



Feidhmeannacht na Seirbhíse Sláinte
Health Service Executive

FRAMEWORK AGREEMENT

FOR

REQUEST FOR APPLICATIONS

FOR APPOINTMENT TO A

MULTI-PARTY FRAMEWORK AGREEMENT

FOR

MINOR BUILDING WORKS – HSE

ACUTE LIVE HOSPITAL ENVIRONMENTS

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**Framework Agreement
for
Construction Work**

Department of Finance

Public Works Framework Agreement
Document Reference PW-CF9 v.1.0
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Government Buildings
Upper Merrion Street
Dublin 2.

Agreement

THIS FRAMEWORK AGREEMENT is made on BETWEEN

<i>The Employer:</i>	The Health Service Executive (HSE)
<i>Principal office of Employer:</i>	Oak House, Millennium Park, Naas, Co Kildare.

AND

<i>The Contractor:</i>	
<i>Registered office of Contractor:</i>	

THE EMPLOYER AND THE CONTRACTOR AGREE as follows:

1. **Framework**

- 1.1 The Contractor and other Participants named in the attached Framework Rules are part of a framework for the Contractor and those other Participants to do construction work for the Employer.
- 1.2 If, during the **Framework Period** defined in the attached Framework Rules, the Employer needs construction work as described in the Framework Rules, the Employer may procure the work by awarding contracts (**Works Contracts**) according to the attached Framework Rules. The Employer may also procure the work in other ways, and does not guarantee that any work will be procured under this agreement.

2. **Works Contracts**

- 2.1 If the Contractor is selected for any work according to the attached Framework Rules, the Employer and Contractor agree to enter a Works Contract in the terms established under this agreement.
- 2.2 Works Contracts will be on the terms of the:
 - PW-CF06 – Public Works Short Form of Contract, or
 - PW-CF05 – Contract for Minor Building & Civil Engineering Works Designed by the Employer or
 - Equivalent Contract approved by the GCCC/Department of Finance, as completed by the Employer and the Contractor according to the attached Framework Rules.
- 2.3 Works Contracts awarded within the Framework Period may be for work that continues after that period.

3. **Communications**

- 3.1 The Contractor’s contact person for communications with the Employer in relation to this agreement and Works Contracts is:

<i>Name of Contractor’s contact person</i>			
<i>Address</i>			
<i>Telephone</i>		<i>Mobile phone</i>	
<i>Fax</i>		<i>email</i>	

If that person (or any subsequent replacement) is no longer able to fulfil the role, the

Contractor must promptly appoint a replacement, who must be a director or senior manager of the Contractor, and notify the Employer of the new contact person.

- 3.2 The Employer's contact persons for communications with the Contractor in relation to this agreement is:

<i>Name of Employer's contact person</i>	Pat McCarthy		
<i>Address</i>	Estates Office HSE South, Block 2, St. Finbarr's Hospital, Douglas Road Cork T12 XH60		
<i>Telephone</i>		<i>Mobile phone</i>	
<i>Fax</i>		<i>email</i>	pato.mccarthy@hse.ie

The Employer may change these details by notice to the Contractor.

4. Tax Clearance Certificate

At all times during the Framework Period, the Contractor must hold a valid tax clearance certificate issued by the Revenue Commissioners.

5. Performance Measurement

- 5.1 On completion of each Works Contract, and other times requested by the Employer, the Contractor must collate and give the Employer the data necessary to demonstrate compliance with the performance indicators listed in the attached Performance Measurement Table.
- 5.2 The Employer may review the Contractor's performance according to the attached Framework Rules and Performance Measurement Table. The Contractor must provide any information required by the Employer for this.

6. Confidentiality

- 6.1 The Contractor must not disclose to anyone:
- official information as defined in the Official Secrets Act 1963 or
 - other information that the Employer notifies the Contractor is confidential
- except as necessary to perform the Contractor's obligations under this agreement or a Works Contract or to comply with the law.
- 6.2 The Contractor's obligations under this clause are perpetual, and this clause survives termination of this agreement.

7. Termination

- 7.1 The Employer may terminate this agreement by written notice to the Contractor:
- if a Works Contract with the Contractor is terminated or
 - according to the attached Framework Rules or
 - if the Contractor breaks this agreement or
 - if any statement made by the Contractor in connection with the procedure by which this agreement was awarded to the Contractor was untrue when made or subsequently

ceases to be true or

- without cause, if the Employer also terminates its agreements with the other Participants listed in the Framework Rules.

7.2 Termination of this agreement does not affect any Works Contract already entered.

7.3 The Contractor is not entitled to any payment because this agreement has been terminated.

8. Limitation on liability

Neither the Contractor nor the Employer have any liability to the other under or in connection with this agreement for breach of contract, negligence, breach of duty or anything else. This does not affect their liability under any Works Contract.

9. This Agreement

9.1 Neither party may assign rights under this agreement.

9.2 This, and any Works Contracts, are the entire agreement between the Employer and the Contractor about its subject matter. Neither the Employer nor the Contractor has relied on any agreement, understanding, or statement that is not written or referred to in this agreement.

9.3 This agreement can only be changed in writing, signed by authorised representatives of the Employer and the Contractor.

