
**MULTI-PARTY
FRAMEWORK AGREEMENT**

FOR

ROAD MARKINGS

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THIS FRAMEWORK 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 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 and in the Official Journal of the European Union inviting requests for tenders to participate in a Framework Agreement for Road Markings (hereinafter referred to as "the Framework Agreement") on behalf of the Contracting Authorities specified in Section 1.5 hereto (hereinafter referred to as "the Contracting Authorities").
- B.** The Economic Operator submitted an Application and, following an assessment by the LGOPC, the LGOPC wishes to admit the Economic Operator to the Framework Agreement.
- C.** The Economic Operator has agreed to be admitted to the Framework Agreement on the terms set out in this Framework Agreement.
- D.** The Economic Operator enters into this Framework Agreement by electronically accepting this Framework Agreement through www.supplygov.ie (hereinafter referred to as "Supplygov") by way of its personal Supplygov account (the formal acceptance of the terms of this Framework Agreement through Supplygov shall operate as if this Framework Agreement had been signed and/or sealed (and witnessed appropriately) by the parties and shall be construed accordingly for all legal purposes).
- E.** By electronically accepting this Framework Agreement, the Economic Operator accepts the terms of this Framework Agreement and this Framework Agreement shall take effect from the date of such acceptance (Effective Date).
- F.** This Framework Agreement incorporates the Framework Agreement General Terms and Conditions specified in section 2.0 hereto (hereinafter referred to as "the Framework Agreement General Terms and Conditions").
- G.** Each obligation, warranty or representation of the Economic Operator under this Framework 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 Framework Agreement governs the relationship between the LGOPC and the Economic Operator in respect of the participation of the Economic Operator in the Framework Agreement.
- 1.1.2 In consideration of the performance by the Economic Operator of its obligations under this Framework Agreement, the LGOPC appoints the Economic Operator to the Framework Agreement for the provision of Road Marking Works as described in the General Specification of this Framework Agreement (hereinafter collectively referred to as "the Works") to the Contracting Authorities when contracted to do so pursuant to this Framework Agreement.
- 1.1.3 The Contracting Authorities are entitled to use the Framework Agreement for the purpose of procuring the Works from Economic Operators who have been admitted to the Framework Agreement.
- 1.1.4 When a Contracting Authority wishes to acquire the Works pursuant to the Framework Agreement, it will do so by means of a Supplementary Request for Tender¹ (hereinafter referred to as "sRFT(s)").
- 1.1.5 Notwithstanding the entitlement of the Contracting Authorities to utilise the Framework Agreement, neither the LGOPC nor the Contracting Authorities give any assurances as to their level of engagement or expenditure through the Framework Agreement and the Economic Operator hereby acknowledges that it has not entered into this Framework Agreement on the basis of any such expectation. This Framework Agreement does not constitute a commitment from the Contracting Authorities to award contracts under the Framework Agreement (hereinafter referred to as "sRFT Contract(s)²) to the Economic Operator and the Contracting Authorities reserve the right to engage in separate procurement processes with Economic Operators outside of the Framework Agreement should they consider it appropriate to do so.

1.2 ENTIRE AGREEMENT

- 1.2.1 This Framework 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 Framework Agreement shall apply to the exclusion of any terms and conditions which the Economic Operator may purport to apply.

1.3 FRAMEWORK TERM

- 1.3.1 The Framework Agreement shall take effect on the Effective Date, as defined in the Framework Agreement. This Framework Agreement shall be established for a term of four (4) years unless it is otherwise terminated in accordance with the provisions of this Framework Agreement.

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 Framework; and (b) entering into this Framework Agreement with the Economic Operator, nothing within this Framework Agreement or the Tender Documents³ 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.

¹ Supplementary Request for Tender means a request for tender issued by a Contracting Authority to the Economic Operators admitted to the Framework Agreement via www.supplygov.ie.

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

³ Tender Documents mean the Instructions Document, this Framework Agreement, the ESPD and all accompanying documents published on eTenders in relation to this Competition.

1.5 THE CONTRACTING AUTHORITIES

1.5.1 The Contracting Authorities partaking in the Framework 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 Regulations⁴ 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

⁴ The European Union (Award of Public Authority Contracts) Regulations 2016 (S. I. No. 284 of 2016) (hereinafter referred to as “the Regulations”).

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 Framework Agreement.

