
INSTRUCTIONS DOCUMENT

FOR

REQUESTS TO PARTICIPATE IN A

DYNAMIC PURCHASING SYSTEM

FOR

CIVIL ENGINEERING WORKS

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1.0 INTRODUCTION

1.1 PRIMARY INFORMATION AND CONTRACTING AUTHORITIES

- 1.1.1 The Local Government Operational Procurement Centre (hereinafter referred to as "the LGOPC")¹, acting as a central purchasing body² under the auspices of Kerry County Council, is co-ordinating the establishment of a Dynamic Purchasing System of Economic Operators³ for Civil Engineering Works (hereinafter referred to as "the DPS") on behalf of contracting authorities⁴.
- 1.1.2 The contracting authorities eligible to partake in the DPS (hereinafter referred to as "the Contracting Authorities") include:
- Ministers of the Government of Ireland; Central Government Departments; offices and non-commercial agencies and organisations which have a formal reporting and legal relationship to Central Government Departments, including all local authorities in Ireland (as defined in the Local Government Act 2014), (themselves including regional assemblies, local enterprise boards and library bodies), and those approved housing bodies which also constitute "bodies governed by public law" within the meaning of Regulation 2 of the European Union (Award of Public Authority Contracts Regulations 2016 (S. I. No. 284 of 2016) (hereinafter referred to as "the Regulations")), listed on the Register of Approved Housing Bodies maintained by the Department of Housing, Local Government and Heritage currently approved under section 6 of the Housing Act 1992;
 - Contracting authorities in the Irish health sector including but not limited to the Health Service Executive (HSE); the Health Information and Quality Authority (HIQA) and HSE funded Agencies delivering health & personal social services funded by more than 50% from Exchequer funds;
 - Contracting authorities which are Third Level Educational Institutions (including universities, institutes of technology and members of the Education Procurement Service);
 - Contracting authorities which are Education and Training Boards (ETBs) and ETB schools, and primary, post-primary, special and secondary schools as well as ETBs acting on behalf of schools;
 - An Garda Síochána (Police);
 - The Irish Prison Service;
 - The Defence Forces;
 - The Housing Agency;
 - Such other contracting authorities as may be notified to Economic Operators from time to time.
- 1.1.3 Economic Operators admitted to the DPS will be invited to participate in Supplementary Requests for Tender⁵ (hereinafter referred to as "Supplementary Request(s) for Tender") issued by the Contracting Authorities through www.supplygov.ie⁶ (hereinafter referred to as "Supplygov") for Civil Engineering Works (hereinafter collectively referred to as "Services/Works") during the Period of Validity⁷ of the DPS.

¹ The LGOPC is responsible for the development and implementation of central purchasing mechanisms for the Category Councils of Plant Hire and Minor Building Works & Civils as established by the Office of Government Procurement.

² Central Purchasing Body means a central purchasing body as defined by Regulation 2(1) of the European Union (Award of Public Authority Contracts) Regulations 2016 (S. I. No. 284 of 2016) (hereinafter referred to as "the Regulations").

³ Economic Operator means an economic operator as defined by Regulation 2(1) of the Regulations.

⁴ Contracting authorities means a contracting authority as defined by Regulation 2(1) of the Regulations.

⁵ Supplementary Request for Tender means a request for tender issued by the Contracting Authorities to the Economic Operators admitted to the DPS via www.supplygov.ie for a Supplementary Request for Tender Contract (hereinafter referred to as an "sRFT Contract").

⁶ www.supplygov.ie is a procurement platform operated by the LGOPC facilitating Local Authorities and other state agencies in the public procurement of goods, works and services from economic operators.

⁷ Period of Validity means the duration ('lifetime') of the DPS. The Period of Validity will commence on the day the DPS is established (this is referred to as the "DPS Tender Start Time") - being the first date on which the Contracting Authorities may issue Supplementary Requests for Tender.

- 1.1.4 It is anticipated that the DPS will commence in Quarter 3, 2021.
- 1.1.5 The Period of Validity will be five years. The LGOPC may, subject to compliance with the Regulations, amend the Period of Validity.
- 1.1.6 The total value of contracts to be awarded under the DPS (hereinafter referred to as "sRFT Contract(s)")⁸ is estimated to exceed the threshold whereby Directive 2014/24 EU and the Regulations apply to this call for competition.

