents including the Instructions to Tender, the Schedule to the Contract, the Works Requirements (including Specifications) and the Pricing Document.

Design Teams are expected to have **read this** guidance document, and **to ensure** that the project is fully designed and detailed before going to tender.

**The Design Team are responsible for ensuring that the project is fully designed, detailed and coordinated before going to tender and that all the information necessary to complete the construction is included in the Tender Documents.**

## 3. Tender Action

### 3.1 Pre-Tender Decisions

Consultants and Design teams should refer to SDG\_01-TN01-Tender-process-price-technical-in-works-contracts to determine the project requirements regarding Price/Technical, Comparative cost of tender or Price Only tender approaches:

Form of Contract	Procedure Type	Contract Value Range	Appropriate Tender Options		
			Price/Technical	Comparative Cost of Tender	Lowest Price Only
PW-CF1	Open	>/= €5m	<input checked="" type="checkbox"/>		
PW-CF1	Restricted	>/= €5m	<input checked="" type="checkbox"/>		
PW-CF2	Restricted	>/= €5m	<input checked="" type="checkbox"/>		
PW-CF5	Open	€1m - €5m		<input checked="" type="checkbox"/>	
PW-CF5	Restricted	€1m - €5m		<input checked="" type="checkbox"/>	
PW-CF6	Open	<€1m			<input checked="" type="checkbox"/>

### 3.2 Current Procurement Thresholds and Requirements for Works

#### National Thresholds

The National Thresholds are set out in 2.1 and 2.2 of Circular 05/2023: Initiatives to assist SMEs in Public Procurement. The national thresholds and procurement procedures for Works are as follows:

National Procurement Thresholds (Below EU Threshold) - Works						
Contract Type:	Estimated Value of Procurement (Ex VAT)	Value at which EU thresholds and EU procedures apply	From (Date)	To (Date)	Type of Procurement Procedure Required	Requirements
Works	Less than <€200,000		01 <sup>st</sup> January 2026	31 <sup>st</sup> January 2027	Quotations (5)	Direct Invitation - Seek a minimum of <u>5</u> Written Tenders from interested and competent contractors
Works	>= €200,000 to <€5,404,000	>€5,404,000	01 <sup>st</sup> January 2026	31 <sup>st</sup> January 2027	Open Procedure	Publish Contract Notice on <u>eTenders</u>

#### EU Thresholds:

Thresholds (exclusive of VAT) above which advertising of contracts in The Official Journal of the EU (OJEU) is obligatory, applicable from 1<sup>st</sup> January 2026. The EU thresholds and procurement procedures for Works are as follows:

EU Thresholds - Works					
Contract Type:	Estimated Value of Procurement (exclusive of VAT)	From (Date)	To (Date)	Type of Procedure	Requirements
Works	>=€5,404,000	01 <sup>st</sup> January 2026	31 <sup>st</sup> December 2027	Restricted	Publish Contract Notice on <u>eTenders</u> including advertising of contracts in the Official Journal of the EU (OJEU)

### 3.3 Pre-Tender Checklist

If the Restricted Procedure is being used (See **DTP 2025 – Detailed Design Stage 2b**) the Design Team Leader will have:

- issued an eTenders Contract Notice for the pre-qualification of the Contractor and Reserved Specialists
- evaluated and short-listed suitable contractors and reserved specialists in consultation with the Quantity Surveyor and the Client
- received confirmation from the PSDP that the selected Contractors are deemed suitable to act as Project Supervisor (Construction) for the Project

On all projects both Open and Restricted (See **DTP 2025 – Detailed Design - Stage 2b**) the Design Team Leader will have:

- obtained all statutory approvals
- Prepared a complete set of tender documentation in 3 volumes for both Contractors and Reserved Specialists comprising of:
  - **[Volume A]** the Works Requirements including the project particulars. Where Reserved Specialists apply this should include the final Suitability Assessment Questionnaire (SAQ) for the named Specialists which is published as part of the Expressions of Interest stage as issued to tenderers must be included in the Works Requirements for the main contract. (This has a twofold purpose: a. To provide those tendering for the main contract an indication of the standards expected of the specialists under consideration for the award of the specialist works contract, and b. To facilitate the reappointment of a named Specialist in the event of a default of the type specified in sub-clause 5.4.5 of the public works contract), The Works Requirements for each of the named Specialist works categories should be provided in the main contract Works Requirements and labelled as such
  - **[Volume B]** the Form of Tender and Schedules. Where Reserved Specialists apply this should include the Pricing Documents (unpriced) for each of the named Specialist works categories should be provided in the main contract Pricing Document and labelled as such. It must be clearly stated that the named Specialists' Pricing Documents are not to be completed by main contract tenderers
  - **[Volume C]** the Pricing Document (Where Reserved Specialists apply this should include the pricing elements for the Mechanical and Electrical Installation) or the Reserved Specialist pricing document. (The Pricing Documents (unpriced) for each of the named Specialist works categories should be provided in the main contract Pricing Document and labelled as such. It must be clearly stated that the named Specialists' Pricing Documents are not to be completed by main contract tenderers.) The tender documents for the Reserved Specialists competition must be issued to the main contract tenderers at the same time as to the Reserved Specialist works candidates)
  - **[Volume D]** – The technical merit criteria and intended scoring where applicable in accordance with SDG01 TN-01 Tender Process: Price/Technical in Works Contracts
  - **Volume E – Background information including** The shortlisted candidates for each of the Main Contractors & Reserved Specialists (where applicable) must be provided in the various sets of tender documents as Background Information).
  - A copy of the 'NN' sub-contract form issued by the Construction Industry Federation with the accompanying Appendix (FTS13) completed as appropriate for each of the Reserved Specialist works categories should be provided within the Reserved Specialist tender documents.
- Completed the Information Pack (Appendix 3 to ITT) and
- **Obtained the written authorisation of both the Client and the Department to proceed to Tender**

If Reserved Specialists are being used (projects over **€12m** in value) (in discussion and agreement with the Department only) the Design Team will have already carried out separate tender competitions to form a shortlist of reserved specialists which will be included as part of the Main Contractor tender information.

### 3.4 Tender Competition

The Department of Public Expenditure, Infrastructure, Public Service Reform and Digitalisation CWMF Public Works Form of Tender appropriate to the type of contract (i.e. Major Works, Minor Works or

Short form) must be used as part of all tender competitions. The appropriate Forms of Tender are available at <https://constructionprocurement.gov.ie/>. The Department should be consulted if any specific information is required in formulating the tender documents including but not limited to details of costs which may need to be provided to the design team to calculate LAD's, the tender validity period, details of building occupation dates, potential phasing considerations, reviews on inflation threshold, intended project board member names for population of tender schedule Part 3 post the tender process etc.

For above threshold tender competitions, the tender period using the open or restricted tender procedure there should be sufficient time allowed for tenderers to price the works. It should be **not less than 30 calendar days**, except in the case of minor and emergency works where a reduced period may be used if certain criteria is met. A Contracting authority should consider the complexity of a contract and the minimum time limit for the receipt of tenders when placing time limits on the receipt of tenders as there are differing requirements depending on the tender procedure used and the procurement thresholds that apply.

There are no prescribed time limits in relation to below threshold procurement procedures, but due consideration should be given to the period to ensure an adequate level of competition takes place and that a sufficient amount of time is provided to prospective tenders to allow them to consider the tender documentation and submit a tender bid.

Under national procurement rules for works greater than €200k (ex-Vat) the period for receipt of tenders is 21 calendar days. It is recommended by the DoEY that a minimum of 30 calendar days is allowed to all tender competitions as best practice to ensure there is adequate time allowed for applicants to make a tender submission

Where EU Directives and competition value above EU thresholds apply, the time periods must not be less than the minimum periods specified in the Directives.

Neither the Employer nor the Design Team has any obligation to respond to tender queries, though it is expected that responses will be issued in line with the timelines set out in the ITT. A defined set of procedures for dealing with queries should be established (e.g. the eTenders query facility). The latest date for receipt of queries is 14 days before the latest time for receipt of Tenders. While there is no obligation to respond to queries it is good practice to issue timely responses. Where a query requires a change to a document, the document **should be updated** to deal with the issue raised and should be **re-issued** to all tenderers to ensure that the final documents reflect those requirements.

The latest date for issuing clarifications/amendments/further information to tenderers should be a **minimum of 8 working days before the date set for receipt of tenders (as set out in the instruction to tenderers particulars)**.

In the case of the Restricted procedure, the onus rests with the Design Team to obtain verification from each tenderer that such clarifications/ amendments/ further information have been received.

