

Tender and Schedule

for

<i>The Provision of</i>	Technical services for an Engineering Consultancy led, Multi-Disciplinary Design Team for the Clonmel Link Roads, Co. Tipperary
<i>For</i>	Stages (i) to (v)

using the

Standard Conditions of Engagement for Consultancy Services (Technical)

Conditions of Engagement for Consultancy Services (Technical)

Document Reference FTS 9 v1.10

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

Tender

To	<i>The Contracting Authority</i>	Tipperary County Council
	<i>Address of Contracting Authority</i>	Emmett Street, Clonmel, County Tipperary
	<i>For the attention of</i>	paul Keane
Date:		

Contract	<i>For the provision of</i>	Engineering Consultancy led, Single Point, Multi-Disciplinary Design Team
In relation to	<i>Project title</i>	Clonmel Link Roads

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:

insert amount	euro excluding VAT for the Whole Stages (0) to (vii),
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as adjusted in accordance with the contract.

and/or

an overall percentage fee of:

Not Applicable	% for the
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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
<i>Project Director</i>	€
Project Engineer (Design)	€
<i>Project Manager</i>	€

<i>Senior Structural Engineer</i>	€
<i>Senior Geotechnical Engineer</i>	€
<i>Cost Engineer/Quantity Surveyor</i>	€
<i>Environmental Specialist</i>	€
Project Engineer	€
<i>Graduate/Junior Engineer</i>	€
<i>Senior Technician</i>	€
<i>Junior Technician</i>	€
<i>Project Archaeologist</i>	€
BIM Manager	€
Senior Site Representative	€
Clerk of Works	€
Administrator	€
Project Supervisor Design Process	€

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

- 180days 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

Tender & Schedule for the Conditions of Engagement for Consultancy Services (Technical)

Witness's occupation

Witness's address

**STANDARD CONDITIONS OF ENGAGEMENT
FOR CONSULTANCY SERVICES (TECHNICAL)
SCHEDULES**

SCHEDULE A: CONTRACT PARTICULARS¹

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.

1. APPOINTMENT

1 Client, Consultant, Contact Details

Client	
Name	Tipperary County Council
Telephone	0818 65000
Mobile	
Email	

Client's Representative	
Name	Paul Keane
Telephone	0818 65000
Mobile	
Email	paul.keane@tipperarycoco.ie

Consultant	
Name	
Telephone	
Mobile	
Email	

¹ Completed by the Client

	Consultant's Representative
Name	
Telephone	
Mobile	
Email	

2 Project

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

1. Letter of Acceptance including any post Tender clarifications;
2. Pricing Schedule
3. Service Requirements
4. The Standard Conditions of Engagement
5. Completed Form of Tender and Schedules A and B
6. Tenderers Quality Submission
7. Model Forms

2. PERFORMANCE

12 Consultant has no authority –

to make any Change Order with an extra value above:

€ 10,000 exclusive of VAT

to make Change Orders in any three month period with a cumulative extra value above:

€ 50,000 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).

(Insert amounts and any other restrictions)

17 Limit of Liability

The Liability Cap is:

€ 3,500,000 /three million and five hundred thousand(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 cause³ €3,000,000 OR Per claim and limited in the Annual Aggregate⁴ €3,500,000	2.0% of gross fee turnover, or €5,000 whichever is greater	From start to completion of the Services; and twelve 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	€ 10,000	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

none

6 Client's resident staff

none

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](https://www.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 ECB + 8% p.a⁵.

12. BUDGETARY CONTROL

2 Excess Percentage

'Excess Percentage' means the percentage [if any] in excess of 50% 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 assignment to the Client instead of a licence.

Document, design or deliverable	[All Consultant's Documents including surveys.
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14 Licence

Client may use Consultant's design etc. for –

Individual projects:	N/A
Types of project:	N/A

15 Fees [if any]

The only fees payable by the Client for its rights under this clause are: included in the Lump Sum Fee.

18 Publicity

Consent to publicity is required from both the Client and the Consultant.

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 % 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

Engineers Ireland Conciliation Procedure 2013

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, 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).

