
**MULTI-PARTY
FRAMEWORK AGREEMENT**

FOR

**ROAD SIGNS AND ANCILLARIES
(SUPPLY ONLY)**

TABLE OF CONTENTS

1.0	SCOPE OF APPOINTMENT	5
1.1	Scope of Appointment.....	5
1.2	Entire Agreement	5
1.3	Framework Term	5
1.4	Limitation on liability.....	5
1.5	The Contracting Authorities	6
2.0	GENERAL TERMS & CONDITIONS	7
2.1	General	7
2.2	Interpretation.....	7
2.3	Legal Status of the Economic Operator – Assignment and/or Novation.....	7
2.4	Termination of the Framework Agreement	8
2.5	Subcontracting	8
2.6	Reliance on Capacity of Other Entities.....	8
2.7	Tax Compliance.....	9
2.8	Employees	9
2.9	Environmental & Social Considerations.....	9
2.10	Statutory Obligations and Applicable Law	10
2.11	Freedom of Information Acts.....	10
2.12	Canvassing.....	10
2.13	Conflicts of Interest and Registrable Interest.....	11
2.14	Confidentiality	11
2.15	Data Protection	11
2.16	Public Health	12
2.17	Performance Bond	13
3.0	EVIDENCE IN SUPPORT OF SELECTION CRITERIA	14
3.1	Introduction	14
3.2	Lot 1 – Technical and Professional Ability –	14
3.3	Lot 2 - Technical and Professional Ability	15
3.4	Financial and Economic Standing	15
4.0	GOODS CATEGORIES	16
4.1	Goods Categories	16
5.0	STAGE 2 - SUPPLEMENTARY REQUEST FOR TENDER	17
5.1	General	17
5.2	Supplementary Request For Tender Process.....	17
5.3	Evidence – Supplementary Request For Tender	18
5.4	Clarifications – Supplementary Request For Tender	18
5.5	Award Criteria – Supplementary Request for Tender.....	18

5.6	Information/Documentation To Be Provided Prior To Contract Award.....	20
5.7	sRFT Contract	21
5.8	Electronic Catalogue	22
5.9	Notice of Addenda	22
1.0	SCHEDULE 1 – THE PO TERMS AND CONDITIONS	24
1.1	Scope of the PO Terms and Conditions	24
1.2	The Charges (Prices)	24
1.3	Interpretation.....	24
1.4	Supply of the Goods	25
1.5	Economic Operator’s Status as Prime Contracting Party	25
1.6	Exclusion Grounds and Subcontractors.....	25
1.7	Legal Relationship Between the Parties	25
1.8	Sharing of Information by the Contracting Authority	25
1.9	The Goods	26
1.10	Inspection of the Goods	26
1.11	Risk and Title	27
1.12	Payment and Invoicing	27
1.13	Warranties, Representations and Undertakings of the Economic Operator	27
1.14	Indemnity and Remedies	28
1.15	Confidentiality	29
1.16	Force Majeure	29
1.17	Termination	30
1.18	Contract Management.....	30
1.19	Governing Law	31
1.20	Assignment and Subcontract	31
1.21	Severability	31
1.22	Waiver	31
1.23	Conflicts, registrable Interests and Corrupt Gifts.....	31
1.24	Access to Premises	32
1.25	Legislation.....	32
1.26	Technical Standards, Guidelines & Codes of Practice.....	33
1.27	Lot 1 - Specification For Permanent Prescribed Road Signs & Ancillaries.....	33
1.28	Lot 2 - Specification For Temporary Roadworks Signs & Ancillaries	34
1.29	Health and Safety	34
1.30	Insurance.....	35

THIS FRAMEWORK AGREEMENT IS MADE BETWEEN:

- 1.** 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 of the one part;

AND

- 2.** The economic operator appointed on foot of the Competition (as defined below) and which has accepted the terms of this Framework Agreement (as defined below) in accordance with Recital D below (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 (the "Competition") inviting applications for a Framework Agreement for Road Signs and Ancillaries (hereinafter referred to as "the Framework Agreement") on behalf of the Contracting Authorities specified in Section 1.5 herein (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 appoint the Economic Operator to the Framework Agreement in respect of those lots referenced in the Letter of Intent and the Letter of Acceptance issued by the LGOPC to the Economic Operator (and references in this Framework Agreement to the Economic Operator having been "appointed to" a particular lot shall be construed accordingly).
- 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 and this Framework Agreement shall take effect from the date of such acceptance ("the Effective Date"). The formal acceptance of the terms of this Framework Agreement through Supplygov shall operate as if this Framework Agreement had been signed and sealed (and witnessed appropriately) by the parties and shall be construed accordingly for all legal purposes.
- E.** 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 SCOPE OF APPOINTMENT

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, subject to Recital B, to the Framework Agreement for the provision of road signs and ancillaries (hereinafter collectively referred to as "the Goods"), which Goods are more particularly specified in Section 4.0 herein ("Goods Categories"), 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 Goods from economic operators who have been admitted to the Framework Agreement for the relevant lot.
- 1.1.4 When a Contracting Authority wishes to procure the Goods pursuant to the Framework Agreement, it will do so by means of a Supplementary Request for Tender¹ (hereinafter referred to as an "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 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 Agreement; 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 ("sRFT(s)") means a request for tender issued by a Contracting Authority via Supplygov to the economic operators admitted to the Framework Agreement.

² sRFT Contract means a contract for the Goods entered into between an economic operator and a Contracting Authority following an sRFT.

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 comprise:

- Ministers of the Government of Ireland as are more particularly specified at <https://www.gov.ie/en/organisation-information/9b5048-government-ministers/>;
- Central Government Departments of the Government of Ireland as are more particularly specified at <https://www.gov.ie/en/service/list-of-government-departments/>;
- Local Authorities in Ireland (as defined in the Local Government Act 2014) as are more particularly specified at <https://www.gov.ie/en/publication/942f74-local-authorities/>;
- Approved Housing Bodies in Ireland 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 as are more particularly specified at <https://www.ahbregulator.ie/registration/the-register/>;
- Publicly funded higher education institutions in Ireland as are more particularly specified at <https://www.gov.ie/en/publication/5088c-list-of-publicly-funded-higher-education-institutions/>;
- Education and Training Boards in Ireland as are more particularly specified at <https://www.etbi.ie/etbs/directory-of-etbs/>;
- All non-fee paying primary and post-primary (secondary) schools in Ireland and schools which cater for students with special educational needs (otherwise known as “special schools”) in Ireland. A list of all primary and post-primary (secondary) schools in Ireland can be found at <https://www.gov.ie/en/directory/category/495b8a-schools/> but please note that this list includes fee paying schools which are not covered;
- Office of Public Works (“OPW”); Irish Water; Waterways Ireland; An Garda Síochána (Police); The Irish Prison Service; The Defence Forces; The Housing Agency; Western Care Association; Environmental Protection Agency; National Treatment Purchase Fund Board; An Bord Bia; The Commissioners of Irish Lights; National Standards Authority of Ireland; Teagasc - The Agriculture and Food Development Authority; Marine Institute; Inland Fisheries Ireland; Grangegorman Development Agency; Alzheimer Society of Ireland; The Courts Service ; Digital Hub Development Agency; The National Tourism Development Authority (Failte Ireland); The National College of Art and Design; Barnardos - Republic of Ireland Company Limited by Guarantee; Health Service Executive (“HSE”); Health Information and Quality Authority (“HIQA”); Beaufort - St Mary’s of the Angels - merged with St John of God’s; Brothers. of Charity, Lota (Southern); Cope Foundation; St. John of God, Tralee; Cork Dental Hospital; St. Patrick’s, Kilkenny; Brothers. of Charity, Waterford (South-Eastern); Carriglea (Sisters of the Bon Sauveur); Brothers. of Charity - Galway Region; Brothers. of Charity, Limerick (Mid-West); Daughters of Charity, Limerick; Brothers. of Charity, Clare; Daughters of Charity, St Anne’s Centre, Roscrea; Brothers of Charity - Roscommon Region; Cregg House (Sisters of La Sagesse Services); Cheeverstown House; Leopardstown Park Hospital; Royal Hospital, Donnybrook, Dublin; Our Lady’s Hospice, (Harold’s Cross); Peamount Hospital (Newcastle); Stewart’s Hospital, (Palmerstown); Children’s Sunshine Home; Drug Treatment Centre Board; Kare, Morefield, Newbridge, Co Kildare; Moore Abbey (Sisters of Charity); Sisters of Charity (Laois/Offaly Centre); Sisters of Charity (Delvin); Dublin Dental Hospital Board; National Rehabilitation Hospital; St. John of God Eastern Region; Sunbeam House Services; Central Remedial Clinic; Incorporated Orthopaedic Hospital (Clontarf); St. Michael’s House, Dublin (incorporates St Mary’s Auxiliary Hospital); St. Vincent’s, Fairview; Daughters of Charity, Navan Road; St. John of God, Drumcar; Adelaide & Meath Inc. N.C. Hospital Tallaght; Beaumont Hospital; Cappagh National Orthopaedic Hospital; Children’s University Hospital, Temple Street; Coombe Women’s Hospital; Mater Misericordiae Hospital; Mercy University Hospital, (Cork); National Maternity Hospital, Holles Street; Our Lady’s Hospital for Sick Children, Crumlin; Rotunda Hospital; Royal Victoria Eye & Ear Hospital; South Infirmary Victoria Hospital; St. James Hospital; St. John’s Hospital (Limerick); St. Luke’s Hospital; St. Michael’s Hospital, Dun Laoghaire; St. Vincent’s University Hospital.

