

# Technical Guidance Document TGD-007

## Design Team Procedures for Small Works

**4<sup>th</sup> Edition, March 2014**

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## 1. INTRODUCTION

### 1.1 Purpose of Document

- (a) This Guidance document sets out the procedures to be followed for small works (including Summer Works and Emergency Works projects) and should be read in conjunction with the current Department of Education and Skills Design Team Procedures [DTPs] and the administrative procedures governing the particular Scheme.
- (b) For details of the terms and conditions of a particular scheme refer to the documentation issued with the relevant scheme.

### 1.2 Main Changes from 3<sup>rd</sup> Edition March 2011 version

- (a) References to other documents updated.
- (b) Guidance on impact of Building Control (Amendment) Regulations 2014 on each of the project stages included.
- (c) Additional guidance in relation to projects over €500,000 included.

### 1.3 Definitions

- (a) For the purpose of this document:
  - (i) The term School Authority means the Board of Management or other body legally entrusted with the management of the School.
  - (ii) A Design Team refers to all the professional advisors engaged by the School Authority for the project.

### 1.4 Project management

- (a) School authorities are responsible for managing their individual projects at all stages from start to finish and in particular ensuring that the project is delivered within the allocated budget.
- (b) As part of this responsibility the School Authority and its consultant or Design Team have a duty to comply with National procurement guidelines (available at [www.constructionprocurement.gov.ie](http://www.constructionprocurement.gov.ie)), Department of Education & Skills [DoES] Technical Guidance Documents and procedures (available at [www.education.ie](http://www.education.ie)), and have a duty to ensure value for money.

### 1.5 Design Team Procedures

- (a) The Design Team Procedures [DTP] 2012 (or as subsequently amended) set out the principles for each stage of the construction process, and apply to all construction projects funded in part or in total by the Department of Education and Skills (unless otherwise stated).
- (b) They set out the principles for each stage of the construction process starting with Preliminary Design (including Project assessment), and proceeding through the design stages to preparing Tender Documents, obtaining Tenders, Construction and Final Account.
- (c) The Project stages are as follows:

STAGE 1	Preliminary Design
STAGE 2a	Developed Design
STAGE 2b	Detailed Design and Preparation of Tender Documents
STAGE 3	Tender Action
STAGE 4	Construction
STAGE 5	Handover and Final Account

- (d) For small works (including Summer Works and Emergency Works projects) the Design Team Procedures 2012 (or as subsequently amended) apply, other than as modified by this document. The detailed reporting mechanism is not applicable other than as stated in this document. However the principles of good planning and cost control inherent in the Design Team Procedures should still be applied.
- (e) It is also not necessary to consider Stages 1 and 2a (the Design Stages) separately. These stages can be combined. Stage 2b (Tender Documentation), Stage 3 (tenders) and Stages 4 and 5 (Post Contract Cost Control) still apply.

## 1.6 Technical reports

- (a) Where a technical report is required as part of the terms and conditions of a specified scheme, the School Authority should appoint a suitable professional consultant to assist in the preparation of the report. Refer to [Guidance on Procuring Consultants for Small Works](#), (available at [www.education.ie](http://www.education.ie)) for the appropriate appointment procedure.

## 1.7 Appointment of Professional Consultant(s)

- (a) For all projects, the engagement of appropriate professional advice is essential. Refer to [Guidance on Procuring Consultants for Small Works](#) (available at [www.education.ie](http://www.education.ie)) for the appropriate appointment procedure.
- (b) It is a legal requirement to appoint a competent person to act as Project Supervisor (Design Stage). This is a separate appointment with a separate fee that should reflect the nature and complexity of the project (refer to [Guidance on Procuring Consultants for Small Works](#)).
- (c) Where the Building Control (Amendment) Regulations 2014 apply to the project, it is also a legal requirement to appoint an Assigned Certifier (again refer to [Guidance on Procuring Consultants for Small Works](#)).

## 1.8 Project Brief

- (a) For all small works projects the responsibility rests with the School Authority and its consultant(s) to ensure that:
  - (i) The project brief is clearly defined before commencement of the Design process, and
  - (ii) The Project can be constructed within the available funding.
- (b) The overall cost of the works must include professional fees, Planning Fees & charges, Fire Certificate Application charges, Disability Access Certificate charges if applicable, licences and all other project costs. It must also include an allocation (or contingency) for the cost of change orders made (post contract) by the Employer's Representative (within his/her authority). See [Appendix B "Total Project Cost Template"](#) showing the typical cost headings.

# 2. DESIGN - STAGES 1 AND 2a

## 2.1 Project Assessment

- (a) The letter of approval for the project will normally indicate the scope of works for which approval has been given.
- (b) Whether or not the scope of works was indicated in the letter of approval for the project, the School Authority should discuss with its consultant(s) the realistic scope of works within the level of funds available (refer to the "[Total Project Cost Template](#)" at [Appendix B](#)).
- (c) To ensure the project remains within cost, they should also agree a strategy to ensure that the project can proceed if costs at Tender stage exceed the level of the Grant. Such strategies may include omission of part of the works, but should be planned from the beginning so as to prioritise the most urgent works (e.g. Health & Safety), and ensure that the standard of construction does not fall below an acceptable level.
- (d) The Consultant(s) should prepare a written brief or scope of works taking into account the above issues. This brief should be agreed with the School Authority in writing before proceeding to develop the design or proposal.
- (e) The Consultant must at all times advise the School Authority of the cost consequences of any decisions made and indicate to the School Authority whether the requested change can be accommodated within the available funding.
- (f) Where client requests cannot be accommodated within the available funding, the Consultant must so advise the client in writing and request confirmation (also in writing) from the School Authority that

funds are available (from the School Authority) to pay for the requested changes and indirect costs arising from those changes.

## 2.2 Developed Design

- (a) Once the written brief and scope of works has been agreed, the Consultant should explore and evaluate the options available for meeting the brief and demonstrate, through comparison of options and costs, that the recommended option achieves an acceptable balance between the design (architectural and engineering), educational and economic requirements of the project.
- (b) The School Authority's Consultant(s) should then prepare proposals for discussion and agreement with the School Authority. Once the design approach has been agreed, the Consultant(s) must design and accurately cost the option chosen.
- (c) At all times the design must take into account Health & Safety, the realistic cost of the proposed works and good building practice.
- (d) Where appropriate, the Consultant(s) should arrange a pre-planning application meeting or meetings with the Local Authority to ensure the acceptability of the proposals and eliminate, where possible, onerous conditions.
- (e) All new works must comply with the current Health and Safety Regulations, current Building Regulations, and have due regard for the need for robust durable construction with low maintenance.
- (f) Where the project includes additional accommodation these proposals must take into account the Educational needs of the school and the possibility of future expansion.