2.2 INTERPRETATION

- 2.2.1 If any term or provision in this Framework 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 Framework Agreement and the enforceability of the remainder of this Framework 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 Framework Agreement are inserted for convenience of reference only and shall not be considered as part of or affect the construction or interpretation of this Framework 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 Framework 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 Framework 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 Framework Agreement.

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

- 2.3.1 This Framework 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 Framework Agreement (hereinafter referred to as the "Competition"); or
 - (b) the change is as a result of corporate restructuring in a manner permitted under Regulation 72 of the European Union (Award of Public Authority Contracts) Regulations 2016, as amended, (hereinafter referred to as 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 selection criteria initially established by the Competition;
 - (b) the succeeding Economic Operator possesses the capability (technical or otherwise), resources and skills in respect of satisfying the requirements of this Framework Agreement and;
 - (c) a formal change in legal status or corporate restructuring as permitted under sub-paragraphs 2.3.1 (b) herein has been lawfully undertaken.

- 2.3.3 The terms of this Framework 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 Framework Agreement to a third party without the consent of the Economic Operator.

2.4 TERMINATION OF THE FRAMEWORK AGREEMENT

- 2.4.1 The LGOPC may, by written notice, terminate this Framework Agreement (without recompense to the Economic Operator) thus ending the participation of the Economic Operator in the Framework Agreement, in the following circumstances:
- if the Economic Operator breaches the terms of this Framework 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 Framework 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 Framework Agreement and therefore end the Framework Agreements with all Economic Operators appointed thereto, without recompense to any Economic Operator, at any time during the term of the Framework Agreement. For the avoidance of doubt, the termination of the Framework Agreement does not affect the validity of any sRFT Contracts entered into and in force unless and until the Contracting Authority terminates the sRFT Contract.

2.5 SUBCONTRACTING

- 2.5.1 When responding to an sRFT 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. The Contracting Authority will evaluate the proposed sub-contractors in accordance with the Selection Criteria for entry onto the Framework Agreement.

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 onto the Framework Agreement:
- 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 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 applicable at the time of entry into 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 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 Framework Agreement facilitates the inclusion of environmental and social considerations as part of the Supplementary Request for Tender process that are consistent with the Programme for Government approach in seeking to achieve social, economic, and environmental goals including, but not limited to, the following (as amended, updated, or re-published by the relevant body from time to time):
- Buying Social: A Guide to Taking Account of Social Considerations in Public Procurement;
 - Green Public Procurement Guidance for the Public Sector: September 2021;
 - Climate Action Plan 2019 and subsequent updates published by the Department of the Environment, Climate and Communications;
 - Information note on incorporating social considerations published by OGP in 2018;
 - Circular 20/2019 promoting environmental & social considerations in Public Procurement;
 - A Waste Action Plan for a Circular Economy: Ireland's National Waste Policy 2020-2025;
 - Whole of Government Circular Economy Strategy 2022 – 2023: Living more, Using Less.
- 2.9.3 Where applicable under the sRFT Contract awarded at Supplementary Request for Tender stage, Economic Operators may be required during the performance of the sRFT Contract to monitor and report on requested measurable environmental and social considerations that are linked to the subject matter of the Works Contract, for the purpose of verifying contractual obligations entered into by the Economic Operator.
- 2.9.4 **Environmental Considerations:**
- Contracting Authorities may incorporate relevant Green Public Procurement (GPP) measures into the specifications and/or Evaluation & Award process at Supplementary Request for Tender stage as set out in Section 5.0 hereunder. For example, Environmental criteria that target enhanced environmental performance, beyond the minimum requirements of the specification may be included insofar as they are linked to the subject matter of the sRFT Contract.
- Good environmental practices should be employed as part of the Economic Operator's normal working arrangements to contribute to the circular economy and objectives for energy and resource efficiency

including the prevention of waste. The Economic Operator shall consider all environmental legislation and guidelines, as well as the Contracting Authorities' environmental policies to ensure that negative environmental impacts are reduced, and sustainable development initiatives are promoted, where relevant to the subject matter of any sRFT contract awarded

2.9.5 **Social Considerations:**

Contracting Authorities may incorporate relevant social considerations into Award Criteria at Supplementary Request for Tender stage as set out in Section 5.0 hereunder. For example, items that contribute to employee wellbeing such as inclusivity, equality, working conditions, educational opportunities and workplace accessibility may be included insofar as they are linked to the subject matter of the sRFT Contract.

2.10 STATUTORY OBLIGATIONS AND APPLICABLE LAW

2.10.1 This Framework 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, as amended and the European Communities (Access to Information on the Environment) Regulations 2007. 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. 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. The LGOPC and the Contracting Authorities accept no liability whatsoever in respect of any information provided by an Economic Operator which is subsequently released or in respect of any consequential damage suffered as a result of such obligations.