**The Design Team leader should not normally agree to any request for an extension to the tender period. However, it is important to ensure that, at all times, tendering firms have been treated in a reasonable manner and, if there are valid reasons for increasing the time allowed, the Client, in consultation with the Design Team, should assess, and if appropriate grant an extension.**

### 3.5 Direct tendering of specialist works packages (where applicable)

- Throughout the tender process for Reserved Specialists and the Main Contractor, all information issued, either in response to a query raised by a tenderer or directly by the Contracting Authority as supplementary information, should be sent simultaneously to both main contract and reserved specialist tenderers regardless of the nature of the information. This is to ensure that all tenderers can assess the impact that the information may have on their tender submission.
- Any Reserved Sums provided are for main contract tender evaluation purposes and each will be substituted with the tender sums of the relevant Reserved Specialist tenderer prior to the award of the main contract. As a result, both the figure for the Reserved Sum and the item for main contractor's profit are subject to adjustment. The main contractor's tender sum is therefore termed a notional tender sum until the adjustments for reserved specialist tenders is completed.
- The notional tender sum of each main contract tenderer will go forward to the evaluation process identified in the Instructions to Tenderers and will be used to identify the successful main contract tenderer.
- The amounts tendered for general attendance, special attendance or management shall not be less than zero and no adjustment to the amounts for these items will be made when the actual amounts for

the Reserved Specialists become available. The lump sums tendered by the main contractor for these items shall be incorporated in the Contract Sum.

- Any adjustment item that a tenderer may (legitimately) apply to their final total in a Pricing Document does not apply to Employer controlled sums such as Reserved Sums, Contract Sums for Novated Specialists, nor to any associated amounts as referred to above.
- The Comparative Cost of Tender is carried out on each tenderer's notional tender sum before ranking the tenderers in accordance with the award criteria for the award of the contract.
- When the first ranked tenderer is identified their Pricing Document is then checked for errors in line with the Instruction to tenderers. An outline programme is required to be submitted by all main contract tenderers. The programme submitted by the successful main contractor is checked to establish whether it has taken proper account of the specialist works packages. (Part of the Works Proposals will require tenderers to prepare an outline programme in compliance with the Form of Tender and Schedule, part 1G, which must identify the named Specialist works. Where a programme is found not to comply, the tender may be judged as a qualified (or conditioned) tender. The summary programme provided should also align with the programme requested in response to technical merit criteria where applicable in order for such a tender to be considered the qualification (i.e. the non-compliant programme) must be removed or the tender withdrawn.)
  - The first ranked tenderer's agreement to stand over their tender is sought. Once the agreement is confirmed, the letters to the successful and unsuccessful main contract tenderers are then issued to the main contract tenderers.
  - The conditions precedent to the award of the contract to the successful tenderer are set out in the Instruction to Tenderers. These must be listed in the appropriate letter to successful tenderer and must be met prior to the issue of the Letter of Acceptance which forms the contract.
  - Once the successful main contractor has been identified and the notification letters sent out to all tenderers, the identity of the successful tenderer for the main contract and their programme must be provided to the Reserved Specialist works candidates.

**Design teams should refer to SDG01 TN-01 Tender Process: Price/Technical in Works Contracts which also applies to Reserved Specialist tender processes.**

Direct tendering of specialist works packages (where applicable) – Reserved Specialist tender evaluation

- The Reserved Specialist tenders are evaluated by the Building Services engineer.
- The technical merit criteria where applicable is marked by the building services engineer evaluation team. Additional members if the design team can be invited for form part of this evaluation panel. It's a matter for the design team as a collective to ensure that adequate resources are available and allocated to the evaluation tasks in compliance with the requirements.
- The scores for the technical merit and the comparative cost or tender are combined and the Reserved Specialist tenders are ranked based on the award criteria for the contract (MEAT, i.e. Comparative Cost of Tender).
- The Pricing Document of the first ranked Reserved Specialist tenderer is checked for errors in line with the Instruction to Tenderers.
- In the event of an error or errors in the first ranked Reserved Specialist tender agreement to stand over their tender is sought. Once the agreement is confirmed, the

letters to the successful and unsuccessful Reserved Specialist tenderers are then issued by the Contracting Authority.

- A copy of the Form of Tender and Schedule of the successful tenderer for the Reserved Specialist works is retained for use in accordance with the determination of the value of a Compensation Event under sub-clause 10.6.4.
- The conditions precedent to the award of the contract to the successful tenderer are set out in the Instruction to Tenderers. These must be listed in the appropriate letter to successful tenderer and must be met prior to the issue of the Letter of Acceptance.
- The Letter of Acceptance for Reserved Specialists is issued by the Contractor which then forms the contract

**Design teams should refer to SDG01 TN-01 Tender Process: Price/Technical in Works Contracts for guidance on tender technical merit criteria and price/technical tender competitions.**

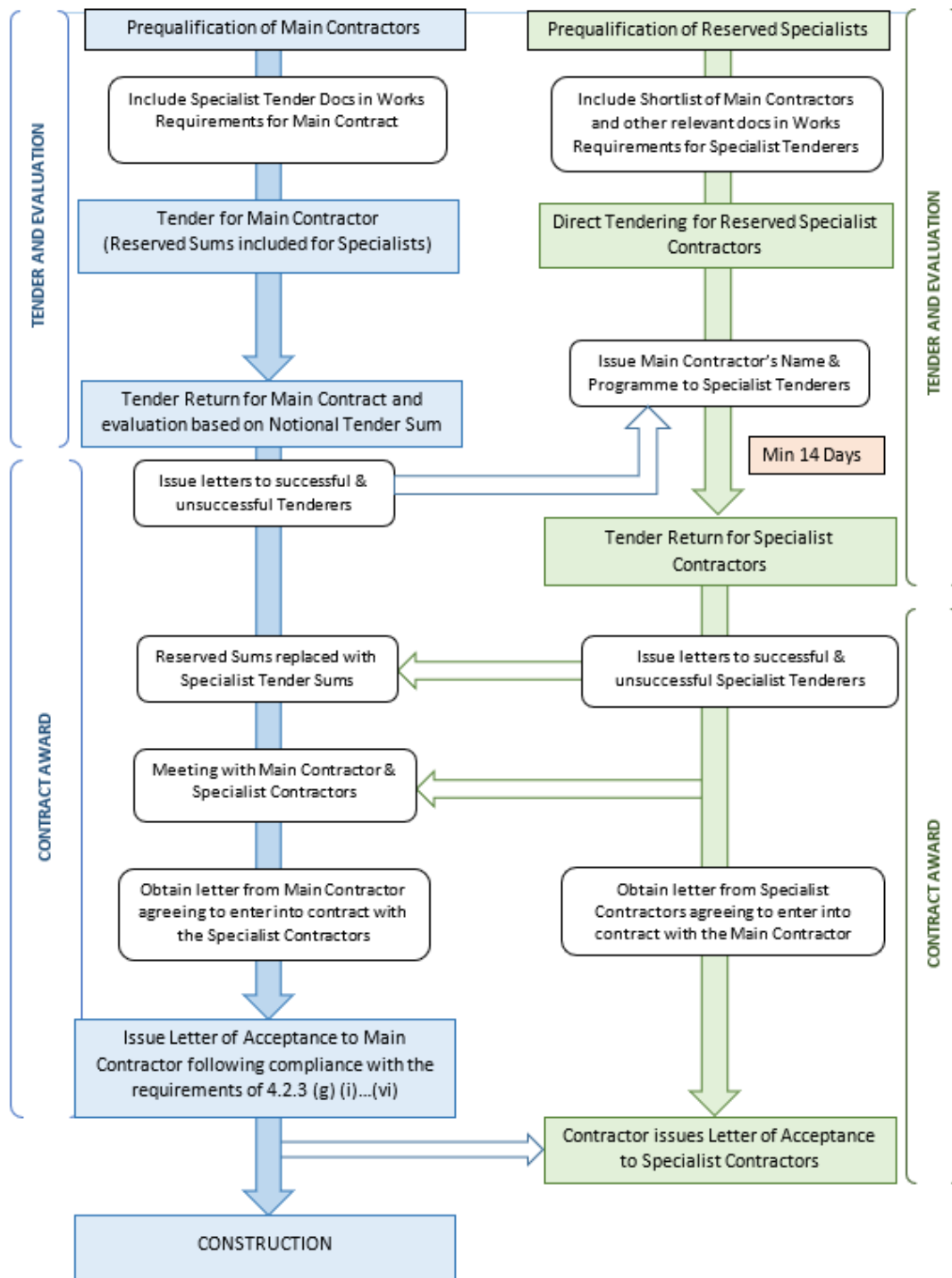
**Main Contractors and Reserved Specialists Contract Award:**

