

Section 2.6 Preparing to Invite Tenders

Overview

Introduction The following section summarises what the Employer has to do before publishing the Invitation to Tender.

Purpose Decisions taken in relation to the Invitation to Tender will dictate the form of tender and the form of contract used when the tender is awarded.

In this section This section deals with the following topics:

Topic	See Page
2.6.1 Compiling the Works Requirements Details what to include in the Work Requirements.	78
2.6.2 Completing the Schedule Details how to fill in the Schedule.	81
2.6.3 Assembling the Invitation to Tender Summarises what is required and how to check before release.	84

2.6.1 Compiling the Works Requirements

Introduction The range of options for design-and-build projects varies from performance output specifications and statement of functional requirements at one end of the spectrum to specimen designs to novated developed designs and specifications at the other.

In traditional contracts, the Works Requirements must be comprehensive, and should always include detailed designs and specifications.

Standard design-and-build specification

In design-and-build projects, the challenge is for the Employer's functional requirements to be clearly and comprehensively stated in the tender documents, along with clear performance specifications covering all items of importance. This is to allow maximum flexibility for integration of design with construction in solutions tenderers propose in their tender submissions.

Under this approach, statutory approval might not have been obtained by the tender stage. If this is case, the successful tenderer will be required to carry the risk associated with planning and other necessary statutory approvals.

Where designs are developed and the risk associated with planning and other necessary approvals are being carried by the Employer, the level of flexibility to integrate design with construction is severely curtailed.

In summary, the design-and-build approach:

- Allows, where designs are not developed, maximum scope for positive integration of design with construction methods, techniques and resources;
- Reduces the time scale of going to the market;
- Provides a greater degree of cost certainty at award stage;
- Provides greater certainty of time and outturn cost;
- Obliges the Contractor to ensure fitness for purpose; and
- Removes the Employer from any disputes between designers the Contractor.

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2.6.1 Compiling the Works Requirements, Continued

Specimen design and outline specification

As an alternative to the standard design-and-build approach, the Employer's designers can develop an outline design, which is included in the tender documents either as background information or as novated design documents.

The specimen design can be presented in two ways:

- Illustrative and capable of adoption by tenderers within certain constraints; or
- Directional in which case it cannot be changed and is part of the Works Requirements and which become novated design documents.

If the Contractor is obliged to follow the outline design there will be less flexibility for tenderers to be innovative in their proposed solutions, as the Employer has taken the main design decisions. On the other hand if a specimen design is given as an illustration that can be varied, this offers greater flexibility with regard to innovation in tender proposals.

Implications of selecting the specimen design and outline specification approach

The specimen design and outline specification approach has a number of advantages and disadvantages:

- It gives the Employer some control over the quality of the design but it has the negative effect of restricting a contractor's input to design;
 - It takes longer to go to the market. However, it is still considerably shorter than the traditional approach;
 - There is greater certainty of time and outturn cost;
 - Less design resources are required of tenderers and therefore their tender preparation costs are lower;
 - There is greater degree of cost certainty at award stage;
 - An obligation can be imposed on the Contractor to ensure fitness for purpose; and
 - The Employer is removed from involvement in any disputes between the designers and the Contractor.
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Consents and licences

The Works Requirements should identify what, if any, consents and licences the Employer has obtained in relation to the works at the time the Invitation to Tender is published. **Appendix B** (page 177) contains a list of consents and licences that may be required for a public works contract. This list is not to be taken as a comprehensive list of all possible consents and licences that may be required.

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2.6.1 Compiling the Works Requirements, Continued

Bill of Quantities in relation to Works Requirements

If a Bill of Quantities is to be used as a Pricing Document and also included as part of the Works Requirements, it is important to state this clearly in the tender documents for the purpose of specification information – for example, by supplying two copies of the Bill, one marked ‘Pricing Document’ and one marked ‘Works Requirements’.

When a Bill of Quantities is included in the Works Requirements, as a general rule the quantities should be deleted or a note inserted clearly stating that the ‘Quantities are not part of the Works Requirements’

Value engineering proposals

In the case of traditional contracts it may be appropriate on some contracts to allow variants at tender stage in order to obtain *value engineering proposals*. In the case of EU procurement rules, it would be necessary to indicate in the Contract Notice if variants are permitted. Any minimum requirements in relation to variants must be stated in the tender documents so as to limit consideration to only those variants that meet the minimum requirements. Where variants are allowed, tenders must be submitted on a *non-variant compliance* basis, with the variant shown separately.

The tender documents must make it clear that the Contractor would be responsible for the design element of any value engineering proposal accepted by the Employer. Furthermore, any proposal would have to be fully developed when tenders were submitted, as communications thereafter would only be for clarification purposes. The value engineering proposal in this context differs from a value engineering proposal under the Contract where the prime objective is to reduce cost (without a reduction in quality, standard or functional requirements) or to accelerate the execution of the works.

Note: For more information on value engineering proposals, see 3.1.4 Value Management on page 105.

2.6.2 Completing the Schedule

Schedule Part 1 The Employer must complete **Part 1** of the Schedule and include it with the Invitation to Tender.