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 Framework Agreement or a Supplementary Request for Tender may result in: (a) the disqualification of the Economic Operator by the LGOPC from the Framework; 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 Framework Agreement and/or its Supplementary Requests for Tender 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 Framework Agreement 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 Framework Agreement.

- 2.13.3 Where the LGOPC and/or a Contracting Authority determines that 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 a Contracting Authority determines that 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 and/or terminate the sRFT Contract in relation to which the conflict of interest has arisen.
- 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 Framework Agreement and its procurement 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).
- 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 Framework 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 for admittance to the Framework Agreement and in response to a Supplementary Request for Tender, is required to confirm in the Electronic Suitability Questionnaire 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 operators of www.etenders.gov.ie and www.supplygov.ie (hereinafter referred to as "Supplygov") for the purpose of the participation of the Economic Operator in the Framework Agreement and/or a 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 Framework Agreement.
- 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 independent Data Controllers, may share the Personal Data as follows:
- with other bodies within the public and/or semi-state sectors that use the Supplygov service as required by this Framework 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 and/or the Contracting Authorities 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 and/or the Contracting Authorities 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 2.15; or (ii) a Personal Data breach which is likely to affect or invoke the LGOPC's and/or the Contracting Authorities' 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 2.15, 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 Works proposed under this Framework 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 Authority's 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 Framework Agreement. However, if successfully admitted to the

Framework 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 as a result of the withdrawal of the United Kingdom from membership of the European Union.

3.0 EVIDENCE IN SUPPORT OF SELECTION CRITERIA

3.1 INTRODUCTION

- 3.1.1 An Economic Operator may be required to provide supporting documentation as evidence to verify their status with respect to the Selection Criteria set out in the online application process. The supporting documentation below must be provided when requested by the LGOPC and/or Contracting Authority at any time during the term of the Framework Agreement or sRFT Contract stage. 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 Framework Agreement with the Economic Operator.
- 3.1.2 For the avoidance of doubt, any reference in this Framework Agreement to a qualification under the National Framework of Qualifications shall include an equivalent qualification obtained in another EU member state.

3.2 TECHNICAL AND PROFESSIONAL ABILITY

3.2.1 Health and Safety

Construction Duty Holder Role Appointments

The evidence to be provided to the Contracting Authority at sRFT Contract stage is 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).

Health and Safety Policy and Health and Safety Statement

The evidence to be provided to the Contracting Authority at sRFT Contract stage is a current Health and Safety Policy and Health and Safety Statement in compliance with the Safety, Health, and Welfare at Work Act 2005.

3.2.2 Educational and Professional Qualifications

Managerial Staff

The evidence to be provided to the LGOPC in support of this Selection Criterion when requested, is a copy of the relevant qualification and details of the relevant experience, as follows: -

- National Framework of Qualification (NFQ) Level Seven (7) or higher, plus five (5) years' experience in managing projects relevant to the works to be completed under this Framework Agreement; OR,
- National Framework of Qualification NFQ Level Six (6) qualification, plus eight (8) years' experience in managing projects relevant to the works to be completed under this Framework Agreement; OR,
- Ten (10) years' experience in managing projects relevant to the works to be completed under this Agreement.

Site Manager/Site Agent

The evidence to be provided to the LGOPC in support of this Selection Criterion when requested, is a copy of the relevant qualification and details of the relevant experience, as follows: -

- National Framework of Qualification (NFQ) Level Six (6) or higher, plus five (5) years' experience in managing projects relevant to the works to be completed under this Framework Agreement; OR,

- Eight (8) years' experience in managing projects relevant to the works to be completed under this Framework Agreement.

3.2.3 **Technicians or Technical Bodies Responsible for Quality Control**

The evidence to be provided to the Contracting Authority at sRFT Contract stage are details in the form of a list naming the Technicians or Technical Bodies involved, that the Economic Operator can call on in order to carry out work or can use in regard to Quality Control, for the delivery of a high-quality end-product.

3.2.4 **Details of Projects Completed During the Past 3 Years**

The Selection Criteria requires the uploading of completed Project Verification Forms as part of the application process.

3.3 FINANCIAL AND ECONOMIC STANDING

3.3.1 **Financial Confirmatory Note**

The Selection Criteria requires the uploading of a completed Financial Confirmatory Note as part of the application process.