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.
- 2.2.9 Capitalised terms not defined herein shall have the meaning given to them in the Instructions Document.

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 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 (a) and (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 provisions of Regulation 57 of the Regulations apply to the Economic Operator and/or its subcontractors; or
- if the Economic Operator fails to provide: (a) the requisite evidence of compliance with the declarations submitted in its ESPD; or (b) renewed and updated self-declarations, when requested to do so by the LGOPC and/or a Contracting Authority; 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 At any time during the term of the Framework Agreement, 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.

2.4.3 The termination of this Framework Agreement does not affect the validity of any sRFT Contract then in force unless and until the Contracting Authority terminates that 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.

2.6 RELIANCE ON CAPACITY OF OTHER ENTITIES

2.6.1 Where the 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 of any sRFT Contract (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 specific tasks 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: (a) that apply at the place where the Goods are provided; and (b) 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 provides for the inclusion of environmental and social considerations as part of an sRFT⁴ that are consistent with the Programme for Government in seeking to achieve environmental, social and economic 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;
- European Commission (2016) Buying Green: A Handbook on Green Public Procurement;
- Green Public Procurement Guidance for the Public Sector: September 2021;
- Climate Action Plan 2019 published by the Department of the Environment, Climate and Communications;
- Information note on incorporating social considerations published by the Office of Government Procurement (hereinafter referred to as "the 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, during the performance of an sRFT Contract, the Economic Operator may be required to monitor and report on requested measurable environmental and social considerations that are linked to the subject matter of an sRFT Contract for the purpose of verifying contractual obligations entered into by the Economic Operator.

⁴ Further details are contained within Sections 5.4.5, and 5.4.8 herein.

Environmental Considerations:

- 2.9.4 An sRFT provides an opportunity to convert environmental policy objectives on carbon reduction, air and water quality and waste reduction into actions that can be achieved as part of an sRFT Contract, by seeking solutions that have a reduced impact on the environment throughout their life cycle.
- 2.9.5 Contracting Authorities may incorporate relevant Green Public Procurement ("GPP") measures into the specifications and/or Award Criteria of an sRFT. For example, in accordance with published national and European Union GPP criteria, 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 an sRFT Contract.
- 2.9.6 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.

Social Considerations:

- 2.9.7 Contracting Authorities may incorporate relevant social considerations measures into the Award Criteria of an sRFT. For example, issues 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 an 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 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 European Communities (Access to Information on the Environment) Regulations 2007. The Economic Operator should consider if any information supplied by it in response to an sRFT should not be disclosed because it is commercially sensitive or confidential. If so, 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 shall not be liable in respect of information provided by the Economic Operator, which is subsequently released as a result of such obligations or in respect of any consequential damage suffered as a result.

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 an sRFT, may result in: (a) the disqualification of the Economic Operator by the LGOPC from the Framework Agreement; and/or (b) the disqualification of the Economic Operator by the Contracting Authority from the sRFT.
- 2.12.2 Where the Economic Operator has an existing relationship with personnel and/or agents of the LGOPC and/or the Contracting Authorities, any discussions, correspondence, or other communications with regards to the Framework Agreement and/or an sRFT may be treated as canvassing.

- 2.12.3 In accordance with the Ethics in Public Office Act, 1995, any money, gift or other consideration furnished by the 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 the LGOPC and/or a Contracting Authority 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 or an sRFT.
- 2.13.3 Where the LGOPC and/or a Contracting Authority determines that a material conflict of interest arises, it may, at its 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 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 an sRFT and/or an sRFT Contract, the Contracting Authority shall exclude the Economic Operator from the sRFT 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 provided to the Economic Operator by the LGOPC in relation to the Framework Agreement shall be treated as 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 Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) and the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011 ("E-Privacy Regulations").
- 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) provided by the Economic Operator in response to this Framework Agreement or an sRFT.
- 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 an sRFT, was required to confirm in their tender submission 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 (hereinafter referred to as "eTenders") and Supplygov for the purpose of the participation of the Economic Operator in the Framework Agreement and/or an sRFT 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 its 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 The Economic Operator must, in its participation in the Framework Agreement, comply with all legislation, public service standards, operating procedures or other guidance which have been put in

place by the Government and/or the relevant state agencies or bodies in response to a public health emergency.

2.17 PERFORMANCE BOND

- 2.17.1 The Economic Operator, if requested to do so by a Contracting Authority for the purposes of an sRFT, shall provide a performance bond prior to the award of an sRFT Contract.

3.0 EVIDENCE IN SUPPORT OF SELECTION CRITERIA

3.1 INTRODUCTION

- 3.1.1 The Economic Operator may be required to provide supporting documentation as evidence of its status with respect to the Selection Criteria used in the online application process. This Section 3.0 outlines the evidence that may be sought in that respect.
- 3.1.2 Upon request, at any stage during: (a) this Framework Agreement; or (b) an sRFT; or (c) an sRFT Contract, the Economic Operator shall provide supporting documentation verifying its ongoing compliance with the Selection Criteria for entry on to the Framework Agreement.
- 3.1.3 If: (a) the supporting documentation is not provided; or (b) there is a serious error or misrepresentation in the supporting documentation provided, the LGOPC may, at its discretion, terminate this Framework Agreement and/or the Contracting Authority may, at its discretion, exclude the Economic Operator from an sRFT or terminate an sRFT Contract.
- 3.1.4 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 LOT 1 – TECHNICAL AND PROFESSIONAL ABILITY

NOTE - This Section 3.2 applies only if the Economic Operator has been appointed to Lot 1.

3.2.1 Health and Safety

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 three (3) years' experience in the provision of the road signs and ancillaries relevant to the supplies under this Framework Agreement; OR,
- National Framework of Qualification NFQ Level Six (6) qualification, plus five (5) years' experience in the provision of the road signs and ancillaries relevant to the supplies under this Framework Agreement Goods; OR,
- Eight (8) years' experience in the provision of the road signs and ancillaries relevant to the supplies under this Framework Agreement.

