Tender and Schedule

for

The Provision of	Consultancy Services
For	Main Pier Repair Works at An Daingean Fishery Harbour Centre, Dingle, Co. Kerry

using the

Standard Conditions of Engagement for Consultancy Services (Technical)

Conditions of Engagement for Consultancy Services (Technical)

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Department of Public Expenditure NDP Delivery and Reform
Government Buildings
Upper Merrion Street
Dublin 2

Tender

To	*The Contracting Authority*	The Department of Agriculture, Food and the Marine
	Address of Contracting Authority	Reen Point, Blennerville, Tralee, Co. Kerry
	For the attention of	Mairead Monaghan
Date:		

Contract	*For the provision of*	Consultancy Services
In relation to	*Project title*	Main Pier Repair Works at An Daingean Fishery Harbour Centre, Dingle, Co. Kerry

A Dhaoine Uaisle

We have examined and understand the **Conditions of Engagement for Consultancy Services (Technical),** the completed Schedules A and B (where appropriate), and any other tender information supplied, all as amended by any supplemental information, for the above contract.

Terms used in this tender that are defined in those documents have the same meaning in this tender. We submit with this tender a detailed breakdown of the tender price (if requested). We offer to provide and complete the Services required on the terms of and in conformity with the documents referred to in the preceding paragraph for:

the lump sum fee of:

euro excluding VAT for the Stage (i)

as adjusted in accordance with the contract.

and/or

an overall percentage fee of:

% for the Stage (ii) to (v)

together with the rates for Time Charges to be determined in accordance with the provisions of the Invitation to Tender.

The amounts set out in this Form of Tender include for expenses, for any intellectual property rights required and, where the Services include acting as Project Supervisor for the Design Process, Assigned Certifier, or signing of the Design Certificate, any fee for so acting.

Rates for Tendered Time Charges [*CA Note: delete this table where ITT-S1a or ITT-S2a is in use***]**

Grade	**Hourly rate**
Project Director	**€**
Project Manager	**€**
Senior Engineer	**€**

Project Engineer	**€**
Senior Technician	**€**
Resident Engineer	**€**
Assistant Resident Engineer	**€**
Quantity Surveyor	**€**
Project Supervisor for the Design Process	**€**
Dispute Resolution Team	**€**
Senior Technician Site Based	**€**
	€

In consideration of your providing us with the contract documents, we agree not to withdraw this offer until the later of:

- 120 days after the end of the last day for submission of this Tender
- expiry of at least 21 days written notice to terminate this Tender given by us.

Your acceptance of this Tender within that time will result in the Contract being formed between us.

We agree that you are not bound to accept the lowest or any tender you may receive.

We agree that if any contract formed by acceptance of this Tender is determined to be void, voidable, unenforceable, or ineffective, any damages for which you may be liable will not exceed the amount that would have been payable under Clause 14.29 of the Conditions of Engagement on termination under clause 14.9 of the Conditions.

We agree that if, at the date of the Contract formed by the acceptance of this Tender, we have in place Annual Aggregate Insurance:

(a) we shall monitor the EU and UK market at no longer than yearly intervals to establish whether (i) the Each and Every Insurance, or (ii) better cover than the cover in place at the later of the date of the Contract formed by the acceptance of this Tender or the latest relevant annual renewal, can be obtained at the Increased Premium Rates; and

(b) if the Each and Every Insurance:

(i) becomes available to us at the Increased Premium Rates; or
(ii) is not available (or not available to us at the Increased Premium Rates) but better cover than the Annual Aggregate Insurance in place at the later of the date of the Contract formed by the acceptance of this Tender or the latest relevant annual renewal becomes available to us at the Increased Premium Rates,

we shall immediately effect such available cover (subject to having obtained your prior written approval, such approval not to be unreasonably withheld or delayed) and notify you in writing within seven days that we have so effected the cover.

For the purposes of this Tender,

the "**Increased Premium Rates**" means premium rates that do not exceed 125% of the premium rates payable by us for cover on an annual aggregate basis at the time of the applicable annual renewal PROVIDED THAT any difference between (i) premium rates for cover on an annual aggregate basis and (ii) premium rates for the Required Insurance or better cover than the cover in place at the later of the date of the Contract formed by the acceptance of this Tender or the latest relevant annual renewal (whichever is applicable), is not due to any act, omission, default, claim, notice of claim, negligence or otherwise of or against us;

"**Each and Every Insurance**" means professional indemnity insurance on an each and every claim basis at the level set out in the Schedule; and

"**Annual Aggregate Insurance**" means professional indemnity insurance on an annual aggregate basis at the level set out in the Schedule.