- The letters to the successful and unsuccessful main contract tenderers will be sent in advance of those to the tenderers for the Reserved Specialist works.
- Prior to the award of the main contract and after the successful tenderers for the Reserved Specialists' works categories are identified, the Contracting Authority will replace each of the Reserved Sums in the Pricing Document with the tender sum for the relevant Reserved Specialist category. The tendered percentage for profit will be applied to the relevant Reserved Specialist category to arrive at the Contract Sum.
- Once the successful tenderers for the Reserved Specialist works are identified and notified the contracting authority will write to the successful main contract tenderer inviting them and the successful Reserved Specialist tenderers to a pre-contract meeting chaired by the contracting authority. The purpose of the meeting is to confirm the following:
  - The Starting Date (as defined in sub-clause 1.1) and the Date(s) for Substantial Completion as set out in the Form of Tender and Schedule, Part 1G to the main contract.
  - Agreement by the successful tenderers for the Reserved Specialist works to the programme prepared by the successful main contract tenderer as part of their Works Proposals (providing it accords with the Form of Tender and Schedule Part 1G);
  - That the sums tendered for the main contract and each of the Reserved Specialist works categories have been adjusted in accordance with the mechanism set out in the ITT;
  - That the conditions of contract governing the main contract and the Reserved Specialist works may not be amended.
  - Any other project specific issues that the contracting authority may wish to confirm
  - The minutes of the meeting will record any clarifications agreed at the meeting and will be appended as a contract document to each of the successful tenderers' contracts.
  - Following this a letter will be sought from the successful main contract tenderer confirming their willingness to enter a contract with each of the successful tenderers for the Reserved Specialist works. A corresponding letter will be obtained from each of the successful tenderers for the Reserved Specialist works confirming their

acceptance of the main contract programme and their willingness to enter a contract with the successful main contract tenderer.

- There is only a single award of contract undertaken by the Contracting Authority. The Reserved Specialists are subcontractors who are to be appointed by the main contractor under sub-clause 5.4.3(ii) of the Conditions of Contract.
- The main contract may be awarded to the successful tenderer for the main contract once the six steps below are completed in the order set out before the Employer issues the Letter of Acceptance which forms the Contract:
  1. Completion of any regulatory Standstill period to the main contract and Reserved Specialist contracts that may apply; and
  2. The successful tenderer for the main contract has met the preconditions to award; and
  3. Letters are received by the Employer from all those named Specialists listed in the Form of Tender and Schedule stating that they are willing to enter a contract with the successful main contract tenderer; and
  4. A letter is received by the Employer from the successful main contractor tenderer stating that it is willing to contract with those named Specialists listed in the Form of Tender and Schedule; and
  5. The selected Reserved Specialists are named and listed in part 3B of the Form of Tender and Schedule
  6. The percentage figure for profit included in the Pricing Document by the successful tenderer for the main contract for each category of named Specialist work shall be transferred to part 3B of the Form of Tender and Schedule
  
- **Where any of the steps set out above cannot be completed the Contracting Authority shall not issue the Letter of Acceptance until the issues preventing their completion have been addressed. Guidance from the DoE Planning and Building Unit may be obtained where necessary.**
- Once the contracting authority has sent the Letter of Acceptance the Contract is formed. Under sub-clause 5.4.3 (ii), the Contractor is required to appoint any Reserved Specialists prior to the Starting Date.
- The Contractor must provide copies of the signed form of sub-contract (un-amended from the form provided in the Reserved Specialist tender) before the Starting Date.

### **Contract Award Process (With Reserved Specialists)**



**Guide to Tender Process with and without Reserved Specialists:**

Tender Process - No Reserved Specialists (PW-CF 1 & 5 < €12m)		Tender Process – With Reserved Specialists (PW-CF1 > €12m)
Main Contractor Tenders Submitted.	1	Main Contractor Tenders Submitted (Includes Reserved Sums for Specialists).
Design Team prepares and submits to DoEY, via Contracting Authority, a Tender Report as per DTP-2025 Tender Action (Stage 3)	2	Design Team prepares and submits to DoEY, via Contracting Authority, <b>Tender Report No. 1</b> . Evaluation based on Notional Tender Sum (i.e. main contract tenders with Reserved Sums still included for Reserved Specialist works)
DoE consider Tender report and gives approval to Contracting Authority to issue Letter of Intent to recommended Main Contractor.	3	DoE consider Tender Report No. 1 and gives approval to Contracting Authority/Design Team to issue Letter of Intent to recommended Main Contractor.

Design Team Leader issues Letter of Intent to recommended Main Contractor requesting verification information (insurances, tax clearance, bond, etc.) & issues letters to unsuccessful tenderers - at the same time.	4	Design Team Leader issues Letter of Intent to recommended Main Contractor requesting verification information (insurances, tax clearance, bond, etc.) and issues letters to unsuccessful tenderers - at the same time.
	5	Contracting Authority/Design Team/DoEY to commence Standing Conciliator appointment.
	6	Recommended Main Contractor name (update of tender schedule for Reserved Specialists) and verified programme issue to tendering Reserved Specialists
	7	Reserved Specialists submit tenders – min 14 days after being informed of recommended Main Contractor and provided with the outline programme
	8	Building Services Engineer prepares Tender Report on Reserved Specialist tenders and submits to QS and Design Team Leader. The QS adjusts the Notional Tender sum to incorporate the recommended Reserved Specialist tenders (including Standing Conciliator) to establish the Contract Sum and provides report to Design Team Leader*. Design Team Leader then submits a co-ordinated report ( <b>Tender Report No. 2</b> ) via Contracting Authority to DoEY.
	9	DoE considers Tender Report No. 2 and gives approval to Contracting Authority/Design Team to proceed with the award process.
	10	Design Team issues letters to successful and unsuccessful Reserved Specialists.
	11	Contracting Authority/Design Team convenes a meeting with the recommended Main Contractor and the Reserved Specialists (see 4.2.3(c) above.
	12	Contracting Authority/Design Team obtains letters from Main Contractor and Reserved Specialists agreeing to enter into contract
Design Team prepares and issues <b>Tender Report Supplement</b> via Contracting Authority to DoEY as per DTP-2025 Stage 3.	13	Design Team prepares and issues <b>Tender Report Supplement</b> via the Contracting Authority to DoEY confirming all actions completed and confirming compliance by the Main Contractor and the Reserved Specialists with the pre-conditions in the Letters of Intent (i.e. insurances, bonds, tax clearance, etc.).
DoEY approval to Contracting Authority to issue Letter of Acceptance to the Main Contractor (LoA to include any post tender clarifications).	14	DoEY approval to Contracting Authority/Design Team to issue Letter of Acceptance to the Main Contractor (LoA to include any post tender clarifications). The Letter of Acceptance for the Reserved Specialists is issued by the Main Contractor

### 3.6 Procurement and Appointment of Project Board Members

#### Projects using Public Works Contract >€5m (ex VAT) using PW-CF1 & PW-CF2

A Project Board will be established in accordance with Guidance Note 3.1.1 (and any subsequent updates) available on Capital Works Management Framework website.

- Members of the Design Team will not be a member of the Project Board.
- Schedule Part 1A of the Contract requires the number of Project Board members to be nominated by each party to the contract (same number for each party). The Employer must select the number of members prior to issuing the Schedule at tender stage. The number of Project Board members to be selected in Schedule Part 1a on DoEY projects is “1 member from each Party”.

- Schedule Part 3A of the Contract contains three form fields to be filled in by the Employer with details of their role within the Employer's organisation or relationship to the Employer's organisation. However, this information is not required until the Letter to Successful Tenderer is being issued, at which time the details are notified to the successful tenderer and inserted in Schedule Part 3A prior to issue of the Letter of Acceptance.
- Schedule Part 3A of the Contract also contains three form fields to be filled in with details of the Contractor's proposed members of the Project Board and their role in the Contractor's organisation or relationship to the Contractor's organisation. The Contractor is not required to disclose these details at tender stage; however, the information must be confirmed to the Employer in response to the Letter to Successful Tenderer. The Employer will then insert the details into Schedule Part 3A prior to issue of the Letter of Acceptance.

