# Instruction to Tenderers

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| The Project | Proposed Carpark Upgrades and Alterations at Waterford Training Centre, Waterford Industrial Park, Cork Road, Waterford |

using the

**Open Procedure for a Works Contractors and PSCS using**
**PW-CF6 SHORT PUBLIC WORKS CONTRACT**

**Document ID ITT-W4 v2.0**

**Office of Government Procurement**

Instruction to Tenderers
for Works Contractors using the Short Form of Contract
under an Open Procedure
Document Reference ITT-W4 v2.0
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# Preface

The Contracting Authority is making these documents available to those expressing an interest in tendering for the Contract identified in the Particulars, for tendering purposes only. These documents must not be used for any other purpose.

The Contracting Authority makes no representation, warranty, or undertaking in or in connection with these documents unless explicitly stated. The Contracting Authority has not authorised anyone to make any representation in connection with these documents on its behalf, and Applicants should not rely on any representation purportedly made on the Contracting Authority's behalf in connection with this Competition. Neither the Contracting Authority nor its officers, employees, or advisers, will have any liability in connection with these documents. Applicants must make their own assessment of the adequacy, accuracy, and completeness of these documents.

The Contracting Authority reserves the right not to proceed with the Competition or any part of it and may terminate the Competition or any part of it at any time, with or without procuring the Works in another way. If this happens, neither the Contracting Authority nor its officers, employees, or advisers will be liable to any Applicant or other person. The Contracting Authority also reserves the right to change any part of these documents, including the procedures and time limits described in them. The Contracting Authority does not bind itself to accept any outcome of the process described in these documents and is not obliged to enter into a contract for the Works with anyone.

Neither the Contracting Authority nor its officers, employees, or advisers have any responsibility for Applicants' costs or losses in connection with this Competition. These Instructions do not create a contract or legal relationship (including, for the avoidance of doubt, any contract about the Competition itself) between any Applicant and the Contracting Authority concerning the subject of these documents (except for the Applicant's irrevocable offer to be bound by its Tender for the period stated) unless and until the Contract has been entered into by issue of the Tender Acceptance and any conditions precedent to its effectiveness have been met. The exception to this is the obligation upon an Applicant with regard to confidentiality. These Instructions to Tenderers will not form any part of any Contract unless explicitly stated otherwise.

These documents are being made available on the terms stated in these Instructions to Tenderers. They are not being distributed to the public, and have not been filed, registered, or approved in any jurisdiction. Possession or use of these documents contrary to any law is prohibited. Recipients must inform themselves of and observe all laws concerning the possession and use of these documents.

Recipients of these Instructions to Tenderers must treat these documents, their Tenders and their participation in this Competition as confidential. They must not disclose any information about this Competition to anyone other than as required for tendering purposes, or as required by law.

The Contracting Authority is entitled to disclose information about this Competition, including the identity of those expressing interest, to any person. If a Tenderer considers that information in its Tender is commercially sensitive or confidential, this should be clearly stated, and clear and substantive reasons should be given. The Contracting Authority will have regard to such a statement

in considering a request for access to the information under the Freedom of Information Acts 2014 (or any other legislation relating to the disclosure of information), but is not bound by the Tenderer's view and will take such steps as it considers necessary to comply with its obligations under applicable law.

Any conflict of interest or potential conflict of interest must be fully disclosed to the Contracting Authority as soon as such conflict or potential conflict becomes apparent. This includes, but is not limited to, situations where an Applicant or any of the members of an Applicant which is a consortium, joint venture or partnership, or any entity being relied upon by an Applicant or any of their advisers, contractors, consultants, servants or agents which are currently or have been in the past an adviser, contractor, consultant, servant or agent to the Contracting Authority, or any local or other relevant authority in relation to the Works which are the subject matter of this Competition.

Without prejudice to the foregoing, any 'registrable interest' involving the Applicant and the Contracting Authority, (and where applicable any elected members of the Contracting Authority or members of the Board of the Contracting Authority), members of the Government, members of the Oireachtas or employees of the Contracting Authority or their relatives must be fully disclosed to the Contracting Authority immediately upon such information becoming known to the Applicant.

The terms 'registrable interest' and 'relatives' shall be interpreted in line with the Ethics in Public Office Act, 1995 and the Standards in Public Office Act 2001 as may be amended from time to time.

The Contracting Authority will, at its absolute discretion, decide on the appropriate course of action in relation to any actual or perceived conflict of interest which may include (but is not limited to) excluding the Applicant from the Competition or permitting the Applicant to continue subject to safeguards determined by the Contracting Authority being put in place and observed.

It will be a condition of the award of the Contract that the successful Tenderer shall, for the term of the Contract, comply with all applicable EU and domestic tax laws. Prior to the award of the Contract arising out of this Competition the successful Tenderer shall be required to supply its Tax Clearance Access Number and Tax Reference Number to facilitate online verification of their tax status by the Contracting Authority. By supplying these numbers the successful Tenderer acknowledges and agrees that the Contracting Authority has the permission of the successful Tenderer to verify its tax cleared position online.