9.4 This agreement is governed and to be construed according to Irish law.

SIGNED by the Employer and the Contractor on the date at the top of this agreement

Signed on behalf of the Employer:

*Signature of person authorised to
sign contracts on behalf of the
Employer:*

Signed on behalf of the Contractor:

*Signature of person authorised to
sign contracts on behalf of the
Contractor:*

Framework Rules

1. The Framework

1.1 *The Employer*

has established a framework for the procurement of construction work in relation to

The framework consists of a **Framework Agreement** between the Employer and each of the **Participants** listed below. Each Framework Agreement incorporates these rules.

1.2 If, during the period

starting on

and ending on

(the **Framework Period**), the Employer needs construction work as described in rule 1.1 above, the Employer may procure it by awarding **Works Contracts** according to these rules. The Employer may also procure the work in other ways, and does not guarantee that any work will be procured under these rules.

2. Participants

2.1 The Participants in the Framework are listed below, in alphabetical order.

2.2 A Participant whose Framework Agreement has been terminated will no longer be considered a Participant under these rules.

3. **Call off by competition**

- 3.1 When the Employer decides to procure work under these rules, the Employer will send each Participant a written invitation to tender. The invitation will be sent by email to each Participant's current email address as given in or notified under its Framework Agreement. The invitation will include a draft Works Contract, based on one of the contracts referenced in Clause 2.2 above with the Schedule completed by the Employer in its discretion, including details of the required Works. The invitation will fix a time limit for Participants to send in tenders taking account of such factors as the complexity of the subject-matter of the Works Contract and the time needed to send in tenders.
- 3.2 The award process for Works Contracts tendered under this rule 3 will be conducted in accordance with these rules and any procedures stated in the invitation to tender. It may include an electronic auction.
- 3.3 Participants wishing to be considered for a Works Contract must submit a tender complying with the invitation to tender. Tenders must propose resources (including key persons) that are consistent with the Participant's tender proposal for its Framework Agreement.
- 3.4 The award criteria for Works Contracts awarded under a procedure initiated under this Rule 3 will be as follows (with the range of weighting given in brackets):

Mini Competition - Most Economically Advantageous Tender (MEAT) - Lowest Price.

Subject to compliance with the following provisions;

- 1) As part of their online tender submission Contractors submitted maximum all-inclusive hourly rates (ceiling rates) for the following personnel:
 - Contracts / Project Manager
 - Site Manager / Foreman
 - Safety Officer
 - Tradesman
 - General Operative
- Contractors who submit responses to Supplementary Requests for Tender may reduce the ceiling rates submitted but may not exceed them. These ceiling rates shall be fixed as the maximum rates applying over the initial 12 months of the Framework Agreement only.
- 2) The Terms and Conditions detail the conditions for the award of Supplementary Request for Tender Contracts under the Framework Agreement. The Terms & Conditions also detail the information to be provided by the Contractor prior to Contract Award.
 - 3) Where, after a competition, two or more Contractors are level on marks the Contracting Authority reserves the right to either;
 - a. Ask the equally ranked Contractors to resubmit prices and continue this process until there is a winner, or
 - b. To divide the works between the equally ranked Contractors, or
 - c. Award the contract by random selection concluded in an open and transparent forum, or
 - d. To re-tender the works

The above criteria are not listed in order of importance. The Employer may attach different weightings to them for different Works Contracts, depending on the service requirement, and will indicate the weightings in the invitation to tender.

4. **Performance Review, Termination and Promotion**

- 4.1 On completion of each Works Contract, the Participant concerned must collate and provide to

the Employer the information required for the Employer to review that Participants' performance according to the attached Performance Measurement Table. The Employer may review Participants' performance of their Works Contracts and the Framework Agreement at the end of each year of the Framework Period, according to the attached Performance Measurement Table.

- 4.2 If a Participant has reached 'Failure Level 1' for any indicator according to the attached Performance Measurement Table, the Employer may give that Participant a written Warning Notice and may exclude that Participant from further competitions until the Participant has demonstrated to the Employer's satisfaction that it has implemented steps to redress the problem.
- 4.3 If a Participant
- receives two Warning Notices during the Framework Period or
 - has reached 'Failure Level 2' for any indicator according to the attached Performance Measurement Table
- the Employer may terminate that Participant's Framework Agreement.
- 4.4 The Employer may give each Participant details of the result of its annual performance review, and of the average results for each item and the average overall score.

Performance Measurement Table

No	Employer's objective	Indicator	Measurement Period	Failure Level 1 (Rule 4.2)	Failure Level 2 (Rule 4.3)
1.	Health and Safety	Failure to maintain safety measures as set out in the Safety and Health Plan	Term	1	1
2.	Health and Safety	Receipt of Prohibition Notice from HSA directing works to cease	Term	1	1
3.	Quality of Materials and / or workmanship	Materials supplied do not meet technical specification, CE marking or equivalent and / or workmanship does not meet the requirements of the drawings and/or specifications	Term	1	1
4.	Quality of Materials and / or workmanship	Failure of the Contractor to execute the Request for Tender Contract in a proper and workmanlike manner and using good practice	Term	2	1
5.	Programme	Failure to respect the nominated start and finish dates	Term	1	1
6.	Legal Requirements	Requirement for immediate cessation of the works on foot of committing or causing the HSE to commit a serious breach of legal or statutory requirements concerning the project.	Term	1	1
7.	Personnel	Requirement for immediate removal of Works Contractor's personnel on foot of their negligence or insufficient competence to carry out their tasks in compliance with the Works Contractor's obligations under the Request for Tender Contract	Term	1	1