Is sinne, le meas,

Signed on behalf of	
Name of Tenderer	
Signature of authorised person	
In the presence of	
Signature of witness	
Name of witness	
Witness's occupation	
Witness's address	

OR (If the Tenderer is an individual)

Signed by	
Signature of Tenderer	
Name of Tenderer	
In the presence of	
Signature of witness	
Name of witness	
Witness's occupation	
Witness's address	

STANDARD CONDITIONS OF ENGAGEMENT
FOR CONSULTANCY SERVICES (TECHNICAL)
SCHEDULES

SCHEDULE A: CONTRACT PARTICULARS[1]

INTERPRETATION

The Agreement is organised in elements, by individual numbers and line breaks, and titled groups, within each clause. One purpose is to identify clearly which contents go together as part of the same element, especially which qualifications, modifications and exceptions apply to what, and the relationships between elements.

Element numbers provide precise references, They are preceded by clause numbers in larger font except where the reference is in and to the same clause [e.g.'1, 5,6,7' in clause 2.4, but '7' alone in 2.10].

Instead of including 'and' or 'or' where either would cause ambiguity, commas are used between contents of an element, and semi-colons between elements in a sentence (with indenting where convenient for listing them), to show that they apply individually and together as relevant to the subject.

Square brackets are included where useful to identify as such clarifications, explanations, reminders of purposeful implications or of general law, and cross-references, to show that significance is not to be given to their absence elsewhere, or in the case of general law that it is not being changed.

In the Agreement, Schedules, except where the context indicates, words in the singular include the plural and the reverse.

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1. APPOINTMENT

1 Client, Consultant, Contact Details

	Client
Name	Department of Agriculture, Food and the Marine
Telephone	066 7149340
Mobile	
Email	mairead.monaghan@agriculture.gov.ie

	Client's Representative
Name	
Telephone	
Mobile	
Email	

	Consultant
Name	
Telephone	
Mobile	
Email	

[1] *Completed by the Client*

	Consultant's Representative
Name	
Telephone	
Mobile	
Email	

2 Project

———Provision of Consultancy Services for Main Pier Repair Works at An Daingean Fishery Harbour Centre, Dingle, Co. Kerry

7 Whole, parts, of other documents included in the Contract

1. Letter of Acceptance
2. Pricing Schedule
3. Service Requirements
4. Form of Tender and Schedule
5. Any Post Tender Clarifications
6. Standard Conditions of Engagement for Consultancy Services (Technical)
7. Form of appointment of PSDP

2. PERFORMANCE

12 Consultant has no authority –

to make any Change Order with an extra value above:	€ 1,000 exclusive of VAT
to make Change Orders in any three month period with a cumulative extra value above:	€ 3,000 exclusive of VAT

any Change Order causing or contributing to a reduction in safety, quality, usefulness, of the Project.

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).

17 Limit of Liability

The Liability Cap is:	€ 1,250,000 / (euro) [2]

The Liability Cap shall not apply to any claim, loss, damage, cost, expense or liability relating to

a) death, personal injury or illness;
b) fraud or fraudulent misrepresentation;
c) wilful default;

[2] If no sum is stated, the applicable amount is €1,500,000 (one million, five hundred thousand euro)

d) gross negligence;
e) third party property;
f) sub-clause 13.26 of this Agreement; or
g) any liability which the Consultant cannot lawfully exclude or limit.

19 Insurance types, terms

COVER	Minimum cover	Permitted deductible each and every occurrence	Period
Annually renewable Professional Indemnity policy, against liability for losses due to professional negligence. The conditions provide for claims for breach of professional duty or civil liability as well as negligence. The jurisdiction in which claims can be lodged and settled includes IRELAND	Each and every claim or series of claims arising out of the same originating cause[3] €300,000 *OR* Per claim and limited in the Annual Aggregate[4] €	2.0% of gross fee turnover, or €5,000 whichever is greater	From start to completion of the Services; and six years from certified substantial completion of the Project works subject to reasonable adjustment of cover for any exceptional increases in insurance market rates.
Public Liability for death, personal injury [except EL, next type]; loss of, damage to, property; with indemnity to the Client as principal	€ 6,500,000	€ 10,000	From start to completion of the Services.
Employers' Liability for death, injury, to employees	€ 13,000,000	None	From start to completion of the Services.
Insurance of plans, documents	€ 50,000	None	From start to completion of the Services.