(Conciliation Procedure 2013 approved by the Dispute Resolution Board of Engineers Ireland, 11 September, 2020.

SCHEDULE B: CONSULTANT'S SERVICES AND FEES

CONSULTANT'S STAGE SERVICES

The Consultant's appointment is for Whole Stages for Stages (i) to ((v) 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:

STAGE SERVICES

Stage (i) Preliminary					
Stage (i) Preliminary Design / Environmental Evaluation (Phase 3)					
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]
as described in the Brief for Services.	3 months	Monthly	25%		5%
Approvals	2 weeks	On receipt of approvals	5%		

STAGE SERVICES

Statutory Processes (Phase 4)					
Stage (ii) Design	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]
STAGE SERVICES					
Whole Stage	Complete fields for whole Stage OR for Sub-Stages, below.	8 months	15%		10%

Sub-Stage (ii a) not required					
Sub-Stage (ii b) not required					
		I			
Sub-Stage (ii c) not required					

STAGE SERVICES

Stage (iii)		Detailed Design - Phase 5			
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]
As described in the Brief for Services	4 months	monthly	10%		5%
Period for Approval	1 month	on receipt of approval	5%		

STAGE SERVICES

Stage (iv)		Tender Action, Evaluation and Award (Phase 5)			
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]
Tender Action, Evaluation and Award	3 months		10%		5%

STAGE SERVICES

Stage (v)		(v)(a) Construction - Phase 6 (v)(a) Handover & Defects Liability Period - Phase 7			
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]
(a) Construction - As detailed in the Brief for Services	18	monthly	30%		
(b) Handover & Defect Liability Period	12	monthly	5%		

DETAILS OF STAGE SERVICES REFERRED TO ABOVE

Click or tap here to enter text.

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 Structural Engineer	
Senior Geotechnical Engineer	
Cost Engineer/Quantity Surveyor	
Environmental Specialists	
Project Engineer	
Graduate/Junior Engineer	

Grade	€ per hour (exclusive of VAT)
Senior Engineer	
Senior Technician	
Junior Technician	
BIM Manager	
Project Archaeologist	
Senior Site Representative	
Site Representative	
Clerk of Works Administrator Project Supervisor Design Process	

MANAGEMENT SERVICES

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

REPORTING		
Timing	Contents	Method
Within 1 week	Minutes of meetings	PDF by email
Monthly	Progress Reports	PDF by email

TRANSFERS [3]		
Timing	Contents	Method
Consent shall be subject to satisfactory receipt and review of all necessary information from the Consultant.	All relevant details of transfer as may be requested by the Client	email or post to TCC Project Manager.

COMMUNICATIONS [6]

Timing	Contents	Method
ommunication shall only be received during working hours.Communications received outside of working hours or working days will be deemed to be received at 9:00am on the next working day.	As required	Electronic transfer or post. Faxing not acceptable.

COORDINATION [7]

Timing	Contents	Method
Requests for access to the site shall be subject to prior notification of at least 48 hours.	written request	email or post
Requests for information or Client assistance shall be in writing to the TCC PM	written request	email or post
Consultant to provide and maintain a programme for delivery of services through all Stages	etailed resourced programme of services	email, in MS Project & PDF format

COOPERATION [8]

Timing	Contents	Method
All Stages	Consultant to maintain the Project Team consistently through stages, to maintain continuity of service.	As required
All Stages	Consultant to co-ordinate all sub-consultants to ensure maintenance of Programme	As required
All Stages	Consultant to co-operate with Contractors appointed for advanced works and Main Works Contracts to avoid unnecessary disputes and delays.	As required

PAYMENTS [9]

Timing	Contents	Method
Monthly in arrears	Per payment schedule	invoice by email or as directed by the TCC PM

CLIENT'S CHANGES [11]

Timing	Contents	Method
As required	Written request detailing change	email or post

TERMINATION [14]

Timing	Contents	Method
As required	In accordance with CI 14 of the Conditions	email or post

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].	n writing from the Project Director to the Tipperary County Council Project Manager within 5 working days of when the Consultant becomes aware, or should have become aware, of the conflict of interest.