## 2.3 Combined Stage 1/2a report

- (a) The Consultant(s) must prepare and submit a written report for agreement with the School Authority before seeking Statutory Approvals or commencement of Tender documents (Stage 2b). This written submission should include:
  - (i) Drawings, specifications and documents sufficient to describe the agreed design proposal (with the scope of work, both new and existing, highlighted).
  - (ii) Commentary on how the proposed design meets the aims of the brief.
  - (iii) A detailed estimate of the overall cost of the project inclusive of VAT, Consultant's fees and all other charges (e.g. Planning Fees), together with written confirmation that the project, inclusive of all costs, can be constructed within the available funding. (Refer to the "Total Project Cost Template" at Appendix B.)
  - (iv) A Health & Safety risk assessment prepared by the Consultant(s) on any H&S issues arising (both during construction stage and in use) with recommendations from the Project Supervisor (Design Process).
  - (v) Confirmation as to whether Planning Permission, Fire Certificate and Disability Access Certificates are required and a report on any pre-planning meetings with the Local Authority.
  - (vi) An up-dated Programme.
- (b) The School Authority must ensure that the report and drawings submitted are fully understood by all members of the School Authority, and should instruct its consultant(s) to proceed to seek statutory approvals and/or prepare tender documents only when it is satisfied that the developed design proposal meets its brief and can be constructed within the available funding.
- (c) A copy of this Submission must be retained in a safe place by the School Authority and shall be available for audit and inspection by the Department of Education and Skills.

## 3. STAGE 2b – Detailed Design

### 3.1 Planning Permission and/or Fire Certificate and/or Disability access Certificate

- (a) Where Planning Permission and/or a Fire Certificate and/or Disability access Certificate are required these should be obtained prior to completion of the tender documentation, and changes arising from conditions must be included in the tender documents.
- (b) Where the Planning Permission and/or a Fire Certificate and/or Disability access Certificate have unduly onerous conditions which will result in increased capital costs for the School Authority, they should revert to the Department immediately for advice and the Department reserves the right to request the School Authority to appeal these conditions to An Bord Pleanála. Failure to inform the

Department of onerous conditions in a timely manner may result in the School Authority having to fund the increased capital costs from their own resources.

### 3.2 Tender Documents

- (a) Where the estimated cost of the construction contract is less than €500,000 inclusive of VAT, the form of Contract to be used is the Public Works Short Form of Contract. Where the estimated cost of the construction contract exceeds €500,000 inclusive of VAT, the Contract for Minor Building & Civil Engineering works designed by the Employer shall be used.
- (b) Tender Documents must include fully detailed drawings and specifications, and must be completed in accordance with the [DoES Design Team Procedures 2012](#) (available at [www.education.ie](http://www.education.ie)). All works must be fully detailed before seeking tenders. A Pricing Document shall be included which contains such descriptions, quantities and rates to enable a contractor to accurately price the work, and for the Consultant (and the contractor) to accurately value the progress of works carried out as well as any post-contract changes.
- (c) The Building Control (Amendment) Regulations 2014 came into force on 1<sup>st</sup> March 2014 and apply to all projects except projects where a Fire Safety Certificate and/or Planning Permission is **not** required. Guidance issued by the Government Construction Contracts Committee, available at [www.constructionprocurement.gov.ie](http://www.constructionprocurement.gov.ie), should be followed with regard to additional requirements for inclusion in tender documentation. For example, a preliminary Inspection Plan prepared in accordance with the Building Control (Amendment) Regulations 2014 and the associated Code of Practice for Inspecting and Certifying Buildings and Works should be included in the tender documents. In addition, if the Consultant is intending to rely on the Contractor to provide ancillary Design Certificates for any elements of the work, details must be given in the tender documents.

### 3.3 Pre-Tender Report

- (a) The Consultant(s) must prepare and submit a report for agreement with the School Authority before advertising for contractors or going to tender. This report should include:
  - (i) An updated cost estimate based on the completed tender documents, inclusive of VAT, Consultant's fees and all other charges (e.g. Planning Fees, DAC charges, advertisements), together with confirmation that the project, inclusive of all costs, can be constructed within the available funding.
  - (ii) Copies of all tender documents drawings and specifications.
  - (iii) Confirmation that the Project Supervisor (Design Process) has reviewed the Consultant(s)' risk assessment on the proposed works and that his/her recommendations have been included in tender documentation.
  - (iv) Confirmation that a preliminary H&S Plan has been prepared and will form part of the Tender Documents.
  - (v) Where applicable, confirmation that a preliminary Inspection Plan, in accordance with the Building Control (Amendment) Regulations 2014, has been prepared and included in the Tender Documents.
  - (vi) Where applicable, copies of Planning Permission, Fire Safety Certificates and Disability Access Certificates.
  - (vii) An up-dated Programme.
- (b) The School Authority should ensure that the report and drawings submitted are fully understood by all members of the School Authority, and should instruct its consultant(s) to proceed to tender when and only when they are satisfied that the proposal meets its brief and can be constructed within the available funding.
- (c) A copy of the Pre-Tender (Stage 2b) Report must be retained in a safe place by the School Authority and shall be available for audit and inspection by the Department of Education & Science.

### 3.4 Consultant's undertaking

- (a) The School Authority's Consultant(s) must also confirm to the School Authority in writing that:
  - (i) Where the estimated cost of the construction contract is less than €500,000 inclusive of VAT, the Public Works Short Form of Contract is being used, **or**, where the estimated cost of the construction contract exceeds €500,000 inclusive of VAT, the Contract for Minor Building & Civil Engineering works designed by the Employer is being used.
  - (ii) There is no partial handover to the Contract.
  - (iii) There are no P.C. sums, Prime Cost sums or contingencies of any kind in the Contract.