**In all cases, Project Board members to represent the Employer will be nominated by the Department of Education and Youth. Any agreement reached by the Project Board involving additional expenditure will be provisional and is subject to final funding approval by the Department of Education and Youth (the Funding Authority).**

### 3.7 Selection Appointment of Standing Conciliator

#### Projects using PW-CF1& PW-CF2, over €10m in value (ex VAT)

- In addition to the Project Board described above, a Standing Conciliator will be appointed by the parties, from the commencement Date until the Parties agree to terminate the Standing Conciliator's appointment.
- In Schedule Part 1N of the Contract, the Employer shall confirm that a Standing Conciliator will be required for the project.
- Schedule Part 3C of the Contract contains a form field to be filled in with details of the agreed Standing Conciliator who shall be jointly appointed by the Parties to the Contract prior to the Starting Date. This form field is not filled in until agreement is reached on the appointment of the Standing Conciliator.
- Schedule Part 1N of the Contract contains an additional form field, to be filled in prior to the issue of tender documents to tenderers, with the name of the person or body to appoint the Standing Conciliator where the Parties cannot agree. Where the Parties cannot agree, the person or body so named will appoint the Standing Conciliator.
- A reserved sum shall be included in the Pricing Document by the Employer to cover the Contractor's share (nominally 50%) of the fee for the Standing Conciliator. Once the successful main contract tenderer is identified, agreement shall be reached on the appointment of the Standing Conciliator, prior to the issue of the Letter of Acceptance. At this point the Contractor's share of the actual fee agreed with the Standing Conciliator is inserted in place of the reserved sum and the Contract Sum calculated accordingly.
- The Department should be consulted in all Standing Conciliator appointment situations and requested to provide a minimum of 3 suitable Stand conciliator names which are then to be provided to the Contractor for agreement in advance of appointment. A competitive tender process is required for the Standing Conciliator appointments. There should always be agreement which results in a minimum of 2 Standing Conciliator names to ensure a genuine tender competition takes place. The availability of the Standing Conciliator to accept the appointment should also be factored into the final decision. It should be noted that the value of Standing Conciliator appointments generally falls below the EU Procurement threshold and as a result falls into the Works Related Services procurement requirement to obtain 5 written quotations from suitably qualified applicants. There is an expectation that the parties will agree on the appointment but if the parties cannot agree to the appointment the person or body names in Schedule Part 1N will appoint a Standing Conciliator.
- Once the list of 3 potential Standing Conciliators options is agreed it is the Design team's responsibility (ER&QS) to check on availability and obtain 3 fee proposals in the DoEY

Standard pricing document format which is available on the website (DoEY - Standing Conciliator Fee Proposal - Model Form).

There are elements of information to be populated within the pricing document including the quantity of potential Project Board meetings.

The quantity of potential meetings and the meeting types should be proportionate to the size, type and complexity of project. Virtual Project Board meetings are an acceptable approach in the main. In person Project Board meetings should only be used where the requirement to do so is merited or there is an issue or volume of issues to be discussed that merit the requirements. Project Board meetings should generally be short and concise meetings.

It also should be noted that if no claims are referred to the Project Board there is potential that there will be no requirement for any Project Board meetings. The quantity within the pricing document of Project Board meetings will vary on a project-by-project basis.

The guidance on quantification of the project board meetings for pricing purposes should be as follows:

- 1 Meeting (Virtual) (prepopulated) – Preliminary meeting to agree project board protocol
  - Allow for 1 project board meeting thereafter every 60 days throughout the duration of the project  
Establish the quantity of meetings to be included in the pricing document as follows (Project duration as per tender schedule 1G of calendar months less 1 month (initial meeting), divided by 2 (every 60 days).  
Eg Contract Duration = 20 months  $(20-1)/2 = 8.5$  meetings (round up to 9)
  - 80% of the meetings should be included in the pricing document as virtual meetings
  - 20% of the meetings should be included in the document as in person meetings
  - The final appointment and reserved sum adjustment should be based on the tendered fee
- The Standing Conciliator Should be Appointed using Model Form (MF 1.18 Appointment of Standing Conciliator) and it is the responsibility of the ER and QS to ensure this takes place. A copy of the appointment should be provided to the Department.
  - Where the appointment is in excess of €25k (ex-Vat) There is a requirement to publish an Contract Award Notice on the eTenders system. It is the ERs responsibility to ensure that this takes place.
  - If the parties cannot agree to the appointment of the Standing Conciliator in advance of the award of the contract, then the sum stated as the reserved sum shall stand as the Contractor's sole entitlement for their share of the fee for the Standing Conciliator's services. The reserved sum shall be included in the Contract Sum and shall not be adjustable via Change Order nor compensation event. If the Contractor's share of the fee sought by the Standing Conciliator, appointed by the nominated body in the Schedule Part 1N, exceeds the sum in the Contract Sum, then the Contractor will pay 50% of the excess fee without entitlement to recoup costs from the Employer

**The Standing Conciliator's fee includes:**

- The fee for establishing and maintaining a standing knowledge of the project progression and the relationship between the parties.
- The fee for attending and/or chairing Project Board meetings (this will be agreed by the parties prior to the award of the contract).
- Any other duties agreed by the Parties and charged by the Standing Conciliator in performing his/her duties.
- The Standing Conciliator's fee does not include for conciliating a dispute under Clause 13.2 of the Contract. The fee for acting as a conciliator for a particular dispute referred under

sub-clause 13.2 shall be shared between the parties in the manner set out in the conditions (see sub-clause 13.2).

- For more information in relation to the role of the Standing Conciliator see OGP Guidance Note 3.1.1 (and subsequent updates) (available on Capital Works Management Framework website)

## 4. Tender Submissions

### 4.1 Non-Compliant Tenders

Care should be taken in considering whether a Tender is compliant or not (you will have to list the reason for exclusion for any non-compliant tender).

**Clause 7 of the ITT states:**

#### 7 Non-Compliant Tenders

If a Tenderer fails to comply in any way with these Instructions, the Contracting Authority may (but is not obliged to) take such steps as it deems appropriate including (but not limited to):

- (a) rejecting the Tender as non-compliant; and/or
  - (b) without prejudice to the Contracting Authority's right to reject the Tender:
    - i. seeking clarification from the Tenderer in respect of the relevant submissions by way of a meeting or written submission;
    - ii. requesting the Tenderer to provide information or items which has/have not been provided or has/have been provided in an incorrect form;
    - iii. waiving a requirement which in the Contracting Authority's opinion is minor or procedural; and/or
    - iv. take any other step permitted by law;
- in accordance with applicable law and principles.

While tenders should not be excluded on a technicality, it is unfair to other tenderers if you do not exclude a tenderer who has not complied with the ITT on a substantive issue (e.g. Form of Tender not signed, blank pricing document etc). See also **DTP-2025 Procuring Construction Contractors**

### 4.2 Tender Evaluation

Design Teams should refer to SDG\_01-TN01-Tender-process-price-technical-in-works-contracts in regard to the evaluation approaches which should be taken on Both Main Contractors tender process and Reserved Specialists tender process.

Form of Contract	Procedure Type	Contract Value Range	Appropriate Tender Options		
			Price/Technical	Comparative Cost of Tender	Lowest Price Only
PW-CF1	Open	>= €5m	<input checked="" type="checkbox"/>		
PW-CF1	Restricted	>= €5m	<input checked="" type="checkbox"/>		
PW-CF2	Restricted	>= €5m	<input checked="" type="checkbox"/>		
PW-CF5	Open	€1m - €5m		<input checked="" type="checkbox"/>	
PW-CF5	Restricted	€1m - €5m		<input checked="" type="checkbox"/>	
PW-CF6	Open	<€1m			<input checked="" type="checkbox"/>

#### Application of Price/Technical ratio for Reserved Specialists

The application of price/technical criteria should also apply to the tendering of M&E reserved specialists (**projects in excess of €12m exc VAT**) in employer design contracts. The default ratio to be used is 85% cost / 15% technical and shall include Works Proposals and Green Public Procurement as identified in section 3.3 of SDG 01-TN01. Note: Programme requirements should not be used as part of the technical merit criteria for Reserved Specialists as tenderers are required to incorporate the implications of the main contract programme into their tender when provided during the tender process. The successful Reserved Specialist tenderers are required to agree with the intended main contractors programme and incorporate the implications of that programme within their tender offering. They therefore do not have the opportunity to make any works proposals in relation to the Works programme.

(If the Short Form (PW-CF6) is used, Tenders are evaluated based on the lowest price only.)