3.3.2 **Insurance**

The evidence to be provided to the Contracting Authority at sRFT Contract stage is documentation that demonstrate the Economic Operator has insurance policies in place that meet the requirements set out for the sRFT Contract.

The minimum levels of insurance cover required are:

- Employer's Liability Insurance: €13 million
- Public Liability Insurance: €6.5 million

4.0 GENERAL SPECIFICATION

4.1 SCOPE OF WORKS

- 4.1.1 Works will involve planned and unplanned road marking works on nominated National Roads, Regional Roads, Local Roads, or equivalent as required by Contracting Authorities.
- 4.1.2 If awarded a sRFT Contract, Economic Operators shall supply and place all regulatory and non-regulatory Road Markings (Permanent/Temporary), Road Studs, Coloured Demarcation/Surfacing, High Friction Surfacing and Removal of Road Markings/Road Studs.
- 4.1.3 The performance, materials and workmanship for thermoplastic road markings, road studs, coloured demarcation/surfacing and high friction surfacing are set out in the General Specification herein.
- 4.1.4 The technical requirements set out in the General Specification are non-specific. All Road Marking works shall be undertaken in compliance with the technical standards as detailed and any further technical requirements as set out in the sRFT.
- 4.1.5 The method of application or removal of road markings may be specified by the Contracting Authority at its sole discretion.
- 4.1.6 High friction surfacing may be either a cold applied or hot applied system. Where required, the application system and certification required (BBA/HAPAS/prTAIT) may be specified by the Contracting Authority.
- 4.1.7 The proposed Works may include, but are not limited to the supply and installation and/or removal of:
- Transverse markings, which are at right-angles (or thereabouts) to the centre line of the carriageway;
 - Longitudinal markings (including double line systems);
 - Hatched markings;
 - Worded and diagrammatic markings;
 - Markings indicating parking and loading requirements;
 - Bus and tram markings;
 - Cycle track markings;
 - Yellow box markings;
 - Road studs;
 - Coloured Demarcation/Surfacing;
 - High Friction Surfacing.

4.2 LEGISLATION

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

General:

- The Safety, Health, and Welfare at Work Act 2005
- The Safety, Health, and Welfare at Work (Repeals)(Commencement) Order, 2015
- The Safety in Industry Act 1980
- The Safety, Health, and Welfare at Work (General Applications) Regulations 2007 to 2016;
- The Safety, Health, and Welfare of Work (Construction) Regulations 2006 - 2013;
- Chemicals (Asbestos Articles) Regulations 2011 (S.I. No. 248 of 2011);
- The Safety, Health & Welfare at Work (Exposure to Asbestos) (Amendment) Regulations, 2010 (S.I. No. 589 of 2010);

- The Safety, Health & Welfare at Work (Exposure to Asbestos) Regulations, 2006 (S.I. No. 386 of 2006);
- REACH⁵ Regulation (EC) No. 1907/2006 amended by Regulation (EC) No. 552/2009;
- Safety, Health, and Welfare at Work (Chemical Agents) Regulations, 2001 (S.I. No. 619 of 2001);
- Safety Health and Welfare at Work (Carcinogens) Regulations, 2001 (S.I. No. 078 of 2001);
- European Communities (Carriage of dangerous goods by road & use of transportable pressure equipment regulations, 2011 (S.I. No. 349 of 2011);
- Air Pollution Act, 1989;
- The Construction Products Regulations (CPR) 2013 and as amended;
- The Waste Management Acts, 1996 to 2013;
- BS5228:2009 'Code of Practice for Noise Control on Construction and Open Sites';
- Any other recommendation or Code of Practice issued by the Health and Safety Authority;
- Law and good industry practice on Disability including those of the National Disability Authority;
- Fire Services Act 1981.

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.

4.3 TECHNICAL STANDARDS, GUIDELINES & CODES OF PRACTICE

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

- Good industry practice in respect of fire;
- Requirements of utility providers;
- Relevant Irish Standards ("Irish Standards"), British Standards ("British Standards"), Codes of Practice ("Codes of Practice"), EU Directives ("Directives") or equivalent European Standards ("European Standards");
- Local Byelaws and Regulations;
- Regulations and requirements of all relevant authorities;
- Guidelines and Tender Documentation for Road Marking Materials - Department of Environment and Local Government, Dublin;
- Chapter 7 of the Traffic Signs Manual as published by the Department of Transport August 2019 and as amended;
- Chapter 8 of the Traffic Signs Manual as published by the Department of Transport August 2019 and as amended;
- Guidance for the Control and Management of Traffic at Roadworks – 2nd Edition;
- Dashboard Manual March 2014 - Temporary Traffic Management Guidance Handbook for Road Marking Related Works;
- TII⁶ Specification for Roadworks Series 1200 (Traffic Signs & Road Markings - CC-SPW-01200);
- TII Specification for Roadworks Series 900 (Road Pavements – Bituminous Materials - CC-SPW-0900);

⁵ Registration, Evaluation, Authorisation and Restriction of Chemicals.