- (iv) There are no “specialists” and that all sub-contracts are domestic.
- (v) All building works (including Mechanical & Electrical) both internal and external have been fully detailed and specified.
- (vi) In accordance with the Building Control (Amendment) Regulations 2014, the Consultant is prepared to certify that the design complies with the Building Regulations and will issue all necessary undertakings and certificates required of the Designer and the Assigned Certifier to the Building Control Authority once authorisation to proceed to construction is received.
- (vii) The guidance on completing the SCHEDULE to the Short Public Works Contract at [Appendix C](#) has been used. Where the Minor Building & Civil Engineering works designed by the Employer is being used (where the estimated cost of the construction contract exceeds €500,000 inclusive of VAT), the guidance in DTP2012 – Preparation of Tender Documents (available at [www.education.ie](http://www.education.ie)) should be used for completing the SCHEDULE.
- (viii) The duration of the Contract is clearly stated in the Tender Documents.
- (ix) Tenders will be obtained on a fixed price basis. The basic information which must be clearly stated in tender documents to facilitate fixed price tendering is (a) the contract period and (b) the period for acceptance of tenders (normally a maximum of 90 days).
- (x) Specific preliminary clauses are required to be included in tender documentation to take account of the Safety Health and Welfare at Work (Construction) Regulations (see Society of Chartered Surveyors’ guidelines and ARM 4).
- (xi) It is stated in the tender documents that Compliance with Tax Clearance Procedures and with the membership requirements of the Construction Industry Pension/Sick Pay Scheme or equivalent are both conditions precedent to the award of the contract.
- (xii) Where a Bill of Quantities forms part of the Tender Documents, the Bill of Quantities is to be in accordance with ARM 4 and Supplement 1 (amendments to agreed rules of measurement for use with Public Works Contracts).

## 4. TENDERING PROCEDURE

### 4.1 Electronic Issue of Tender Documents

- (a) The electronic issue of Tender Documents is permitted (for both Open and Restricted Procedures) subject to certain restrictions as described in DTP 2012 Detail Design (Stage 2b) (available at [www.education.ie](http://www.education.ie)).

### 4.2 Open or Restricted Tendering?

- (a) Below €500,000 (including VAT):
  - (i) For projects with a Construction value of less than €50,000 (including VAT) either the [Restricted Procedure](#) or the [Open Procedure](#) may be used.
  - (ii) For projects with a Construction value greater than €50,000 (including VAT) the [Open Procedure](#) must be used. There are no exceptions!
  - (iii) The advertising and tendering procedures set out below apply.
- (b) Above €500,000 (including VAT):
  - (i) For projects with a Construction value less than €2,500,000 (including VAT) the [Open Procedure](#) should be used unless the prior agreement of the Department of Education and Skills [DoES] to use the [Restricted Procedure](#) has been obtained.
  - (ii) For projects with a Construction value equal to or greater than €2,500,000 (including VAT) Contracting Authorities may use either the [Open Procedure](#) or the [Restricted Procedure](#). In general principle the Restricted Procedure should be used for larger and more complex projects. For smaller straight forward projects where the cost of Tendering will not be an undue burden on contractors the Open Procedure can be used.
  - (iii) The procedure set out in the Design Team Procedures [DTP 2012 Procurement of Contractors, Section 3](#) (c.f. [www.education.ie](http://www.education.ie)) is applicable for projects using the [Open Procedure](#).
  - (iv) The procedure set out in the Design Team Procedures [DTP 2012 Procurement of Contractors, Section 4](#) (c.f. [www.education.ie](http://www.education.ie)) is applicable for projects using the [Restricted Procedure](#).

### 4.3 Public Advertisement

- (a) For projects with an estimated construction value of less than €50,000 ex VAT, advertisement on eTenders or other national medium is not required (unless there is the possibility of cross-border interest).
  - (i) If the Open procedure is used, the School and their consultant must put an advertisement in the local papers (including cross-border papers where appropriate) stating how to obtain the tender documents and the latest date for the return of tenders.
- (b) For projects greater than €50,000 an advertisement must be placed on eTenders.
- (c) For projects greater than €5,186,000 (ex VAT) a Contract Notice must be placed in the OJEU journal. This can be done simply through the eTenders web-site.

### 4.4 Tendering for Works under €50,000 (incl. VAT)

- (a) A minimum of at least 5 quotes (in writing or by email) must be sought from suitable contractors and a minimum of 5 obtained.
  - (i) If using the **Restricted Procedure**, School Authorities and their Consultants are required to consider any Contractor who has expressed an interest in tendering for the project (e.g. by writing or emailing the school or consultant), and where that Contractor meets the minimum standard required for the construction of the works must include that contractor on the list of firms tendering for the project. There is no upper limit on the number of contractors permitted to tender for the project.
  - (ii) Where the **Open Procedure** is being used the School and their consultant must put an advertisement in the local papers (including cross-border papers where appropriate) stating how to obtain the tender documents and the latest date for the return of tenders. In addition, the School and their consultant must directly contact any Contractor who has expressed an interest in tendering for the project (e.g. by writing or emailing the school or consultant) informing them in a timely manner of the tender opportunity.  
**In using the Open Procedure placing an advertisement does not guarantee an acceptable level of interest from contractors. It is permissible and prudent to contact suitable contractors in the general geographical area to alert them to the tender opportunity and invite them to respond to the advertisement.**
- (b) If fewer than five firms submit tenders, (whether under the Open or Restricted Procedure) the Contracting Authority should only proceed with an award if it considers that there has been genuine competition and that the tender being considered for acceptance represents value-for-money.
- (c) If there is the possibility that there could be interest from another jurisdiction (e.g. Northern Ireland) it is important to ensure that the principles, under the Treaty of Rome, of transparency and non-discrimination are observed.