Tenderers may obtain information regarding their obligations concerning

- taxation from the Revenue Commissioners (www.revenue.ie )
- environmental protection from the Environmental Protection Agency (www.epa.ie )
- employment protection and working conditions from the Workplace Relations Committee National Employment Rights Authority (www.employmentrights.ie )

Irish law is applicable to these Instructions and the Irish courts shall have exclusive jurisdiction in relation to any disputes arising from or in connection with these documents.

The Applicant's attention is drawn to the Competition Act 2002 – 2019 (as may be amended from time to time) which makes it a criminal offence to collude on prices or terms in a public procurement competition.

Tenderers must not make any assumptions that the Contracting Authority has prior knowledge of their organisation or service provision. Tenderers will only be evaluated on the information contained in their Tender (as may be clarified in accordance with these Instructions).

# 1 Introduction

## 1.1 This procedure

The Contracting Authority has sent a contract notice for the Works to eTenders.[1]

These documents set out the suitability assessment criteria, the award criterion and the evaluation and award process which will be followed by the Contracting Authority in making the assessment of which Tender is the lowest price. The documents also set out the information which must be supplied by Tenderers. Tenders must be submitted in accordance with these Instructions. Any Tenders not complying with these Instructions may be rejected by the Contracting Authority, whose decision in the matter shall be final.

## 1.2 These documents

These documents are available to those Applicants expressing an interest in this project.

Refer to Section 4.2 Tender Documents and the Particulars for further details of these documents.

## 1.3 The Contract

If the Contracting Authority enters a Contract for the Works, it will do so by issuing the Tender Acceptance at the back of the Form of Tender fully completed. The Contract, if formed, will consist of:

- the Tender Acceptance issued by the Employer (Volume B) and
- any written post-tender clarifications (Volume B)
- the Conditions of the Short Public Works Contract stated in the Particulars (PW-CF6)
- the documents describing the Works[2] (Volume A)
- the completed Form of Tender and Schedule (Volume B)
- the completed pricing document[3] (Volume C) [where required]

Where required, the Contractor will be required to provide a Performance Bond.
None of the following documents will form part of any Contract:

- the invitation letter and these Instructions
- Suitability Assessment Questionnaire(s)
- the Preliminary Safety and Health Plan
- any Bill of Quantities
- the information referred to in Appendix 3 to these Instructions
- any other information issued to Applicants not stated to amend the Contract documents
- additional information to be submitted with Tenders, as specified in Appendix 2 to these Instructions
- any other information submitted with Tenders and not called for in these Instructions or in post-tender clarifications.

[1] The open procedure may be used for all values of works contracts but must be used for works contracts with a value of less than €250,000. Projects in excess of €200,000 must be advertised on eTenders.

[2] These documents may include (but are not limited to) any of the following: drawings, specifications, schedules, reports, information on the site location, any constraints such as existing services or working hours, statutory consents and conditions attached thereto.

[3] Where a pricing document is required by the Employer, it shall be in the form described in the Particulars in accordance with Section 4.8 of these Instructions. Its purpose shall be to value completed work or may also be used in connection with the valuation of a compensation event in accordance with clause 4.5 and clause 4.6 of PW-CF6.

## 1.4 Data Protection Notice

As part of this Competition, the Tenderer may (at various stages) provide personal data relating to the Tenderer or its organisation, employees or other third parties. In these documents , "Data Protection Laws" means all applicable data protection law including, with effect from 25 May 2018, the General Data Protection Regulation (Regulation (EU) 2016/679) and the Data Protection Act 2018; and the terms "personal data", "process", "controller", "processor" and 'data subject' shall have the meanings given to them under Data Protection Law.

Where the Tenderer provides personal data relating to third parties, the Tenderer must ensure that such third parties are made aware of the contents of this Data Protection Notice in full.

The Tenderer, as controller in respect of any personal data provided by it as part of this Competition, is required to confirm in the declaration required under Section 2 of the Suitability Assessment Questionnaire(s) that all data subjects whose personal data is provided by the Tenderer have consented to the processing of such personal data by the Tenderer, the Contracting Authority, the evaluation team and the supplier of the etenders.gov.ie website for the purposes of the participation of the Tenderer in this Competition or that the Tenderer otherwise has a legal basis for providing such personal data to the Contracting Authority for the purposes of its participation in this Competition.

Where such personal data is provided, the relevant controller is the Contracting Authority. If there are any questions about the Contracting Authority's use of such personal data, please contact the Contracting Authority's Data Protection Officer whose details are available upon request from the Contracting Authority.

The Contracting Authority may process the following personal data as part of this Competition:

- name;
- contact details;
- CV details (including but not limited to qualifications, education, experience, previous roles and responsibilities);
- details of proposed role(s) and responsibilities on this contract;
- referee details; and
- any other data provided by the Tenderer.

The Contracting Authority collects personal data from the Tenderer directly, and from the following sources:

- Tenderer's organisation;
- other members of the Tenderer's consortium (if applicable); and
- Referees.

