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**DYNAMIC PURCHASING SYSTEM  
AGREEMENT**

**FOR**

**MINOR BUILDING WORKS - TRADESPERSONS**

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**THIS DYNAMIC PURCHASING SYSTEM AGREEMENT IS MADE BETWEEN:**

The Local Government Operational Procurement Centre (hereinafter referred to as the "LGOPC") (which expression shall, where the context so admits or requires, be deemed to include its successors and assigns) acting as a central purchasing body under the auspices of Kerry County Council with an address of Unit 9, Ground Floor, Building C, Reeks Gateway, Rock Road, Killarney, Co. Kerry, V93 KVK1 and an email address of [eproc@kerrycoco.ie](mailto:eproc@kerrycoco.ie) of the One Part.

**AND**

The "Economic Operator" (which expression shall, where the context so admits or requires, be deemed to include its successors and assigns) of the Other Part.

**WHEREAS:**

- A.** The LGOPC conducted a call for competition on [www.etenders.gov.ie](http://www.etenders.gov.ie) and in the Official Journal of the European Union inviting requests to participate in a Dynamic Purchasing System for Minor Building Works – Tradespersons (hereinafter referred to as "the DPS") on behalf of the Contracting Authorities specified in Section 1.5 hereto (hereinafter referred to as "the Contracting Authorities").
- B.** The Economic Operator submitted a request to participate in the DPS and, following an assessment by the LGOPC, the LGOPC wishes to admit the Economic Operator to the DPS.
- C.** The Economic Operator has agreed to be admitted to the DPS on the terms set out in this DPS Agreement.
- D.** The Economic Operator enters into this DPS Agreement by electronically accepting this DPS Agreement through [www.supplygov.ie](http://www.supplygov.ie) (hereinafter referred to as "Supplygov") by way of its personal Supplygov account (the formal acceptance of the terms of this DPS Agreement through Supplygov shall operate as if this DPS Agreement had been signed and/or sealed (and witnessed appropriately) by the parties and shall be construed accordingly for all legal purposes).
- E.** The admittance by the LGOPC of the Economic Operator to the DPS, subsequent to the acceptance by the Economic Operator of the terms of this DPS Agreement, shall operate as the acceptance by the LGOPC of the terms of this DPS Agreement and this DPS Agreement shall take effect from such date.
- F.** This DPS Agreement incorporates the DPS Agreement General Terms and Conditions specified in 2.0 hereto (hereinafter referred to as "the DPS Agreement General Terms and Conditions").
- G.** Each obligation, warranty, or representation of the Economic Operator under this DPS Agreement is undertaken and/or made for the benefit of both the LGOPC and the Contracting Authorities.

## **1.0 THE LGOPC AND THE ECONOMIC OPERATOR AGREE AS FOLLOWS:**

### **1.1 SCOPE OF APPOINTMENT**

- 1.1.1 This DPS Agreement governs the relationship between the LGOPC and the Economic Operator in respect of the terms and conditions applying to the participation of the Economic Operator in the DPS.
- 1.1.2 In consideration of the performance by the Economic Operator of its obligations under this DPS Agreement, the LGOPC appoints the Economic Operator to the DPS for the provision of minor building works - tradespersons (hereinafter collectively referred to as "the services/works") to the Contracting Authorities when contracted to do so pursuant to the DPS.
- 1.1.3 The Contracting Authorities are entitled to use the DPS for the purpose of procuring the services/works from Economic Operators who have been admitted to the DPS.
- 1.1.4 When a Contracting Authority wishes to acquire the services/works pursuant to the DPS, it will do so by means of a Supplementary Request for Tender<sup>1</sup> (hereinafter referred to as "sRFT(s)") only.
- 1.1.5 Notwithstanding the entitlement of the Contracting Authorities to utilise the DPS, neither the LGOPC nor the Contracting Authorities give any assurances as to their level of engagement or expenditure through the DPS and the Economic Operator hereby acknowledges that it has not entered into this DPS Agreement on the basis of any such expectation. This DPS Agreement does not constitute a commitment from the Contracting Authorities to award contracts under the DPS (hereinafter referred to as "sRFT Contract(s)") to the Economic Operator and the Contracting Authorities reserve the right to engage in separate procurement processes with Economic Operators outside of the DPS should they consider it appropriate to do so.

### **1.2 ENTIRE AGREEMENT**

- 1.2.1 This DPS Agreement constitutes the entire agreement between the parties and contains all the terms which the parties have agreed with respect to its subject matter and shall prevail over and supersede all prior agreements, understandings, statements and communications between the Economic Operator, the LGOPC and the Contracting Authorities in relation to same. Without prejudice to the generality of the foregoing, this DPS Agreement shall apply to the exclusion of any terms and conditions which the Economic Operator may purport to apply.

### **1.3 PERIOD OF VALIDITY**

- 1.3.1 The Period of Validity of the DPS shall be five years.
- 1.3.2 The LGOPC may, subject to compliance with the Regulations<sup>3</sup>, amend the Period of Validity. Any amendment to the Period of Validity shall not necessitate the re-execution or re-affirmation of this DPS Agreement by the parties which terms shall continue in force for the duration of any amended Period of Validity.

### **1.4 LIMITATION ON LIABILITY**

- 1.4.1 Notwithstanding that the LGOPC is: (a) acting as a Central Purchasing Body co-ordinating the establishment of the DPS; and (b) entering into this DPS Agreement with the Economic Operator, nothing within this DPS Agreement or the Tender Documents<sup>4</sup> shall operate to bind the LGOPC to (or make them a party to) the terms and obligations of an sRFT Contract and the Economic Operator hereby indemnifies and holds harmless the LGOPC from any losses, damages, costs or claims arising from: (a) the failure of the Economic Operator to secure an sRFT Contract; and/or (b) any sRFT Contract entered into by the Economic Operator.

<sup>1</sup> Supplementary Request for Tender means a request for tender issued by a Contracting Authority to the Economic Operators admitted to the DPS via [www.supplygov.ie](http://www.supplygov.ie).

<sup>2</sup> sRFT Contract means a contract for the services/works entered into between an Economic Operator and a Contracting Authority following a Supplementary Request for Tender.

<sup>3</sup> Regulations means the European Union (Award of Public Authority Contracts Regulations, 2016 (S. I. No. 284 of 2016) (hereinafter referred to as "the Regulations")

<sup>4</sup> Tender Documents mean the Instructions Document, the DPS Agreement, the ESPD, Selection Criteria for each Lot, associated Contract(s) and Forms to be completed.

## **1.5 THE CONTRACTING AUTHORITIES**

1.5.1 The Contracting Authorities partaking in the DPS Agreement 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 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;
- A Garda Síochána (Police);
- The Irish Prison Service;
- The Irish Defence Forces;
- The Housing Agency;
- Such other Contracting Authorities as may be notified to the Economic Operator from time to time.