### 4.5 Tendering for Works > €50,000 (incl. VAT) and < €500,000 (incl. VAT)

#### Minimum Standards for Participation

- (a) Under the Open Procedure, all interested parties are permitted to submit tenders. This does not however mean that there are no minimum standards for participation.
- (b) For a tender to be deemed a valid tender, the tenderer must meet the minimum standards for participation published in the advertisement/Contract Notice and the Conditions for Award set out in the Tender Documents.
- (c) These minimum standards must be reasonable and should not exceed the requirements in the DoES Suitability Declaration for Small Works available at [www.education.ie](http://www.education.ie) under School Design > Procedures and Cost Plans > Design Team Procedures.
- (d) For Projects < €500,000 (incl. VAT) all tenderers should be required to sign the **DoES Suitability Declaration for Small Works** and submit it with their tenders.
  - (i) By signing this declaration, tenderers are stating that they meet the minimum Standards for Participation and the Conditions for Award and confirming that (if they are the apparently successful tenderer) they will produce (within 7 calendar days) evidence of compliance with all sections of this declaration.

### eTenders Advertisement

- (e) Once the Tender documents are complete an advertisement must be placed on eTenders (see [template eTenders advertisement](#) at Appendix A).
- (f) The eTenders advertisement should state that the DoES Suitability Declaration for Small Works is available at [www.education.ie](http://www.education.ie) under *School Design > Procedures and Cost Plans > Design Team Procedures* and must be signed and submitted with their tenders.
- (g) The eTenders advertisement should contain the following wording under Additional Information:
 

**Important Notice:**  
*Tenderers are required to read the [DoES Suitability Declaration for Small Works](#) carefully and to make sure that they meet the minimum standards stated therein. Tenderers who do not meet those requirements should not submit a tender as they will be excluded at award stage. All Tenderers are liable for their own costs of tendering.*
- (h) In using the Open Procedure placing an advertisement on eTenders does not guarantee an acceptable level of interest from contractors. It is permissible and prudent to contact suitable contractors in the general geographical area to alert them to the tender opportunity and invite them to respond to the advertisement.

### Tenders

- (i) An adequate period of time must be allowed to tenderers for compiling and submitting their tenders. The minimum period to be allowed is 15 working days (except in the case of emergency works where a reduced period may be used).
- (j) Tender submissions should be in writing (not by email)

### Tender Assessment

- (k) Tenders received on or before the due date and time should all be opened together after the closing date for receipt of tenders, and only by a nominated official of the School Authority in the company of the Consultant(s). All details must be recorded, checked and signed by all present.
- (l) A signed [DoES Suitability Declaration for Small Works](#)<sup>1</sup> must be included with each Tender submission. Any tenderer who has not submitted the signed suitability declaration and the signed Form of Tender with the price clearly stated (either in words or numbers) should be excluded.
- (m) The lowest qualifying tender (i.e. not excluded at (k) above) is the apparently successful tenderer or preferred bidder.
- (n) The Preferred bidder's pricing document should now be opened and any arithmetical errors, low rates or un-priced items noted.
- (o) The preferred bidder should now be contacted and asked to provide (within 7 days) the information required in the [DoES Suitability Declaration for Small Works](#). (The template Letter of Intent at [Appendix D](#) should be used)
  - (i) At the same time, if his/her Form of Tender has been modified in any way (e.g. additions omissions or amendments, he/she should be given the opportunity (in writing) to withdraw those qualifications. (If any such qualifications are not withdrawn, the tender should be rejected.)
  - (ii) Any arithmetical errors, low rates or un-priced items should be brought to the preferred bidder's attention and he/she should be given the opportunity (in writing) to stand over or to withdraw his tender. He should not be allowed to correct his tender.
  - (iii) Where a tender is so low that the Consultant(s) considers that viability may be compromised, detailed discussions with the contractor must take place. If the contractor is prepared to stand over his/her tender the Consultant(s) must be satisfied that the contractor has comprehensive knowledge of the extent, scope and nature of the works and of post contract cost control procedures, that he/she has demonstrated the adequacy of his/her tender and has the financial capacity to complete the project.

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<sup>1</sup> A School Authority and their consultant shall not exclude a contractor who submits the DoES - QW2 (The Public Works Open Procedure Suitability Assessment questionnaire for Works Contractors [with DoES requirements included](#)) suitably completed and signed with appropriate declarations attached. [The Public Works Open Procedure Suitability Assessment questionnaire for Works Contractors QW2 without the DoES requirements included is not acceptable.](#)



- (p) When the evidence of compliance with the *DoES Suitability Declaration for Small Works* has been received, it should be examined and verified.
  - (i) The preferred bidder should not be excluded on a technicality (Before excluding the preferred bidder clarification should be sought for such non-compliance items).
  - (ii) However substantive non-compliance items (e.g. complete failure to demonstrate H&S competence or no track record of projects of a similar size and complexity) are a basis for exclusion and are not matters of clarification).
  - (iii) If clarification is sought on any item and the issue is not resolved by return the preferred bidder should not be given a further chance.
- (q) If the preferred bidder is deemed to be non-compliant, that tenderer should be excluded and the next lowest tenderer should be deemed to be the preferred bidder. The process from 4.5(n) to 4.5(p) should be repeated until a qualifying preferred bidder is established
- (r) Except where a tender is withdrawn or deemed to be non-qualifying (as above) the Design Team must not pass over the lowest or any tender, due to any other reasons without prior consultation and agreement with the Planning and Building Unit.

#### 4.6 Works > €500,000 (incl. VAT)

- (a) For guidance on using the Open Tendering Procedure refer to the Design Team Procedures *DTP 2012 Procurement of Contractors, Section 3* (available at [www.education.ie](http://www.education.ie)).  
In using the Open Procedure placing an advertisement on eTenders does not guarantee an acceptable level of interest from contractors. It is permissible and prudent to contact suitable contractors in the general geographical area to alert them to the tender opportunity and invite them to respond to the advertisement.
- (b) For guidance on using the Restricted Tendering Procedure refer to the Design Team Procedures *DTP 2012 Procurement of Contractors, Section 4* (available at [www.education.ie](http://www.education.ie)).

#### 4.7 Cost Control

- (a) If the recommended tender inclusive of VAT, plus Consultant(s) fees and all other charges is within the approved Devolved Grant sum (or total funding available to the School Authority) the School Authority may authorise commencement of construction.
- (b) In all other cases however, the School Authority and the Consultant(s) must jointly assess the action required to reduce the cost to the level of available funding. Such reductions must not include reductions in standards of materials below that appropriate for a robust school building with a minimum life span of 25 years.