1.2 DYNAMIC PURCHASING SYSTEM (DPS)

- 1.2.1 A Dynamic Purchasing System is a two-stage electronic process that Contracting Authorities use to streamline the procurement of commonly available goods, works or services that meet their requirements from all suitably qualified Economic Operators that have been admitted.
- 1.2.2 Following the initial establishment of a Dynamic Purchasing System, the system re-opens to receive requests to participate from new and previously unsuccessful Economic Operators.
- 1.2.3 The initial phase of a Dynamic Purchasing System covers the assessment of exclusion grounds and selection criteria only and all Economic Operators that pass this assessment shall be admitted (there is no limit to the number of Economic Operators that may be admitted to a Dynamic Purchasing System). Individual contracts are subsequently awarded, following further competition, at the second stage of the procurement process.

1.3 DIVISION INTO LOTS

- 1.3.1 The DPS will be divided into the following lots:

LOT REFERENCE	DESCRIPTION
Lot 1	Road Making and Associated Ancillary Works with PSCS appointment for Contracts greater than €200K
Lot 2	Road Making and Associated Ancillary Works with PSCS appointment for Contracts less than €200K
Lot 3	Road Making and Associated Ancillary Works without PSCS appointment for Contracts less than €200K
Lot 4	Civil Works with PSCS appointment

- 1.3.2 The General Specification included in the DPS Agreement provides more details on the scope of the lots.
- 1.3.3 Economic Operators wishing to participate in the lots above must apply for each lot separately.
- 1.3.4 Economic Operators admitted to the DPS for a particular lot may apply to participate in an additional lot at any time.
- 1.3.5 The addition of a new lot to the DPS by the LGOPC will require Economic Operators and any existing Economic Operators admitted to the DPS to make a new application for that lot.

⁸ sRFT Contract means a contract for Works entered between an Economic Operator and a Contracting Authority following a Supplementary Request for Tender.

2.0 ESTABLISHMENT AND OPERATION OF THE DPS

2.1 STAGE 1 – CALL FOR COMPETITION – DPS QUALIFICATION

This stage is hosted on www.etenders.gov.ie⁹ (hereinafter referred to as “eTenders”).

- 2.1.1 Stage 1 is the call for competition issued by the LGOPC seeking requests to participate (hereinafter referred to as “application(s)”) in the DPS. In stage 1, the LGOPC assesses the Economic Operator against the exclusion grounds and selection criteria only. All Economic Operators that pass this assessment are admitted to the DPS as there is no limit to the number of Economic Operators that may be admitted.
- 2.1.2 Instructions on how to complete an application are outlined in **Section 4.0: Application Process** of this document.
- 2.1.3 Applications will be assessed in accordance with **Section 5.0: Tender Evaluation and Admittance to the DPS**.

Initial Application Period and Establishment of the DPS

- 2.1.4 The Initial Application Period deadline for submission of applications for the initial establishment of the DPS is indicated on eTenders. An Economic Operator may submit an application for the initial establishment of the DPS any time prior to this date.
- 2.1.5 Once the Initial Application Period has passed, the LGOPC shall assess all applications received prior to the end of the Initial Application Period. On completion of this assessment, the LGOPC shall notify all Economic Operators of the outcome of their application.
- 2.1.6 A minimum standstill period of 14 days shall apply following notifications to all Economic Operators that submitted applications during the Initial Application Period.
- 2.1.7 Following the standstill period, the LGOPC shall:
 - a) invite the successful Economic Operators to execute the DPS Agreement on Supplygov; and
 - b) formally establish the DPS.
- 2.1.8 The DPS will then become operative and open to the Contracting Authorities to issue Supplementary Requests for Tender and award sRFT Contracts (this is the DPS Tender Start Time and the date of the commencement of the Period of Validity).
- 2.1.9 Contracting Authorities may not issue Supplementary Requests for Tender or award sRFT Contracts prior to the DPS Tender Start Time.