## 2.0 GENERAL TERMS & CONDITIONS

### 2.1 GENERAL

- 2.1.1 The LGOPC is not bound by any anomalies, errors, or omissions in the Tender Documents. The Economic Operator shall immediately notify the LGOPC if it becomes aware of any ambiguities, anomalies, errors or omissions in the Tender Documents and the LGOPC shall, upon receipt of such notification, notify all Economic Operators of its ruling in respect of same. Such ruling shall be issued in writing and may, at the LGOPC's discretion, form part of this DPS Agreement.

### 2.2 INTERPRETATION

- 2.2.1 If any term or provision in this DPS Agreement is held to be illegal or unenforceable, in whole or in part, such term or provision shall be deemed not to form part of this DPS Agreement and the enforceability of the remainder of this DPS Agreement shall not be affected.
- 2.2.2 Words importing the singular shall, where the context so requires, include the plural and vice versa.
- 2.2.3 Words of the masculine gender include the feminine and neuter genders and words denoting natural persons include where the context so requires corporations and firms and all such words shall, where appropriate, be construed interchangeably in that manner.
- 2.2.4 The headings and captions in this DPS Agreement are inserted for convenience of reference only and shall not be considered as part of or affect the construction or interpretation of this DPS Agreement.
- 2.2.5 Reference to a Statute or Act or a provision of a Statute or Act shall include any Statute or Act or provision of a Statute or Act amending, consolidating, or replacing it for the time being in force.
- 2.2.6 Words denoting an obligation on a party to do any act, matter or thing shall include an obligation to procure that it be done and words placing a party under a restriction includes an obligation not to permit or allow infringement of the restriction.
- 2.2.7 The terms of this DPS Agreement shall be construed without regard to the rule of construction known as "ejusdem generis".
- 2.2.8 If any ambiguity or question of intent or interpretation arises, this DPS Agreement shall be construed as if drafted jointly by the Economic Operator and the LGOPC and no presumption or burden of proof shall arise favouring or disfavouring either party by virtue of the authorship of any of the provisions of this DPS Agreement.

### 2.3 LEGAL STATUS OF THE ECONOMIC OPERATOR – ASSIGNMENT AND/OR NOVATION

- 2.3.1 This DPS Agreement may be assigned or novated by the Economic Operator, subject to the granting of formal written consent to such assignment or novation by the LGOPC, to the legal successor of the Economic Operator where:
- (a) the specific change was provided for in the procurement process for the award of this DPS Agreement; or
  - (b) the change is as a result of corporate restructuring in a manner permitted under Regulation 72 of the Regulations.
- 2.3.2 The LGOPC may, prior to granting consent to such assignment or novation, require compliance by the succeeding Economic Operator with such conditions the LGOPC deems necessary including, but not limited to, requiring evidence that:
- (a) the succeeding Economic Operator fulfils the qualifying criteria initially established;
  - (b) the succeeding Economic Operator possesses the capability (technical or otherwise), resources and skills in respect of satisfying the requirements of this DPS Agreement; and
  - (c) a formal change in legal status or corporate restructuring as permitted under sub-paragraphs 2.3.1 (a) and (b) herein has been lawfully undertaken.
- 2.3.3 The terms of this DPS Agreement shall govern any succeeding Economic Operator and the LGOPC may, at its discretion, direct the Economic Operator and the succeeding Economic Operator to execute a formal Deed of Assignment/Novation.

- 2.3.4 The LGOPC reserves the right to assign, novate or transfer this DPS Agreement to a third party without the consent of the Economic Operator.
- 2.3.5 Without prejudice to such additional circumstances where assignment is permissible under subparagraphs 2.3.1 (a) and (b) herein, assignment or novation to the legal successor of the Economic Operator (subject to the granting of formal written consent to such assignment by the LGOPC) is permissible in the following circumstances:
- Change of the Economic Operator's legal status from:
- (i) sole trader to corporation where general ownership and personnel remain the same;
  - (ii) corporation to sole trader where general ownership and personnel remain the same;
  - (iii) sole trader to partnership where general ownership and personnel remain the same;
  - (iv) partnership to sole trader where general ownership and personnel remain the same;
  - (v) corporation to partnership where general ownership and personnel remain the same;
  - (vi) partnership to corporation where general ownership and personnel remain the same;
  - (vii) sole trader to other related sole trader (for example, business transfer from father to son); or
  - (viii) change of the Economic Operator's business name.

## **2.4 TERMINATION OF THE DPS AGREEMENT**

- 2.4.1 The LGOPC may, by written notice, terminate this DPS Agreement (without recompense to the Economic Operator) thus ending the participation of the Economic Operator in the DPS, in the following circumstances:
- if the Economic Operator breaches the terms of this DPS Agreement; or
  - if the provisions of Regulation 73 of the Regulations apply; or
  - if the Economic Operator falls within a relevant exclusion ground under Regulation 57 of the Regulations; or
  - if the Economic Operator fails to provide the requisite evidence of compliance with the declarations submitted in its ESPD following a request from the LGOPC and/or a Contracting Authority; or
  - if the Economic Operator fails to provide, to the LGOPC or the Contracting Authorities, renewed and updated self-declarations in accordance with Regulation 34 (24) of the Regulations; or
  - if any statement made by the Economic Operator in connection with the procedure by which this DPS Agreement was entered into was: (a) untrue when made or subsequently ceases to be true; or (b) was materially incorrect, inaccurate or misleading (whether intentionally so or not).
- 2.4.2 The LGOPC, acting in its sole discretion, may, by giving written notice, collapse the DPS and therefore end the DPS Agreements with all Economic Operators appointed thereto, without recompense to any Economic Operator, at any time during the Period of Validity.

## **2.5 SUBCONTRACTING**

- 2.5.1 When responding to a Supplementary Request for Tender where subcontractor(s) are proposed for completion of an sRFT Contract, the Economic Operator shall provide to the Contracting Authority (if requested): (a) the relevant details of the subcontractor(s); (b) an ESPD for the subcontractor(s); (c) evidence of the qualifications and experience of the subcontractor(s); and (d) such other information and documentation in relation to the subcontractor(s) as may be reasonably required by the Contracting Authority.

## **2.6 RELIANCE ON CAPACITY OF OTHER ENTITIES**

- 2.6.1 Where an Economic Operator has relied on the capacities of other entities to satisfy the selection criteria for entry on to the DPS:
- it shall, upon request by the Contracting Authority, demonstrate to the Contracting Authority that it will have at its disposal the resources necessary by providing a written undertaking from that other entity, in terms satisfactory to the Contracting Authority and duly evidenced, confirming



that the entity in question will place the necessary resources at the disposal of the Economic Operator;

- such entity must, when requested by the Contracting Authority, provide joint and several liability to the Contracting Authority for the performance and fulfilment of any sRFT Contracts (this may take the form of a guarantee, letter of reliance, such entity being a party to the sRFT Contract or other form of commitment as directed by the Contracting Authority).

2.6.2 An Economic Operator may only rely on the capacities of other entities where those entities will perform the services/works for which these capacities are required.

## **2.7 TAX COMPLIANCE**

2.7.1 All payments under an sRFT Contract are conditional upon the Economic Operator (and its subcontractor(s) where appropriate) being tax compliant.