#### 4.8 Tender Report

- (a) In all cases, the Consultant(s) must prepare and issue a tender report to the School Authority for consideration. This report should include:
  - (i) A list of Tenderers and the amount of each tender received.
  - (ii) A copy of the completed Form of Tender of the recommended main contractor.
  - (iii) A cost analysis to an appropriate level of detail.
  - (iv) The Consultant(s)' report and recommendation.
  - (v) A reconciliation with the approved budget and, where appropriate, a schedule of reductions which may be necessary to meet cost limits.
- (b) This tender report, including any amendments agreed after consultation with the School Authority, must be retained in a safe place by the School Authority. The Department reserves the right to audit any or all reports during the course of the project or after project completion.
- (c) If the recommended tender exceeds the level of available funding and if it is not possible to make sufficient savings, through a Bill of Reductions, to bring the cost in line, the full Tender Report should still be completed, and the School Authority should revert to the Department to seek advice on how to proceed.

## 5. CONSTRUCTION

### 5.1 Tender Acceptance

- (a) Where the recommended adjusted tender is within the level of available funding, the School Authority and the Consultant(s) must make every effort to have construction commence as quickly as possible, and well within the maximum period during which tenders remain open for acceptance (90 days). Failure to meet this deadline could cause cost increases and jeopardise the project.
- (b) A Performance Bond is not normally required for projects under €500,000 (incl. VAT). If a bond is deemed necessary the DoES should be contacted.
- (c) Tender acceptance should be in accordance with the Short Public Works Contract, as follows:
  - (i) The Awarding Authority issues a **Letter of Intent** [see template at [Appendix D](#)] to enter into a contract subject to preconditions such as, for example:
    - Conditions for participation (as stated in Declaration)
    - Compliance of Contractor's insurances with the Conditions of Contract
    - Appointment of a competent Project Supervisor for Construction Stage
    - Compliance with Tax Clearance Procedures
    - Compliance with the membership requirements of the Construction Industry Pension/Sick Pay Scheme or equivalent.
- (d) When all preconditions have been satisfied, the Consultant accepts the tender on behalf of the School by issuing to the Contractor a copy of the Form of Tender with the tender acceptance section at the bottom signed. This forms the Contract. The contract period commences on the date of the Letter of Acceptance and the Contractor is required to commence work on site within 5 days.
- (e) Where the form of contract is the Minor Building & Civil Engineering works designed by the Employer (projects with an estimated cost over €500,000 inclusive of VAT) the guidance in DTP 2012 Tender Action Stage 3 (available at [www.education.ie](http://www.education.ie)) can be adapted to suit the devolved nature of the project (i.e. no submissions to, or direct contact with, the DoES except where noted herein).
- (f) The Assigned Certifier (Usually the Architect/Employer's Representative or consultant for the project), in consultation with the School Authority and the Contractor, issues the Commencement Notice, including all associated undertakings, certificates and documentation as required by the Building Control (Amendment) Regulations 2014 and the associated Code of Practice for Inspecting and Certifying Buildings and Works, to the relevant Local Authority using the online Building Control Management System. The issue of the Commencement Notice shall be timed to allow commencement of the contract in accordance with the letter of acceptance and the Conditions of Contract.
- (g) (The Consultant should assist the School Authority in complying with its obligations under the Building Control (Amendment) Regulations 2014, as Building Owner).
- (h) The Contractor issues the required notifications to the Health and Safety Authority after consultation with the Consultant and the Client. The issue of the required Notice shall be timed to allow commencement of the contract in accordance with the letter of acceptance and the Conditions of Contract.
- (i) While the Tender Acceptance forms the Contract, it is still necessary for the Contract to be formally signed by both parties (not later than one month after contract commencement).

### 5.2 Post Contract Cost Control

- (a) The contract does not (and cannot) include any contingency. The maximum Devolved Grant funding commitment however applies to the total of the Contract sum plus an Employer's Representative's Authority of up to 1% of the Contract Sum plus fees and charges. It does not cover any other expenditure whatever.
- (b) It must be emphasised that the responsibility for controlling the cost within the contract sum rests with the School Authority and the Design Team and any excess of the final account over the contract sum will fall to the School Authority to fund from its own resources.
- (c) The Consultant(s) are individually and collectively responsible for the effective management of the project in order to achieve its completion on time and within budget. Constant communication and information exchange between the Consultant(s) and the School Authority is essential in this regard.
- (d) Any and all change orders and/or additional works outside the approved grant must be agreed with the School Authority in writing prior to these works being carried out on site. All cost increases will be borne by the School Authority.

- (e) The Consultant(s) shall prepare regular Financial Reviews for the School Authority and must highlight any variations or project delays that may effect the final contract cost. At all times the School Authority must acknowledge in writing to the Consultant that it will be responsible for any additional costs.
- (f) The Financial Review should be accompanied by a summary Progress Report, comparing progress to date with the agreed programme of work, and highlighting any areas of delay, and the action being taken to maintain the agreed programme.

### 5.3 Safety File

- (a) Under the Safety Health & Welfare at Work (Construction) Regulations a Safety File is required on most projects (check with your PSDP). The co-ordination of the preparation of the Safety File is the responsibility of the Project Supervisor (Design Process) [PSDP]. The Consultant(s) and Project Supervisor Design Process will provide advice on what is required.
- (b) The Safety File exists for the benefit of the School Authority. It is intended to provide information that will be needed by anyone preparing for construction work, and cleaning or maintenance work on the site after completion of the current project. It is an essential reference for project supervisors appointed for future construction works (maintenance, repairs, renovation, extension or demolition) and it will be the basis for future safety plans. It is also a legal requirement!
- (c) Information for the Safety File should be captured from the start of the project. As design is completed and information from contractors becomes progressively available, additional input for the file can be assembled under the supervision of the PSDP.

### 5.4 Payments Generally

- (a) It is a contractual requirement that the School Authority pay to the Contractor the amount specified on each certificate within the time period allowed (15 calendar days).
- (b) Payments to the Contractor should only be made on the recommendation of the lead Consultant by means of Certificates signed by the lead Consultant and presented to the Client for payment.
- (c) The process for co-ordinating the valuation of works for interim certificates is a matter for the Consultant(s) and the Main Contractor, and the School Authority should not accept late or separate claims for payment not included on the interim certificate.
- (d) On construction projects, it is standard practice to deduct a percentage of each payment certificate to ensure that adequate funds are available to remedy all defects. This is called Retention. On issue of the Certificate of Substantial Completion, half of this retention is released. The appropriate level of retention for small projects is normally 10%.
- (e) There are no Specialist Contractors or Nominated Sub-Contractors. Payments should only be made to the Main Contractor.
- (f) Where certificates of payment are issued, including recommendations for payment in respect of additional work or variations exceeding the available funding, the School Authority bears full financial responsibility and must fund those works from its own resources. (See also Section 6.2.)