New Applications After the Expiry of the Initial Application Period

- 2.1.10 An applicant that submits an application after the end of the Initial Application Period shall not be notified of the result of the application until after the DPS Tender Start Time.
- 2.1.11 Subject to section 2.1.12 herein, the DPS will remain open to receive applications from new and previously unsuccessful Economic Operators throughout the Period of Validity. These applications must be submitted through eTenders.

⁹ eTenders is a procurement platform administered by the Office of Government Procurement facilitating local authorities and other state agencies in the public procurement of goods, works and services.

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- 2.1.12 The LGOPC may temporarily suspend the receipt and acceptance of applications to the DPS for operational and logistical reasons during the Period of Validity. During such periods, the LGOPC will not be in a position to receive or accept applications from Economic Operators. In circumstances where the receipt or acceptance of applications is being temporarily suspended, the LGOPC shall: (a) advise Economic Operators in advance of the dates when applications are temporarily suspended and cannot be accepted; (b) minimise such temporary suspensions for as short a period as possible; and (c) advise Economic Operators when the suspension will come to an end and when applications can be received and accepted again.
- 2.1.13 An application submitted after the DPS Tender Start Time, other than during a period of suspension as identified in accordance with section 2.1.12, will be assessed and receive notification of the outcome within 10 working days following receipt of same¹⁰.
- 2.1.14 No standstill period applies to applications received after the DPS Tender Start Time.
- 2.1.15 The LGOPC shall invite all successful Economic Operators to execute the DPS Agreement on Supplygov.

2.2 STAGE 2 – SUPPLEMENTARY REQUESTS FOR TENDER

This stage is hosted on www.supplygov.ie (hereinafter referred to as "Supplygov").

- 2.2.1 Stage 2 involves the Contracting Authorities inviting the Economic Operators admitted to the DPS to tender for specific sRFT Contracts. Contracting Authorities shall invite, per Lot, all Economic Operators admitted to the DPS that have indicated an interest in tendering for those region(s) selected as part of their application. A table illustrating the establishment and operation of the DPS is contained within Appendix 1 attached hereto.

¹⁰ This time limit may be extended to 15 working days in individual cases in accordance with the provisions of Regulation 34 (16).

3.0 INSTRUCTIONS

3.1 POINTS TO NOTE PRIOR TO MAKING AN APPLICATION

- 3.1.1 All documentation, information and communications relating to the DPS, including the Tender Documents¹¹, are published on eTenders under the Contract Notice, which supersede and replace all previous documentation, communications and correspondence issued by the LGOPC and/or the Contracting Authorities in relation to same.
- 3.1.2 If an Economic Operator becomes aware of any ambiguity, discrepancy, error or omission in the Tender Documents or in the online application process, it shall immediately notify the LGOPC through the eTenders messaging system.
- 3.1.3 The LGOPC gives no assurances as to the level of expenditure by the Contracting Authorities through the DPS and the admittance of an Economic Operator to the DPS does not constitute a commitment from the Contracting Authorities to enter into sRFT Contracts with the Economic Operator. Any costs incurred by the Economic Operator, howsoever arising, in making an application shall be the Economic Operator's own liability.
- 3.1.4 The Tender Documents, in whole or in part, may not be reproduced, stored, transmitted or used for purposes other than this tender competition without the prior written permission of the LGOPC.
- 3.1.5 The LGOPC, acting in its sole discretion, may, by giving written notice, cancel this tender competition at any stage prior to the formal establishment of the DPS (or at any time during the Period of Validity) without recompense to the Economic Operator.
- 3.1.6 It shall be the responsibility of the Economic Operator to fulfil the obligations under the DPS Agreement and any sRFT Contract, notwithstanding any changes in circulars, law, regulations, taxation or duties or other restrictions that might arise following the withdrawal of the United Kingdom from membership of the European Union.
- 3.1.7 Economic Operators can make only one application per lot (per Economic Operator) in response to this tender competition.
- 3.1.8 Economic Operators not currently registered on eTenders must register as a "Supplier" on eTenders in order to make an application.
- 3.1.9 Economic Operators must:
- fully comply with this Instructions Document and a failure to do so may result in the application being deemed non-compliant. An Economic Operator that makes an application that is deemed non-compliant shall not be admitted to the DPS;
 - read the Tender Documents carefully and ensure that they fully understand the requirements of this tender competition and the terms of the DPS Agreement prior to applying;
 - take into account: (a) upload speeds may vary and; (b) the maximum allowed size of all the attached files in a tender response should not exceed **100MB**;
 - ensure electronic documents are not corrupt.
- 3.1.10 The LGOPC will not issue hard copy correspondence relating to any aspect of this tender competition.
- 3.1.11 All correspondence will be issued via eTenders only and it is the responsibility of the Economic Operator to ensure that its correct email address for the receipt of electronic correspondence is recorded on its eTenders account.