2.7.2 The Economic Operator (and its subcontractor(s) where appropriate) must comply with the following:

- (a) at a minimum, the terms of the Department of Finance Circulars 43/2006 and 44/2006: Tax Clearance Procedures Public Sector Contracts (as may be amended, updated or re-published by the relevant body from time to time and as then apply at the time of the sRFT Contract) and;
- (b) such other requirements and directions that an individual Contracting Authority may impose in order to satisfy itself that the Economic Operator (and its subcontractor(s) where appropriate) is tax compliant.

## **2.8 EMPLOYEES**

2.8.1 The Economic Operator (and its subcontractor(s) where appropriate) must comply with all legal requirements in relation to PAYE and PRSI and must ensure that the rates of pay and conditions of employment, including pension contributions: (a) comply with all applicable laws; and (b) are at least as favourable as those for the relevant category of worker in any sectoral employment orders, employment regulation orders or registered employment agreements.

## **2.9 ENVIRONMENTAL & SOCIAL CONSIDERATIONS**

2.9.1 In the performance of an sRFT Contract, the Economic Operator and its subcontractor(s) (if applicable) shall comply with all applicable obligations in the field of environmental, social and labour law that apply at the place where the services/works are provided, that have been established by EU law, national law, collective agreements or by international, environmental, social and labour law listed in Schedule 7 of the Regulations.

2.9.2 This DPS facilitates the inclusion of environmental and social considerations and labour law in the Award Criteria published at Supplementary Request for Tender stage as set out in Section 5.0 hereunder.

## **2.10 STATUTORY OBLIGATIONS AND APPLICABLE LAW**

2.10.1 This DPS Agreement shall be governed by and construed in accordance with the laws of Ireland and the courts of Ireland shall have exclusive jurisdiction to hear and determine any disputes arising out of or in connection with same.

## **2.11 FREEDOM OF INFORMATION ACTS**

2.11.1 The LGOPC and the Contracting Authorities are subject to the Freedom of Information Act, 2014 and the Economic Operator acknowledges that information provided in response to a Supplementary Request for Tender may be considered confidential or commercially sensitive. The Economic Operator should consider if any information supplied by it in response to a Supplementary Request for Tender should not be disclosed because it is commercially sensitive or confidential and if this is the case, the Economic Operator should, when providing the information, identify same and specify the reasons for its commercial sensitivity or confidentiality. The LGOPC and the Contracting Authorities shall have regard to such statement but shall not be bound by it. If the Contracting Authority and/or the LGOPC, in their discretion, are satisfied that the information should be properly regarded as being confidential or commercially sensitive, the information shall be kept confidential subject to the LGOPC's and/or the Contracting Authority's obligations under public procurement and Freedom of Information laws.

## **2.12 CANVASSING**

- 2.12.1 Canvassing or any effort by the Economic Operator to influence the personnel and/or agents of the LGOPC and/or the Contracting Authorities in relation to the DPS or a Supplementary Request for Tender may result in: (a) the disqualification of the Economic Operator by the LGOPC from the DPS; and/or (b) the disqualification of the Economic Operator by the Contracting Authority from the Supplementary Request for Tender.
- 2.12.2 Where the Economic Operator has an existing relationship with personnel and/or agents of the LGOPC and/or the Contracting Authorities, it is advised that any discussions, correspondence or other communications with regards to the DPS and/or its Supplementary Requests for Tenders may be treated as canvassing.
- 2.12.3 In accordance with the Ethics in Public Office Act, 1995 (as amended), any money, gifts or other consideration furnished by an Economic Operator seeking to obtain an sRFT Contract or otherwise influence the DPS will be deemed to have been paid or given corruptly unless the contrary is proved.

## **2.13 CONFLICTS OF INTEREST AND REGISTRABLE INTEREST**

- 2.13.1 Any actual or potential conflict of interest involving the Economic Operator and a Contracting Authority and/or the LGOPC must be disclosed by the Economic Operator as soon as it becomes apparent.
- 2.13.2 The LGOPC and/or the Contracting Authorities may investigate potential conflicts of interest with the Economic Operator where it deems it necessary for the proper and transparent administration of the DPS.
- 2.13.3 Where the LGOPC and/or the Contracting Authority determines a material conflict of interest arises it may, at its sole discretion, permit the situation to continue subject to the Economic Operator's satisfactory compliance with safeguards specified by the LGOPC and/or the Contracting Authority.
- 2.13.4 Where the LGOPC and/or the Contracting Authority determines a material conflict of interest arises and same can only be remedied by the exclusion of the Economic Operator from a Supplementary Request for Tender and/or an sRFT Contract, the LGOPC and/or the Contracting Authority shall exclude the Economic Operator from same.
- 2.13.5 Any registrable interest (having the meaning prescribed by the Ethics in Public Office Act, 1995) involving the Economic Operator and the LGOPC and/or a Contracting Authority, must be fully disclosed to the LGOPC and/or the Contracting Authority immediately upon such information becoming known to the Economic Operator.

## **2.14 CONFIDENTIALITY**

- 2.14.1 All documents and information in relation to the DPS and its application process provided to the Economic Operator by the LGOPC shall be treated as strictly confidential by the Economic Operator.

## **2.15 DATA PROTECTION**

- 2.15.1 In this clause, "Data Protection Laws" means: (a) the Irish Data Protection Acts 1988 to 2018; (b) the General Data Protection Regulation (EU) 2016/679 ("GDPR"); and (c) any other applicable law or regulation relating to the processing of personal data and to privacy including (but not limited to) the E-Privacy Directive and the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations, 2011 ("E-Privacy Regulations") (as may be amended, updated or re-published by the relevant body from time to time and as then apply at the time of an sRFT Contract).
- 2.15.2 The Contracting Authorities and the LGOPC will each be an Independent Data Controller (where Data Controller has the meaning given under the Data Protection Laws) in respect of any Personal Data (where Personal Data has the meaning given under the Data Protection Laws) required to be provided by the Economic Operator in response to this DPS Agreement and any Supplementary Request for Tender.
- 2.15.3 The Economic Operator, as Data Controller in respect of any Personal Data provided by it, in its application to the DPS and in response to a Supplementary Request for Tender, is required to confirm that all Data Subjects (where Data Subject has the meaning given under the Data Protection Laws) whose Personal Data is provided by the Economic Operator have consented to the processing of such Personal Data by the Economic Operator, the LGOPC, the Contracting Authorities, the evaluation teams and the operator of [www.supplygov.ie](http://www.supplygov.ie) (hereinafter referred to as "Supplygov") for the purpose of the participation of the

Economic Operator in the DPS and/or Supplementary Request for Tender or that the Economic Operator otherwise has a legal basis for providing such Personal Data to the foregoing for the purpose of its participation in the DPS.

