# Tender and Schedule

for

| | |
|---|---|
| *The Provision of* | Consultancy Services |
| *For* | Machaire Rabhartaigh Harbour Tidal Access Restriction Study |

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** | *The Contracting Authority* | Donegal County Council |
| | *Address of Contracting Authority* | County House, Lifford, Co. Donegal |
| | *For the attention of* | Cathal Sweeney |
| **Date:** | *November 2026* | |

| | | |
|---|---|---|
| **Contract** | *For the provision of* | Consultancy Services |
| **In relation to** | *Project title* | Machaire Rabhartaigh Harbour Tidal Access Restriction Study |

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 Stage, |

as adjusted in accordance with the contract.

***and/or***

an overall percentage fee of:

| | |
|---|---|
| N/A | % for the N/A |

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 (amend as required)* | **€** |
| *Project Manager (amend as required)* | **€** |
| *Senior Engineer (amend as required)* | **€** |

| | |
|---|---|
| *Project Engineer (amend as required)* | **€** |
| *Senior Technician (amend as required)* | **€** |
| *Junior Technician (amend as required)* | **€** |
| | |
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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* | |
| *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 | Donegal County Council |
| Telephone | 0749153900 |
| Mobile | |
| Email | cathalsweeney@donegalcoco.ie |

| | Client's Representative |
|---|---|
| Name | Cathal Sweeney |
| Telephone | 0749153000 |
| Mobile | |
| Email | Cathalsweeney@donegalcoco.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
2. Pricing Schedule
3. Service Requirements
4. Scope of Services
5. Form of Tender and Schedule
6. Standard Conditions of Engagemenet for Consultancy Services (Technical)
7. The Tenderer's tender submission
8. Post tender clarifications

## 2. PERFORMANCE

**12 Consultant has no authority –**

| | |
|---|---|
| to make any Change Order with an extra value above: | € 1000 exclusive of VAT |
| to make Change Orders in any three month period with a cumulative extra value above: | € 3000 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: | € / ( 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;

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

c) wilful default;
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.<br>The conditions provide for claims for breach of professional duty or civil liability as well as negligence.<br>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]<br>€1,500,000<br>*OR*<br>Per claim and limited in the Annual Aggregate[4]<br>€1,500,000 | 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 | € N/A | 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 [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 2% p.a[5].

## 12. BUDGETARY CONTROL

### 2 Excess Percentage

'Excess Percentage' means the percentage [if any] in excess of 0% 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 | Not applicable |

### 14 Licence

Client may use Consultant's design etc. for –

| | |
|---|---|
| Individual projects: | without limitation, the construction, completion, reconstruction, modification, repair, maintenance, use, letting, sale and advertisement of the works or any part thereof |
| Types of project: | Similar or nearby projects. The Consultant shall not be liable for any use by the Client of the documentation for any purpose other than that for which such documentation was produced / provided by the Consultant |

### 15 Fees [if any]

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

### 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 Irealnd concilliation procedures (most recent revision)

**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).

(Identify the Rules that apply in each other resolution method, or where none any Rules agreed by the parties.)

# SCHEDULE B: CONSULTANT'S SERVICES AND FEES

## CONSULTANT'S STAGE SERVICES

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

## PSDP SERVICES

Performance of all the duties of Project Supervisor for the Design Process is not 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]

Lump Sum:

## STAGE SERVICES

| **Stage (i)** | | | | | |
|---|---|---|---|---|---|
| **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] |
| Services as described in and as can be reasonably implied from the Scope of Services | 9 Months | | 100 | | |

## STAGE SERVICES

| Stage (ii) not applicab | | | | | |
|---|---|---|---|---|---|
| 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] |
| Whole Stage | Complete fields for whole Stage OR for Sub-Stages, below. | | 100% | | % |
| | | | | | |

| | | | | | |
|---|---|---|---|---|---|
| **Sub-Stage (ii a)** | | | | | |
| | | | | | |
| | | | | | |
| **Sub-Stage (ii b)** | | | | | |
| | | | | | |
| | | | | | |
| **Sub-Stage (ii c)** | | | | | |
| | | | | | |
| | | | | | |

## STAGE SERVICES

| Stage (iii) not applicable | | | | | |
|---|---|---|---|---|---|
| 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] |
| | | | | | |
| | | | | | |

## STAGE SERVICES

| Stage (iv) not applicable | | | | | |
|---|---|---|---|---|---|
| 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] |
| | | | | | |
| | | | | | |

## STAGE SERVICES

| Stage (v) not applicable | | | | | |
|---|---|---|---|---|---|
| **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] |
| | | | | | |
| | | | | | |

| **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) |
|---|---|
| | |
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| | |

| Grade | **€ per hour** (exclusive of VAT) |
|---|---|
| | |
| | |
| | |

## MANAGEMENT SERVICES

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

| **REPORTING** | | |
|---|---|---|
| **Timing** | **Contents** | **Method** |
| Progress Reports at review meeting showing updates from previous meeting and upcoming actionable matters.<br>Initial Client Meeting with second follow up meeting 1 month later to review approach and approve progression. A Programme will be required for 2nd meeting.<br>Minimum 4no. meetings with Donegal Co. Council to complete report. | | |
| | | |

**TRANSFERS** [3]

| Timing | Contents | Method |
|---|---|---|
| At Project Review Stages is preferred. | If the Consultant wishes to supplement an area of expertise by employing a sub consultant, the consultant must furnish details of the proposed sub consultants experience and PI Insurance. | In writing (hardcopy / email) MIN.3 days prior to the relevant Project Review Stage. |
| | | |
| | | |

**COMMUNICATIONS** [6]

| Timing | Contents | Method |
|---|---|---|
| | | |
| | | |
| | | |

**COORDINATION** [7]

| Timing | Contents | Method |
|---|---|---|
| | | |
| | | |
| | | |

**COOPERATION** [8]

| Timing | Contents | Method |
|---|---|---|
| | | |
| | | |
| | | |

| **PAYMENTS** [9] | | |
|---|---|---|
| **Timing** | **Contents** | **Method** |
| | | |
| | | |
| | | |

| **CLIENT'S CHANGES** [11] | | |
|---|---|---|
| **Timing** | **Contents** | **Method** |
| Whole Stage (i) | Payments of the fee appropriate shall be made as detailed in Schedule B | By ETF to Nominated Account details. |
| | | |
| | | |

| **TERMINATION** [14] | | |
|---|---|---|
| **Timing** | **Contents** | **Method** |
| | | |
| | | |
| | | |

| ALERTS, FOLLOW UP | | |
|---|---|---|
| **Timing** | **Contents** | **Method** |
| Conflict of Interest [2.29] | Details of Conflict of Interest-<br><br>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]. | [Client to insert details of how it wishes to be informed of the conflict] |
| | | |
| | | |