¹¹ Tender Documents mean the Instructions Document, the Agreement, the ESPD, the Selection Criteria for each Lot, associated Contract(s) and Forms to be completed.

- 3.1.12 If links are not working in any electronic correspondence (due to internal firewalls or IT security), log in directly via the eTenders portal to view.
- 3.1.13 All Economic Operators should include noreply@delos.eurodyn.com in their spam filters (if they use a filtering tool) in order to receive notifications.
- 3.1.14 Should an Economic Operator experience any technical difficulty with any aspect of its application on eTenders, please contact the eTenders Support Desk using the contact details available on the 'contact us' page on www.etenders.gov.ie.
- 3.1.15 The LGOPC and the contracting authority would refer Tenderers in particular to the provisions of Regulation (EU) 2022/1031 on the access of third country economic operators, goods and services to the Union's public procurement and concession markets and procedures supporting negotiations on access of Union economic operators, goods and services to the public procurement and concession markets of third countries (International Procurement Instrument – IPI), and to their obligation to comply therewith. In particular, tenderers and Economic Operators should note in Article 6 of Regulation (EU) 2022/1031, the obligations for the LGOPC and the contracting authority in the context of a procurement procedure where the EU Commission has adopted an IPI measure.
- 3.1.16 Council Regulation (EU) No 833/2014 of 31 July 2014, as amended by Council Regulation (EU) No 2022/576 of 8 April 2022 prohibits the award of any public or concession contract to any of the entities set out in Article 5k 1(a) to (c). It is a requirement of this tender competition that all Economic Operators and all entities on whose capacities the Economic Operator relies, are not any of the entities set out in Article 5k 1(a) to (c). By participating in this tender competition, each Economic Operator confirms that it and any entities upon whose capacities it relies, are not any of the entities set out in Article 5k 1(a) to (c).

3.2 COMPANY REGISTRATION DETAILS

- 3.2.1 Where an Economic Operator is registered with the Companies Registration Office (hereinafter referred to as the "CRO") it must ensure that:
- the registered company name and address as recorded in the CRO are used in all relevant parts of the application.
- 3.2.2 Where an Economic Operator is not registered with the CRO it must ensure that:
- the Economic Operator's name and address as registered with its VAT/Tax Registration Number is used in all relevant parts of the application.

3.3 CONSORTIUM/JOINT VENTURE

- 3.3.1 An Economic Operator comprising of a consortium or joint venture (hereinafter collectively referred to as the "Consortium") will not be required to convert into a specific legal entity to submit an application but may be required to do so prior to admittance to the DPS. In this respect the LGOPC may, at its discretion, enter into the DPS Agreement with:
- one member who will carry overall responsibility for the performance of an sRFT Contract;
 - each member of the Consortium on a joint and several liability basis;
 - one member of the Consortium with the other members being subcontractors; or
 - at its discretion, the LGOPC may require the Consortium to enter into any other contracting arrangement.

3.4 CONFIRMATION OF ECONOMIC OPERATOR DETAILS

- 3.4.1 The LGOPC may examine and verify the Economic Operator's details as submitted including, but not limited to, the following:
- Nature of the Economic Operator;

- Name of the Economic Operator;
- Address of the Economic Operator;
- VAT/Tax Registration Number of the Economic Operator (if applicable);
- Company Registration Number of the Economic Operator (if applicable);

3.4.2 Where, in the course of such examination, the LGOPC determines that an Economic Operator has provided details that contain discrepancies, it may at its discretion contact the Economic Operator requesting that the Economic Operator provide or confirm the correct details.