3.2.3 Declaration of Performance (DoP) & Certificate of Constancy of Performance

The Selection Criteria requires the uploading, as part of the application process, evidence in the form of certification from an accredited organisation that they can manufacture in accordance with EN 12899-1:2007 (Fixed, vertical road traffic signs) and EN 12899-4:2007 (Factory Production Control):

1. a copy of a current valid "Declaration of Performance" (DoP) for the manufacturer's product, and
2. a copy of the current valid 'Certificate of Constancy of Performance' referred to in the Declaration of Performance' (DoP) from the notified body⁵.

Important Notes:

1. The Declaration of Performance by the manufacturer must: (a) list the essential characteristics of the product that have been established by testing in order to be awarded their certificate;

⁵ Notified Body means an organisation designated by an EU country to assess the conformity of certain products before being placed on the market, for example, the National Standards Authority of Ireland

and (b) refer to a Certificate of Constancy of Performance which is awarded to the manufacturer by a notified body.

2. The appropriate valid Certificate of Constancy of Performance must confirm that the manufacturer's product is in accordance with Annex ZA of EN 12899-1.

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

The evidence to be provided to the Contracting Authority at sRFT Contract stage is a list of 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.

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

The Selection Criteria requires the uploading of completed Lot 1 - Project Verification Forms as part of the application process.

3.3 LOT 2 - TECHNICAL AND PROFESSIONAL ABILITY

NOTE - This Section 3.3 applies only if the Economic Operator has been appointed to Lot 2.

3.3.1 **Health and Safety**

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.

3.3.2 **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 Six (6) qualification, plus three (3) years' experience in the provision of road signs and ancillaries relevant to the supplies under this Framework Agreement; OR,
- Five (5) years' experience in the provision of road signs and ancillaries relevant to the supplies under this Framework Agreement.

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

The evidence to be provided to the Contracting Authority at sRFT Contract stage is a list of 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.

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

The Selection Criteria requires the uploading of completed Lot 2 - Project Verification Forms as part of the application process.

3.4 FINANCIAL AND ECONOMIC STANDING

3.4.1 **Financial Confirmatory Note**

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

3.4.2 **Insurance**

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

The minimum levels of insurance cover required are:

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

4.0 GOODS CATEGORIES

4.1 GOODS CATEGORIES

- 4.1.1 The Goods subcategories described in the tables below are broadly indicative of the Goods that will be procured by the Contracting Authorities in an sRFT.

Lot 1 – Permanent Prescribed Road Signs & Ancillaries

NOTE – The table below applies only if the Economic Operator has been appointed to Lot 1.

	GOODS SUBCATEGORIES
1	Directional Information Signs (TSM Chapter 2)
2	Regulatory Signs (TSM Chapter 5)
3	Warning Signs (TSM Chapter 6)
4	Supplementary Plates (TSM Chapter 6)
5	Standard Galvanised Signposts (per TII Specification for Road Works Series 1200 and TSM)
6	Plastic Pole Cap (per TII Specification for Road Works Series 1200)
7	Channel rail brackets, nuts, bolts etc (per TII Specification for Road Works Series 1200)
8	As per attached BoQ

Lot 2 – Temporary Roadworks Signs & Ancillaries

NOTE – The table below applies only if the Economic Operator has been appointed to Lot 2.

	GOODS SUBCATEGORIES
1	Warning Signs (TSM Chapter 8)
2	Rectangular Warning Signs (TSM Chapter 8) "x" height 50mm
3	Rectangular Warning Signs (TSM Chapter 8) "x" height 75mm
4	Rectangular Warning Signs (TSM Chapter 8) "x" height 100mm
5	TSM Diamond Warning Signs - with Supplementary Plates "x" height 50mm
6	Regulatory Signs (TSM Chapter 5 & 8)
7	Standard Galvanised Signposts (per TII Specification for Road Works Series 1200 and TSM)
8	Plastic Pole Cap (per TII Specification for Road Works Series 1200)
9	Channel rail brackets, nuts, bolts etc (per TII Specification for Road Works Series 1200)
10	Barrier Boards (TSM Chapter 6)
11	Chevron Boards (TSM Chapter 6)
12	Cones (per TII Specification for Road Works Series 1200 and TSM Chapter 8)
13	Pedestrian Barrier (TSM Chapter 8)
14	Water filled lane separator's (Red and White)
15	Bollards - per TII Specification for Road Works Series 1200
16	Delineators - per TII Specification for Road Works Series 1200 and TSM Chapter 8
17	Junction Definition Posts - per TII Specification for Road Works Series 1200
18	Road Danger Lamps (TII Specification for Road Works Series 1200)
19	As per attached BoQ

- 4.1.2 The legislation, technical standards, guidelines and codes of practice relating to the Goods subcategories are outlined in the Economic Operators Obligations included in Section 2.0 of the Term Contract and Sections 1.25 and 1.26 of the PO Terms and Conditions⁶.

⁶ Further information on the Term Contract and the PO Terms and Conditions are contained within Section 5.7 herein.

5.0 STAGE 2 - SUPPLEMENTARY REQUEST FOR TENDER

5.1 GENERAL

- 5.1.1 The Economic Operator may only submit:
- a response to an sRFT electronically via Supplygov (responses in any other form will not be accepted); and
 - one response to an sRFT, whether as part of a consortium or individually.
- 5.1.2 The Economic Operator, having submitted a response to an sRFT, 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 an sRFT 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 sRFTs for the purpose of awarding sRFT Contracts during the term of the Framework Agreement.
- 5.2.2 SRFTs will issue electronically via Supplygov to all economic operators admitted to the Framework Agreement that have expressed an interest in receiving sRFTs for the relevant region.
- 5.2.3 Where a Contracting Authority requires Goods falling under more than one lot, a separate sRFT will be issued for each of Lot 1 and Lot 2.
- 5.2.4 **Important Note: Economic Operators must respond separately to each sRFT.**
- 5.2.5 The Economic Operator shall comply with all instructions and rules issued by the Contracting Authority in relation to the sRFT.
- 5.2.6 SRFTs will be evaluated in accordance with the provisions set out below.
- The sRFT will include:
- (a) details of the Contracting Authority's specific requirements in relation to the Goods;
 - (b) the instructions and rules of the sRFT; and
 - (c) the Contracting Authority's intention to award the sRFT Contract to:
 - (i) a Preferred Tenderer only, or
 - (ii) a Preferred Tenderer with Substitution List
- 5.2.7 Where the Contracting Authority indicates 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. In such circumstances, the Contracting Authority may use either the Purchase Order Contract or the Term Contract⁷.
- 5.2.8 Where the Contracting Authority indicates its intent to award sRFT Contracts to a Preferred Tenderer and substitute suppliers, the Contracting Authority shall enter into sRFT Contracts with the Preferred Tenderer and each of the substitute suppliers. In such circumstances, the Contracting Authority shall use the Term Contract.
- 5.2.9 Where, following an sRFT, the Contracting Authority has entered into Term Contracts with a Preferred Tenderer and substitute suppliers, the Contracting Authority shall, in the first instance, procure the Goods from the Preferred Tenderer. 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 Goods; 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 Goods, then and in those

⁷ Further details in relation to the Purchase Order Contract and the Term Contract are contained in Section 5.7 herein.

circumstances, the Contracting Authority may procure the Goods from the highest ranking substitute (beginning with the substitute ranked No. 1) then capable of providing the Goods.

5.3 EVIDENCE – SUPPLEMENTARY REQUEST FOR TENDER

5.3.1 A Contracting Authority may require the Economic Operator, as part of an sRFT, to provide evidence of compliance with the Selection Criteria used for admittance to the Framework Agreement in accordance with Section 3.0 herein. Where applicable, such requirements will be assessed on a “Pass/Fail” basis and a response which is deemed to be a “Fail” shall not proceed to be assessed against the Award Criteria nor be awarded the sRFT Contract.