- 2.15.4 The Contracting Authorities and the LGOPC, each as an independent Data Controller, may process the Personal Data as follows:
- by the Contracting Authorities disclosing data (including Personal Data of the Economic Operator and/or their employees or other related third-party agents such as those persons' names, contact details, work experience etc.) to the LGOPC.
- 2.15.5 The Contracting Authorities, as an independent Data Controller, may share the Personal Data as follows:
- share such Personal Data with other bodies within the public and/or semi-state sectors that use the Supplygov service as required by this DPS Agreement. The list of such public and/or semi-State bodies is maintained on Supplygov and is updated from time to time. In addition, such Personal Data may be shared with the Office of Government Procurement, the Local Government Management Agency and with other bodies as required under law.
- 2.15.6 The Contracting Authorities and the LGOPC shall enter into a Data Sharing Agreement, which shall govern the sharing of the Personal Data between them and their respective rights, obligations, and liability in relation to this.
- 2.15.7 The Economic Operator shall be individually responsible, as an independent Data Controller, for its own processing of the Personal Data and must fully comply with its obligations as a Data Controller under the Data Protection Laws in this regard.
- 2.15.8 Neither the Economic Operator nor the LGOPC shall be construed as a Data Processor (where Data Processor has the meaning given under the Data Protection Laws) in relation to the other, unless the conditions for processing of the Personal Data change so that one party processes Personal Data on behalf of and on the instructions of the other party.
- 2.15.9 The Economic Operator and the LGOPC shall not be construed as Joint Data Controllers (where Joint Data Controllers has the meaning given under the Data Protection Laws) unless the conditions for processing of the Personal Data change such that the parties in conjunction with one another jointly, in a collaborative fashion, determine the purposes and means of processing the Personal Data.
- 2.15.10 The Economic Operator will inform the LGOPC as soon as possible of any requests from Data Subjects regarding rectification or erasure of Personal Data included in a tender, or restriction of or objection to the processing of such Personal Data for the purposes set out herein. The Economic Operator shall, to the extent that such a request affects the processing of such Personal Data by the LGOPC, provide reasonable assistance to the LGOPC and or the Contracting Authorities to enable compliance with the Data Protection Laws. Notwithstanding the foregoing, the Economic Operator shall remain responsible itself for dealing with requests from Data Subjects in respect of Personal Data, to the extent that such requests are directed by the Data Subject to the Economic Operator (or any of its agents, employees or sub-contractors).
- 2.15.11 The Economic Operator shall notify the LGOPC immediately if the Economic Operator becomes aware of, or suspects: (i) any breach of this section; or (ii) a Personal Data breach which is likely to affect or invoke the LGOPC's obligations under the Data Protection Laws; or (iii) any situation or envisaged development that shall in any way influence, change or limit the processing of the Personal Data included in the tender for the purposes set out herein. The Economic Operator shall document all Personal Data breaches in accordance with the Data Protection Laws and fully co-operate with the LGOPC and/or the Contracting Authorities to ensure compliance with the Data Protection Laws. The Economic Operator shall use reasonable endeavours to mitigate any damage suffered by a Data Subject in these circumstances.
- 2.15.12 The Economic Operator hereby indemnifies the LGOPC and the Contracting Authorities against all claims, liabilities, costs, expenses, damages and losses suffered or incurred by the LGOPC and/or the Contracting Authorities arising out of or in connection with any breach by the Economic Operator (or any of its employees/agents/sub-contractors) of any terms of this section, or its obligations under the Data Protection Laws, or any use by the Economic Operator of the Personal Data.

## **2.16 PUBLIC HEALTH**

- 2.16.1 All services/works proposed under this Agreement must be capable of being undertaken in compliance with all Safety, Health and Welfare at Work legislation and guidance including, but not limited to, public

health advice and requirements, and any applicable public service standard operating procedures which have been put in place by the Government, Government Departments, State Agencies and/or construction industry representative bodies in response to a public health emergency.

## **2.17 CHILD PROTECTION & VETTING**

- 2.17.1 Contractors Personnel shall strictly adhere to the Contracting Authorities child protection policy which will be included with the sRFT documents for the information of Contractors – if applicable.
- 2.17.2 Contractors Personnel may be subject to routine Garda Security Clearance procedures prior to being allowed entry onto certain sites, including but not limited to Local Authority, An Garda Síochána, Health Service Executive, Department of Defence and Department of Education sites. Co-operation with these procedures is mandatory.

## **2.18 PERFORMANCE BOND**

- 2.18.1 Economic Operators are not required to have a Performance Bond in place when submitting their application for admittance to the DPS. However, if successfully admitted to the Agreement, Economic Operators, if requested to do so by a Contracting Authority, may be required to provide a Performance Bond prior to the award of an sRFT Contract.

## **2.19 BREXIT**

- 2.19.1 It shall be the responsibility of the Economic Operator to fulfil the obligations under an sRFT Contract notwithstanding any changes in circulars, law, regulations, taxation or duties or other restrictions which might arise following the withdrawal of the United Kingdom from membership of the European Union.

## 3.0 EVIDENCE IN SUPPORT OF MINIMUM STANDARDS

### 3.1 INTRODUCTION

- 3.1.1 An Economic Operator may be required to provide supporting documentation to verify their status with respect to the minimum standards set out below. The supporting documentation must be provided within five working days when requested by the LGOPC and/or Contracting Authority. If the supporting documentation is not provided or is withheld or if there is a serious misrepresentation in supplying such supporting documentation, the Contracting Authority may, at their discretion, exclude the Economic Operator from the sRFT and/or the LGOPC may, at its discretion, terminate the DPS Agreement with the Economic Operator.
- 3.1.2 Unless otherwise indicated, the evidence in support of minimum standards as set out below applies to all lots. For the avoidance of doubt, any reference in this Agreement to a qualification under the National Framework of Qualifications shall also mean an equivalent qualification obtained in another EU member state.

### 3.2 FINANCIAL CONFIRMATORY NOTE

- 3.2.1 The evidence in support of this minimum standard is a signed completed Financial Confirmatory Note in the form published with the Tender Documents.

### 3.3 MINIMUM STANDARDS – EVIDENCE

#### 3.3.1 Health and Safety Declarations

The evidence in support of this minimum standard is a current Health and Safety Policy and Health and Safety Statement in compliance with the Safety, Health and Welfare at Work Act 2005.

#### 3.3.2 Technicians or Technical Bodies Responsible for Quality Control

The evidence in support of this minimum standard is a written statement naming the Technicians and Technical Bodies, particularly those involved in quality control.

### 3.4 LOT 1 MINIMUM STANDARDS – EVIDENCE

#### 3.4.1 Technical Capability - Educational and Professional Qualifications

The evidence in respect of the Technical Capability - Educational and Professional Qualifications is for the Economic Operator to satisfy both **A** and **B** below:

- A.** That my organisation can provide at least one (1) member of the managerial staff who holds a National Framework of Qualifications (NFQ) Level Seven (7) or higher, plus three (3) years experience, or equivalent, in managing projects relevant to the services/works to be completed under this Agreement:

**Note:**

Equivalent managerial staff technical capability offered by the Economic Operator must include as a minimum an NFQ Level Six (6) qualification, plus five (5) years experience in managing projects relevant to the services/works to be completed under this Agreement; or Ten (10) years' experience in managing projects relevant to the services/works under this Agreement.

**Note:** The evidence in support of the minimum criteria above is a copy of the relevant qualification and evidence of the relevant experience.

- B.** That my organisation is a Registered Electrical Contractor with an Electrical Safety Supervisory Body (Safe Electric) as appointed by the Commission for Regulation of Utilities (CRU).