3.5 COMMUNICATIONS, QUERIES AND CLARIFICATIONS

- 3.5.1 All queries from Economic Operators in relation to this tender competition may only be submitted online through the messaging function on eTenders.
- 3.5.2 The LGOPC will endeavor to respond to all reasonable queries validly received without delay. However, the LGOPC is not obliged, nor does it undertake, to respond to all queries received and queries seeking interpretation of this Instructions Document may not result in a response.
- 3.5.3 Any queries, along with the LGOPC's response to same, will, where appropriate, be communicated to all those expressing an interest in this tender competition without disclosing the name of the Economic Operator who initiated the query.
- 3.5.4 If an Economic Operator believes a query and/or its response relates to a confidential or commercially sensitive aspect of its application, it must mark the query as "Confidential" and state the reason(s) why it believes it to be confidential or commercially sensitive. The LGOPC shall have regard to such statement but shall not be bound by same. If the LGOPC, in its absolute discretion, is satisfied that the query and/or its response should be properly regarded as being confidential or commercially sensitive, the nature of the query and its response shall be kept confidential subject to the LGOPC's and/or the Economic Operators obligations under public procurement and freedom of information legislation.

3.6 CANVASSING

- 3.6.1 Canvassing or any effort by an Economic Operator to influence any staff or agents of the LGOPC in relation to any aspect of this tender competition, may result in the Economic Operator's disqualification.
- 3.6.2 Where an Economic Operator has an existing relationship with the LGOPC (or its staff or agents), any discussions, correspondence or other influences on this tender competition may be treated as canvassing.
- 3.6.3 In accordance with Section 38 of the Ethics in Public Office Act 1995, any money, gift or other consideration from an Economic Operator holding, or seeking to obtain, admittance to the DPS will be deemed to have been paid or given corruptly unless the contrary is proved.

3.7 NOTICE OF ADDENDA

- 3.7.1 The LGOPC reserves the right, where necessary for the efficient and compliant operation of the DPS, to update or alter this Instructions Document, other Tender Documents and/or any information and documents pertaining to the DPS by written notice via eTenders and any such notification will automatically become part of the Tender Documents.

4.0 APPLICATION PROCESS

4.1 GENERAL

- 4.1.1 All Applications in response to this CFT must be made using the online application process on eTenders only.
- 4.1.2 Applications in any other format will not be accepted.
- 4.1.3 A 'Detailed User Manual for Companies' (EO User Manual) is available to download on eTenders under the 'Help' menu option. It provides detailed information and guidance on the steps required to make an application for admittance to the DPS.
- 4.1.4 In order for the Economic Operator to express an interest in the CFT, select the "**Expression of Interest**" option from the "Show DPS Menu" and complete the system prompt on 'Association with CFT'.
- 4.1.5 Select 'DPS Tenders' from the "Show DPS Menu" and click 'Accept & confirm all the above' to confirm validity of the user details.
- 4.1.6 Selecting the "**Create Tender Online**" option opens a new webpage that requires the Economic Operator to enter a title for the tender response¹² and to select the Lots being applied for. Once complete, click '**Save**' which will then display the Eligibility Criteria¹³ where the Economic Operator can prepare, edit and submit a tender response for the DPS.

4.2 COMPLETING THE ONLINE ELIGIBILITY CRITERIA (QUESTIONNAIRE)

- 4.2.1 The Economic Operator must activate the application process by clicking on the red menu option ('Tender Response Options') at the top of the page and selecting the '**Edit**' option. Once '**Edit**' is selected, the menu option will change from red to green.
- 4.2.2 The Lots selected by the Economic Operator will appear in a dropdown menu at the top of the page. The selected Lots can be edited at any point prior to submission of the tender response by clicking on the red icon beside the Lots dropdown menu.
- 4.2.3 A separate online Questionnaire must be completed for each Lot selected.
- 4.2.4 The Economic Operator must select each lot separately and complete the associated online Questionnaire.
- 4.2.5 For each questionnaire, the number of questions to be answered and the number answered as the application progresses will be displayed beside 'Criteria Completed', which is located under the Lot title at the top of the questionnaire. All questions must be completed to enable the tender response to be submitted.
- 4.2.6 Progress of the Economic Operator's overall tender response will be displayed as a percentage beside 'Eligibility Criteria' that is visible on the upper left of the application page or by clicking on the 'Completion Summary' menu option also available on the page.
- 4.2.7 After the actions in each required question are completed, the colour of the text will change to green and the draft response will be saved.