⁶ Transport Infrastructure Ireland is a state agency in Ireland, responsible for national road and public transport infrastructure. The body was established in 2015 by merging the former National Roads Authority and Railway Procurement Agency.

- TII Specification for Roadworks Series 100 (Preliminaries - CC-SPW-00100);
- IS EN 1423: Road marking materials - Drop on materials - Glass beads, antiskid aggregates, and mixtures of the two;
- IS EN 1424: Road Markings materials - Premix glass beads;
- IS EN 1790: Road Marking materials - Preformed road markings;
- IS EN 1436: Road Marking materials - Road marking performance for road users and test methods;
- IS EN 1871: Road Marking materials - Physical properties;
- IS EN 1463: Road Marking materials - Retroreflecting road studs.

The above is a non-exhaustive list of standards that are being continuously updated and changed.

- 4.3.2 In addition to the Construction Product Regulations, particular products, application types or processes may require;
- A Type Test or Type Approval Installation Trial (TAIT).
 - A Provisional Type Approval Installation Trial (prTAIT) or European Assessment Documents where the product, application or process is not covered by a harmonised technical specification.
- 4.3.3 Permanent road markings shall be guaranteed for a minimum of 2 years as defined in IS EN 1436.
- 4.3.4 Where required, a guarantee will be requested by the Contracting Authority for Permanent Thermoplastic Road Markings laid on cement bound and bituminous bound road surfacing including surface dressings as part of any Supplementary Request for Tender. During any guarantee, the Economic Operator shall be required to replace or renew markings which fail to comply with one or more minimum values established in the Supplementary Request for Tender. The guarantee will cover parameters from IS EN 1436 in respect of Durability, Retro reflectivity, Skid Resistance, Luminance and Chromaticity as set out in the Supplementary Request for Tender.
- 4.3.5 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. Compliance will be verified by use of material conformance testing (remote and in-situ) and reference to the quality management systems within the production plant.
- 4.3.6 Where alternate products/system accreditations etc. are required by the Contracting Authority, the Economic Operator shall provide confirmation in writing:
- Of the name of the proposed product to be used;
 - That the product/system complies with BBA/HAPAS/prTAIT or equivalent product and accreditation scheme;
 - That the Economic Operator is an approved BBA or equivalent Installation Contractor.
- 4.3.7 The Economic Operator shall comply with the above including all mandatory notifications and notices for display. Compliance with these regulations, standards and guidelines shall relate to those most up to date or reasonably foreseeable as being in force or published at the time of the sRFT Contract award.
- 4.3.8 The Economic Operator shall identify any hazards that the design may present during construction and subsequent use and maintenance. Where possible, the hazards shall be eliminated, or the risk reduced. Where hazards cannot be eliminated, provision shall be made for control of those risks and the transfer of the necessary information on those control measures and any residual risks together with any design assumptions to the PSDP.
- 4.3.9 The Economic Operator shall adhere to and ensure compliance with all relevant product manufacturer's instructions.

4.4 HEALTH AND SAFETY - GENERAL

- 4.4.1 In fulfilling a Supplementary Request for Tender 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”⁷), at Supplementary Request for Tender stage, shall assess the competence of parties appointed to or that will have a Construction Duty Holder⁸ 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 Operator's Personnel.
- 4.5.2 The required insurances for a Supplementary Request for Tender shall be specified by the Contracting Authority in the sRFT. The minimum insurance levels that Contracting Authorities are likely to require are set out above. Economic Operators do not need to have the insurances in place when making their application in response to a Supplementary Request for Tender but will be required to put those insurances in place prior to the award of any sRFT Contract should they be successful. 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 Supplementary Request for Tender unless satisfactory evidence of insurance is submitted prior to contract award by the Economic Operator’s insurance broker/company.
- 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 a sRFT Contract and/or this Framework Agreement (thus ending the participation of the Economic Operator in the Framework).
- 4.5.5 Where required, limits for Professional Indemnity Insurance cover will vary depending on the nature of the sRFT Contract. The actual level of professional indemnity insurance cover required for individual sRFT Contracts 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 Works associated with the specific sRFT.
- 4.5.6 The required insurance cover will vary from contract to contract as will the type 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 the award of an sRFT Contract. 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.