25 Key Team Members

Key Team Members are the members of the Consultant's team that are named in the Consultant's tender submission for the Services and/or named in the Consultant's suitability assessment questionnaire response for the Services, as applicable.

[3] The Each and Every Insurance for the purpose of the Tender
[4] The Annual Aggregate Insurance for the purpose of the Tender

7. COORDINATION

5 Facilities from the Client

6 Client's resident staff

11 Team Leader

The Consultant is team leader.

9. PAYMENTS

13 Inflation Adjustment

First Adjustment Date means for any element of the Fee that is

a) a Lump Sum [by Schedule B only, not by conversion under 9.11,12], the date that is the Base Date;
b) based on Tendered Time Charges, the date that is the Base Date;
c) a Lump Sum [by conversion under 9.11,12 only] the date that is the later of:
    (i) the Base Date; or
    (ii) the Percentage Fee Conversion Date;
d) a percentage applied under 9.7,8 the date that is the later of:
    (i) the Base Date; or
    (ii) the Percentage Fee Application Date.

Base Date means the date that is the first day of the 25th month falling after the date that is 10 days before the last date of receipt of the Consultant's tender for the Services, or, if there was none, 10 days before the Client received the Consultant's tender for the Services.

Calculated Time Charges means Time Charges that are calculated by the Client in accordance with Section 5.5 (Pricing) of the Instructions to Tenderers for Consultancy Services using a formula to calculate hourly rates and carrying a document reference of ITT-S1a or ITT-S2a, as applicable. Calculated Time Charges shall only apply where ITT-S1a or ITT-S2a was used in the tender for the Contract.

COE Fee Adjustment Factor is the figure for a Relevant Quarter in an Indexation Year published on the constructionprocurement.gov.ie [or any successor] website.

Indexation Year means a period of a year with the first Indexation Year being the period starting on the First Adjustment Date and ending on the day before the anniversary of the First Adjustment Date; for each subsequent Indexation Year it shall be the period of a year from the last anniversary of the First Adjustment Date and ending on the day before the next anniversary.

Percentage Fee Application Date means the date upon which the Client applies a Scheduled Percentage for the Total Fee under 9.7,8.

Percentage Fee Conversion Date means the date upon which the Client converts a Scheduled Percentage Total Fee to a Lump Sum Fee under 9.11,12.

Quarter means a period of 3 months ending on 31 March, 30 June, 30 September or 31 December in any calendar year.

Relevant Quarter means the Quarter in which a First Adjustment Date occurs.

Tendered Time Charges means Time Charges tendered by the Consultant in accordance with Section 5 (Pricing) of the Instructions to Tenderers for Consultancy Services using tendered hourly rates and

carrying a document reference of ITT-S1b or ITT-S2b, as applicable. Tendered Time Charges shall only apply where ITT-S1b or ITT-S2b was used in the tender for the Contract.

10. DEBTS TO CLIENT

4 Interest

The rate of interest payable on Client's wrongful deduction is the rate set out in the Prompt Payment of Accounts Act 1997 p.a[5].

12. BUDGETARY CONTROL

2 Excess Percentage

'Excess Percentage' means the percentage [if any] in excess of 5% of the tendered amount accepted by the Client for the Project construction by which that amount is above or below the last estimate approved by the Client before giving permission to start Stage (iii).

13. INTELLECTUAL PROPERTY etc

11 Assignment

There is not assignment to the Client instead of a licence.

Document, design or deliverable	[List]

14 Licence

Client may use Consultant's design etc. for –

Individual projects:		
Types of project:		

15 Fees [if any]

The only fees payable by the Client for its rights under this clause are: .

18 Publicity

Consent to publicity is required from the Client.

14. TERMINATION

9 Scheduled termination events

The following are Scheduled termination events:

1. Where the Contract is subject to Statutory Instrument 284 of 2016 European Union (Award of Public Authority Contracts) Regulations 2016 or Statutory Instrument 286 of 2016 European Union (Award of Contracts by Utility Undertakings) Regulations 2016 and:
   (i) the Consultant has, at the time of Contract award, been in one of the situations referred to in Article 57(1) of SI 284 of 2016 and, in the opinion of the Employer, should therefore have been excluded from the procurement procedure; or
   (ii) the Contract should not have been awarded to the Consultant in view of a serious infringement of the obligations under the Treaties and Directives 2014/24/EU or Directive 2014/25/EU that has been declared by the Court of Justice of the European Union in a procedure pursuant to Article 258 of the Treaty on the Functioning of the European Union; or
   (iii) in the opinion of the Employer, the Contract has been subject to a substantial modification which would have required a new procurement procedure pursuant to Regulation 72 of SI 284 of 2016 or Regulation 97 of SI 286 of 2016; or

[5] If no rate of interest is specified, the European Central Bank main refinancing rate ('ECB') plus eight percentage points (ECB+8%) shall apply.