The following procedure for examining tenders should apply:

- If qualifications are attached to the Tender Form, the Design Team should not open and examine the Pricing Document until those qualifications are withdrawn and so confirmed in writing.
- If qualifications are attached to Pricing Document, the Contractor should be advised that the Pricing Document will not be examined until the qualifications are withdrawn.
- If such qualifications (as above) are not removed (in writing) the Design Team Leader should consult with the Department prior to excluding that tenderer and proceeding to examine the next placed tender.
- In the normal course, only the Pricing Document of the MEAT tenderer should be opened. However, the Design Team reserves the right to open all or any Pricing Documents (As Instructions to Tender)
- If arithmetical errors are found in the tender computation, the tenderer shall be given the opportunity to stand over his tender notwithstanding the errors or to withdraw his tender. He should be asked to confirm his decision in writing. (A Tenderer may not change the Tender sum)

#### 4.3 Validating the preferred bidder's evidence of suitability (Open Procedure only)

Once the Design Team is satisfied that the preferred bidder's Tender is a valid tender, the preferred bidder in an Open Procedure should be asked to provide evidence verifying the declaration in **QW2 Suitability Assessment for Works Contractors, Open Procedure** (See also **DTP-2025 Procuring Construction Contractors**)

In practice this can be done (at the discretion of the Design Team) at the same time as discussions are held with the Contractor on rates, abnormally low tenders and other matters.

If the preferred bidder does not meet the minimum standard required, that tenderer should be excluded and the next placed tenderer should be deemed to be the preferred bidder. The process should be repeated until a qualifying preferred bidder is established.

Except where a tender is withdrawn or deemed to be non-qualifying (as above) the Design Team must not pass over the highest placed tender or any tender, (due to any other reasons apart from compliance with the Conditions for Participation) without prior consultation and agreement with the Planning and Building Unit.

**This clause does not apply to the Restricted Procedure as the Short-listed candidate's submissions will already have been validated prior to going to tender.**

#### 4.4 Abnormally Low Tenders

The Instructions to Tender [ITT] Clause 8.3 refers. "If, in the Contracting Authority's opinion, the tendered Contract Sum is abnormally low or any tendered amounts (including the rates tendered in the Schedule, part 2) are abnormally low or abnormally high, the Contracting Authority may require the Tenderer to provide details of the constituent elements of the tendered Contract Sum or the tendered amounts. This may include (without limitation) the information listed in Regulation 69 of the European Union (Award of Public Authority Contracts) Regulations 2016".

Comparison with the pre-tender estimate and the other tenders may be used as a preliminary indicator of an "apparently abnormally low tender" but is not in itself evidence sufficient to justify exclusion.

There are many reasons why a tenderer may bid below a pre-determined estimate or an average tender amount. For example, a Contractor might wish to develop a track record in the particular area of construction (as a means of being better positioned to get more work).

All tenders considered to be abnormally low (including in comparison to other tender bids) should be thoroughly investigated and the applicable tender should be afforded the opportunity to explain in detail the figures included within their bid. Response such as '*as per tender*' & "*we are willing to stand over our tender*" are completely insufficient responses and do not constitute or satisfy the requirements for a detailed explanation from a tendering party. All pricing documents should be fully priced and balanced as per the ITT. And tenderers should be referred to the ITT document within the tender information in relation to their obligations when submitting a compliant tender. Any failure to provide information requested may exclude the tenderer from further consideration.

Further investigation is required prior to reaching a (fair and transparent) decision:

- Any investigation needs to look at the capacity of the Contractor to complete the work based on their resources rather than just the tender rates. There is nothing intrinsically contrary to EU law in a person bidding for a contract at a price at which it will make a loss rather than a profit
- If a Contractor of unquestionable economic capacity and good reputation is prepared (for its own commercial reasons) to build a project at a price that won't make a profit (or may make a loss), and the Contracting Authority has every confidence that the project will be delivered (in accordance with the Contract), the Contracting Authority has no reason to exclude that tender.
- The true measure of an abnormally low tender is the risk to the Employer that the tenderer will not be able to perform the contract.
- The Litmus test is both a mathematical assessment that a tender meets the prima facie description of an apparently "abnormally low" tender and that the Employer considers that there is an unacceptable risk of non-performance or delivery.
- A combination of an arithmetically "low tender" **plus** evidence that the tender is below reasonable cost + profit **plus** an assessment of the Contractor's financial capacity (using or validating the information provided as part of suitability assessment – not a new examination of financial capacity) **plus** current workload may be sufficient to determine that there is an unacceptable risk of non-performance or delivery.

While the above guidance describes a methodology to assess whether a Tender is abnormally low or not, the most effective way to avoid apparently abnormally low tenders is to ensure that the Tender Documentation is clear and comprehensive and does not offer any scope for post Contract change orders requests for information or claims.

**The Design Team must not exclude an apparent "Abnormally Low Tender" without first consulting with the Client and the Department.**

#### 4.5 Discussions/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 2.3 (refer to any subsequent updates on the Capital Works Management Framework website)**

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, **it 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. The subject matters of the discussions may include:

- Performance Bond and insurances
- Tax Clearance Certificate/evidence of compliance with Tax Clearance Procedures
- Evidence of compliance with legal obligations in regard to Sick Pay/Pensions
- The name and contact details of the designated person within the Contractor's firm to deal with compliance with Registered Employment Agreement compliance. (refer also to [DTP-2025 Pay and Conditions of Employment](#))
- The Detailed Programme of Work and the Resources related to the Detailed Programme of Work
- The Contractor's management arrangements for the Project.
- The Projected cash flow and their relationship with the agreed programme.
- Appointment of Project Supervisor Construction Stage [PSCS] to Health & Safety Authority
- Project specific Health and Safety Plan
- Anomalies in Rates, Re-balancing of Rates and apparently "Abnormally Low" Tenders
- Scheduled and special meetings
- Other Post-tender clarifications

The Design Team **must not** in any circumstances agree to a reduced Contract Period as this changes to basis of the Tender competition and also exposes the Design Team to an accelerated timeline for decisions and the provision of additional information.

#### 4.6 Unbalanced rates

If in the Contracting Authority opinion, the tendered rates or prices in the Pricing Document do not reflect a fair allocation of the tendered Contract Sum the Contracting Authority may (but is not obliged to) do either or both of the following

- Require the Tenderer to provide a breakdown of any tendered amounts to show they reflect a fair allocation of the tendered Contract sum
- Invite the Tenderer to adjust rates or prices tendered in the Pricing Document, but without adjusting the tendered Contract sum of having any effect on the Comparative Cost of the tender

The Contracting Authority will pay particular attention to pricing that could result in the Tenderer if successful being paid too much of the Contract sum disproportionately early in comparison with the amount of work done.

Amounts must be included wherever required in the Form of Tender, the Schedule, Part 2 and the Pricing Document. blank spaces, the terms 'nil' or 'included', dashes or zero must not be used. Where zero is a permitted entry, it must be stated as 0.00. Each amount must properly cover the full inclusive value of the work to which the amount relates.

Under the Public Works Contracts, the Employer may at his/her discretion re-balance the rates to reflect a fair rate for each pricing item. **This process should not be used unless the rates are self-evidently un-balanced.**

- If it is the intention of the Design Team to use this provision, they should so inform the Contractor and obtain the Contractor's agreement.
- Contractually, the Contractor is bound to accept such re-balancing and to construct the project using the revised rates.
- Where a Design Team has concerns regarding apparent pricing errors, low rates, un-priced items (including un-priced or low-priced delay days, or zero or low rates against items listed in Appendix 4 of the ITT) a meeting should be convened between the Contractor and the Design Team before the completion of the Tender Report.
- At this meeting all of these concerns and their implications throughout the course of the project should be brought to the attention of the Contractor.
- The Contractor should then be given the opportunity to stand over his tender or withdraw it.
- Should the tenderer stand by his tender notwithstanding apparent pricing errors he should confirm so in writing including acceptance and that they have a full understanding of the implications of the rates they have tendered for labour, materials and the daily delay rates.

**Where the Design Team proposes to pass over the lowest or any tender, due to any of the above or other reasons, they should consult with the appropriate Department Officer before proceeding to examine the next lowest tender or entering into any communications (verbal or written) other than with the lowest tenderer.**

The appropriate Department Officer will in turn consult with their manager and Technical and Professional staff and revert to the Design Team. All queries in this regard should be directed to the appropriate Department Officer not to a member of Technical and Professional Staff. (See also **Design Team Procedures 2025 5th Edition - Department Communications**)

#### 4.7 Cost Overruns

If the tender price exceeds the approved pre-tender budget, the Design Team **must** identify any possible savings needed to bring the cost within budget.