Any personal data provided will be processed for the purposes of the Competition, the administration of any contract awarded on foot of this Competition, reporting to any regulators or oversight bodies and/or any disputes relating to the Competition or the Contract.

In connection with the above, the Contracting Authority may disclose personal data to various recipients including:

- Tenderer's organisation;
- other members of the Tenderer's consortium (if applicable);
- the Contracting Authority's third party service providers, such as financial, legal and technical advisors; and
- regulators or oversight bodies.

If the Tenderer is unsuccessful as part of the Tender process, such personal data will be retained until three years after the conclusion of the Tender process or the award of the Contract to the successful Tenderer, whichever is later. If the Tenderer is successful, and a Contract is awarded to

the Tenderer at the end of the Tender process, such personal data will be retained in accordance with the Contracting Authority's record management and retention policy, a copy of which can be obtained from the Contracting Authority upon request.

Any data subjects in respect of which the Contracting Authority holds or processes personal data have rights in relation to their personal data, including the right to request access to their data and, in certain circumstances, to request rectification, erasure or restriction of the processing of their personal data. All such data subjects have the right to lodge a complaint with the Irish supervisory authority, the Data Protection Commission.

# 2 Communications

## 2.1 Means of Communication

All communications with the Contracting Authority concerning this Competition must be in writing by the means of communication stated in the Particulars.

## 2.2 Supplemental Information

The Contracting Authority may issue supplemental information about this Competition to Applicants at any time (including where prompted by a query, confidential or otherwise). Supplemental information may amend any of the information in these documents, including by deleting and adding to it, and by extending time limits. Supplemental information will only become part of the Contract if it is stated to amend the Contract documents.

The Contracting Authority will not normally issue supplemental information later than the date stated in the Particulars but is entitled to do so at any time.

## 2.3 Query Procedure

Queries may be raised in writing using the means of communication stated in the Particulars. Queries must be raised as soon as possible and should be raised in any event no later than the date stated in the Particulars. The Contracting Authority has no obligation to respond to queries although the Contracting Authority may at its discretion respond to queries raised after that date. If the Contracting Authority responds to a query, it will issue the response to all Applicants using the stated means of communication, unless the query has been clearly designated as confidential. If the query has been designated as confidential, and the Contracting Authority decides that the response should be issued to all Applicants, the Contracting Authority will notify the Applicant raising the query, who will have the option within the time limit specified by the Contracting Authority, of withdrawing the query or having any response issued to all Applicants. However, the Contracting Authority may under Section 2.2 of these Instructions issue any information it considers appropriate to all Applicants following withdrawal of the query.

As with these Instructions to Tenderers, responses to queries will not create any contractual relationship between the Contracting Authority and Applicants, or form part of the Contract unless explicitly stated otherwise.

It is the responsibility of Applicants to monitor the means of communication stated in the Particulars for any correspondence or clarifications in relation to the Competition.

If an Applicant intending to submit a Tender becomes aware of any ambiguity, discrepancy, error, or omission in or between these documents, they must immediately notify the Contracting Authority, even after the time for submitting queries has expired.

## 2.4 Other

As stated in the Particulars.

# 3 Tenderers

## 3.1 Name

Each Tenderer must sign the Form of Tender using the Tenderer's full correct legal name and this shall be the same as that given in the Tenderer's SAQ Response.

## 3.2 Joint Ventures

If a Tenderer is one or more human or legal persons (such as a partnership, joint venture or consortium), each of them must sign the Form of Tender. (See also 4.8 below.)

# 4 Requirements for Tenders

## 4.1 Delivery

Tenders must be received in accordance with the required means of tender delivery stated in the Particulars and by no later than the deadline stated in the Particulars (or a later date and time advised by the Contracting Authority to Tenderers). All times are local Irish time as standard time according to the Standard Time Act 1968 (as amended).

Where the Particulars state that the required means of tender delivery is electronic submission to the eTenders platform, Tenderers are advised to ensure that they give sufficient time to allow for the successful upload of all Tender documents and that they have a reliable, continual connection speed available for this purpose. Tenderers should ensure that their operating system has sufficient capacity to execute the upload of all the documents included in the Tender submission before the deadline stated in the Particulars. The timely and complete upload of documents is the responsibility of each Tenderer. All files submitted electronically must be capable of being readily viewed in their entirety by the means stated in the Particulars. It is the responsibility of the Tenderer to ensure that electronic documents submitted are not corrupt. Tenderers are advised to consult etenders.gov.ie for information on uploading electronic submissions.

Completed delivery of the Tender in advance of the submission deadline is the responsibility of each Tenderer.

All Tenders received on time will be opened promptly after receipt.

## 4.2 Tender Documents

Attached to these Instructions are the documents listed in the Particulars under *Tender Documents*. Documents listed in the Particulars as *Documents to be included in the Contract* or any amendment to them which have been made available to Applicants will form part of the Contract. These will include[4]:

- the documents describing the Works[5]
- Volume B; the completed Form of Tender and Schedule (FTS-6)
- Volume C: the completed pricing document[6] [where required]

(Also included in the Contract but not being made available as part of the tender documentation is the Conditions of Contract identified in the Particulars, which the Contracting Authority issues at award stage. (See also section 1.3.))