5.4 CLARIFICATIONS – SUPPLEMENTARY REQUEST FOR TENDER

5.4.1 Without prejudice to the foregoing, the Contracting Authorities in the course of conducting an sRFT, at their discretion, may seek clarifications or further information (that does not materially alter a tender) from the Economic Operator (in accordance with the principles of equal treatment, non-discrimination, transparency, proportionality and mutual recognition).

5.5 AWARD CRITERIA – SUPPLEMENTARY REQUEST FOR TENDER

5.5.1 Tenders submitted in response to an sRFT will be evaluated in accordance with the Award Criteria outlined below.

5.5.2 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 (RANGE)	MAXIMUM MARKS AVAILABLE (RANGE)	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

5.5.3 In an sRFT, 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 sub-criteria; or
- b) where Price (Total Cost) and Quality Criteria are used, divide the Price (Total Cost) criteria and Quality Criteria into 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 sRFT.

5.5.4 In circumstances where Quality Criteria/sub-criteria are used in an sRFT, economic operators shall be required to achieve a minimum pass threshold of 40% for each Quality criterion/sub-criterion adopted and a tender which does not achieve the minimal pass threshold of 40% shall not proceed to be assessed against the remaining award criteria identified in the sRFT and will not be awarded the sRFT Contract.

5.5.5 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.

5.5.6 The Price (Total Cost) criteria may be formulated more precisely by the Contracting Authority in the sRFT.

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

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

5.5.8 **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.

5.5.9 The Quality criteria may be formulated more precisely by the Contracting Authority in the sRFT.

5.5.10 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 delivery will not be successful.	20% - 39 %
Poor	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.	1% - 19 %
No Evidence	Response not submitted or response completely fails to address the criterion under consideration.	0%

- 5.5.11 In the event of a tie in an sRFT 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 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 Criterion in descending order of weighting);
 - (iii) In circumstances where the 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 sRFT 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 sRFT);
 - (iv) In circumstances where the approach in Par. (iii) does not identify the most economically advantageous tender, the Contract Authority, may, at its discretion either:
 - re-issue the sRFT 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 approach as it deems appropriate.
- 5.5.12 In the event of a tie in an sRFT 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 sRFT to all economic operators; or
 - ask the tied economic operators to re-submit prices and continue this process until there is a winner.
- 5.5.13 The Contracting Authority is not bound to adopt the tie break approach outlined above and may adopt in the sRFT such other open and transparent tie break approach as it deems appropriate.
- 5.5.14 Where, following an evaluation but prior to the award of an sRFT Contract, the Preferred Tenderer is: (a) deemed by the Contracting Authority to be unable or unsuitable to complete the sRFT Contract due to a change in circumstances; or (b) by its own admission, is unable or unwilling to complete the sRFT Contract, 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.

5.6 INFORMATION/DOCUMENTATION TO BE PROVIDED PRIOR TO CONTRACT AWARD

- 5.6.1 In addition to the information and documentation to be provided when submitting a response to an sRFT, the Economic Operator may be required to provide to the Contracting Authority for its approval, prior to award of an sRFT Contract, the information and/or documentation listed below:
- updated confirmation that the Economic Operator complies with the requirements of Regulation 57 of the Regulations;
 - subcontractors proposed for fulfilment of an sRFT Contract are required to: (a) confirm that they comply with the requirements of Regulation 57 of the Regulations by providing an ESPD

or equivalent; and/or (b) produce an in-date (not older than 30 days) Notification of Determination⁸;

- the Economic Operator's (or its subcontractors') Tax Clearance Access Number and Tax Reference Number to facilitate online verification of its (or its subcontractors') tax status. By supplying these details, the Economic Operator confirms that the Contracting Authority has consent to verify its (or its subcontractors') tax status online;
- evidence of insurance in accordance with the minimum standards referred to in the Tender Documents or sRFT;
- the Economic Operator's Safety Statement (or equivalent) may be assessed for compliance with the Safety, Health & Welfare at Work Act 2005 and enforcing regulations;
- evidence of compliance with laws in relation to rates of pay and conditions of employment (including pension contributions);
- SOLAS Safepass Cards or equivalent Safety Awareness Scheme registration card, and, where required in the sRFT, Construction Skills Certification Scheme ("CSCS") cards;
- Specific Risk Assessment, if applicable;
- Specific Method Statement, if applicable;
- Temporary Traffic Management Plan;
- Such other relevant information and/or documentation deemed necessary by the Contracting Authority.

5.7 SRFT CONTRACT

5.7.1 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. Subject to Section 5.2 herein, the sRFT Contract to be entered into shall, at the discretion of the Contracting Authority, be either the Purchase Order Contract or the Term Contract.

(i) **The Purchase Order Contract**

The Purchase Order Contract shall comprise of:

- a. a purchase order issued by the Contracting Authority to the Economic Operator in the form and manner utilised by the Contracting Authority from time to time (hereinafter referred to as the "Purchase Order"); and
- b. the Purchase Order Terms and Conditions attached to the sRFT by the Contracting Authority in the form exhibited in Schedule 1 herein (hereinafter referred to as "the PO Terms and Conditions").

The PO Terms and Conditions shall apply to the Purchase Order notwithstanding that same may not necessarily be affixed to, or expressly referred to in the Purchase Order. Notwithstanding that the Purchase Order may not contain or require formal signing and/or countersigning by the Contracting Authority and the Economic Operator, the Purchase Order shall operate as if same had been signed and/or sealed (and witnessed appropriately) by the parties and shall be construed accordingly for all legal purposes.

(ii) **The Term Contract**

The Term Contract shall comprise of the Term Contract published as part of the Tender Documents.

5.7.2 The LGOPC may, where necessary for: (i) the efficient and compliant operation of the Framework Agreement; or (ii) the utilisation of an electronic catalogue in an sRFT, amend the terms and conditions of the Purchase Order Contract and/or the Term Contract.

⁸ Notice of Determination means notification of a formal ruling in relation to specific Value-Added Tax (VAT) matters.

5.8 ELECTRONIC CATALOGUE

- 5.8.1 In accordance with Regulation 36 of the Regulations, the Contracting Authorities may, at their discretion, award sRFT Contracts by requiring tenders to be presented in the form of, or to include, an electronic catalogue.
- 5.8.2 In circumstances where Contracting Authorities require tenders to be presented in the form of, or to include, an electronic catalogue, the Economic Operator shall be provided, in advance, with the necessary details of the sRFT to include, amongst other details, the format of the electronic catalogue required, the award criteria and the form of sRFT Contract to be awarded.

5.9 NOTICE OF ADDENDA

- 5.9.1 The LGOPC may, where necessary for the efficient and compliant operation of the Framework Agreement, 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.

SCHEDULE 1 PO TERMS & CONDITIONS

FOR

A MULTI-PARTY FRAMEWORK AGREEMENT FOR ROAD SIGNS AND ANCILLARIES (SUPPLY ONLY)

Notwithstanding any statement to the contrary (whether in this sRFT or otherwise), in responding to this sRFT, the Economic Operator acknowledges and accepts that the PO Term and Conditions attached hereto shall apply to any Purchase Order issued by the Contracting Authority pursuant to this sRFT and the PO Term and Conditions shall apply to the exclusion of any other terms and/or conditions which the Economic Operator may seek to impose from time to time.