### 5.5 Certificate of Substantial Completion

- (a) The Certificate of Substantial Completion is issued by the lead Consultant when the Building or works are fit for occupation/use. Once the Certificate of Substantial Completion is issued, the responsibility for insuring the new works passes from the Contractor to the School Authority.
- (b) Where the Building Control (Amendment) Regulations 2014 apply to the project, the Assigned Certifier must submit to the Building Control Authority a Certificate of Compliance on Completion, signed by the Builder (at Part A) and by the Assigned Certifier (at Part B), and all associated documentation as required by the Code of Practice for Inspecting and Certifying Buildings and Works. The Certificate of Compliance on Completion must then be validated and registered by the Building Control Authority before the Certificate of Substantial Completion can be issued.
- (c) Prior to issuing the Certificate of Substantial Completion, the Consultant(s) must consult with the School Authority and ensure that the School Authority is satisfied that the works have been carried out to such a stage that they can be taken over and used for their intended purpose and that any outstanding items are such that their completion or rectification does not interfere with, or interrupt, such use.
- (d) It is the responsibility of the Consultant(s) to ensure that all defects and snags have been identified, agreed with the School Authority and listed for the contractor's attention.
- (e) The Defects Liability Period is the time allowed during which defects or snags which become apparent must be repaired or fixed, and is normally 12 months from Substantial Completion.

- (f) Prior to hand over of the building or works, the Consultant(s) must explain how to operate and maintain the building and its engineering services systems at optimum efficiency with particular emphasis on safety and energy conservation; and the Project Supervisors for the Design Process and for Construction must provide all information and documentation required to allow the School Authority comply with its duties in respect of the safe operation of the premises under the relevant statutory provisions.
- (g) As soon as the Certificate of Substantial Completion has been issued and the building handed over to the School Authority, the Consultant(s) should issue a comprehensive set of the latest issue of construction drawings and copies of all guarantees allowed for in the Contract Documents to the School Authority, together with an Architect's Opinion on Compliance of the Works with Planning and Development Acts and a copy of the signed Certificate of Compliance on Completion (which confirms compliance with the Building Regulations).

## **5.6 Defects Certificate**

- (a) Prior to the issue of the Defects Certificate the Consultant(s) shall agree and confirm, in writing to the School Authority that all defects have been corrected within the Defects Liability Period.

## **5.7 Final Account**

- (a) The Consultant(s) should prepare a Draft Final Account for discussion and agreement with the School Authority in advance of agreement with the Contractor.
- (b) A Final Account is the agreed final cost of a Construction Project including all changes and cost increases (if any). Where the proposed Final Account exceeds the project cost, the School Authority has sole responsibility for the additional cost. The Department of Education & Science will not consider any applications for additional funding for any reason.
- (c) On agreement of the Final Account a Final Account report should be prepared by the Consultant(s) and submitted to the School Authority. It should include where appropriate:
  - (i) The Consultant(s)' Report on the Building Works and the Contractor's performance during the Building Contract.
  - (ii) A Cost Report including list of Change Orders referenced to approvals with the value of Omissions and Additions in respect of each Change Order;
- (d) When the Employer's Representative (the Consultant) issues the Defects Certificate, the amount of that certificate should be the unpaid balance of the adjusted Price (i.e. the Final Account sum), less deductions permitted by the Contract. On payment of this certificate your project is complete.

## Appendix A Template eTenders advertisement

**Note:** Placing a Contract Notice on eTenders is now an online process. The Consultant must register on eTenders and complete the notice by working through the online system step by step. The information below is essential to the notice and should be included in the relevant section.

### CONTRACT NOTICE – NATIONAL

**Notice Type:** WORKS

#### 1 Authority Details

##### 1.1 Authority Name and Address

<b>Official Name:</b> School Board of Management		
<b>Postal Address:</b> XXXXXXXXXXXXXXXXXXXX,		
<b>Town:</b> XXXXXX	<b>Postal Code:</b>	<b>Country:</b> IE
<b>For the attention of:</b> XXXXXXXXXXXXXXXXXXXX	<b>Telephone:</b> 00353 XXXXXXXX	
<b>E-Mail:</b>	<b>Fax:</b> n/a	
<b>Internet Address (URL):</b>		

##### 1.2 Address from which documentation may be obtained

<b>Official Name:</b> Consultant's name		
<b>Postal Address:</b> XXXXXXXXXX,		
<b>Town:</b> XXXXXX	<b>Postal Code:</b>	<b>Country:</b> IE
<b>For the attention of:</b> XXXXXXXXXX	<b>Telephone:</b> 00353 XXXXXXXX	
<b>E-Mail:</b> XXXXXXXXXXXXXXXXXX@xxxx.xx	<b>Fax:</b> n/a	
<b>Internet Address (URL):</b>		

1.3 Completed documents must be returned to:  
As in 1.1

#### 2 Contract Details

##### 2.1 Title

XXXXXXXXXXXXXXXXXXXX

##### 2.2 Description of the goods or services required

Brief Description and Approximate Size (not value)

##### 2.3 Notice Coding and Classification

###### a) Commodity Codes

Code	Description
4	Building
233	Electrical
166	Mechanical
244	Roofing

###### b) Delivery Location/Area

Code	Location
XXX	... XXXXXXXX

- 2.4 Total quantity or scope of tender  
description of scope of work

### 3 Conditions for Participation

- 3.1 Minimum standards and qualification required

Tenderers must sign the "DoES Suitability Declaration for Small Works" available at [www.education.ie](http://www.education.ie) under School Planning/Building > Technical Guidance, and if requested to do so must provide the necessary evidence of compliance stated in that document within 7 days, including evidence of annual turnover greater than 1.5 times the sum tendered and H&S competence.