All other documents, including *Documents for information purposes only*, made available to Applicants will not form part of the Contract such as:

- the SAQ

[4] This is not an exhaustive list.

[5] These documents may include (but are not limited to) any of the following:
drawings, specifications, schedules, reports, information on the site location, any constraints such as existing services or working hours, statutory consents and conditions attached thereto.

[6] Where a pricing document is required by the Employer, it shall be a schedule of rates which will be derived (in accordance with Section 4.8 of these Instructions) from the pricing document returned as Volume C. Its purpose shall be to value completed work or may also be used in connection with the valuation of a compensation event in accordance with clause 4.5 of PW-CF6.

- the invitation letter and these Instructions
- the Preliminary Safety and Health Plan
- any Bill of Quantities
- the information referred to in Appendix 3 to these Instructions
- any other information issued to Applicants not stated to amend the Contract documents.
- additional information to be submitted with Tenders, as specified in Appendix 2 to these Instructions. any other information submitted with Tenders and not called for in these Instructions or in post-tender clarifications.
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## 4.3 Number of Tenders per Tenderer

Only one Tender per Tenderer is permitted with the Short Public Works Contract.

## 4.4 Copies

Where the Particulars state that the required means of tender delivery is by registered post or delivery by hand, Tenders must include the number and type of paper and/or electronic copies stated in the Particulars and these must be packed and/or labelled as stated in the Particulars.

## 4.5 Format

The format in which Tenders must be submitted is stated in the Particulars.
Tenders will consist of:

- the completed Form of Tender and attached Schedule (Volume B)
- completed Suitability Assessment Questionnaire(s) in the format stated in the Particulars of the Suitability Assessment Questionnaire
- the completed pricing document (Volume C) [where required]. This will take the form of a Schedule of Rates or a Bill of Quantities (the Schedule of Rates or the Bill of Quantities may be prepared by the Contracting Authority or, if required in the Particulars to these Instructions, by the Tenderer)
- additional information specified in Appendix 2 to these Instructions.

If Volumes B or C have been amended by supplemental information, Tenderers must use the most recently issued versions.

No amendments or alterations to the Form of Tender or attached Schedule are permitted (save for (i) completing them in accordance with their terms and (ii) the inclusion of alternative signature/execution blocks in the event that the template signature/execution blocks are not suitable having regard to the characteristics of the Tenderer of the circumstances of the signing/execution. Any other amendments/alterations may result in the Tenderer's Tender being rejected.

## 4.6 Language

Tenders and all information included with them must be in the language stated in the Particulars. Any original document in another language must include an accurate translation into the language stated in the Particulars. Queries and other communications must be in the same language.

## 4.7 Qualification

Tenders must not be qualified in any way but must be submitted in accordance with these Instructions. Without prejudice to the generality of the foregoing, Tenders must not include or be accompanied by a cover letter or any other information not included in Volume B or Volume C or specified in these documents, or by any statement that could be construed as rendering the Tender equivocal and/or placing it on a different footing from other Tenders.

## 4.8 Pricing

Unless otherwise stated, all sums given in Tenders must be in euro, to two decimal places.

The Contracting Authority may provide a Schedule of Rates or a Bill of Quantities to be completed by the Tenderer and returned as the pricing document (Volume C). Alternatively the Contracting Authority may require the Tenderer to prepare a Schedule of Rates or a Bill of Quantities based upon the documents describing the Works as set out in Section 4.2 to these Instructions. The Particulars to these Instructions will advise Tenderers which option applies. If required in the Particulars, a Schedule of Rates or a Bill of Quantities prepared by the Tenderer shall be returned as the pricing document (Volume C).

The pricing document will provide the rates and prices in the Contract referenced in clause 4.5 subject to its conforming to this Section 4.8.

Where provided by the Contracting Authority, Tenderers must not insert additional items in the pricing document, except where permitted to do so by the pricing document, or make any alterations to the pricing document.

Amounts must be included wherever required in the Form of Tender, and the pricing document. Blank spaces, the terms ‘nil’, ‘included’, dashes or the like 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.

Tenderers must not use abnormally high or low rates or prices. This prohibition includes using strategies that might allow the Tenderer to benefit disproportionately from clause 4.5 of the Conditions or, if it would be a compensation event under the Contract, a difference between the Contract value of the Works according to the quantities and descriptions in any Bill of Quantities and the Contract value of the Works as set out in the documents describing the Works (Volume A).

Each amount in the pricing document except an item described as an ‘adjustment item’ must cover the full inclusive value (excluding value-added tax) of the relevant work, and, where applicable, a fair allocation of the tendered Price.

All items and quantities in any Bill of Quantities must be priced. All items in any Schedule of Rates must be priced.

Tenderers must not use negative rates or prices, or omit rates, or use zero rates, in any Schedule of Rates or Bill of Quantities.

Where the Contracting Authority provides either a Schedule of Rates or a Bill of Quantities, the Contracting Authority may provide these documents to Candidates in *.csv* and native file formats.