(iv) the Consultant (or its or sub consultant(s), if any) falls within the category of prohibited economic operators identified in Regulation (EU) No 833/2014 of 31 July 2014 (as amended by EU Regulation 2022/576 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine or any subsequent amendments to same).

2. Any breach of clause 2.22,23 Corrupt Gifts or the commission of any offence by the Consultant, any subcontractor, agent or employee under the Criminal Justice (Corruption Offences) Act 2018. [Without affecting its other rights], the Client shall be entitled to recover from the Consultant the amount or value of any gift, consideration or commission.

In this Form of Tender and Schedule, the reference to "Treaties" means the Treaty on European Union, the Treaty on the Functioning of the European Union, the Treaty establishing the European Atomic Energy Community and the Charter of Fundamental Rights of the European Union.

30 Payment where Client terminates at will

Where the Client terminates Services at will although the Project is continuing, the Consultant is entitled to ~~%~~ 5% of the difference between the Fees payable under clause 14.27 [without any apportionment under 14.28], and the total fee that would, as estimated at termination, have been payable on completion of the Services for the last Stage in or after which the termination occurred.

16. DISPUTES

1 Initial resolution method

The Arbitration Rules for use with the Standard Conditions of Engagement for Construction Consultants

4 Nominator

In default of agreement, an arbitrator, conciliator or other for 16.1, will be nominated at the request of either party by the following person[s]: The President of Engineers Ireland

In default of agreement an adjudicator, under the Construction Contracts Act 2013, will be appointed at the request of either party by the Chairperson of the Panel of Adjudicators.

5 Rules

The applicable Rules are the following published for use with these Standard Conditions of Engagement:

In the case of Arbitration, the arbitration rules are the Capital Works Management Framework (CWMF) *Arbitration Rules for use with Public Works and Construction Services Contracts* (AR1) published on http://constructionprocurement.gov.ie/arbitration-rules/ on the date 10 days before the latest date for submission of Tenders for this contract (disregarding any amendments posted on that date).

Arbitration Rules for use with Public Works and Construction Services ContractsPreliminary Project Brief

SCHEDULE B: CONSULTANT'S SERVICES AND FEES

CONSULTANT'S STAGE SERVICES

The Consultant's appointment is for Whole Stage as tabled below.

PSDP SERVICES

Performance of all the duties of Project Supervisor for the Design Process is included in the Services as tabled below [and the Stage Fees].

ASSIGNED CERTIFIER SERVICES

Performance of all the duties of Assigned Certifier under the Building Control (Amendment) Regulations 2014 is not included in the Services [and the Stage Fees].

DESIGN CERTIFICATE SERVICES

The Consultant is not required to sign the Design Certificate in accordance with the Building Control (Amendment) Regulations 2014.

TOTAL FEE [9]

Percentage of Project costs: Lump sum for Stage I and Percentage Fee for Stages ii to v (notional capital value is €2m)

STAGE SERVICES

Stage (i) Preliminary	1 month				
STAGE SERVICES	**Performance Period from permission to start [4.4] (days)**	**Milestones (if any)**	**Percentage of Total Fee for Stage**	**Stage Fee**	**Percentage of Stage Fee for suspension [4.18,19]**
Perform duties as outlined in the 'Scope of Service' document	1 month			100%	5%

STAGE SERVICES

Stage (ii) Design	3 months				
STAGE SERVICES	**Performance Period from permission to start** [4.4] **(days)**	**Milestones (if any)**	**Percentage of Total Fee for Stage**	**Stage Fee**	**Percentage of Stage Fee for suspension** [4.18,19]
Perform duties as outlined in the 'Scope of Service' document	3 months (4 months cumulative)		40%		5%

Sub-Stage (ii a) 2 months					
Sub-Stage (ii b) 1 month					
Sub-Stage (ii c)					

STAGE SERVICES

Stage (iii) Tender Action, Evaluation, Award	1 month				
STAGE SERVICES	**Performance Period from permission to start** [4.4] **(days)**	**Milestones (if any)**	**Percentage of Total Fee for Stage**	**Stage Fee**	**Percentage of Stage Fee for suspension** [4.18,19]
Perform duties as outlined in the 'Scope of Service' document	1 month (5 months cumulative)		25%		5%