Contract is intended to be awarded to a single main contractor. If a group of contractors apply as a group or joint venture and are successful, either a lead contractor must be nominated who will be responsible for providing the service or a Joint Venture must be formed with whom the Awarding Authority will sign the contract.

### 4 Administrative Information

- 4.1 Type of Procedure  
Single stage - Any candidate may submit a tender.
- 4.2 Reference number attributed to the notice by the contracting authority  
N/a
- 4.3 Time Limits
- a) Time-limit for receipt of completed tenders  
[XX-XX-2014](#) Time 12:00
- b) Time-limit for obtaining documentation
- 4.4 Dispatch of invitations to tender to selected candidates  
N/a
- 4.5 Language or languages in which tenders or requests to participate can be drawn up  
EN
- 4.6 Tender Submission Postbox

### 5 Other Information

- 5.1 Additional Information

**Important Notice:**

Tenderers are required to read the DoES Contractor Suitability Declaration for Small Works carefully and to make sure that they meet the minimum standards stated therein. Tenderers who do not meet those requirements should not submit a tender as they will be excluded at award stage. All Tenderers are liable for their own costs of tendering.

The applicable works contract will be: Short Public Works Contract (available at [www.constructionprocurement.gov.ie](http://www.constructionprocurement.gov.ie))

The Contract will be awarded on the basis of lowest price

There are no Contractor or Employer named specialists. All sub-contractors are domestic.

The successful applicant will be appointed Works Contractor and Project Supervisor for the Construction Stage (PSCS) on the project in accordance with the Safety, Health and Welfare at Work (Construction) Regulations.

The Project categorisation for assessment of H&S competence as Works Contractor and PSCS is [Type 1/Type 2/Type 3]. If not specified the default is Type 1 i.e. <€500,000 with no special H&S considerations  
The Areas of work involving Particular Risks known to Contracting Authority at this time are: [none if not otherwise stated]

It is a condition precedent to the award of the Contract that the successful Tenderer will provide:

1. A current tax clearance certificate or in the case of a non-resident Contractor a statement of suitability on tax grounds from the Revenue Commissioners of Ireland.
2. Evidence showing that they are in compliance with the registered employment agreement (Construction Industry Pensions Assurance and Sick Pay).

The Department of Education & Science is subject to the requirements of the Freedom of Information Act, 1997. If a candidate considers that any of the information supplied in response to this notice is either commercially sensitive or confidential, this should be highlighted and reasons for its sensitivity given. The relevant material will, in response to a request under the Act, be examined in the light of exemptions provided for in the Act.

(ET Ref:214712)

- 5.2 Additional Documentation
- 5.3 Publication date of this notice  
[XX-XXX-XX](#)
- SF 51a

## Appendix B Total Project Cost Template

### Total Estimated Project Cost [Pre Planning Permission]:

A	Estimated Contract sum (including VAT)	
B	Design Contingency (Margin of safety for design issues)	
C	Estimated Cost of Planning/Fire cert Conditions (including VAT)	
D	Construction Inflation/Deflation to Tender date	
E	Sub-Total [A+B+C+D]	
F	Employer's Representative's Authority (max 1% E)	
G	Estimated Planning Development Charges	
H	Utility connections and other charges:	
J	Sub-Total Construction costs[E+F+G+H]	
K	Consultant(s) Fees (Including VAT)	
L	Project Supervisor (Design Process) Fees (Including VAT)	
M	Provision for unforeseeable costs (including VAT)	
	<b>TOTAL PROJECT COST[J+K+L+M]</b>	

### Total Estimated Project Cost [Pre tender]:

A	Estimated Contract sum (including VAT) including Planning/Fire cert conditions	
B	Tender Contingency (Margin of safety for higher than expected Tenders)	
E	Sub-Total [A+B]	
F	Employer's Representative's Authority (max 1% E)	
G	Planning Development Charges	
H	Utility connections and other charges:	
J	Sub-Total Construction costs[E+F+G+H]	
K	Consultant(s) Fees (Including VAT)	
L	Project Supervisor (Design Process) Fees (Including VAT)	
M	Provision for unforeseeable costs (including VAT)	
	<b>TOTAL PROJECT COST[J+K+L+M]</b>	

### Total Project Cost [Based on actual contract sum]:

E	Contract sum (including VAT)	
F	Employer's Representative's Authority (max 1% Contract sum)	
G	Planning Development Charges	
H	Utility connections and other charges:	
J	Sub-Total Construction costs[E+F+G+H]	
K	Consultant(s) Fees (Including VAT)	
L	Project Supervisor (Design Process) Fees (Including VAT)	
M	Provision for unforeseeable costs (including VAT)	
	<b>TOTAL PROJECT COST[K+L+M]</b>	

## Appendix C Completing the Schedule to the Short Public Works Contract

The changeable sections of the Schedule should be completed as follows:

- The **Contractor** is: [Name and Address of successful tenderer to be entered here when Contract is being signed]
- The **Employer** is [Name and Address of Employer to be entered here when Contract is being signed]
- The **Employer's Representative** is [Name and Address of Main Consultant to be entered here when Contract is being signed]
- The **Time for Completion** is ..... (insert period)  
[The period for completion should be entered here prior to issue of Tender Documents]
- **Other documents in Contract** [Enter all contract documents]

A weather event is when a weather measurement is recorded at ..... weather station ..... [The nearest Weather Station should be entered here prior to issue of Tender Documents]

A weather event also means the following: .....  
[This line should be left blank]

### Clause 3.15

The Employer's Representative will issue the Defects Certificate between \_\_\_\_ and \_\_\_\_ months after the date for which it certified that the Works were substantially complete.

[For most projects the correct time periods are 12 and 13 month. The time periods should be entered here prior to issue of Tender Documents]

### Clause 4.1

Arrangements for interim payments on account are: monthly, 95% of the value of Works completed and materials delivered to the Site with title vested in the Employer to the Employer's Representative's satisfaction.  
(Delete and replace if alternative period, percentage or arrangements are to be used.)

[For most projects the above arrangements should not be altered.]

The percentage of the Price to be paid after the Employer's Representative certifies the date the Works were substantially complete (less deductions under clause 4.1) is \_\_\_\_%. (If blank, 95%)

[For most projects the above percentage should not be altered.]