1.0 SCHEDULE 1 – THE PO TERMS AND CONDITIONS

1.1 SCOPE OF THE PO TERMS AND CONDITIONS

- 1.1.1 The Contracting Authority is a participating contracting authority in the Local Government Operational Procurement Centre (hereinafter referred to as "the LGOPC") Multi-Party Framework Agreement for Road Signs and Ancillaries (hereinafter referred to as "the Framework Agreement").
- 1.1.2 The Economic Operator was appointed to the Framework Agreement in respect of those lots referenced in the Letter of Intent and the Letter of Acceptance issued by the LGOPC to the Economic Operator (and references in these PO Terms and Conditions to the Economic Operator having been "appointed to" a particular lot shall be construed accordingly).
- 1.1.3 Pursuant to the Framework Agreement and following the Economic Operator's response to the Contracting Authority's Supplementary Request for Tender (hereinafter referred to as "the sRFT"), the Contracting Authority wishes to purchase items of road signs and ancillaries (hereinafter collectively referred to as "Goods") from the Economic Operator by way of a purchase order in the form and manner utilised by the Contracting Authority from time to time (hereinafter referred to as "the Purchase Order Contract").
- 1.1.4 The within terms and conditions (hereinafter referred to as "the PO Terms and Conditions") shall apply to each Purchase Order issued by the Contracting Authority to the Economic Operator notwithstanding that the PO Terms and Conditions may not necessarily be affixed to, or expressly referred to in, the Purchase Order or any correspondence pertaining to same. The Purchase Order and the PO Terms and Conditions form the Purchase Order Contract (hereinafter referred to as "the Purchase Order Contract").
- 1.1.5 Subject to clause 1.1.6, any of the Economic Operator's pre-printed terms and conditions produced, signed and/or stamped by either party (or any other terms and conditions wheresoever found which the Economic Operator may wish to rely on) are hereby disallowed.
- 1.1.6 In circumstances where additional terms and conditions are contained within the Purchase Order and/or in the sRFT, such additional terms and conditions shall take precedence over the PO Terms and Conditions where same are in conflict.

1.2 THE CHARGES (PRICES)

- 1.2.1 The Economic Operator shall sell and the Contracting Authority shall purchase, in accordance with the PO Terms and Conditions, the Goods described in the Purchase Order (and/or in the sRFT where the Goods are more particularly described in same).
- 1.2.2 Subject to the PO Terms and Conditions, the Contracting Authority agrees to pay to the Economic Operator the charges (prices) specified in the Economic Operator's response to the sRFT (hereinafter referred to as "the Charges").

1.3 INTERPRETATION

- 1.3.1 Headings herein are included for ease of reference only and shall not affect the construction of PO Terms and Conditions.
- 1.3.2 Unless the context requires otherwise, words in the singular may include the plural and vice versa.
- 1.3.3 References to any statute, enactment, order, regulation or other legislative instrument shall be construed as a reference to the statute, enactment, order, regulation or legislative instrument as amended unless specifically indicated otherwise.
- 1.3.4 In the event that any ambiguity or question of intent or interpretation arises in relation to PO Terms and Conditions, same shall be construed as if drafted jointly by the Contracting Authority and the Economic Operator and no presumption or burden of proof shall arise favouring or disfavouring any party by virtue of the authorship of same.
- 1.3.5 Unless otherwise specified herein, a defined term used in the Purchase Order Contract shall have the same meaning as assigned to it in the sRFT.

1.4 SUPPLY OF THE GOODS

- 1.4.1 In consideration of the payment of the Charges by the Contracting Authority, the Economic Operator shall:
- supply the Goods in accordance with the Purchase Order Contract and the sRFT (where additional terms and conditions in relation to the Goods and/or their delivery are specified therein);
 - comply with any policies, guidelines and/or any project governance protocols and with all local security (including child protection and Garda vetting policy) and health and safety arrangements as notified to it by the Contracting Authority;
 - supply the Goods in accordance with good industry practice and comply with all applicable laws including, but not limited to, all obligations in the field of environmental, social and labour law that apply at the place where the Goods are provided, that have been established by EU and national law, collective agreements and by international, environmental, social and labour law listed in Schedule 7 of the European Union (Award of Public Authority Contracts) Regulations 2016 (Statutory Instrument 284 of 2016) (hereinafter referred to as the "Regulations"). Without prejudice to the generality of the foregoing, the Economic Operator shall be solely responsible for the employment, remuneration, taxes, immigration status and work permits of all personnel retained by it for the purposes of complying with the sRFT and Purchase Order Contract.

1.5 ECONOMIC OPERATOR'S STATUS AS PRIME CONTRACTING PARTY

- 1.5.1 The Economic Operator is deemed to be the prime contracting party under the Purchase Order Contract and assumes full responsibility for the discharge of all obligations under same. The Economic Operator, as prime contracting party, hereby assumes liability for any of its subcontractors and agents (where applicable) engaged in the performance of the Purchase Order Contract. The Economic Operator shall notify the Contracting Authority as soon as possible of any changes to the name, contact details and legal representatives of its subcontractors.

1.6 EXCLUSION GROUNDS AND SUBCONTRACTORS

- 1.6.1 Where the Contracting Authority becomes aware that any of the exclusion grounds contained in Regulation 57 of the Regulations apply to any of the Economic Operator's subcontractors, the Contracting Authority can (without prejudice to such other legal rights and remedies generally available to the Contracting Authority) direct the Economic Operator to immediately replace such subcontractor.
- 1.6.2 The Economic Operator shall include in every subcontract a right for the Economic Operator to terminate the subcontract where any of the exclusion grounds apply to the subcontractor and a requirement that the subcontractor, in turn, includes a provision having the same effect in any subcontract which it awards.

1.7 LEGAL RELATIONSHIP BETWEEN THE PARTIES

- 1.7.1 In supplying the Goods, the Economic Operator shall be an independent operator and nothing in the within operates to create an employer/employee relationship, a joint venture or partnership and/or fiduciary or other relationship between the parties. The officers, employees or agents of the Economic Operator are not, and shall not hold themselves out to be, (and shall not be held out by the Economic Operator as being) servants or agents of the Contracting Authority for any purpose whatsoever.

1.8 SHARING OF INFORMATION BY THE CONTRACTING AUTHORITY

- 1.8.1 The Economic Operator agrees that any information relating to the supply of Goods by the Economic Operator to the Contracting Authority may be passed by the Contracting Authority to the LGOPC, the Office of Government Procurement and/or such other relevant statutory body for the purpose of analysis and reporting of spend data including the preparation and publishing of reports.

1.9 THE GOODS

- 1.9.1 The Economic Operator shall deliver the Goods at the time(s), to the location(s) and on the date(s) specified in the Purchase Order and/or in the sRFT (where additional terms and conditions in relation to the Goods are contained therein), unless otherwise expressly directed by the Contracting Authority.
- 1.9.2 Unless otherwise expressly agreed between the parties:
- where the Goods are delivered by the Economic Operator, the point of delivery shall be when the Goods are removed from the transporting vehicle at the Contracting Authority's premises or such other location as notified by the Contracting Authority. Where the Goods are collected by the Contracting Authority, the point of delivery shall be when the Goods are loaded on the Contracting Authority's vehicle;
 - delivery shall include the unloading, stacking or installation of the Goods by the Economic Operator's staff, agents or carriers at such place as the Contracting Authority shall reasonably direct;
 - the Goods shall be packed and marked in a proper manner and in accordance with the Contracting Authority's instructions and any statutory requirements and any requirements of the carriers and manufacturers. The name of the contents shall be clearly marked on each container and all containers of hazardous content (and all documents relating thereto) shall bear prominent and adequate warnings.
- 1.9.3 Unless expressly agreed by the Contracting Authority, the Contracting Authority shall not be obliged to accept delivery of Goods by instalments. If, however, the Contracting Authority does specify or agree to delivery of Goods by instalments, delivery of any instalment later than the date specified or agreed for its delivery shall, without prejudice to such other legal rights and remedies generally available to the Contracting Authority, entitle the Contracting Authority to terminate the whole of any unfulfilled part of the Purchase Order Contract without further liability to the Economic Operator.
- 1.9.4 The Contracting Authority shall be under no obligation to accept or pay for any Goods: (a) delivered in excess of the quantity ordered; or (b) supplied earlier or later than the date expressly specified by the Contracting Authority and time shall be of the essence in this respect.

