

PAM
**/ PRACTICE
NOTE**

/ LETTERS OF AWARD

a publication of



PAM

NOVEMBER 2023
SERIAL NO: **PN** 2023-1
/ TAG: CONTRACT, AWARD

Practice Note: Letters of Award

Notes:

¹ Although not explicitly stated, it has to be noted that the *Contract Bills* as described in the Conditions of Contract, include the “*Instructions to Tenderers*”, implying that there are both invitations to tender along with the receipt of tenders. It must be further noted though that the tenders (or tender) received may not necessarily be as a result of a competitive bidding process.

² As the tendering process may also involve negotiation, offers and counter-offers, there may be more than a single round of tenders received. Letters of Award though are issued only upon the final tender which is accepted by the Employer.

³ An often asked question is; *who* issues the Letter of Award? Strictly speaking, it should be the Contractual Party accepting the offer, i.e.; the Employer. Nevertheless, as with the administration of the resulting Building Contract, an Employer may engage the services of an *agent* (in this case, his Architect) to issue the Letter of Award *on his behalf*. The recognition of Architects being empowered to issue such letters is well established with this duty being formalised as part of his Basic Services under the Contract Documentation Phase (Rule 10.(e)) of the *Architects Scale of Minimum Fees Rules 2010*. Architects who are indeed, engaged for the Basic Services are advised to remember this obligation.

There may be instances where the Employer may choose to issue the Letter of Award. There may also be occasions where the Employer employs others such as Quantity Surveyors or Lawyers to draft and prepare their Letters of Award. In such situations, irrespective of whether the Letter is prepared by *wise men or witch doctors*, it is *always* advisable for the Architect to (at the very least) review the Letter of Award to ensure that it is in line with the Building Contract which he is expected to administer.

⁴ There are schools of thought that take the view that the contract comes into existence with the **issuance** of the Letter of Award. This writer would advise caution in following this line of thought; upon being awarded the contract, a tenderer may decide to *repudiate* the award and accept the forfeiture of his *earnest money* by the Employer instead. This is the type of scenario after all, from which we have derived precautions such as the need to submit *earnest money* as part of the tender.

A more cautious approach would be to only declare the existence of the Contract upon the Contractor *confirming his acceptance* of the award.

Preface

This Practice Note (PN) is the first in a series of notes issued to assist and clarify the administration of Building Contracts based on the PAM Contracts 2006 and 2018. However, it is also noted that the advice offered in this PN may also be applicable for Building Contracts other than the above PAM Forms and it is left to Architects to use their professional judgement to make the necessary adjustments.

As the issuance of Letters of Award would, strictly speaking, occur before a Building Contract comes into existence, this note should fall outside the ambit of *Contract Administration*. Nevertheless, given the importance of the Letter of Award and its consequences relative to the contract, it has been deemed important enough to be included into this series of PNs.

As for all the PNs in this series on Contract Administration, the intention is to always try and deliver the message as directly as possible with any supporting information being consigned to footnotes. It is the writer’s opinion though that these footnotes are as equally relevant and all readers are encouraged to not ignore them.

This PN is based on part of PAM’s previous Professional Practice Courses (Module M05) related to Procurement (as also prepared by this writer).

Introduction

An often over-looked advantage of the PAM Forms of Contract is their comprehensiveness in detailing out the roles and obligations of the Contractual Parties and Architect during the currency of the contract. What the Forms do not do though, is explain how the contractual parties actually enter into the contract in the first place.

With the PAM Forms of Contract, there is the implication that there is firstly, an *invitation to tender*¹. This invitation would then be followed by an *offer* (known as the *tender*)² by the tenderer. Should the tender be deemed as acceptable, there would then be a formal acceptance of the tender. For the PAM Forms, this formal acceptance would take the form of the issuance of a **Letter of Award**, awarding the contract from one contractual party (the *Employer*)³ to the other (the *Contractor*).