Where the Particulars state that the required means of tender delivery is electronic submission (including to the eTenders platform), Candidates must submit a *read only* PDF copy of the pricing document with their Tender. In accordance with section 9.2 of these Instructions, the Contracting Authority may request that Tenderers provide a copy of the submitted pricing document (as appropriate) in its native file and/or *.csv* file format. Where requested, Tenders must provide the pricing document in the requested file formats promptly and within the stated timeframe. In the event of inconsistencies between the submitted *read only* PDF pricing document and either the native file format and/or csv file format, the *read only* PDF pricing document shall take precedence.

If any Tender does not comply with this Section 4.8, the Contracting Authority may proceed according to Sections 5 or 6 of these Instructions.

## 4.9 Value- Added Tax

The Form of Tender states whether and to what extent the tendered Price includes value-added tax (VAT). The pricing document (where provided) excludes VAT unless otherwise stated by the contracting authority in the pricing document.

If the pricing document (where provided) includes a schedule of items that are not construction operations subject to Relevant Contracts Tax (and therefore to reverse-charge VAT), and, in the Contracting Authority's opinion, the categorisation of an item, the VAT rate stated, or the value stated is not correct, the Contracting Authority may invoke Section 6.2 of these Instructions.

## 4.10 Time for Completion

The Particulars state the Time for Completion period for the Works (see clause 1.1 of the Short Public Works Contract for definition) which is also stated in the Schedule.

## 4.11 Project Supervisor

The Contractor or its nominee will be appointed as project supervisor for the construction stage under the Safety, Health and Welfare at Work (Construction) Regulations 2013, if so stated in the Schedule.

If the Tenderer names a proposed project supervisor for the construction stage in its SAQ Response, the Tenderer must also include that name as part of their Tender and enclose it with Volume B.

If the Tenderer has not named a nominee in its SAQ Response for appointment as project supervisor for the construction stage, (if required in the documents describing the Works) the Tenderer will be taken to offer to act in the role itself, and the Contract, if awarded to the Tenderer, will require the Tenderer to accept the role. In this case, the Tenderer must be a competent individual or body corporate.

## 4.12 Tender Execution

The Form of Tender must be signed as follows:

- if the Tenderer is a company, the signature must be that of a director and the execution must be witnessed;

- if the Tenderer is an individual, he or she must sign the Form of Tender and the execution must be witnessed;
- if the Tenderer is a partnership then each partner must sign the Form of Tender and the execution must be witnessed;
- if the Tenderer is a company registered elsewhere than Ireland, it must execute the Form of Tender under hand according to the laws of its place of incorporation.

If so requested by the Employer a legal opinion that the Form of Tender has been duly executed in accordance with the requirements of the jurisdiction in which the company is registered may be requested by the Employer following the submission of tenders and must, if requested, be provided at the Tenderer's cost.

Where the Particulars state that the required means of tender delivery is by electronic submission, the signature must be visible on the electronic Form of Tender. The Contracting Authority reserves the right to seek the original of the Form of Tender at a later date.

## 4.13 Deposits

Where the Particulars state that a deposit required for tender documents it will be refundable to all Tenderers that submit *bona fide* Tenders that are not subsequently withdrawn. The deposit is to cover the cost incurred by the Contracting Authority in preparing the relevant Tender documents.

# 5 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.

# 6 Corrections, unbalanced and abnormal tenders and rates

## 6.1 Errors

The Contracting Authority may, without any responsibility for this, examine the pricing document (where required) for errors in addition or extension.

If there is an error in extension, the rate will be adjusted, so that the extension remains the same.

If there is an error in addition, the amounts added (and the rates making them up) will be adjusted pro rata to the error, so that the total remains the same. This will apply if the total of the tendered rates and prices, with value-added tax added, does not add up to the tendered Price.

The Contracting Authority will decide which amounts and rates are to be adjusted.

Instead of adjusting the amounts added, the Contracting Authority may, at its discretion, adjust an item described in the pricing document (where required) as an 'adjustment item'.

No adjustment made under this Section 6.1 will affect the tendered Price.

The Contracting Authority reserves the right to open the pricing documents from all Tenderers without the need to revert to the Tenderers for permission.

## 6.2 Unbalanced Tenders

If, in the Contracting Authority's opinion, the tendered rates or prices in the pricing document (after adjustment under Section 6.1 above) do not reflect a fair allocation of the tendered Price, or the last sentence of Section 4.8 applies, 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 that they reflect a fair allocation of the tendered Price and
- invite the Tenderer to adjust rates or prices tendered in the pricing document, but without adjusting the tendered Price.

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

If, having considered the information provided (both in the Tender and in response to a requirement under this Section 6.2), the Contracting Authority is of the view that the Tenderer's tendered rates or prices in the pricing document do not reflect a fair allocation of the tendered Price, the Contracting Authority may reject the Tender.