1.10 INSPECTION OF THE GOODS

- 1.10.1 The Contracting Authority may inspect (to include a call for advance samples) or test the Goods, either completed or in the process of manufacture, during normal business hours on reasonable notice at the Economic Operator's premises (including the premises of any subcontractor or agent) and the Economic Operator shall provide all reasonable assistance in relation to any such inspection or test free of charge.
- 1.10.2 A failure to make a complaint at the time of an inspection or test and/or the approval given during or after such inspection or test shall not constitute a waiver by the Contracting Authority of any rights or remedies in respect of the Goods and the Contracting Authority reserves the right to reject the Goods in accordance with clause 1.10.3 herein.
- 1.10.3 The Contracting Authority may, by written notice to the Economic Operator, reject Goods which fail to conform to the approved sample or fail to meet the Contracting Authority's specification and applicable standards. If the Contracting Authority rejects any Goods pursuant to this clause, the Contracting Authority may (without prejudice to such other legal rights and remedies generally available to the Contracting Authority) either:
- treat the Purchase Order Contract as discharged by the Economic Operator's breach and obtain a refund (if payment for the Goods has already been made) from the Economic Operator in respect of the Goods concerned together with payment of any additional expenditure reasonably incurred by the Contracting Authority in obtaining other Goods in replacement provided that the Contracting Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Goods; or
 - have such goods promptly, and in any event within 5 calendar days, either repaired or replaced by the Economic Operator with Goods which conform in all respects with the approved sample

or with the Contracting Authority's specification and applicable standards and due delivery shall not be deemed to have taken place until such repair or replacement has occurred.

- 1.10.4 Rejected Goods shall be removed by the Economic Operator within 5 calendar days (hereinafter referred to as the "Prescribed Time") from the date of the notification by the Contracting Authority to the Economic Operator of their rejection. In the event of the failure by the Economic Operator to remove the Goods within the Prescribed Time, the Contracting Authority may dispose of such Goods as it sees fit and pending such removal, the Goods will remain with the Contracting Authority at the risk of the Economic Operator. Any costs incurred by the Contracting Authority relating to such disposal shall be borne by the Economic Operator.
- 1.10.5 The Contracting Authority will be deemed to have accepted the Goods if it expressly states the same in writing or fails to reject the Goods in accordance with clause 1.10.3 herein.
- 1.10.6 The issue by the Contracting Authority of a receipt note for the Goods shall not constitute an acknowledgement of the condition, quantity or nature of those Goods or the Contracting Authority's acceptance of them.

1.11 RISK AND TITLE

- 1.11.1 All Goods shall be delivered by the Economic Operator free from encumbrances or retention of title clauses or similar provisions. The Charges are based on the Goods being delivered carriage paid to the location specified by the Contracting Authority. Pending delivery, the Goods remain at the risk of the Economic Operator.
- 1.11.2 Title shall pass to the Contracting Authority on payment of the Charges.

1.12 PAYMENT AND INVOICING

- 1.12.1 Invoicing arrangements for Goods ordered by the Contracting Authority through the Purchase Order shall be on such terms as directed by the Contracting Authority.
- 1.12.2 Discharge of the Charges is subject to:
- compliance by the Economic Operator with the provisions of the Purchase Order Contract and the sRFT (where additional terms and conditions in relation to the Goods are specified therein);
 - the furnishing by the Economic Operator of a valid invoice and such supporting documentation as may be reasonably required by the Contracting Authority;
 - where applicable, the Contracting Authority being in possession of the Economic Operator's current tax clearance certificate;
 - where applicable, the retention by the Contracting Authority of any Professional Services Withholding Tax payable to the Economic Operator in accordance with section 523 of the Taxes Consolidation Act 1997.
- 1.12.3 The European Communities (Late Payment in Commercial Transactions) Regulations, 2012 shall apply to all payments. Incorrect invoices will be returned for correction with consequential effects on the due date of payment.
- 1.12.4 The Charges shall include the cost of reasonable instruction by the Economic Operator to the Contracting Authority's personnel in the use and maintenance of the Goods.
- 1.12.5 Any and all taxes applicable to the supply of the Goods from the Economic Operator shall be the sole responsibility of the Economic Operator.

1.13 WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS OF THE ECONOMIC OPERATOR

- 1.13.1 The Economic Operator acknowledges, warrants, represents and undertakes that:
- it has the authority and right under law to enter into, and to carry out its obligations under the Purchase Order Contract;

- it is fulfilling the Purchase Order Contract with a full understanding of: (a) its obligations with regards to taxation, employment, social and environmental protection; and (b) its material terms and risks, and is capable of fulfilling those obligations and assuming those risks;
- it has acquainted itself, and shall comply, with all legal requirements or such other recommendations, guidance or practices as may affect the supply of the Goods (to include manufacture and distribution process) as they apply to the Economic Operator;
- it has taken all and any action necessary to ensure that it has the capacity to fulfil the Purchase Order Contract;
- it has inspected the Contracting Authority's premises, lands and facilities before submitting its response to the sRFT and has made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under the Purchase Order Contract;
- the status of the Economic Operator, as declared in the ESPD, which confirms that none of the excluding circumstances listed in Regulation 57 of the Regulations apply to the Economic Operator, remains unchanged.

1.13.2 The Economic Operator shall be responsible, and to take due precautions, for the safe custody of any Goods on its premises which are the property of the Economic Operator and shall insure same against any form of loss or damage.

1.13.3 The Economic Operator confirms and undertakes that the Goods supplied will, at the time of delivery, correspond to the description given by the Economic Operator in its response to the sRFT (to include any samples furnished thereunder) and that the manufacture, distribution and processes employed will comply in all material respects with the representations made in its response to the sRFT. None of the provisions of the Sale of Goods Acts 1893 and Sale of Goods and Supply of Services Act 1980 shall be excluded or limited under the Purchase Order Contract.

1.13.4 The Economic Operator undertakes to ensure that all necessary consents and/or licenses required for the fulfilling of the Purchase Order Contract are obtained and in place.

1.13.5 The Economic Operator hereby indemnifies the Contracting Authority and shall keep and hold the Contracting Authority harmless from any losses (whether direct, indirect or consequential), liability, damages, claims, costs or expenses which arise by reason of any breach of third party intellectual property rights in so far as any such rights are used for the purposes of fulfilling the Purchase Order Contract.

1.13.6 The Economic Operator undertakes to immediately notify the Contracting Authority of any material change to the status of the Economic Operator with regard to the warranties, acknowledgements, representations and undertakings made herein and to comply with all reasonable directions of the Contracting Authority with regard thereto which may include termination of the Purchase Order Contract.

1.14 INDEMNITY AND REMEDIES

1.14.1 The Economic Operator shall be liable for, and hereby indemnifies the Contracting Authority from, any losses, claims, demands, damages or expenses which the Contracting Authority may suffer due to and arising from, directly or indirectly, the negligence, acts or omissions, breach of contract, breach of duty, insolvency, recklessness, bad faith, wilful default or fraud of the Economic Operator (including its subcontractors and/or agents) in performing the Purchase Order Contract. The terms of this clause shall survive expiry, completion or termination, for whatever reason, of the Purchase Order Contract.