Why is the Letter of Award important?

Upon issuance of the Letter of Award (and subsequent acceptance of this letter by the Contractor)⁴ and until the formalisation of the actual contract, the Letter of Award **forms a formal and binding agreement** between the Employer and Contractor, i.e.; with the issuance and acceptance of the Letter of Award, both of the Contractual Parties are now bound to fulfill their contractual obligations irrespective of whether the formal contract has yet to be prepared and executed.

The Letter of Award in turn, shall also ultimately, **form part of the** above-mentioned, final and formal **Contract** which is to be signed and witnessed (by the Contractual Parties) as well as stamped ⁵.

With the Letter of Award, a Contractor will also be able to commence performing his statutory obligations (such as registering the project and paying any levies to the *Construction Industry Development Board* (CIDB) or applying for permits from the Local Authority), apply for the temporary connection of utilities, arrange for the necessary insurance coverage or Performance Bonds and enter into agreements with sub-contractors or suppliers. The Letter of Award would also signify his obligation to complete the planning of his construction works, commence preparation of his works programmes as well as the mobilization of the necessary personnel, plant and machinery ready for the start of his physical work on Site upon the Date of Commencement.

Notes:

- ⁵ For a list of the documents required for the Contract, please refer to Article 7 or Clause 3.1 of the PAM Forms of Contract.
- ⁶ Tenders are issued based on circumstances at *specific* points in time; they are not meant to be valid in perpetuity with acceptance of the tender and award of the contract having to occur when the tender is still valid. Tenderers are under no obligation to accept the award of a tender after the expiry of the tender validity period.
- ⁷ As noted elsewhere, there may be more than one tender submitted by the same tenderer and it is important to indicate which is the *final* tender upon which the award is based.
- ⁸ There may be more than one tender received but there can only be ONE Contract Sum which should be the sum which is mutually agreed upon between the contractual parties.
- ⁹ The Construction Period which is finally agreed upon by the contractual parties need not be the same period as originally set out in the tender documents and may have been arrived at by a process of *post-tender* negotiations.
- ¹⁰ A not unreasonable assumption would be for the works to commence *shortly* after the issuance of the Letter of Award; it is highly unlikely that any Contractor would be willing to accept an award if no Date of Commencement is provided or if the Date of Commencement is very far away (i.e.; 2 years) away from the date of the award.

Once awarded, the Employer may still decide to delay the Date of Commencement of the works on site but it must be remembered that such delays are governed by Clause 21.1 of the Conditions of Contract.

Considerations prior to issuance of the Letter of Award

As seen earlier, there must first be a *tender* from a tenderer for the Employer to consider. It is assumed that the Employer and his Consultant Team would have carried out their due diligence by checking and assessing this tender, both financially and technically, ready for a final decision to be made regarding the award. If so required, questionnaires or tender interviews may need to be arranged to clarify the tenders received. If there are any doubts on the tender, it is important to seek clarification (*in writing*) and clear away these doubts before any final decision is made.

The Consultant Team may make recommendations on the award but it must always be remembered that the **final decision lies with the Employer**. Upon reaching such a decision, it is in the Architect's interest to confirm this decision in writing before the Letter of Award is prepared and issued.

As also seen above, once a Letter of Award is issued (and accepted), it shall be deemed that an enforceable agreement has come into existence; Employers as such should be cautioned and reminded to be very sure of their decision as once this Letter is issued, there is **no turning back**.

Essential Components for a Letter of Award

It is the writer's opinion that the following are required (*at a minimum*) for inclusion in any Letter of Award.