## 6.3 Abnormally low Tenders, abnormally high or low rates or prices

If, in the Contracting Authority's opinion, the tendered Price is abnormally low or any tendered amounts (including the rates tendered in the Tender documents) are abnormally low or abnormally high, the Contracting Authority may require the Tenderer to provide details of the constituent elements of the tendered Price or the tendered amounts. This may include (without limitation) the information listed in Regulation 69 of European Union Procurement Regulations (Award of Public Authority Contracts Regulations) 2016. Any failure to provide such information, when requested, may exclude the Tender from further consideration. If, having considered the information provided, the Contracting Authority is of the view that either the Price is abnormally low or any tendered amounts are abnormally low or abnormally high, the Contracting Authority may reject the Tender.

No adjustment made under this Section 6.3 will affect the tendered Price.*CA Note: Contracting Authorities should exercise with caution the rights reserved by this Section 6. In most cases, it is expected that Tenderers will be best judge of their own costs. (delete this note before issue of these Instructions)*

# Assessment of Tenders

## 7.1 Award Criteria

The award criterion shall be the lowest price only tendered by a Tenderer meeting the qualification criteria in the SAQ. Tenders will be assessed according to this criterion.

## 7.2 Clarification

The Contracting Authority may seek clarification or further information or both from one or more Tenderers in relation to its Tender submission. The Contracting Authority may meet with one or more Tenderers for these purposes. The Contracting Authority will confirm to the Tenderer concerned in written minutes any clarification arising from a meeting and the Tenderer will be required to confirm or correct the minutes in writing. (See also Section 8.4 of these Instructions.)

## 7.3 Compliance

The Contracting Authority shall consider whether any of the grounds for exclusion referenced in the Suitability Assessment Questionnaire apply. The Contracting Authority shall consider whether Tenderers meet the qualification criteria in the Suitability Assessment Questionnaire.

The Contracting Authority shall assess Tenders for compliance with these Instructions, including provision of all the information and documentation required, and the matters covered in Section 6 above.

Following the assessments under this Section 7.3, the Contracting Authority may proceed according to Sections 5 or 8 of these Instructions whichever is appropriate.

## 7.4 Review[7]

**Important Note**: Any review process set out in the Particulars is not mandatory. Tenderers should obtain legal advice as to the review procedures that may be available to them under law, as well as the timeframes in which such review procedures may be availed of.

## 7.5 Change in circumstances

If, as a result of a change in circumstances or otherwise, any information given by a Tenderer to the Contracting Authority, in a Tender or otherwise, including in a SAQ Response (in particular, but without limitation to, regarding the structure of a Tenderer and/or Members of a Tenderer or any entity being relied upon), was (when submitted) or has become (by reference to the facts as they then stand) untrue, incomplete or misleading, the Tenderer must so inform the Contracting Authority as soon as it becomes aware of this.

If it comes to the Contracting Authority's attention that:

[7] Note to CA: The CA may include in the Particulars a provision for a review procedure whereby a Tenderer who disputes a decision of the Employer about whether a Tender complies with the ITT may, raise the matter with the CA. The review procedure should include appropriate timelines for the submission of the query and response times.

- there has been a change in circumstances concerning a Tenderer that could affect the Contracting Authority's assessment of that Tenderer's Tender, or the Contracting Authority's decision to invite the Candidate to submit a Tender; or
- information submitted by a Tenderer was untrue, incomplete or misleading when submitted or has become by reference to the facts as they then stand untrue, incomplete or misleading;

the Contracting Authority may (but is not required to) take such steps as it considers necessary to revise its assessment of the Tenderer's Tender (including revising its assessment of the Tenderer's SAQ Response) on the basis of the information then available to the Contracting Authority and/or exclude the Tenderer from further participation in the Competition. The Contracting Authority may clarify this with the Tenderer and may seek further information and/or evidence from the Tenderer.

# 8 Award Process

## 8.1 Tender validity period

The Contracting Authority may accept a Tender any time within the time stated in the Form of Tender and Schedule.

## 8.2 Notification

As soon as practicable after reaching the award decision, the Contracting Authority will inform all Tenderers of the decision.

The notification to the Tenderer to whom the Contracting Authority has decided to make an award should be in the form of *Model Letter* O.*na.*6 *Letter to Successful Tenderer.* The notification to the other Tenderers should be in the form of Model Letters O.na.7 *Letter to Unsuccessful Tenderer* and should issue at the same time as the *Letter to Successful Tenderer.*

The *Letter to Successful Tenderer (O.na.6)* will not form the Contract, or any contract or other obligation. The Contract will be formed only by issue of the *Tender Acceptance*.