⁷ As defined in the Safety, Health, and Welfare at Work (Construction) Regulations, 2013.

⁸A Construction Duty Holder role means a role which has legal duties under the Safety, Health, and Welfare at Work (Construction) Regulations, 2013.

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, whether as part of a consortium or individually.
- 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 Framework Agreement 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 term of the Framework Agreement.
- 5.2.2 Supplementary Requests for Tenders will be issued electronically via Supplygov to all Economic Operators admitted to the Framework Agreement that have expressed an interest in receiving Supplementary Requests for Tender for their selected regions.
- 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 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 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.
- 5.2.5 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.
- 5.2.6 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)
- 5.2.7 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 Works from the Preferred Tenderer.
- 5.2.8 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 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 Works, then and in those circumstances, the Contracting Authority may procure the Works from the highest ranking substitute (beginning with the substitute ranked No. 1) then capable of providing the Works.

5.3 DOCUMENTARY EVIDENCE – SUPPLEMENTARY REQUEST FOR TENDER

5.3.1 As part of the Supplementary Request for Tender process, Contracting Authorities may require Economic Operators to provide documentary evidence to demonstrate satisfactory compliance with relevant Selection Criteria used for admittance to the Framework Agreement. Where applicable, such requirements will be assessed on a Pass/Fail basis and only responses deemed compliant with such requirements will proceed to be assessed against the award criteria identified in the sRFT.

5.4 AWARD CRITERIA – SUPPLEMENTARY REQUEST FOR TENDER

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

5.4.2 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

5.4.3 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.

5.4.4 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.

5.4.5 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.

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

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

5.4.7 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.

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

5.4.9 In particular, under this Framework Agreement, initiatives in relation to the procurement of Road Markings with reduced environmental impact may be included in the award criteria at Supplementary Request for Tender stage, as detailed in the EU green public procurement criteria for paints, varnishes and road marking published 20.12.2017 (as may be amended, updated, or re-published by the relevant body from time to time).

A copy of this publication is available for downloading from the below link under the category 'Paints, varnishes and road markings' and titled 'EU GPP criteria (published in 2018)'.

https://ec.europa.eu/environment/gpp/eu_gpp_criteria_en.htm

5.4.10 The marking scale for Quality criteria is provided below:

RATING	GUIDANCE	MARKING SCALE
Excellent	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.	80% - 100 %
Very Good	A response that demonstrates real understanding of the requirements and assurance that the Economic Operator will deliver to a good or high standard.	60% - 79 %
Good	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.	40% - 59 %
Fair	A response where reservations exist. Lacks full credibility/convincing detail, and there is a significant risk that the response will not be successful.	20% - 39 %
Poor	Response where serious reservations exist. This may be because, for example, insufficient detail is provided, and the	1% - 19 %

	response has fundamental flaws, or is seriously inadequate or seriously lacks credibility with a high risk of non-delivery.	
No Evidence	Response not submitted or response completely fails to address the criterion under consideration.	0%

5.4.11 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.

5.4.12 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.

5.4.13 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.

5.4.14 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 carry out the Works due to a change in circumstances; or
- by its own admission, is unable or unwilling to carry out the 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.

5.5 INFORMATION/ DOCUMENTATION TO BE PROVIDED PRIOR TO CONTRACT AWARD

5.5.1 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 a sRFT 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 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 or Subcontractor'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;
- In relation to Pay and the Conditions of Employment, satisfactory evidence of compliance with applicable law in relation to rates of pay and the conditions of employment, including pension contributions;
- 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;
- Site⁹ Specific Risk Assessment, if applicable;
- Site Specific Method Statement, if applicable;
- Temporary Traffic Management Plan;
- The Contractor's Waste Management Plan (WMP) for the management of all waste arising on site, if applicable.

5.5.2 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.

5.6 sRFT CONTRACT

5.6.1 If, following an sRFT, 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:

- PW-CF11 Public Works Term Maintenance and Refurbishment Contract
- PW-CF6 Short Public Works Contract

⁹ Site is any place where the works are to be executed according to the contract, any place provided by the Employer for the works, any place where the Contractor is to operate or maintain Employer's facilities or any place that the works requirements identify as part of the site.

- 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.

5.7 NOTICE OF ADDENDA

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