The Design Team must not propose changes to the specification or omissions which would lower the standard of the building or external works below that required by the brief and the Department's Design Guidance.

Care must also be taken to ensure that, during the process of identifying the savings necessary to bring the project within budget, **the Design Team does not enter pre-award negotiations with the Contractor (see Discussions/Meetings with Contractor above).**

Notwithstanding the above, the Design Team may identify savings due to changes and omissions, and prepare a Schedule of proposed Reductions:

- Where a Schedule of proposed Reductions is prepared, the ER can, and should, notify the Contractor of the Change Orders which may be issued **on commencement** of Contract.
- Where the cost of these Change Orders can be determined by reference to the rates in the Pricing Document, the Contractor should also be informed of the applicable credit to the Client (if and when the Change Orders are issued).
  - This is not pre-award negotiation as the right to issue these change orders or not rests with the ER (post-award), and the value will be determined by reference to the pricing document at the time of issue of those change orders in accordance with the Contract.
  - The Design Team may also wish to discuss with the Contractor the impact of such changes on the programme of works and seek reassurances that those changes will not adversely affect the programme of works.
- Where the cost of proposed Change Orders cannot be determined as above, supplementary rates for the work should be ascertained in the same manner as provided for in the Contract.
- The Design Team can and should discuss these with the Contractor and seek information to assist in the assessment of the value of such works but may not include these supplementary rates in the Contract Documents.
- As above, the Design Team may also wish to discuss with the Contractor the impact of such changes on the programme of works and seek reassurances that those changes will not adversely affect the programme of works.
- Whether the intended change orders relate to existing rates only or include supplementary rates, the ER should ensure that any positive or negative affect on the cost of preliminaries, and any potential consequential cost or delays arising are included in the Schedule of proposed Reductions, and equally important where there are none arising the basis for that calculation.

The Detailed Programme of Work (called for in the Letter of intent) should be based on the original scope of works on which the Contract will be formed. An amended draft detailed programme which allows for these intended changes can also be requested from the Contractor, but cannot be attached to the Contract as a clarification in the Letter of Acceptance

**As stated in Guidance Note 2.3 (Capital Works Management Framework website) ) the ER and the Design Team are not permitted to enter any post-tender negotiations with the Contractor. Any such negotiations would be in violation of the EU procurement rules (applies also to below threshold projects) and might result in the project being re-tendered.**

#### 4.8 Electronic Issue of Tender Documents

- The completed Pricing Document (Bill of Quantities or Schedule of Rates) returned with the Tender submission may be in another format (e.g. BillSoft, Cubit, Cost Ex, Excel etc.) as long as the pricing information therein and Pricing Document descriptions are in the same and in the same order as the original Pricing Document (Bill of Quantities, Schedule of Rates) issued with the Tender Documents. Tender returns must be in Soft Copy with correct form of Tender completed, and signed in ink
- All tender engagement including the issue and receipt of tender submissions must be done by electronic means through the eTenders system

#### 4.9 Tender Report 1 – Main Contractors

On completion of the examination of the tenders (and the preparation of a Schedule of proposed Reductions if required) the Design Team are required to prepare a tender report and submit it to the Client and the Department as soon as possible **(and at latest within 10 working days of receipt of tenders)**. (Where it is necessary to identify cost savings to bring the project within budget, a longer period of time may be required.)

The Design Team Leader, Quantity Surveyor (and the Building Services Engineer where appropriate), should comment on the level of pricing generally and on any obvious pricing errors.

- The Design Team do not have the right to seek the names of domestic sub-contractors (including Mechanical and Electrical Contractors) or to comment on, or seek to change the prices (other than to [re-balance the rates](#) as above), unless those sub-contractors are listed in the Tender Documents as Specialists.
- Any rates which are unusually high or low, especially when considered to be below cost and any un-priced items should be specifically commented upon.
- **Where such below cost or un-priced items occur, the Design Team should comment on whether the Design Team has used the provision under Clauses 8.1 and 8.2 of the ITT to re-balance the rates.**
- If the tender price exceeds the Department authorised pre-tender budget, the report must provide a cost reconciliation indicating the cause of the cost over-run and identifying any possible savings needed to bring the cost within budget (see [Cost Overruns](#) above).
- As a pre-award agreement (forming part of the Contract) is not permitted, the value of the savings is the Design Team's estimate and not a contractually binding agreement. In consequence the Design Team should also indicate the basis of that calculation and whether all consequential costs have been included.
- Where omissions or substitutions are proposed as savings, the Design Team must also comment on the effect of such omissions or substitutions on the suitability of the building for its intended use and the durability and life of the building.
- [The Design Team must not propose changes to the specification or omissions which would lower the standard of the building or external works below that required by the brief and the Department's Design Guidance.]

The following information shall be accumulated by the Design Team leader (normally the Architect) into one brief report and submitted as a bound A4 document to the Department through the Client:

- A list of Tenderers, the amount of each tender received and the comparative cost of Tenders all on the Department's **DTP-2025 Tender Summary Form** (available at [www.education.ie](http://www.education.ie) ) signed and dated by Design Team Leader where indicated. Where price technical are used within the tender process the information should be included in the tender report.
- For each of the 3 tenders having the lowest comparative cost of tender, a copy of the completed Form of Tender and Schedule (Part 1 and Part 2).
- Design Team Leader's report with tender recommendation (the tenderer with the lowest comparative tender or overall price/technical score) and comment on any omissions or substitutions.
- Quantity Surveyor's report with comment on the level of pricing generally and on any obvious pricing errors including any rates which are unusually high or low, and any un-priced items (including tendered compensation event charges). If the tenderer intends to stand by his tender notwithstanding apparent pricing errors or omissions, his written justification for doing so shall be included and commented on.
- Copy of Appendix 4 as issued to the Tenderers
- Consulting M&E Engineer's comment on the level of pricing generally in the Mechanical and Electrical section of the Pricing Document and on any obvious pricing errors including any rates which are unusually high or low, and any un-priced items. [The M&E Engineer cannot seek the names of domestic M&E sub-contractors or seek to change the prices (other than to [re-balance the rates](#)), unless those sub-contractors are listed in the Tender Documents as Reserved /Named Specialists.]
- VAT Calculation for the recommended tender
- A cost analysis of the recommended tender using the VAT inclusive figure (The Department's Cost Analysis Form (available at [www.education.ie](http://www.education.ie) ) must be used and all data and specification entries must be completed in full)
- A reconciliation with the approved budget (adjusted if appropriate in line with current market conditions) and, where appropriate, a schedule of proposed reductions which may be necessary to meet cost limits. (Failure in this regard will mean a delay in the completion of tender examination)
- **Written confirmation by the Client, that the Client has read the report carefully and fully approves of the content therein.**

**The Design Team must not submit a qualified report to the Client or the Department. All the Design Team members contributing to the report must support the appointment of the recommended Contractor without equivocation or the Report cannot be accepted by the Client and Department.**

#### 4.10 Tender Report 2 (Reserved Specialists) (where Reserved Specialists are included)

On completion of the examination of the Reserved Specialist tenders (and the preparation of a Schedule of proposed Reductions if required) the Design Team are required to prepare a tender report and submit it to the Client and the Department as soon as possible (**and at latest within 10 working days of receipt of tenders**). Design Team Leader then submits a co-ordinated report (Tender Report No. 2) via Contracting Authority to DoEY. The Building Services Engineer and Design Team QS should comment on the level of pricing generally and on any obvious pricing errors.

- Any rates which are unusually high or low, especially when considered to be below cost and any un-priced items should be specifically commented upon.
- **Where such below cost or un-priced items occur, the Design Team should comment on whether the Design Team has used the provision under Clauses 8.1 and 8.2 of the ITT to re-balance the rates.**
- If the tender price exceeds the Department authorised pre-tender budget, the report must provide a cost reconciliation indicating the cause of the cost over-run and identifying any possible savings needed to bring the cost within budget (see [Cost Overruns](#) above).
- As a pre-award agreement (forming part of the Contract) is not permitted, the value of the savings is the Design Team's estimate and not a contractually binding agreement. In consequence the Design Team should also indicate the basis of that calculation and whether all consequential costs have been included.
- Where omissions or substitutions are proposed as savings, the Design Team must also comment on the effect of such omissions or substitutions on the suitability of the building for its intended use and the durability and life of the building.
- [The Design Team must not propose changes to the specification or omissions which would lower the standard of the building or external works below that required by the brief and the Department's Design Guidance.]