**Note:**

The evidence in support of the minimum selection criteria above is a copy of the current Safe Electric Registration Card issued by Safe Electric to the Economic Operator.

### 3.5 LOT 2 MINIMUM STANDARDS – EVIDENCE

#### 3.5.1 Technical Capability - Educational and Professional Qualifications

The evidence in respect of the Technical Capability - Educational and Professional Qualifications is for the Economic Operator to satisfy both **A** and **B** below:

- A.** That my organisation can provide at least one (1) member of the managerial staff who holds a National Framework of Qualifications (NFQ) Level Seven (7) or higher, plus three (3) years experience, or equivalent, in managing projects relevant to the services/works to be completed under this Agreement:

**Note:**

Equivalent managerial staff technical capability offered by the Economic Operator must include as a minimum an NFQ Level Six (6) qualification, plus five (5) years experience in managing projects relevant to the services/works to be completed under this Agreement; or Ten (10) years' experience in managing projects relevant to the services/works under this Agreement.

**Note:** The evidence in support of the minimum criteria above is a copy of the relevant qualification and evidence of the relevant experience.

- B.** That my organisation can provide at least one (1) plumber/pipefitter.

**Note:**

The evidence in support of the minimum selection criteria above is having attained:

- a) National Framework of Qualification Advanced Certificate Craft - Plumbing/Pipefitting (NFQ) Level Six (6), or b) FETAC Level 6 Advanced National Craft Certificate in Plumbing/Pipefitting, or c) Recognised apprenticeship as a Plumber/Pipefitter.

### 3.6 LOT 3 MINIMUM STANDARDS – EVIDENCE

#### 3.6.1 Technical Capability - Educational and Professional Qualifications

The evidence in respect of the Technical Capability - Educational and Professional Qualifications is for the Economic Operator to satisfy both **A** and **B** below:

- A.** That my organisation can provide at least one (1) member of the managerial staff who holds a National Framework of Qualifications (NFQ) Level Seven (7) or higher, plus three (3) years experience, or equivalent, in managing projects relevant to the services/works to be completed under this Agreement:

**Note:**

Equivalent managerial staff technical capability offered by the Economic Operator must include as a minimum an NFQ Level Six (6) qualification, plus five (5) years experience in managing projects relevant to the services/works to be completed under this Agreement; or Ten (10) years' experience in managing projects relevant to the services/works under this Agreement.

**Note:** The evidence in support of the minimum criteria above is a copy of the relevant qualification and evidence of the relevant experience.

- B.** That my organisation can provide at least one (1) plumber/pipefitter;

OR

is a Registered Electrical Contractor with an Electrical Safety Supervisory Body (Safe Electric) as appointed by the Commission for Regulation of Utilities (CRU).

**Note:**

The evidence in support of the minimum selection criteria for:

**Plumber/Pipefitter**

Having attained:

- a) National Framework of Qualification Advanced Certificate Craft - Plumbing/Pipefitting (NFQ) Level Six (6), or b) FETAC Level 6 Advanced National Craft Certificate in Plumbing/ Pipefitting, or
- c) Recognised apprenticeship as a Plumber/Pipefitter.

**Registered Electrical Contractor**

A copy of the current Safe Electric Registration Card issued by Safe Electric to the Economic Operator.

## 4.0 GENERAL SPECIFICATION

### 4.1 SCOPE OF WORKS

#### 4.1.1 Lot-1: Electrical Works

The relevant categories associated with services/works for this Lot may include but are not limited to:

- Electrical installation work
- Electrical wiring work
- Electrical fitting work
- LED Lighting
- Maintenance, repairs and emergency repairs
- Servicing and testing of various wiring systems and services
- Commissioning and provision of appropriate certification
- Periodic inspection reports
- Other electrical installation work

#### 4.1.2 Lot-2: Plumbing Works

The relevant categories associated with services/works for this Lot may include but are not limited to:

- Boiler repairs, maintenance and servicing
- Planned and/or reactive boiler maintenance and servicing of boiler systems and ancillary plant
- Boiler replacement
- Hot and cold-water systems
- Servicing, maintenance & installation of water, sanitary, drainage & rain-water systems
- Oil/Gas/Solid fuel burning devices and associated systems
- Installation, replacement and/or repair of plumbing and heating applications
- Inspection, testing, commissioning and/or certification of plumbing and heating applications
- Other plumbing installation work

#### 4.1.3 Lot-3: Renewable Energy Systems and Ancillary Works

The relevant categories associated with services/works for this Lot may include but are not limited to:

- Heat recovery systems
- Heat Pumps
- Renewable based hot water systems
- Photovoltaic Panels
- Servicing, maintenance & installation of renewable energy systems
- Other renewable energy systems works

### 4.2 LEGISLATION

4.2.1 The Economic Operator shall, in its performance of the SRFT Contract, comply with all relevant legislation and bye-laws that apply during the term of the DPS including, but not limited to, the following (as may be amended, updated or re-published by the relevant body from time to time):

- Safety Health and Welfare at Work Act 2005;
- Safety Health and Welfare at Work (Construction) Regulations 2013;
- Safety Health and Welfare at Work (General Application) Regulations 2007 – 2016 (as amended);
- The Building Regulations 1997 - 2019;
- Waste Management Act 1996 - 2013 (as amended);
- Electricity Regulation Act 1999;
- The Air Pollution Act 1987;



- Fire Services Act 1981;
- Construction Product Regulations 2013;
- Local Byelaws and Regulations;
- Such further and/or new relevant legislation, regulations, byelaws, that may be introduced or come into being during the term of the DPS.

4.2.2 The Contracting Authority may seek evidence of the Economic Operator's compliance with the above by way of production of such licenses, permits or other documentation deemed reasonably necessary by the Contracting Authority.

4.2.3 The economic operator will be fully responsible for the quality of the materials and their compliance with the technical requirements as set out in the Tender Documents.

4.2.4 The economic operator must adhere to and ensure compliance with all relevant product manufacturer's instructions.

4.2.5 In order to ensure compliance with environmental technical standards, Economic Operators tendering for an alternative environmentally friendly product at Supplementary Request for Tender stage will be required at that stage to submit an Environmental Product Declaration (EPD) in accordance with EN 15804 for each alternative environmentally friendly product they propose.