STAGE SERVICES

Stage (iv] Construction	4 months				
STAGE SERVICES	**Performance Period from permission to start** [4.4] **(days)**	**Milestones (if any)**	**Percentage of Total Fee for Stage**	**Stage Fee**	**Percentage of Stage Fee for suspension** [4.18,19]
Perform duties as outlined in the 'Scope of Service' document	4 months (9 months cumulative)		30%		5%

STAGE SERVICES

Stage (v) Handover of Works					
STAGE SERVICES	**Performance Period from permission to start** [4.4] **(days)**	**Milestones (if any)**	**Percentage of Total Fee for Stage**	**Stage Fee**	**Percentage of Stage Fee for suspension** [4.18,19]
Perform duties as outlined in the 'Scope of Service' document	12 months (21 months cumulative)		5%		5%

DETAILS OF STAGE SERVICES REFERRED TO ABOVE
Refer to Scope of Service Document

PROJECT SUPERVISOR FOR THE DESIGN PROCESS SERVICES	**Performance period**	
All the duties of Project Supervisor for the Design Process according to the Safety, Health and Welfare (Construction) Regulations 2013, notwithstanding any inconsistent Contract contents.	While required for these Services [subject to any later appointment, earlier clause 14 Termination, by the Client].	No additional payments

TIME CHARGES

The following Tendered Time Charges apply to suspension [4.21], Client's Changes [clause 11] (unless the Time Charges are Calculated Time Charges, in which case Calculated Time Charges apply)

CA Note: Enter N/A in the table below where Calculated Time Charges apply.

Grade	**€ per hour** (exclusive of VAT)
Project Director	
Project Manager	
Senior Engineer	
Project Engineer	
Senior Technician	
Resident Site Engineer	
Assistant Resident Engineer - Site Based	
Quantity Surveyor	

Grade	**€ per hour** (exclusive of VAT)
Project Supervisor for the Design Process	
Dispute Resolution Team	
Senior Technician - Site Based	

MANAGEMENT SERVICES

[Included in Stage Services as relevant, and in the Total Fee and Stage Fees]

REPORTING		
Timing	**Contents**	**Method**
Within one week of project start Weekly	Details of key team (minimum qualifications and experience), appointed members, alternatives, including commitments, change in commitments Methods for changing a key team member Programme showing planned and actual progress, explaining differences. Methods for implementing other services below Updates highlighting all changes from previous contents	To be delivered by e-mail to Client
As required	Refer to the Scope of Service document. Any additional reporting required under Construction & Handover Stages Extra updates where necessary for informed consultation, cooperation, alerts and follow-up Reports on any special actions required during suspension	To be delivered by e-mail to Client

TRANSFERS [3]		
Timing	**Contents**	**Method**

COMMUNICATIONS [6]		
Timing	**Contents**	**Method**
	Tasks assigned to the parties to be notified by action listing on minutes of progress meetings, Consultant to prepare minutes of all meetings and within 5 days	To be delivered by e-mail to Client

COORDINATION [7]		
Timing	**Contents**	**Method**
	By action listing on minutes of progress meetings	To be delivered by e-mail to Client

COOPERATION [8]		
Timing	**Contents**	**Method**
	On the responsibility of the nominees to direct their respective staff to fulfill their roles	

PAYMENTS [9]		
Timing	**Contents**	**Method**
	Written requests to be lodged with the Client, detailing costs and reasons, not less than one week before decision is required in accordance with the programme	To be delivered by e-mail to Client

CLIENT'S CHANGES [11]		
Timing	**Contents**	**Method**

TERMINATION [14]		
Timing	**Contents**	**Method**
	Consultant to prepare a comprehensive handover report covering all contract obligations on termination	

ALERTS, FOLLOW UP		
Timing	**Contents**	**Method**
Conflict of Interest [2.29]	Details of Conflict of Interest- Full details of the conflict of interest or potential conflict of interest together with any further information which the Client may require [including any steps proposed to manage the conflict or potential conflict].	
From Consultant to Client as soon as aware of likely- Circumstances likely to require change in agreed scope of construction works.		by email within two working days of the circumstances becoming apparent
Construction variation required beyond the consultant's authority[2.11]		Consultant notification within two working days of the need for the variation becoming apparent
Insurance default[2.19]		Consultant shall submit written confirmation of renewal of premium within one week of renewal date
Information, access, assistance, urgently needed[7.1-6]		Consultant to commuicate their requirements, and necessary dates, to the Client at initiation meeting