1. The Letter must be **dated** with the award and issuance all occurring within the tender validity period ⁶.
2. It should obviously be **addressed to the Contractor** at his registered address.
3. If the Letter is issued by the Architect on behalf of the Employer, it should make clear who the **Employer** is.
4. It must refer to the **project or works** (including the location) which are to be undertaken by the Contractor.
5. It should refer to the **tender** (incl. the final and revised tenders) ⁷ submitted by the Contractor.
6. It must carry the **explicit declaration** that the Employer (or the Architect acting on his behalf) "*hereby award the contract*" to the Contractor.
7. It should indicate the **Contract Sum** ⁸ upon which the award is to be based.
8. It should confirm the **Construction Period** ⁹.
9. It must state the **Date of Commencement** ¹⁰.

10. It should then state the **Completion Date**.
11. It may confirm the version of the **PAM Form**¹¹ being used for the Contract.
12. It should state **any other conditions**¹² which the Contractor is required to comply with, which have not been captured in any of the tender documents or submissions.
13. It may instruct the Contractor to **commence mobilisation**, prepare works programmes or arrange for insurances or Performance Bonds.
14. It should remind the Contractual Parties that with the issuance and acceptance of this Letter of Award, a **Binding Agreement** is deemed to have come into existence between them.
15. It must be **signed** by the Person authorised to issue the Letter of Award.
16. It is advisable to allow space for a Contractor to indicate his **acceptance of the Letter of Award**.
17. As the PAM Forms of Contract only recognise a contract based on physical documents, the relevant number of **hardcopies** of the Letter of Award needs to be issued.

Notes:

¹¹ The form of Contract (if a *standard* form is used) would normally be stated in the Instruction to Tenderers; how else would a tenderer be able to prepare a tender if he is unaware of the contractual conditions? Nevertheless, it does no harm to have a reminder within the Letter of Award, of the Form of Contract being employed and the subsequent conditions (and obligations) which the Contractual Parties can be expected to face.

There has also been a tendency for Employers and their agents to *amend* or *modify* the standard PAM Forms. It is this writer's opinion that any version of the PAM Contract which has been so amended or modified is **NO LONGER the PAM Contract** and all Architects (and their Employers) are advised to **refrain from carrying out such amendments or modifications**.

¹² There may be conditions which may only be deemed as being required *after* tenders have been called. Inclusion of these conditions though is still subject to the Contractor agreeing to accept these conditions. As conditions listed down in the Letter of Award have priority over similar (or contradictory) conditions listed in other parts of the Contract Documents, care must be taken when listing out such conditions in order not to deviate away from the original intent of the contract.

Items which are to be included in any Letter of Award though, are in no way restricted to just those in the above list, i.e.; there may also be specific instructions regarding the taking of site possession. Architects as such, are advised to review and check if there are indeed specific requirements for each of the contracts they intend awarding.

It is this writer's practice to also provide information as to when (and where) the **Contract or Construction Drawings and Bills** may be collected by the Contractor for them to commence their planning. If the Employer and Architect are earnest enough about awarding the Contract, they should also correspondingly, be earnest in providing the Contractor with all the necessary information to commence their planning and work immediately.

Given that the *timely* issuance of the physical, Letter of Award is crucial, it is advised that its issuance be by hand with an acknowledgement of its receipt also being recorded. The issuance though should be followed up with receipt of the Contractor's acceptance.

Conclusion.

Letters of Award are literally the gateway into any building contract and should as such, never be underestimated. They are also useful tools; the PAM Forms of Contract are *standard* contract forms to be used for a variety of construction projects but unfortunately, construction projects are never *standard* across the board and the peculiarities of each construction project may be catered for with your Letters of Award which are then tailored to suit the differing circumstances; this PN should not be seen as being *definitive* but rather as a base upon which Architects are able to construct their own Letters of Award which are pertinent to their respective projects.

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This Practice Note was authored primarily by Ar. Joseph Tan, reviewed by Practice Note Working Group, Professional Practice Committee 2023-24 and issued on 9 November 2023.

Practice Notes are a guide for Architects to rely on, and provides clarity on a particular subject but it should also be considered in relation to their respective projects. As in all practices, there are peculiarities and specific issues which PN may not or cannot cover. Therefore Architects must exercise their own judgement.