Schedule Item		Completed by Employer
A	Employer's Representative and Communications:	Contact details for notices to the Employer. It is possible to specify different contact details for notices that concern termination of the Contract and notifications of disputes, on the one hand, and more routine notices on the other. Consideration should be given to identifying only one contact so that there is no confusion as to who should have got the notice.
	Employer's Representative	Name of Employer's Representative (ER) to be announced and contact details for notices to the ER.
	Limitations on ER's authority	List of limitations.
B	Documents: Works Requirements	Identifying details (for example, title, date, unique n ^o).
	Pricing Documents	Identifying details (for example, title, date, unique n ^o).
	Methods of measurement (Dept of Finance approved amendments must be included with the tender documents – see Appendix F)	Where Bill of Quantities is used, select from: <ul style="list-style-type: none"> ▪ Agreed Rules of Measurement 3 (ARM3); ▪ Civil Engineering Standard Method of Measurement 3 (CESMM3); ▪ National Roads Authority (NRA) Method of Measurement for Road Works (MMRW); and ▪ Other approved methods of measurement.
C	Property in Contractor's Documents	Option to select whether ownership does or does not transfer to employer in accordance with sub-clause 6.4; defaults to 'does not'.
D	Insurance	For details see Section 2.4 above. Employers should obtain advice (from experienced construction consultants, or from the Employer's normal insurers or experts nominated by them or by the construction consultants) in completing this item.
E	Performance Bond	Specify if required.
F	Collateral Warranties	State details of warranties required.

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2.6.2 Completing the Schedule, Continued

Schedule Part 1 (continued)

Schedule Item		Completed by Employer
G	Dates for Substantial Completion	Employer gives the date (unless to be completed by the tenderers in Part 2). This may be a fixed date or (more likely) a period for completion commencing from the contract award date.
	Liquidated damages	This must be a genuine pre-estimate of the loss that will be suffered as a result of late completion of the works.
	Completion of the works by sections	If sections are envisaged, the appropriate line for each section must be completed. If sections are not envisaged, the first line only is completed. The left hand column should include a description of the section – for example, ‘a length of road’; this can be a reference to a more detailed description in the Works Requirements. Each section can have its own Date for Substantial Completion and its own rate of liquidated damages for delayed completion.
H	Early Completion	State whether the Certificate of Substantial Completion may be issued early if required.
I	Defects Period	Specify a period that runs from Substantial Completion. Default is 12 months.
J	Random Checks for Employment Records	Option to state whether the appropriate clause, 5.3.3A(2) is part of the Contract. Default is that it should be.
K	Delay Events	Specify whether or not optional events are to be regarded as compensation events: this applies to items 17–21 only.
	Bill of Quantities [where they are used] (17)	State whether the Contract Sum is to be adjusted because of errors in quantities or descriptions in the Bill of Quantities. The default is no adjustment, which puts the risk of measurement errors on the Contractor. Consider carefully the circumstances that warrant the use of Bills of Quantities for minor works contracts.
	Weather events – time extension data	Add events if required. The relevant location for recording weather data is to be specified; this will usually be a Met Éireann weather station local to the site of the works. Certain weather events are listed; others can be added.

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2.6.2 Completing the Schedule, Continued

Schedule Part 1 (continued)

Schedule Item		Completed by Employer
	Programme contingency	Specify two thresholds (in site working days) for delay caused by compensation events (there is only one threshold in the case of the Minor Works Contract). If delay is caused by compensation events: <ul style="list-style-type: none"> ▪ Up to the first threshold, the Contractor is not entitled to any time extension. ▪ Between the first and second threshold, the Contractor is entitled to a half time extension up to the second threshold. ▪ Above the second threshold, the Contractor is entitled to a full time extension.
	Delay costs	Select actual delay or tendered daily rate.
	Definition of craftspersons	Add any additional categories relevant to part 2E.
	Tender Rate	For clause 10.7, select single daily rate or separate rates for periods of the Works. Default is a single rate.
L	Payment Particulars: Contractor is to be paid	State how often payments are to be made. Default is monthly. A minimum payment can also be specified so that there is no payment if the minimum has not been earned (other than a payment in respect of release of retention money). The maximum percentage of the value of unfixed materials that can be paid can also be specified: the default is 90%. The percentage of retention may also be entered by the Employer; the default is 10%.
M	Price Variation	State whether PV1 or PV2 is to be used to deal with price variation. The default is PV1.
N	Conciliation and Arbitration	Enter the name of the organisation/person to appoint the conciliator and arbitrator in the absence of agreement. This person must be one of the following: <ol style="list-style-type: none"> 1. President The Society of Chartered Surveyors of Ireland 2. President Engineers Ireland 3. President The Royal Institute of Architects of Ireland 4. President Law Society of Ireland 5. Chairman Bar Council of Ireland 6. Chairman The Chartered Institute of Arbitrators (Irish Branch).

2.6.3 Assembling the Invitation to Tender

Documents

The documents to be issued as part of the Invitation to Tender would normally be:

- Instructions to Tender/Invitation to Tender (which does not form part of the Contract);
 - Contract Conditions;
 - Schedule Part 1 (completed by the Employer);
 - Works Requirements (completed by the Employer including Model Forms and may include reports and appendices 2 and 3 of the Contract where PV2 is being used);
 - Blank Pricing Document (to be completed by the Contractor); and
 - Any other background information or documents not forming part of the contract, for example, reports or Bid Bond.
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Key decisions

The Invitation to Tender should clearly specify:

- Which of the five types of public works contract will apply to the Contract;
 - How price variation is to be treated;
 - Compensation events and how they are to be treated; and
 - Bonds, guarantees and insurance and how they are to be treated.
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Checklists

At the outset of preparation and also before making the decision to publish the Invitation to Tender, the Employer should review the checklists contained in Appendix B.

The relevant Checklists are:

- Invitation to Tender Checklist – High Level;
 - Consents and Licences Checklist;
 - Operation Licence Checklist;
 - Invitation to Tender Checklist – Traditional; and
 - Invitation to Tender Checklist – Design-and-build.
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