### **4.3 TECHNICAL STANDARDS, GUIDELINES & CODES OF PRACTICE**

4.3.1 The Economic Operator shall, in its performance of the SRFT Contract, comply, where applicable, with all relevant technical standards, guidelines and codes of practice that apply during the term of the DPS including, but not limited to, the following (as may be amended, updated or re-published by the relevant body from time to time):

- I.S. 10101:2020 - National Rules for Electrical Installations (5th Edition) and any Amendments, Corrigenda & Errata lists;
- Transition arrangements from ET 101:2008 - National Rules for Electrical Installations (4th Edition) to the new standard I.S. 10101:2020 shall be determined by the Regulator CRU;
- Commission for Regulation of Utilities (CRU) document entitled '*Definition of the Scope of Controlled Works*';
- Irish Standard I.S. 813 Domestic gas installations (Edition 3) and Amendment 1:2017;
- Irish Standard I.S. 820:2019 Non-domestic gas installations (Edition3);
- I.S. 3217:2013 Emergency Lighting;
- IS 3218:2013 Fire detection and alarm systems for buildings - system design, installation, servicing and maintenance;
- Commission for Regulation of Utilities (CRU) document entitled '*Gas Safety Regulatory Framework for Ireland*';
- EN 1949 : 2011 + A1 2013 Specification for the installation of LPG systems for habitation purposes in leisure accommodation vehicles and accommodation purposes in other vehicles;
- SEAI Domestic Technical Standards and Specifications Version 1.3 2020;
- S.R. 54:2014 Code of Practice for the energy efficient retrofit of dwellings;
- Building Regulations Technical Guidance Documents;
- Guidance in the 'Energy Efficiency in Traditional Buildings' (DECLG 2010);
- Energy Efficiency Best Practice in Housing, Internal Wall Insulation in Existing Housing, A Guide for Specifiers and Contractors;
- Product Manufacturer Guidelines;
- NSAI Agrément certificates;
- Relevant Irish Standards ("Irish Standards"), Codes of Practice ("Codes of Practice"), EU Directives ("Directives") or equivalent European Standards ("European Standards");

- The Building Regulations Technical Guidance Document C and the DHPLG publication Radon in Existing Buildings – Corrective Options;
- I.S. EN ISO 13788:2012 – Hygrothermal Performance of Building Components and Building Elements – Internal Surface Temperature to Avoid Critical Surface Humidity and Interstitial Condensation – Calculation Methods;
- I.S. EN 15026:2007 – Hygrothermal Performance of Building Components and Building Elements – Assessment of Moisture Transfer by Numerical Simulation;
- All ASHRAE guidance for specific Mechanical Systems and Components (where more comprehensive than CIBSE);
- Requirements of utility providers and other applicable authorities;
- Law and good industry practice on Disability including those of the National Disability Authority;
- Good industry practice in respect of Fire; and
- Such further and/or new relevant technical standards, guidelines and codes of practice that may be introduced or come into being during the term of the DPS.

4.3.2 Individual Contracting Authorities may also require compliance with specific documents. This may include, for the avoidance of doubt, a Contracting Authority’s own guidance document relating to the services/works.

#### **4.4 HEALTH AND SAFETY - GENERAL**

- 4.4.1 In fulfilling an sRFT Contract, the Economic Operator must comply with its obligations under Health and Safety legislation, which legislation includes, but is not limited to, the Safety, Health and Welfare at Work Act, 2005 and all regulations, codes of practice and guidelines arising thereunder, including, but not limited to, the Safety, Health and Welfare at Work (Construction) Regulations 2013 and the Safety, Health and Welfare at Work (General Application) Regulations 2007 – 2016 (collectively referred to as “Health and Safety legislation”).
- 4.4.2 In order to comply with its requirements under Health and Safety legislation, the Contracting Authority (“the Client”), at sRFT stage, shall assess the competence of parties appointed to or that will have a Construction Duty Holder<sup>5</sup> role taking into account the specific requirements of the sRFT Contract.
- 4.4.3 The Contracting Authority may seek evidence of the Economic Operator’s competence in this respect including, but not limited to, proof of statutory (or other reasonably necessary) qualifications and the completion of a questionnaire similar to the requirements of the BPC 2 Competency Assessment for PSCS/Contractor (as issued by the Contracting Authority) and/or a PSDP questionnaire similar to the requirements of the BPC 1 Competency Assessment for PSDP/Designer (as issued by the Contracting Authority).
- 4.4.4 For the purpose of an sRFT Contract, the LGOPC is not the Client and is not responsible for the appointment of any duty holder role.

#### **4.5 INSURANCE**

- 4.5.1 The Economic Operator shall be liable for and shall indemnify the Contracting Authority for and in respect of all and any losses, claims, demands, damages or expenses which the Contracting Authority may suffer due to and arising directly because of the negligence, act or omission, breach of contract, breach of duty, wilful default or fraud of the Economic Operator and the Economic Operators Personnel.
- 4.5.2 The required insurances for an sRFT shall be specified by the Contracting Authority in the sRFT or will be indemnified in the form of sRFT contract specified in the sRFT. Economic Operators do not need to have the insurances in place when making their application in response to a sRFT but will be required to put those insurances in place prior to the award of any contract should they be successful in a sRFT. The Contracting Authority will not be responsible for any cost incurred by Economic Operators in putting in place the required insurances.
- 4.5.3 No Economic Operator shall be awarded a contract under a sRFT unless satisfactory evidence of insurance is submitted prior to contract award by the Economic Operator’s insurance broker/company.

<sup>5</sup>A Construction Duty Holder role means a role which has legal duties under the Safety, Health and Welfare at Work (Construction) Regulations, 2013.

- 4.5.4 The onus is on the Economic Operator to advise the Contracting Authority when their insurance has lapsed or has been cancelled. All Economic Operators must notify the Contracting Authority of alterations, cancellations and confirm renewal of policies. Any failure to do so may result in immediate termination of an sRFT Contract and/or this DPS Agreement (thus ending the participation of the Economic Operator in the DPS).
- 4.5.5 Where required, limits for Professional Indemnity Insurance cover will vary depending on the nature of the contract. The actual level of professional indemnity insurance cover required for individual sRFTs will be specified by the relevant Contracting Authority after they have conducted a risk assessment to identify the level of risk associated with a potential failure, delay or error in the provision of the services/works associated with the specific sRFT.
- 4.5.6 The required insurance cover will vary from contract to contract as will the style of insurance cover available to Economic Operators, particularly in relation to professional indemnity risks.
- 4.5.7 Economic Operators may be required to arrange Contractors All Risks Insurance as a requirement for an sRFT. The successful Economic Operator will be required to include the Contracting Authority as joint insured and may be required to include a non-vitiation clause.

## 5.0 STAGE 2 - SUPPLEMENTARY REQUEST FOR TENDER

### 5.1 GENERAL

- 5.1.1 The Economic Operator may only submit:
- a response to a Supplementary Request for Tender electronically via Supplygov (responses in any other form will not be accepted); and
  - one response to a Supplementary Request for Tender.
- 5.1.2 All Economic Operators submitting a response to a Supplementary Request for Tender will be informed of the outcome at the earliest reasonable opportunity following conclusion of the evaluation process.
- 5.1.3 Any costs incurred by the Economic Operator in responding to a Supplementary Request for Tender or in the performance of an sRFT Contract or howsoever else arising from its general participation in the DPS shall be the Economic Operator's sole liability.