### Clause 4.2

The Employer must pay the amount due on an invoice under clause 4.2 within \_\_\_\_\_ working days after receiving the invoice. (If blank, 10 working days.)

[A period of 15 working days for payment on foot of invoice received should be entered here]

### Clause 10.3

The minimum indemnity limit for public liability insurance is €6.5m for any one event, but this limit may be on an annual aggregate basis for products liability, collapse, vibration, subsidence, removal and weakening of supports and sudden and accidental pollution.

The minimum indemnity limit for employer's liability insurance is: €13.0m for any one event.

### Clause 10.4

The maximum levels of excess for the required insurances are as follows:

- insurance of the Works and goods and materials for the Works: € The greater of 1% of Project Value or 0.5% of Contractor's turnover - See also note below)
- public liability € The greater of 1% of Project Value or 0.5% of Contractor's turnover - See also note below)

for property damage only, no excess for death, illness or injury

### Clause 12.3

If the Employer terminates the Contractor's obligation to complete the Works, and clause 12.2 does not apply, and the Employer appoints another contractor within 12 months after the termination to complete the Works, the percentage of the unpaid portion of the Price to be paid to the Contractor is \_\_\_\_% (If blank, 4%).

[4% to be entered here]

### Clause 15.2

..... the conciliator will be appointed by President RIAI/ACEI as appropriate



## Appendix D Template Letter of Intent

[Date]

To [Name and address of tenderer]

[Title of contract e.g. Extension to XXX school ]

### Subject to Contract/Contract Denied

A Dhaoine Uaisle

I write to inform you that we intend to issue a Letter of Acceptance to you subject to the receipt of all the following items within the required time period of 7 days.

Please be advised that if you cannot, or do not, provide all of the required evidence to the satisfaction of the School Authority, within the above time period your tender will be deemed to be invalid and will be excluded from further consideration.

- **Evidence of compliance with Signed Suitability Assessment Declaration:**

- (i.) **Certified turnover**

- An original letter (or colour photocopy of an original letter) from the firm's accountant (signed by that accountant) stating the Certified turnover for the last 3 years financial years (which must not be less than an average of 1.5 times the sum tendered for this project). If for any valid reason this evidence cannot be provided then alternative evidence considered appropriate by the Contracting Authority demonstrating the same level of turnover must be provided.

- (ii.) **Public Liability Insurance and Employer's Liability Insurance**

- Originals or validated copies of the Public Liability Insurance policy (with a minimum level of cover of €6,500,000) and the Employer's Liability Insurance Policy (with a minimum level of cover of €13,000,000) in accordance with the conditions stated in the Instructions to Tenderers.

- (iii.) **Contracts Manager, Health & Safety Manager, Foreman, and PSDP**

- Evidence that each of the above personnel (who all may be the one person) have previous experience on 2 projects of a similar nature, size and complexity in the assigned role satisfactorily completed. The evidence must include contact details (including phone numbers) for the Contracting Authorities and consultants.

- (iv.) **Examples of previous work over the past 7 years**

- 3 examples of works of a similar nature, size and complexity, each carried out and satisfactorily completed within the last 7 years including the start and finish dates for the projects, the name of the Foremen, the scope of work completed by you, and contact details (including phone numbers) for the Contracting Authorities and the Consultants in charge. This information may be checked with the Contracting Authorities and/or the Consultants in charge.

- 3 examples of works (which may be the same as the projects above) of a similar nature, size and complexity completed within the last 7 years in a satisfactory manner in compliance with the Safety, Health and Welfare at Work Construction Regulations 2006 - 2013, with details as above and the record of enforcement actions, legal proceedings accidents, fatalities or incidents for those projects and (where applicable) measures that have been put in place by the above named Contractor to address any deficiencies in H&S procedures.

- (v.) **An organisation chart showing the duty holders responsible for Health and Safety**

- This organisation must show how responsibility for Health and Safety is allocated (in a satisfactory manner) within the firm.

- (vi.) **Signed Health and Safety Declaration**

- Signed Health and Safety Declaration in the form at Appendix C1 to QW2 available at [www.constructionprocurement.gov.ie](http://www.constructionprocurement.gov.ie)

- (vii.) **H&S Training and Experience of Health & Safety Manager and the Site Safety Officer**

**[Required for Type 2 and 3 projects only]**

For both the Health & Safety Manager and the Site Safety Officer, evidence of a minimum of 4 hours externally accredited CPD or a H&S Degree/diploma or other equivalent H&S training in addition to experience as Health and Safety Manager and Site Safety Officer respectively on 3 satisfactorily completed building construction projects

**(viii.) Structured H&S Procedures for Type 3 projects only****[Required for Type 2 and 3 projects only]**

Evidence of adequate structured H&S Procedures suitable for small works projects with a higher degree of H&S complexity, in the format at

[http://www.hsa.ie/eng/Topics/Managing\\_Health\\_and\\_Safety/Safety\\_Statement\\_and\\_Risk\\_Assessment/](http://www.hsa.ie/eng/Topics/Managing_Health_and_Safety/Safety_Statement_and_Risk_Assessment/) or other mutually agree format

- **Tax Clearance Certificate/evidence of compliance with Tax Clearance Procedures**
- **Evidence of compliance with your legal obligations in regard to Sick Pay/Pensions**
- **Confirmation that the project will not be commence on site until the Project Supervisor Construction Stage [PSCS] has been appointed (by the Consultant on behalf of the Client) and the PSCS has accepted that appointment (both in writing) and that the Health & Safety Authority have been notified on the correct form (again by the Consultant on behalf of the Client).**
- **Confirmation that a project specific Health and Safety Plan will be prepared by the Project Supervisor (Construction) Stage prior to commencement on site.**
- ***[add any other requirements stated in tender documents or advertisements,]***

If any of the above listed items is not provided within 7 days of the date of this letter, we may proceed to award the contract to another tenderer.

Award of the contract will also be conditional on Board of Management approval and the approval of funding for this project by the Department of Education and Science.

This is not the Letter of Acceptance. The Employer has not accepted your tender.

Please return a copy of this letter acknowledging receipt as indicated below.

Is mise, le meas

Signed: \_\_\_\_\_ [On behalf of the Employer]

We acknowledge receipt of this letter on \_\_\_\_\_ (date)

Signed: \_\_\_\_\_ [On behalf of the tenderer]