## 8.3 Letter to Successful Tenderer

The *Letter to Successful Tenderer* should request the Tenderer to submit to the Contracting Authority any or all of the following[8]:

- evidence of the insurances required by the Contract
- evidence of tax compliance from the Revenue Commissioners
- any confirmation of appointment as project supervisor for the construction stage
- the performance bond (where required by the Contract)
- any Reliance Guarantee or Reliance Warranty (where required by the Contract)

If the Tenderer to whom such a *Letter to Successful Tenderer* is addressed does not submit the documents as required within the time allowed, the Contracting Authority may:

- proceed according to the process in Section 8.2 above to initiate award to the Tenderer who submitted the next lowest priced Tender, or
- allow the Tenderer to whom the Letter to Successful Tenderer was addressed additional time to provide the documents or
- issue the *Tender Acceptance to* the Tenderer to whom the *Letter to Successful Tenderer* was addressed (even though the documents have not yet been provided)[9]

## 8.4 Tender Acceptance

The acceptance of the Form of Tender (Contracting Authority signing and sending the 'Tender Accepted' section of FTS-6) by the Contracting Authority creates a binding contract. The 'Tender

[8] This is not an exhaustive list

[9] A contract should not be awarded to any firm which cannot produce a tax clearance certificate except as a last resort. In such a case, the advance approval of the Department of Finance must be obtained.

Accepted' form shall be completed and signed by the Contracting Authority only after all award procedures have been completed.

The Contracting Authority may issue the *Tender Acceptance* at any time during the Tender validity period referred to in Section 8.1 above.

Any written clarifications of a Tender (including minutes of a meeting clarifying the Tender, see Section 7.2), will be attached to the *Tender Acceptance* of the clarified Tender, and will be included in the Contract.

The acceptance of the Form of Tender (Contracting Authority signing and sending the 'Tender Accepted' section of the Form of Tender (FTS-6)) by the Contracting Authority creates a binding contract. The 'Tender Accepted' form shall be completed and signed by the Contracting Authority only after all award procedures have been completed.

# Glossary of terms used in these Instructions

Terms defined in the Conditions of the Contract identified in the Particulars have the same meaning in these Instructions. References to clauses are to clauses or sub-clauses of those Conditions. Unless otherwise indicated, references to Sections and Appendices are to Sections of and Appendices to these Instructions.

| Term | Meaning |
|---|---|
| Applicant | A person (or group of persons) who has applied for tender documents but has not submitted a tender. |
| Contract | The Short Public Works Contract (PW-CF6) that may be awarded by the Contracting Authority for the Works at the end of the Competition. |
| this Competition | The award process for which these Instructions are issued. |
| these documents | These Instructions and the invitation letter and other documents issued with it and any additional information issued by the Contracting Authority to Candidates in connection with the Competition. |
| these Instructions | • this volume, including the Preface at the start, Particulars and Appendices<br>• other information or instructions issued by the Contracting Authority to Candidates in connection with the Competition not stated to amend the Contract documents |
| SAQ | The Suitability Assessment Questionnaire issued for this Competition |
| SAQ Response | The response to the Suitability Assessment Questionnaire submitted by the Tenderer |
| Tender | A tender for the Contract, including the completed Form of Tender and Schedule (FTS6) and completed pricing document and SAQ Response. |
| Tenderer | A person (or group of persons) that submits a Tender |

# Particulars

These are the Particulars referred to in the Instructions. They are part of the Instruction to Tenderer (ITT-W4).

| | |
|---|---|
| Tender for | Proposed Carpark Upgrades and Alterations at Waterford Training Centre, Waterford Industrial Park, Cork Road, Waterford |
| Procedure for | Works Contractor and as PSCS |
| Approximate Size and General Description of the Works | Proposed Carpark Upgrades and Alterations |
| At | Waterford Training Centre, Waterford Industrial Park, Cork Rd, Waterford |
| For | Waterford & Wexford Education & Training Board |
| Address | Ardcavan Business Park, Wexford, Ireland. Y35 P9EA |
| Form of Contract to be used (Instructions Section 1.3) | The form of Conditions set out in the Short Public Works Contract (PW-CF6) published on http://constructionprocurement.gov.ie/contracts/ on the date 10 days before the latest date for submission of Tenders (disregarding any amendments posted on that date). |

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| Means of communication (Instructions Section 2.1, 2.3) | All communications between the Tenderers and the Contracting Authority in relation to this Competition shall be in writing using the: eTenders platform |
| | *Note to CA: Where it is stated above that all communication is to be via "the details given below" enter details below.* |
| | |

| | | |
|---|---|---|
| Supplemental Information and Queries (Instructions Sections 2.2, 2.3) | Latest date for queries | As Per eTender (14 days before latest time for receipt of Tender) |
| | Date after which Contracting Authority will not normally issue supplemental information or responses to queries | As Per eTenders (8 days before latest time for receipt of Tender) |

| | | | | |
|---|---|---|---|---|
| Timetable for Competition | Contract Notice date: | *N/A* | Reference: | *N/A* |
| | Interviews (if required): | *N/A* | | |
| | Decision on Contract Award: | *10 days after submission date* | | |

| | |
|---|---|
| Tender Submission Deadline | Latest date and time for submission of Tenders: As Per eTenders (Local Irish Time) |

| | | |
|---|---|---|
| (Instructions Section 4.1) | | |

| | | |
|---|---|---|
| Means of Tender delivery (Instructions Section 4.1) | All Tender submissions shall be delivered by: | the eTenders platform |
| | *Insert additional details if required here for electronic submission, hand or pre-paid registered post* | |
| | **Tenderer Note:** Where it is stated above that tender submissions are to be delivered via hand or pre-paid registered post, Tenderers should obtain a signed receipt acknowledging delivery. | |

| | | |
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| Copies (Instructions Sections 4.4) | ***Note to CA:*** *Where is stated above that tender submissions are to be delivered by hand or registered pre-paid post enter details below, otherwise enter N/A.* | |
| | Number of Paper Copies of Tender | N/A |
| | Number and type of Electronic Copies of Tender: | Type: PDF<br><br>No.: 1 |

| | |
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| Other (Instructions Section 2.4) | To contain the Completed Form of Tender and Schedule and the completed Pricing Document |