1.14.2 Except as otherwise expressly provided herein, all remedies available to either party for breach of the Purchase Order Contract are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

1.15 CONFIDENTIALITY

- 1.15.1 Both the Contracting Authority and Economic Operator agree to hold confidential all information, documentation and other material received, provided or obtained arising from the supply of the Goods by the Economic Operator and shall not disclose same to any third party except to:
- its professional advisers; or
 - as may be required by law; or
 - as may be necessary to give effect to the terms of the Purchase Order Contract or the sRFT; or
 - in the case of the Contracting Authority, by request of any person or body or authority whose request the Contracting Authority or persons associated with the Contracting Authority (including but not limited to the Legislature and/or the Executive and/or the Civil Service) considers it necessary or appropriate to so comply.
- 1.15.2 The Economic Operator shall comply with all reasonable directions of the Contracting Authority with respect to the use and application of any confidential information. The obligations in this clause 1.15 shall not apply to confidential information:
- in the receiving party's possession (with full right to disclose) before receiving it from the other party; or
 - which is or becomes public knowledge other than by breach of this clause 1.15; or
 - is independently developed by the disclosing party without access to or use of the confidential information; or
 - is lawfully received by the disclosing party from a third party (with full right to disclose).
- 1.15.3 The Contracting Authority may be subject to requests for information relating to the supply of the Goods by the Economic Operator under the Freedom of Information Act 2014 and/or the European Communities (Access to Information on the Environment) Regulations 2007 to 2014 (or such other similar legislation which may be enacted and apply from time to time) and the Economic Operator acknowledges that information the Economic Operator deems as confidential or commercially sensitive may be disclosed by the Contracting Authority in accordance with same. In circumstances where the Contracting Authority is subject to a request for information under the aforementioned legislation, the Contracting Authority shall consult with the Economic Operator prior to making a decision on any request received and the Economic Operator shall specifically identify any information that is not to be disclosed on grounds of confidentiality or commercial sensitivity and shall state the reasons for this sensitivity. However, the Contracting Authority accepts no liability whatsoever in respect of any information provided which is subsequently released (irrespective of notification) or in respect of any consequential damage suffered as a result of such obligations.
- 1.15.4 The terms of this clause shall survive expiry, completion or termination, for whatever reason, of the Purchase Order Contract.

1.16 FORCE MAJEURE

- 1.16.1 A 'Force Majeure Event' means an event or circumstance or combination of events or circumstances not within the reasonable control of the Affected Party which has the effect of delaying or preventing that party from complying with its obligations under the Purchase Order Contract including, but not limited to, acts of God, war, out-break of disease, insurrection, riot, civil disturbance, rebellion, acts of terrorism, embargoes, explosions, fires, floods, tempests, or failures of supply of electrical power, or public telecommunications equipment or lines, excluding industrial action of whatever nature or cause (strikes, lockouts and similar) occurring at the Economic Operator's (or its subcontractors' or agents' as the case may be) or Contracting Authority's places of business.
- 1.16.2 In the event of any failure, interruption or delay in the performance of either party's obligations resulting from any Force Majeure Event, that party ("the Affected Party") shall promptly notify the other party in writing specifying:

- the nature of the Force Majeure Event;
- the anticipated delay in the performance of its obligations;
- the action proposed to minimise the impact of the Force Majeure Event;

and the Affected Party shall not be liable or have any responsibility of any kind for any loss or damage thereby incurred or suffered by the other party, provided always that the Affected Party shall use all reasonable efforts to minimise the effects of the Force Majeure Event and shall resume the performance of its obligations as soon as reasonably possible after the removal of the cause.

- 1.16.3 If the Force Majeure Event continues for 7 working days, either party may terminate the Purchase Order Contract by notice in writing.
- 1.16.4 In circumstances where the Economic Operator is the Affected Party, the Contracting Authority shall be relieved from any obligation to make payments under the Purchase Order Contract save to the extent that payments are properly due and payable for obligations actually fulfilled by the Economic Operator in accordance with the Purchase Order Contract.

1.17 TERMINATION

- 1.17.1 The Contracting Authority shall have the right (in addition to such other legal rights and remedies generally available to it) to terminate the Purchase Order Contract immediately and without liability for compensation or damages to the Economic Operator on the happening of any of the following:
- if the Economic Operator commits any serious breach, or a series of breaches, of any provision of the Purchase Order Contract (or any other provision expressly notified to the Economic Operator by the Contracting Authority) and fails to remedy such breach(es) (if the breach(es) are deemed capable of remedy by the Contracting Authority) within 5 (five) working days after receipt of a request in writing from the Contracting Authority;
 - if the Economic Operator becomes insolvent or bankrupt, enters into examinership, is wound up, commences winding up, has a receiving order made against it, makes any arrangement with its creditors generally or takes or suffers any similar action as a result of debt, or an event having an equivalent effect;
 - if any statement made by the Economic Operator in connection with the procedure by which the Economic Operator was appointed to the Framework Agreement or was awarded the Purchase Order Contract was: (a) untrue when made or subsequently ceases to be true; or (b) was materially incorrect, inaccurate or misleading (whether intentionally so or not);
 - if: (a) any of the exclusion grounds in Regulation 57 of the Regulations apply to the Economic Operator or its subcontractors; or (b) the category of prohibited economic operators identified in Regulation (EU) No. 833/2014 (as amended by EU Regulation 2022/576 or any subsequent amendments to same) apply to the Economic Operator or its subcontractors.
- 1.17.2 Termination of the Purchase Order Contract shall not affect any antecedent and accrued rights, obligations or liabilities of either party, nor shall it affect any provision herein which is expressly or by implication intended to come into or continue in force on or after such termination.

1.18 CONTRACT MANAGEMENT

- 1.18.1 The Economic Operator agrees to:
- liaise regularly with the Contracting Authority and keep it fully informed of any matter which might affect the performance of its obligations under the Purchase Order Contract;
 - maintain such records as directed by the Contracting Authority from time to time and comply with reporting arrangements, milestones, compliance schedules and operational protocols directed by the Contracting Authority from time to time; and
 - comply with all reasonable directions of the Contracting Authority including, but not limited to, meeting formally with the Contracting Authority to report on progress.
- 1.18.2 The Contracting Authority, or its authorised representative, may inspect, at its own cost, the Economic Operator's premises, lands and facilities (or such part thereof relating to the Purchase Order Contract),

with due access to relevant personnel and records, upon reasonable notice in writing to ensure compliance with the terms of the Purchase Order Contract. The Economic Operator shall comply with all reasonable directions of the Contracting Authority thereby arising.

- 1.18.3 The Economic Operator shall be required to hold, for the time required to fulfil all obligations arising under the Purchase Order Contract, insurances of the nature and amount specified in the sRFT and shall immediately advise the Contracting Authority of any material change to its insured status. Upon request, the Economic Operator shall produce: (a) proof of current premiums paid; and (b) valid certificates of insurance.

1.19 GOVERNING LAW

- 1.19.1 The Purchase Order Contract shall in all aspects be governed by and construed in accordance with the laws of Ireland and the courts of Ireland have exclusive jurisdiction to hear and determine any disputes arising out of or in connection with same.

1.20 ASSIGNMENT AND SUBCONTRACT

- 1.20.1 Subject to the parties' rights and obligations at law, any assignment (or other transfer) or subcontract to a third party of a parties rights or obligations under the Purchase Order Contract requires the prior written consent of the other party (such consent will not be unreasonably withheld). Prior to any such assignment or subcontract, the assignee or subcontractor will be obliged to sign an undertaking to comply with all obligations under the Purchase Order Contract.
- 1.20.2 For the purpose of Regulation (EU) No. 833/2014 (as amended by EU Regulation 2022/576 or any subsequent amendments), the Contracting Authority may require information from the Economic Operator in relation to the status of a proposed subcontractor or assignee including, but not limited to, copies of identity documents or extracts from the commercial registrar (or other competent authority) of the country in which the entity is established.

1.21 SEVERABILITY

- 1.21.1 If any term or provision of the Purchase Order Contract is found to be illegal or unenforceable for any reason, then such term or provision shall be deemed severed and all other terms and provisions shall remain in full force and effect.

1.22 WAIVER

- 1.22.1 No failure or delay by either party to exercise any right, power or remedy granted herein shall operate as a waiver of it nor shall any partial exercise preclude further exercise of same or some other right, power or remedy.