The following information shall be accumulated by the Design Team leader (normally the Architect) into one brief report and submitted as a bound A4 document to the Department through the Client:

- A list of Tenderers, the amount of each tender received and the comparative cost of Tenders all on the Department's DTP-2025 Tender Summary Form (available at [www.education.ie](http://www.education.ie) ) signed and dated by Design Team Leader where indicated. Where price technical are used within the tender process the information should be included in the tender report
- For each of the 3 tenders having the lowest comparative cost of tender, a copy of the completed Form of Tender and Schedule (Part 1 and Part 2).
- Building Services Engineers report with tender recommendation (the tenderer with the lowest comparative tender or overall price/technical score) and comment on any omissions or substitutions.
- The Building Services Engineers and the Quantity Surveyor's report with comment on the level of pricing generally and on any obvious pricing errors including any rates which are unusually high or low, and any un-priced items (including tendered compensation event charges). If the tenderer intends to stand by their tender notwithstanding apparent pricing errors or omission written justification for doing so shall be included and commented on.
- Copy of Appendix 4 as issued to the Tenderers
- The Building Services Engineers comment on the level of pricing generally in the Mechanical and Electrical section of the Pricing Document and on any obvious pricing errors including any rates which are unusually high or low, and any un-priced items.
- VAT Calculation for the recommended tender
- A cost analysis of the recommended tender using the VAT inclusive figure (The Department's Cost Analysis Form (available at [www.education.ie](http://www.education.ie) ) must be used and all data and specification entries must be completed in full)
- A reconciliation with the approved budget (adjusted if appropriate in line with current market conditions) and, where appropriate, a schedule of proposed reductions which may be necessary to meet cost limits. (Failure in this regard will mean a delay in the completion of tender examination)

- Written confirmation by the Client, that the Client has read the report carefully and fully approves of the content therein.

**The Design Team must not submit a qualified report to the Client or the Department. All the Design Team members contributing to the report must support the appointment of the recommended Contractor without equivocation or the Report cannot be accepted by the Client and Department.**

#### 4.11 Department of Education & Youth Authorisation

**In all cases written authorisation is required from the Department before proceeding to issue a Letter of Intent or Letter of Acceptance to the recommended Contractor.**

The Client and the Design Team are not permitted under any circumstances to enter into any commitments with the recommended contractor until such formal written authorisation has been obtained

#### 4.12 Letter of Intent (Successful Tenderer)

Once the Department has given written authorisation to the Client to issue a **Letter of Intent**, the Client shall notify the Design Team and the Design Team leader shall issue the Letter of Intent using the template available at [www.education.ie](http://www.education.ie) requiring the recommended contractor proceed to satisfy all preconditions to which acceptance of the tender is subject. Where reserved or named specialists apply, the information required should be shared with the Reserved Specialists to allow the tender process to be completed. This should happen at the point of the issue of the Letter of Intent to the Main Contractor.

Two pieces of information are to be provided to all of the Reserved Specialist Candidates as a clarification during the tender process.

1. The Form of Tender shall be reissued to include the name of the successful tenderer for the main contract
2. A copy of the programme prepared by the successful tenderer for the main contract.

The deadline for receipt of Reserved Specialist tenderers must be a minimum of 14 calendar days after the Form of Tender and Schedule including the identity of the successful tenderer for the main contract and their programme are issued to the Reserved Specialist candidates.

The process of the Letter of intent should be replicated in a similar manner to the Main Contractors with the Reserved Specialists and there is a mandatory standstill period of 14 calendar days (if issued electronically) to be observed before progressing the appointment process.

**Under no circumstances should a Letter of Acceptance be issued at this time (whether subject to meeting certain conditions or not). This has the effect of accepting the contract sum without the protection of the Contract conditions.**

#### 4.13 Notice to Unsuccessful Tenderers

At the same time as the **Letter of Intent** is issued, (whether the project is above or below EU threshold) the Design Team leader should issue letters to all the apparently unsuccessful tenderers using the template **Letter to Unsuccessful Tenderers** available at [www.education.ie](http://www.education.ie).

A minimum of **14 calendar days (where issued electronically) of a standstill period must be** provided before a Letter of Acceptance to the successful tenderer can be issued (subject also to Department authorisation and to the other requirements in these procedures)

The process of the Unsuccessful tenderer letters should be replicated in a similar manner to the Main Contractors with the Reserved Specialists.

**Where a valid challenge or legal appeal is made within the relevant time period, the subject matter of the challenge or appeal must be resolved prior to Contract award. The Design Team is to notify the Department of the details of a challenge at their earliest opportunity and before any formal response is issued to the tenderer. The Department may seek legal advice from the Chief State Solicitor's Office ahead of any formal response.**

#### 4.14 Tender Report Supplement (Including the Reserved Specialists where relevant)

The Design Team shall satisfy themselves as to the adequacy of the Contractor's programme, management resources and management arrangements for the project. (this may also be accounted for in the technical merit and Works Proposals element of tender process where it may apply).

Then, having waited a minimum of 14 days (as above), and prior to receiving authorisation from the Department to issue the formal Letter of Acceptance, the Design Team must submit to the Client the following supplementary Tender Report information (including all the Reserved Specialist documentation):

- Confirmation that all pre-conditions as set out in the letter of intent have been satisfied
- A draft Performance Bond in the form and amount included in the Works Requirements together with a written commitment from the Bonding Company to execute the bond within 10 working days of a request to do so
- Evidence of the insurances required by the contract (PI, PL,EL Etc)
- Tax Clearance Certificate/evidence of compliance with Tax Clearance Procedures
- Evidence of compliance with their legal obligations regarding Sick Pay/Pensions including Death in Service Benefit and details of how you will deal with providing future evidence in relation to these obligations where you intend to subcontract elements of the Works
- The Contractor's management arrangements for the Project. Detailed Management Resources. (Where resources are requested as a technical merit response (Works Proposals) the same resources and organogram should be resubmitted in response to the Letter of Intent
- The name and contact details of the designated person within the Contractor's firm to deal with compliance with Registered Employment Agreement compliance. (Clause 5.3.9)
- The Detailed Programme of Work (If a programme forms part of technical merit response) (Works Proposals) the programme must be the same as the programme issued in response to the Works Proposals/Technical merit criteria with only the assumed start date amended to reflect the projected start date. The Letter of Acceptance will formalise the Contract Start Date
- A resource histogram detailing the resources related to the Detailed Programme of Work
- The Projected cash flow and their relationship with the detailed programme with observations on the projected Cash-flow and "S" Curve and their relationship with the agreed programme
- Confirmation of the name of the Project Supervisor Construction Stage [PSCS] who will be appointed (by the Design Team Leader on behalf of the Client) and confirmation in writing from the PSCS (who may be the Contractor) that the PSCS will accept that appointment.
- Confirmation that a preliminary project specific Health and Safety Plan has been prepared by the person to act as Project Supervisor (Construction Stage).
- The Contractor must confirm the details of their project member(s)
- The Detailed Programme of Work and Resources related to the Detailed Programme of Work
- The Contractor's management arrangements for the Project.
- Confirmation that letters to all apparently unsuccessful tenderers have been issued (including to reserved Specialists), and that there are no appeals outstanding.
- Confirmation that there are no impediments to the commencement of work on site once authorisation to issue the letter of acceptance is received (e.g. planning conditions requiring certain actions before commencement, enabling works by others such as utility companies, etc.)
- **Written confirmation by the Client, that the Client has read the supplementary report carefully and fully approves of the content therein.**

The Client in turn **must immediately** forward copies of this Tender Report Supplement to the Department.

**Under no circumstances should a Letter of Acceptance be issued by the Client and Design Team until written authorisation to award the contract has been received from the Department.**

#### 4.15 Tender Acceptance and Contract Execution

Once written authorisation to award the contract has been received from the Department a Letter of Acceptance using the template Letter of Acceptance available at [www.education.ie](http://www.education.ie) may be issued to

the Contractor. There is no letter of acceptance for Reserved Specialists and there is one singular appointment with the Contractor.