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|---|---|
| Tender Documents (Instructions Section 4.2) | Attached to these Instructions are the following documents, divided into the two categories set out below:<br>**Documents to be included in the Contract**<br>Volume A: Works Requirements (as stated in Project Particulars)<br>Volume B: Form of Tender and Schedule<br>Any Post Tender Clarifications<br>Please note that a Bill of Quantities will not form part of this Contract.<br>**Documents for information purposes only** (*not* to be included in the Contract)<br>Volume C - Pricing Document<br>Volume D - Information Pack<br>These Instructions |
| | Further information may be issued as described in these Instructions |

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| Deposit (Instructions Section 4.13) | Deposit required on issue of Tender documents | Not Applicable. |

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| Format of Tender Submissions (Instructions Section 4.5) | **Where the required means of tender delivery is by electronic submission (including to the eTenders platform):**<br><br>Tenderers should upload their Tender in clearly named (see below) separate documents for each of:<br>• completed Volume B, Form of Tender and Schedule<br>• completed Volume C, Pricing Document<br>• Additional information specified in Appendix 2 to these Instructions<br><br>All uploaded documents should be clearly identified in their saved title.<br><br>All uploaded documents should be saved in a *read only* PDF format<br><br>All documents that require signature must be signed prior to converting to *read only* PDF.<br><br>All uploaded documents should be clearly marked with the name of the Tenderer, name of the Contract and the content. For example "Tender of ABC Limited for [contract title], Volume C, Pricing Document.<br><br>The SAQ Response and supporting documentation for the Tenderer should be clearly labelled with the name of the Tenderer, name of the Contract and the title "SAQ Response" and uploaded as a separate document or documents.<br><br>Insert additional requirmements for electronic submission here. |
| | **Where the required means of Tender delivery is hand delivery or registered pre-paid post:**<br><br>Tenderers should submit their Tender in a sealed envelope or box (the "Outer Envelope[10]") containing one or a series of separate sealed envelopes or boxes, each containing one or more separate bound folder for each of:<br>• completed Volume B, Form of Tender and Schedule<br>• completed Volume C, Pricing Document<br>• Additional information specified in Appendix 2 to these Instructions<br><br>Each envelope or box within the Outer Envelope must be clearly marked with the name of the Tenderer, the name of the Contract, and the content, and, if more than one copy is required, the copy number: for example "Tender of ABC Limited for [contract title], Volume C, Pricing Document, copy 1, master'.<br><br>The Suitability Assessment Questionnaires and supporting documentation for the Tenderer should be clearly labelled "Suitability Assessment Material" and kept separate in a sealed envelope or box inside the "Outer Envelope" from any of the other sealed envelopes or boxes which contain the Tender submission. |
| Language (Instructions Section 4.6) | English |

[10] This may be an outer box with sealed wrapping.

| | | |
|---|---|---|
| Pricing (Instructions Section 4.8) | Pricing Format: **Lump Sum** | |
| Pricing document (Instructions Section 4.8) | The rates and prices in the Contract (clause 4.5 of PW-CF6) shall be derived from:<br>Schedule of Rates prepared by Employer | |
| Time for Completion (Instructions Section 4.10) | Time for Completion | 50 days, starting on the day this Contract comes into effect.<br>CA note: must accord with period stated in Schedule to Contract |
| Award Criterion (Instructions Section 7.1) | Lowest Price | |
| Review Procedure (Instructions Section 7.4) | Not Applicable | |
| | Important Note to Tenderers: Where a process is set out above, the process is not mandatory. Tenderers should obtain legal advice as to the review procedures that may be available to them under law, as well as the timeframes in which such review procedures may be availed of. | |

# Appendix 1: Schedule of Rates or Bill of Quantities

## Application

This Appendix applies if the Contracting Authority requires the Tenderer to prepare and submit a Schedule of Rates or Bill of Quantities with their Tender. Should this arise notification will be included in the Particulars under Pricing Document (Instructions Section 4.8)

## Pricing Document to be submitted with Tender

Requirements for the format of the Schedule of Rates - Contractign Authority requires from the Tenderer e.g the method of measurement etc.

# Appendix 2: Additional Information to be Submitted with Tender

## Additional Information to be submitted with Tender

{Contracting Authority should list here documents other than the Form of Tender (Volume B) or the pricing document (Volume C) that it wants the Tenderer to submit}

# Appendix 3: Information Pack

Instructions sections 1.3)

## Information Pack