¹² Submitting a Tender Response on eTenders has the same meaning as making an application

¹³ Eligibility Criteria means exclusion grounds (ESPD) and selection criteria

- 4.2.8 **Note:** Each Questionnaire includes Notes that do not require any input from the Economic Operator.
- 4.2.9 Economic Operators do not need to complete the entire application process at one time. The application process can be started, paused, updated, edited, and saved at any point prior to completion and submission of the tender response.
- 4.2.10 Economic Operators are not required to submit evidence of compliance with the declarations at tender response stage except where indicated in the online Questionnaire. Economic Operators must be in a position to provide the requisite evidence of compliance with the declarations when requested by the LGOPC and/or Contracting Authority.

4.3 UPLOADING AND ATTACHING FILES

- 4.3.1 The tender response requires the Economic Operator to upload and attach Files, where indicated in the Questionnaire for each Lot.
- 4.3.2 To upload and attach a File in response to a particular criterion -:
- Click on the Folder Icon to the right of the Criterion. A new window opens.
 - Click on 'Upload a new File' and choose the file to be uploaded.
 - Click 'Upload' to upload the selected file.
 - After the upload is complete, the progress against the 'Name' will show 100%.
 - Click on 'Back', select the relevant 'Filename' from the list, and click 'Save'.
 - Your uploaded file name should then appear under 'Referenced Files' for the relevant criterion, confirming that this file has been associated with the criterion.

4.4 SUBMISSION OF TENDER RESPONSE

- 4.4.1 Economic Operators must respond to all required questions in the online Questionnaire associated with each Lot selected so that the overall completion percentage displays 100%.
- 4.4.2 Economic Operators must submit their response by clicking on the 'Submit' button at the top of the page.
- Note** – During preparation of the tender response, the 'Submit' button will be inactive and appear in the colour grey. Once 100% completion is reached, the 'Submit' button will become active and change colour.
- 4.4.3 Once the tender has been submitted, a status of 'Submitted' will be displayed on the page.
- 4.4.4 Submitted tenders can be viewed by selecting the 'Related Responses' option on the page.

5.0 TENDER EVALUATION & ADMITTANCE TO THE DPS

5.1 GENERAL

5.1.1 Applications for admittance to the DPS will be assessed by the LGOPC as follows:

PROCESS	ACTION
Compliance	Assess completeness of application for compliance with requirements of the Tender Documents.
Selection Criteria	Assessment in accordance with the selection criteria.

5.2 COMPLIANCE

5.2.1 Applications will be assessed to determine whether they include all information and documentation required.

5.2.2 Compliant applications will proceed to be assessed in accordance with the selection criteria. Non-compliant applications will not be assessed any further.

5.3 SELECTION CRITERIA

5.3.1 Applications will be assessed against the selection criteria for each Lot they apply for. An application that meets the minimum selection criteria for a Lot will be considered a successful application for that Lot.

5.3.2 Economic Operators must meet the minimum selection criteria **for each lot they apply for**.

5.4 CLARIFICATION OF TENDERS

5.4.1 During the assessment of an application, the LGOPC may seek clarifications or further information (or take such other legally permissible actions) from Economic Operators via eTenders.

5.4.2 The Economic Operator's response to a request for clarification or further information shall be submitted via eTenders no later than the date specified by the LGOPC. Any response provided by an Economic Operator may not constitute a material alteration of the application initially submitted.

5.5 NOTIFICATION OF EVALUATION OUTCOME

5.5.1 Following assessment of an application, Economic Operators will be informed of the outcome via eTenders.

5.5.2 Notification of a successful application by the LGOPC to the Economic Operator shall not, in and of itself, give rise to any enforceable rights by the Economic Operator.

5.6 DPS AGREEMENT

5.6.1 When an Economic Operator has submitted a successful application, it will be invited to formally enter on to the DPS by accepting the terms of the DPS Agreement electronically through Supplygov.

6.0 APPENDIX 1 – PROCESS FLOW FOR APPLICATIONS FOR ADMITTANCE TO THE DPS