1.23 CONFLICTS, REGISTRABLE INTERESTS AND CORRUPT GIFTS

- 1.23.1 The Economic Operator confirms that it has carried out a conflicts of interest check and is satisfied that neither it nor any subcontractor nor agent as the case may be, have any conflicts of interest in relation to the Goods and its obligations under the Purchase Order Contract.
- 1.23.2 The Economic Operator hereby undertakes to: (a) notify the Contracting Authority immediately should any conflict, or potential conflict of interest, come to its attention during currency of the Purchase Order Contract; and (b) comply with the Contracting Authority's directions in respect thereof. In the event of any such notification the Contracting Authority shall have the right (without prejudice to such other legal rights and remedies generally available to the Contracting Authority) to terminate the Purchase Order Contract immediately without liability for compensation or damages to the Economic Operator where, in the opinion of the Contracting Authority, the conflict, or potential conflict of interest, cannot be removed by other means.
- 1.23.3 Any registrable interest involving the Economic Operator (and any of its subcontractors or agents as the case may be) and: (a) the Contracting Authority; or (b) the Ceann Comhairle (Speaker); or (c) any member of the Government or the Oireachtas (or their relatives) must be fully disclosed by the Economic Operator to the Contracting Authority immediately upon such information becoming known to the Economic Operator and the Economic Operator shall comply with the Contracting Authority's directions

in respect thereof. In the event of any such disclosure, the Contracting Authority shall have the right (without prejudice to such other legal rights and remedies generally available to the Contracting Authority) to terminate the Purchase Order Contract immediately without liability for compensation or damages to the Economic Operator. The terms "registrable interest" and "relative" shall be interpreted as per section 2 of the Ethics in Public Office Act 1995 (or such other similar legislation which may be enacted and apply from time time).

- 1.23.4 The Economic Operator shall not offer or agree to give any public servant or civil servant any gift or consideration or commission of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the Purchase Order Contract. Any breach of this clause or the commission of any offence by the Economic Operator (and any of its subcontractors or agents as the case may be) under the Prevention of Corruption Acts 1889 to 2005 (or such other similar legislation which may be enacted and apply from time time) shall entitle the Contracting Authority (without prejudice to such other legal rights and remedies generally available to the Contracting Authority) to terminate the Purchase Order Contract immediately and without liability for compensation or damages to the Economic Operator and to recover the amount of any loss resulting from such cancellation including, but not limited to, recovery from the Economic Operator of the amount or value of any such gift, consideration or commission.

1.24 ACCESS TO PREMISES

- 1.24.1 Any of the Contracting Authority's premises made available from time to time to the Economic Operator in connection with the fulfilment of the Purchase Order Contract are made available on a non-exclusive licence basis and shall be used by the Economic Operator solely for the purpose of performing its obligations under the Purchase Order Contract with the Economic Operator immediately vacating on completion of same.

1.25 LEGISLATION

- 1.25.1 In the performance of the Purchase Order Contract, the Economic Operator shall comply, where applicable, with all relevant legislation, technical standards, guidelines and codes of practice that apply 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;
 - 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;
 - The Road Traffic Regulations;
 - The Consumer Rights Act 2022.
- 1.25.2 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.

1.26 TECHNICAL STANDARDS, GUIDELINES & CODES OF PRACTICE

- 1.26.1 In the performance of the Purchase Order Contract, the Goods supplied by the Economic Operator shall comply, where applicable, with all relevant legislation, technical standards, guidelines and codes of practice that apply to the Goods including, but not limited to, the following (as may be amended, updated, or re-published by the relevant body from time to time):
- The "Traffic Signs Manual" published by the Department of Transport;
 - The Transport Infrastructure Ireland ("TII") Specification for Roadworks Series 1200 (Traffic Signs & Road Markings - CC-SPW-01200);
 - TS4 - "Guidelines, Certification Scheme and Specification for the Construction of Traffic Signs" published by the Department of Transport;
 - The "Guidance for the Control and Management of Traffic at Road Works", published by the Department of Transport;
 - European standards where applicable e.g. for fixed, vertical road traffic signs;
 - 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;
- 1.26.2 The Economic Operator will be responsible for the quality of the Goods and their compliance with the technical requirements set out in the Purchase Order Contract. 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.
- 1.26.3 Where alternate products/system accreditations are required by the Contracting Authority, the Economic Operator shall provide written confirmation:
- of the name of the proposed product to be used;
 - that the product/system complies with BBA HAPAS⁹ or equivalent product and accreditation scheme.
- 1.26.4 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 Contracting Authority.
- 1.26.5 The Economic Operator shall adhere to and ensure compliance with all relevant product manufacturer's instructions.

1.27 LOT 1 - SPECIFICATION FOR PERMANENT PRESCRIBED ROAD SIGNS & ANCILLARIES

NOTE - This Section applies only if the Economic Operator has been appointed to Lot 1.

1.27.1 Signs / Posts / Brackets

1. In general, road signs and signposts must conform in all respects with:
 - the current valid 'Declaration of Performance' (DoP) for the manufacturer's product, and
 - the current valid 'Certificate of Constancy of Performance' referred to in the 'Declaration of Performance' (DoP) from the notified body,
 - the TII Specification for Roadworks Series 1200 (Traffic Signs & Road Markings - CC-SPW-01200),

⁹ British Board of Agrément (The Highway Authorities Product Approval Scheme)

- TS4 (Guidelines, Certification Scheme and Specification for the Construction of Traffic Signs),
 - the Traffic Signs Manual and/or the Road Traffic Regulations.
2. The numbering system used to identify the signs is in accordance with the current edition of the Traffic Signs Manual.

1.28 LOT 2 - SPECIFICATION FOR TEMPORARY ROADWORKS SIGNS & ANCILLARIES

NOTE - This Section applies only if the Economic Operator has been appointed to Lot 2.

1.28.1 Signs / Posts / Brackets: -

1. In general, road signs and signposts must conform in all respects with:
 - the TII Specification for Roadworks Series 1200 (Traffic Signs & Road Markings - CC-SPW-01200),
 - TS4 (Guidelines, Certification Scheme and Specification for the Construction of Traffic Signs),
 - the Traffic Signs Manual and/or the Road Traffic Regulations.
2. The numbering system used to identify the signs is in accordance with the current edition of the Traffic Signs Manual.
3. In cases where the signs are to be mounted in frames/stands – the Lot 2 - signs are to include for the frames/stands being adequately sized to allow for a minimum clearance of 350mm from ground to bottom of plate (unless specified otherwise at sRFT stage).

1.28.2 Cones, barriers, delineators, bollards etc.

1. In general, cones, barriers and other ancillaries must, where relevant, conform in all respects with the TII Specification for Road Works Series 1200, the Traffic Signs Manual; Road Traffic Regulations and the Guidance for the Control and Management of Traffic at Road Works 2nd Edition (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 Purchase Order Contract):
2. Unless specified otherwise at sRFT stage, **Lot 2** - flexible bollards must include for the following:
 - a height of 900mm,
 - either a bolted base or epoxy resin base, and
 - the provision of all materials necessary for mounting.

1.29 HEALTH AND SAFETY

- 1.29.1 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.
- 1.29.2 Economic Operator's personnel entering the Contracting Authority's sites must have a SOLAS Safe Pass Card (or approved equivalent) available upon request.
- 1.29.3 Economic Operator's personnel entering construction sites must comply with the directions given by the Contractor, the Project Supervisor for the Construction Stage (PSCS) or any authorised representative of the Client.
- 1.29.4 Where applicable, Economic Operator's personnel operating vehicles/plant must have a current full driver's license pertaining to the item(s) of vehicle/plant they are operating available upon request.
- 1.29.5 Where applicable, plant operators under Schedule 5 of Safety, Health and Welfare at Work (Construction) Regulations 2013 must have a valid Construction Skills Certification Scheme (CSCS) Card for the item of plant being operated available upon request.

1.30 INSURANCE

- 1.30.1 In the performance of the Purchase Order Contract, the Economic Operator shall: (a) hold insurances of the nature and amount specified in the sRFT; (b) upon request, provide proof of current premiums paid and valid certificates of insurance for inspection; and (c) immediately advise the Contracting Authority of any material change to its insured status.