### 5.2 SUPPLEMENTARY REQUEST FOR TENDER PROCESS

- 5.2.1 Contracting Authorities may issue Supplementary Requests for Tender for the purpose of awarding sRFT Contracts throughout the Period of Validity of the DPS.
- 5.2.2 Supplementary Requests for Tender will be issued electronically via Supplygov to all Economic Operators admitted to the DPS that have expressed an interest in receiving Supplementary Requests for Tender for their selected regions and lots.
- 5.2.3 The Economic Operator shall comply with all instructions and rules issued by the Contracting Authority in relation to the Supplementary Request for Tender.
- 5.2.4 Unless otherwise agreed, Economic Operators will be given a minimum of 5 days within which to submit a tender from the date a Supplementary Request for Tender is issued by a sub-central contracting authority<sup>6</sup>. In circumstances where the Supplementary Request for Tender is issued by a non-sub-central contracting authority, Economic Operators will be given a minimum of 10 days within which to submit a tender from the date the Supplementary Request for Tender is issued.
- 5.2.5 Supplementary Requests for Tender will be evaluated in accordance with the provisions set out below. The Supplementary Request for Tender will include:
- (a) details in relation to the Contracting Authority's specific requirements in respect of the services/works;
  - (b) the instructions and rules of the Contracting Authority in relation to the Supplementary Request for Tender; and
  - (c) the Contracting Authority's intention to award the sRFT Contract to:
    - a Preferred Tenderer only, or
    - a Preferred Tenderer with substitutes.
- 5.2.6 Where the Contracting Authority indicates in the Supplementary Request for Tender its intent to award the sRFT Contract to a Preferred Tenderer only, the Contracting Authority shall enter into an sRFT Contract with the Preferred Tenderer only.
- 5.2.7 Where the Contracting Authority indicates in the Supplementary Request for Tender its intent to award the sRFT Contract to a Preferred Tenderer and a specified number of substitute suppliers, the Contracting Authority shall enter into sRFT Contracts with the Preferred Tenderer and each of the ranked substitutes. In such circumstances, the sRFT Contract will be a PW-CF11 Public Works Term Maintenance and Refurbishment Contract (or equivalent) or the Office of Government Procurement Services Contract (amended to cater for substitute suppliers) (or equivalent).
- 5.2.8 Where, following a Supplementary Request for Tender, the Contracting Authority has entered into sRFT Contracts with a Preferred Tenderer and substitute suppliers, the Contracting Authority shall, in the first instance, procure the services/works from the Preferred Tenderer.

<sup>6</sup> "Sub-central contracting authority" means a contracting authority that is not a central government authority.

5.2.9 In circumstances where the Preferred Tenderer: (a) has confirmed to the Contracting Authority that it is unable or unwilling (through lack of capacity or otherwise) to provide the services/works; or (b) is deemed by the Contracting Authority to be unable or unwilling (through change in circumstances, lack of capacity or otherwise) to provide the services/works, then and in those circumstances, the Contracting Authority may procure the services/works from the highest ranking substitute (beginning with the substitute ranked No. 1) then capable of providing the services/works.

**5.3 AWARD CRITERIA – SUPPLEMENTARY REQUEST FOR TENDER**

5.3.1 Tenders submitted in response to a Supplementary Request for Tender will be evaluated in accordance with the Award Criteria outlined below.

5.3.2 The Economic Operator that achieves the highest Total Marks will be deemed to have submitted the most economically advantageous tender and identified as the Preferred Tenderer. The remaining Economic Operators will be ranked in descending order based on their Total Marks.

SUPPLEMENTARY REQUEST FOR TENDER AWARD CRITERIA				
CRITERION		WEIGHTING	MAXIMUM MARKS AVAILABLE	MINIMUM PASS THRESHOLD
1	Price (Total Cost)	20 – 100%	200 – 1,000	N/A
2	Quality	0 – 80%	0 – 800	40%
Total Marks		100%	1,000	N/A

- 5.3.3 In a Supplementary Request for Tender, a Contracting Authority may, at its discretion:
- (a) identify that the Award Criteria will be based on Price (Total Cost) only and divide the Price (Total Cost) Criteria into a number of sub-criteria; or
  - (b) where Price (Total Cost) and Quality Criteria are used, divide the Price (Total Cost) criteria and Quality criteria into a number of sub-criteria.

In circumstances where sub-criteria are identified, the Contracting Authority shall specify the percentage weighting and associated marks applicable to each criterion/sub-criterion in the Supplementary Request for Tender.

In circumstances where Quality criteria/sub-criteria are used in a Supplementary Request for Tender, the Economic Operator shall be required to achieve a minimum pass threshold of 40% for each Quality criterion/sub-criterion adopted.

5.3.4 Price (Total Cost)

Total Cost criteria may comprise of one or more of the following:

- Costs relating to acquisition;
- Costs of use;
- Maintenance costs;
- End of life costs;
- Costs imputed to environmental externalities linked to the subject matter.

5.3.5 The Price (Total Cost) criteria referred to above may, where appropriate, be formulated more precisely by the Contracting Authority in the Supplementary Request for Tender.

5.3.6 Marks for **Total Cost** will be allocated using the following formula:

$$\text{Price (Total Cost)} = \frac{\text{Lowest Total Cost}}{\text{Total Cost under evaluation}} \times \text{Maximum Marks Available}$$

### 5.3.7 Quality

Quality criteria may comprise of one or more of the following:

- Technical merit;
- Aesthetic and functional characteristics;
- Accessibility;
- Design for all users;
- Social characteristics;
- Environmental characteristics;
- Innovative characteristics;
- Trading and its conditions;
- Organisation, qualification, and experience of staff assigned to perform the Contract;
- After-sales service and technical assistance;
- Delivery conditions such as delivery date, delivery process and delivery period or period of completion.

5.3.8 The Quality criteria referred to above may, where appropriate, be formulated more precisely by the Contracting Authority in the Supplementary Request for Tender.

5.3.9 The marking scale for Quality criteria is provided below:

<b>RATING</b>	<b>GUIDANCE</b>	<b>MARKING SCALE</b>
<b>Excellent</b>	A response with very few or no weaknesses that fully meets or exceeds requirements, and provides comprehensive, detailed, and convincing assurance that the Economic Operator will deliver to an excellent standard.	<b>80% - 100 %</b>
<b>Very Good</b>	A response that demonstrates real understanding of the requirements and assurance that the Economic Operator will deliver to a good or high standard.	<b>60% - 79 %</b>
<b>Good</b>	A response which demonstrates a reasonable understanding of requirements and gives reasonable assurance of delivery to an adequate standard but does not provide sufficiently convincing assurance to award a higher mark.	<b>40% - 59 %</b>
<b>Fair</b>	A response where reservations exist. Lacks full credibility/convincing detail, and there is a significant risk that the response will not be successful.	<b>20% - 39 %</b>
<b>Poor</b>	Response where serious reservations exist. This may be because, for example, insufficient detail is provided, and the response has fundamental flaws, or is seriously inadequate or seriously lacks credibility with a high risk of non-delivery.	<b>1% - 19 %</b>
<b>No Evidence</b>	Response not submitted or response completely fails to address the criterion under consideration.	<b>0%</b>

5.3.10 In the event of a tie in a Supplementary Request for Tender that includes both quality and cost criteria, the following tie-break approach may, at the discretion of the Contracting Authority, be adopted:

- (i) The Economic Operator who was awarded the highest overall mark for the Quality Award Criteria of its tender will be deemed to have submitted the most economically advantageous tender;
- (ii) In circumstances where the tie-break approach in Par. (i) does not identify the most economically advantageous tender, the Economic Operator who was awarded the highest overall mark for the specific Quality Award Criterion with the largest weighting will be deemed to have submitted the most economically advantageous tender (in circumstances where this approach does not identify the most economically advantageous tender, the approach will continue to be applied to each of the Qualitative Award Criteria in descending order of weighting);
- (iii) In circumstances where the tie-break approach in Par. (ii) does not identify the most economically advantageous tender, the Economic Operator who was awarded the highest overall mark for the

specific Quality Award Criterion which was listed first in the Supplementary Request for Tender will be deemed to have submitted the most economically advantageous tender (in circumstances where this approach does not identify the most economically advantageous tender the approach will continue to be applied to each of the specific Quality Award Criterion in the order they were listed in the Supplementary Request for Tender);

- (iv) In circumstances where the tie-break approach in Par. (iii) does not identify the most economically advantageous tender, the Contract Authority, may, at its discretion either:
- re-issue the Supplementary Request for Tender to all Economic Operators; or
  - award the sRFT Contract to one of the tied Economic Operators by random selection concluded in an open and transparent manner; or
  - ask the tied Economic Operators to resubmit prices and continue this process until there is a winner; or
  - implement such other open and transparent tie-break approach as it deems appropriate.

5.3.11 The Contracting Authority is not bound to adopt the tie-break approach outlined above and may adopt in the first instance such other open and transparent tie-break approach as it deems appropriate.

5.3.12 In the event of a tie in a Supplementary Request for Tender that includes price (Total Cost) criteria **only**, the Contracting Authority may, at its discretion, either:

- award the sRFT Contract to one of the tied Economic Operators by random selection concluded in an open and transparent manner; or
- re-issue the Supplementary Request for Tender to all Economic Operators; or
- ask the tied Economic Operators to resubmit prices and continue this process until there is a winner.

5.3.13 Where, following an evaluation but prior to the award of an sRFT Contract, the Preferred Tenderer is:

- deemed by the Contracting Authority to be unable or unsuitable to supply the services/works due to a change in circumstances; or
- by its own admission, is unable or unwilling to supply the services/works,

then the Contracting Authority may award the sRFT Contract to the tenderer ranked next highest and may repeat this process until the sRFT Contract is awarded.

#### **5.4 INFORMATION/ DOCUMENTATION TO BE PROVIDED PRIOR TO CONTRACT AWARD**

5.4.1 In addition to the information and documentation to be provided when submitting a response to a sRFT, successful Economic Operators may be required to provide to the Contracting Authority for their review and approval, prior to formal award of the contract (if not already submitted), the specific information and/or documentation listed below or any such relevant information and/or documentation as requested by the Contracting Authority:

- Updated confirmation that the Economic Operator complies with the requirements of Regulation 57 of the European Union (Award of Public Authority Contracts) Regulations 2016 (SI 284 of 2016);
- Confirmation that any Subcontractor/Specialist proposed for completion of the services/works complies with the requirements of Regulation 57 of the European Union (Award of Public Authority Contracts) Regulations 2016 (SI 284 of 2016) by providing an ESPD or equivalent;
- The Economic Operator's Tax Clearance Access Number and Tax Reference Number to facilitate online verification of the Economic Operator's tax status. By supplying the aforementioned numbers, the successful Economic Operator acknowledges and agrees that the Contracting Authority has the permission of the successful Economic Operator to verify its tax clearance position online;
- Subcontractors engaged at sRFT stage are required to produce an in-date (not older than 30 days) Notification of Determination to the Contracting Authority or the Economic Operator, before any contract is awarded;

- Satisfactory evidence of insurance in accordance with the minimum standards referenced in the Tender Documents or as outlined in the sRFT;
- The Economic Operator's Safety Statement or equivalent document may be assessed for compliance with the provisions set out in the Safety, Health & Welfare at Work Act 2005 and enforcing Regulations;
- Agreement to the use of specific electronic tools where appropriate;
- Appointment and acceptance of duty holder role(s), where appropriate as outlined in the Safety Health & Welfare at Work (Construction) Regulations 2013;
- SOLAS Safepass Cards or equivalent Safety Awareness Scheme registration card, for all Contractors Personnel and where appropriate to the works required in the Supplementary Request for Tender, Construction Skills Certification Scheme ("CSCS") cards;
- Site Specific Risk Assessment, if applicable;
- Site Specific Method Statement, if applicable;
- Current Safe Electric Registration Card issued by Safe Electric to the Economic Operator;
- For services/works which do not require a Completion Certificate, the Contracting Authority reserves the right to seek an appropriate form of certification in respect of that type of service/work;
- Proof of compliance with service/work requirements set out during an sRFT may be sought at any time during the contract;
- Temporary Traffic Management Plan, if applicable;
- The Economic Operator's Waste Management Plan (WMP) for the management of all waste arising on site, if applicable;
- Parent Company Guarantee (if applicable);
- Performance Bond (if applicable);
- Any other details specified in the sRFT consistent with the terms and conditions of the Agreement.

**Note:** The aforementioned information and/or documentation may, at the discretion of the Contracting Authority, be sought at Supplementary Request for Tender stage.

5.4.2 Depending on the nature of the services/works, the Contracting Authority reserves the right to seek proof of additional qualifications/training that are either statutory or deemed necessary for undertaking the services/works. The following is a non exhaustive list of additional qualifications/training that may be sought from the preferred Tenderer(s):

- Verification and Certification Course (Qualified Certifier);
- Firm Alarm installations;
- Thermal Imaging;
- Generator Installation and repair;
- Emergency Lighting;
- Pat Test;
- Renewable Energy sources installations;
- Evidence of competence to work with Oil-fired burning devices (e.g. registration with the Oil Firing Technical Association (OFTEC));
- Evidence of full registration as a Gas Installer on the list of the Register of Gas Installers of Ireland (RGII).

5.4.3 In addition to the information and/or documentation to be provided when submitting a response to a Supplementary Request for Tender, the Preferred Tenderer and, if applicable, the substitute(s) shall provide to the Contracting Authority for its review and approval, prior to the formal award of an sRFT Contract, the information and/or documentation requested by the Contracting Authority.



5.4.4 The Contracting Authority is not obliged to accept from the Economic Operator any information and/or documentation that it reasonably considers to be insufficient or otherwise unsatisfactory.

## **5.5 SRFT CONTRACT**

5.5.1 If, following a Supplementary Request for Tender, the Economic Operator is awarded an sRFT Contract (either as the Preferred Tenderer or a substitute), the Economic Operator will enter into an sRFT Contract with the Contracting Authority. The sRFT Contract to be entered into shall, at the discretion of the Contracting Authority, be one of the following:

- Office of Government Procurement Services Contract (or equivalent)
- PW-CF11 Public Works Term Maintenance and Refurbishment Contract
- PW-CF6 Short Public Works Contract
- PW-CF5 Public Works Contract Minor Building & Civil Engineering Works Designed by the Employer
- Other applicable Capital Works Management Framework Contracts for Public Works
- Approved equivalent as identified in the relevant sRFT.

## **5.6 NOTICE OF ADDENDA**

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