

Circular L4/05

5 August 2005.

**Water Services Investment Programme – Capital Replacement
Fund for DBO Schemes**

1. DBO Procurement Policy

Design/Build/Operate (DBO) contracts are now the standard form of procurement for water or wastewater treatment infrastructure being funded under the Department's *Water Services Investment Programme*. DBO generates cost and time efficiencies and has a number of advantages over traditional procurement, including:

- accelerated infrastructure provision since the service phase does not commence until construction is completed, thereby reducing exposure to construction inflation,
- single point responsibility for design, construction, operation and maintenance which incentivises contractors to optimise whole life costs,
- better allocation of risk, resulting in greater certainty of final capital cost,
- use of innovative technologies with associated technical and economic benefits.

On the basis of satisfactory experience to date, Design/Build/Operate procurement will, for the foreseeable future, remain the preferred option for the provision of treatment facilities under the *Water Services Investment Programme*. Against that background, and in the context of the extensive consultations between the Department and local authorities under the aegis of the County and City Managers Association, this Circular introduces formal procedures for local

authorities to recoup from the Department the domestic share of the Capital Replacement Fund associated with the service phase of water services DBO contracts.

2. Capital Replacement Fund

Water services DBO contracts include provision for a Capital Replacement Fund (CRF) to facilitate timely renewal of major items of plant during the service, or operation and maintenance, phase of such contracts. The service phase normally has a 20-year term. At tender stage, the contractor nominates specific items of plant and the scheduled year of replacement for each item. Monies may be made available by the employer (i.e. the local authority) from the CRF only in respect of plant items listed by the contractor at tender stage.

The CRF does not cover:

- the cost of routine maintenance items,
- the cost associated with the correction of defects,
- the cost of providing spares between scheduled dates for plant replacement,
- the cost of replacement of any item of plant that has a life expectancy of less than five years,
- anything else not specifically nominated by the contractor at tender stage.

3. Disbursements from the CRF

Under a DBO contract, the employer (i.e. the local authority) is required to open a bank deposit account in Ireland in its own name. All payments to the contractor in respect of the CRF are debited to this account by the employer, with both employer and contractor acting as account signatories.

The employer is at all time the sole legal and beneficial owner of the monies contained in the CRF. The contractor does not at any time

have a legal or beneficial interest in these monies. Interest accrued to the CRF is added to the account each year.

On expiry of the normal 20 years service phase, or in the event of earlier termination of the contract, any amount standing to the credit of the CRF is retained by the employer, including any accrued interest, for use in conjunction with any subsequent service contract.

4. Recoupment of CRF Funding from the Department

Local authorities will henceforth be entitled to recoup the domestic proportion of the CRF from the Department in the form of a once-off lump sum. The lump sum will become payable with effect from the date of commencement of the service (operation and maintenance) phase of the DBO contract. The lump sum will be based on the value of the CRF provision as set out in the tender, with appropriate adjustments, as follows:

- the domestic proportion of the CRF will be calculated pro-rata with the domestic (i.e. Exchequer funded) component of the relevant capital works, as approved by the Department in accordance with the Water Services Pricing Policy Framework,
- “relevant capital works” for this purpose means works that have been procured under a DBO contract and are operated and maintained under the service phase of the DBO contract,
- the CRF provision for the term of the service phase will, for recoupment purposes, be expressed in Present Term Values, i.e. a figure calculated using the Net Present Value method,
- indexation of the CRF value will apply from the tender date to the date of submission of the recoupment claim, in accordance with the terms of the contract,
- claims under the CRF scheme should be submitted on Form WSIP 11 (copy attached) immediately on commencement of the service phase; the WSIP 11 form should be accompanied

by a Manager's Order, hard copies of relevant extracts from the tender documentation and detailed supporting calculations,

- subject to paragraph 5 below, claims received more than 6 months after commencement of the service phase will not be considered.

5. Other Provisions

Claims under the CRF scheme in respect of contracts where the service phase has commenced prior to the date of this Circular must be submitted to the Department not later than 31 October 2005. These claims must comply with the procedures set out above in all other respects.

The facility to recoup the CRF domestic share is only available in respect of the service phase of DBO elements of major schemes funded by the Department under the *Water Services Investment Programme*. It does not apply to:

- operation and maintenance costs in respect of works procured under traditional contracts,
- group or small public schemes funded under the Rural water Programme,
- services (O & M) only contracts,
- services only modules of "bundled" DBO contracts, i.e. for works procured traditionally but where the service contract is bundled with a DBO contract.

The CRF recoupment facility will remain in place until the end of the current National Development Plan and will apply to DBO contracts where the service phase commences on or before 31 December 2006. The arrangements will be subject to review at that point.

6. Enquiries

Enquiries about this circular may be addressed to Ms. Janet Jacobs at the above address, telephone: 01-8882154, e-mail: janet_jacobs@environ.ie.

T Allen
Principal Officer
Water Services Section

To: County and City Managers
Directors of Services (for water services)