Any post-tender clarifications **should be included** in the Letter of Acceptance such post-tender clarifications will include:

- The Contractors Detailed Programme of Work (fully aligned with the Works Proposals criteria submission where applicable), the contractors project specific organogram (fully aligned with the Works Proposals criteria submission where applicable) and a resource histogram detailing the resources related to the Detailed Programme of Work
- The contractors project specific organogram (fully aligned with the Works Proposals criteria submission where applicable) Project as stated in the Contractors submission
- The Projected cash flow and their relationship with the agreed programme.
- The designated person within the Contractor's firm to deal with compliance with Sectoral Employment Orders.
- The name of Contractor's nominated person who will act as Project Supervisor Construction Stage [PSCS] on behalf of the Contractor.
- The preliminary Project specific Health and Safety Plan
- Copy of the fully Priced (rebalanced where required) Pricing Document. Any re-balancing of Rates [Clause 8.2 ITT]
- Copy of the final updated tender schedule including relevant section PART 3 (Completed by the Employer after Tender and prior to issue of the Letter of Acceptance)
- Updating of any reserved sums included within the Contract sum (Where applicable) aligned with the contract sum included within this letter of acceptance
- Name of the Contractors Project Board Member(s)
- Name of the Employers Project Board Member(s)
- All post tender clarifications issued and responded to during the tender process – List attached
- Minutes of Pre-start meeting between the Contractor, Reserved Specialists and the Design Team
- Name of the agreed Standing Conciliator
- The fully populated form of tender and schedule Part 3
- Other 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 changes made under any circumstance to the Contract Sum, scope of work or project duration.**

**Proposed post-award change orders must not be included as clarification (Refer also to [Cost Overruns](#)).**

**Once the letter of acceptance has been issued there is a Contract in place, and all the Contract terms and conditions apply.**

- The date of Letter of Acceptance is the Contract Date.
- The Contract Period starts from this date.
- The Start Date is within 20 days of the Contract Date.

**Before the Start Date, the Contractor is required to:**

- Provide copies of the signed form of sub-contract (un-amended from the form provided in the Reserved Specialist tender) before the Starting Date. CL 9.1.2(7)

The Employer's Representative must now:

- Notify (on behalf of the Client) the Health & Safety Authority of the appointment of the Project Supervisor Construction Stage [PSCS] using the correct form.
- Issue the Commencement Notice to the relevant Local Authority after consultation with the Client and the Contractor. (The issue of the Commencement Notice shall be timed to allow

commencement of the contract in accordance with the letter of acceptance and the Conditions of Contract)

- Arrange for the signing of the Contract

**When the contract has been signed, the Design Team must submit to the Department a copy of the priced Pricing Document and a copy of the Articles of Agreement, and Schedule 1 & 2 of the signed and sealed Conditions of Contract (Contract must be under seal).**

#### 4.16 Before the Starting Date

- **Performance Bond** - Before the Starting Date, unless the Schedule, part 1E, says that no bond is required, the Contractor shall give the Employer a performance bond in the form in the Works Requirements, or, if there is none, a form approved by the Employer. The performance bond shall be in the amount stated in the Schedule, part 1E, and shall be executed by the Contractor and by a surety approved by the Employer
- **Reliance Documents** - If the Schedule, part 2B, says that there is to be a reliance guarantee, or reliance warranty, or any combination (“the Reliance Documents”), the Contractor shall give the Employer the Reliance Documents before the Starting Date. They shall be executed by the guarantors and/or warrantors named in the Schedule, part 2B, and in the form in the Works Requirements, or, if there is none, a form approved by the Employer
- **Programme** - 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]
- **Subcontractors and Specialists** - where the Contractor is to enter a sub-contract with a named Specialist, (Reserved Specialist), the Reserved Specialist sub-contract shall be an unamended form of sub-contract as identified in Schedule Part 1F(iii) and the Contractor shall enter into the sub-contract with the Reserved Specialist before the Starting Date
- 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 Contractor must provide the required appointment, and the developed safety and health plan required by the Construction Regulations
- Provide evidence that the insurances required by the Contract are in effect
- Provide any collateral warranties required by the Contract
- Provide copies of signed agreements and unamended form of sub-contract as identified in Schedule Part 1F(iii)

On the Starting Date, the Contractor shall start to execute the Works on the Site. The Contractor shall, unless the Employer’s Representative directs otherwise, proceed regularly and diligently in order to achieve Substantial Completion of the Works and each Section by its Date for Substantial Completion

#### 4.17 National and EU Contract Award Notice

##### **Refer to SDG 01-TN05 Publication of Contract Award Notices (CAN) for Works and Works Related Services**

Where procurement processes are being carried out for Works and Works Related Services for and on behalf of the Department of Education and Youth, there is a mandatory requirement as detailed in **Circular 05/2023: Initiatives to assist SME’s in Public Procurement** that **all** Contracting authorities and are required to publish a **contract award notice** for all procurements with a value over €25,000 (exclusive of VAT).

This **includes** any contracts

- Awarded under a Framework Agreement
- any contract awarded through a competition on the eTenders website
- and any contract award competition which was not advertised on the eTenders website (for example, via quotes request more than a value €25,000)

### Responsibility for publishing the Contract Award Notices

- Where the **Contract Authority** is carrying out the procurement internally the **Contracting Authority Personnel** are responsible for generating and publishing the relevant Contract Award notice
- Where **Design Teams (Lead consultant)** appointed by the Department, School, BOM etc are carrying out the procurement on behalf of a School or the Department the **Design Teams (Lead consultant)** appointed are responsible for generating and publishing the relevant Contract Award notice
- Where a **Project or Procurement Manager** appointed by the Department, School, BOM etc. is carrying out the procurement on behalf of a School or the Department the **Project or Procurement Manager** appointed is responsible for generating and publishing the relevant Contract Award notice
- Where a **devolved partner** is carrying out the procurement on behalf of a School, BOM or the Department the **devolved partner** is responsible for generating and publishing the relevant Contract Award notice

### The Time Period for Publishing Contract Award Notices / Contract Award Information:

The period following a contract award where a Contract Award Notice should be published is outlined below:

#### Above EU Threshold Procurement:

- Contracting authorities are obliged to send contract award notices to the OJEU via eTenders **within 30 days of the award of the contract.**

#### National Procurement Thresholds (Below EU Threshold):

- For below EU threshold contracts, contracting authorities should ensure that all tender notices and any relevant fields on eTenders, including relating to contract award, have **been completed in a timely manner**
- For above National Threshold but below EU threshold contracts with a value more than €25,000 excluding Vat should ensure that all tender notices and any relevant fields on eTenders, including relating to contract award, have **been completed in a timely manner (DoEY within 30 days)**
- For below National Threshold contracts with a value more than €25,000 excluding Vat but the procurement has not carried out on the eTenders platform (Direct invitation of quotations) Contracting Authorities should ensure that a Stand-Alone Contract Award notice tender notices has **been completed in a timely manner (DoEY within 30 days)**

### Types of Contract Award Notices and which approaches are required:

All Contract Award information/notices are issued using an eForms system facility on the eTenders platform. Introduced under the EU Commission Implementing Regulation 2019/1780, September 2019, all Member States must use these eForms when announcing above threshold competitions regardless of which EU directive, national regulation or procedure applies. eForms data is pre-populated with information provided by users when they create their tender notices on eTenders.

**The threshold for which Contract Notices are required to be published is €25,000 exclusive of Vat as per circular 05/23**

- a) Where a competition is carried out using a **simplified procedure (formally quick quotes)** there is a requirement to create a **Stand-Alone Contract Award Notice** or **Stand Alone Multi Lot Multi Supplier Contract Award Notice** depending on which may apply. This requires a notice to be created from the start on the eTenders platform
- b) For **above EU Threshold** and below **EU threshold** procurement processes that are carried out using the eTenders the CFT system allows the creation of eForm notices which are used to generate the final **Contract Award Notice** once the Contract has been awarded. Where the award is below the EU threshold a National Contract Award notices applies. Where the award is over the EU threshold a Standalone Contract Award notice with a TED publication is required.
- c) For tender processes carried out as a **mini competition** from a Framework there is no facility within the eTenders system to create an eForm to allow the future creation of a **Contract Award Notice**. As a result, there is a requirement to create a **Stand-Alone Contract Award Notice** or **Stand Alone Multi Lot Multi Supplier Contract Award Notice** depending on which may apply. There is a facility within the eTenders system that allows the stand-alone award notices to be created. In this case – **a Standalone National Contract Award Notice (no TED publication) and the obligation is a National one from Circular 05/23 and is excluded under 50(4) SI 284 2016 from TED publication regardless of the amount**
- d) For **below National Threshold** procurement processes where there is no requirement to use the eTenders system (Direct Quotations) there is a requirement to create a **Stand-Alone Contract Award Notice** or **Stand Alone Multi Lot Multi Supplier Contract Award Notice** depending on which may apply once a contract has been awarded. There is a facility within the eTenders system that allows the stand-alone award notices to be created.

**The Design Team Leader must issue all Contract Award Notices within the prescribed time and through the e-tenders website at [www.etenders.gov.ie](http://www.etenders.gov.ie) )**