

DATED

2016

**LOCAL GOVERNMENT
OPERATIONAL PROCUREMENT
CENTRE**

and

[

]

**STANDARD TERMS AND
CONDITIONS**

for

**ROAD MARKING SUPPLIES & SERVICES
(Lot 2)**

**FOR
LOCAL AUTHORITIES**

WHEREAS:

- A. The LGOPC is a central purchasing body within the meaning of the European Union (Award of Public Authority Contracts) Regulations 2016. The LGOPC, acting on behalf of the contracting authorities listed in Schedule 3 (**DPS Purchasers**) has established a Dynamic Purchasing System for Road Marking Supplies & Services (**the DPS**).
- B. The Contractor is engaged in the business of supplying Road Marking Supplies & Services. The Contractor submitted an Application for Admission (as defined below) in response to the LGOPC's Request for Applications for Admission to the DPS which was advertised on the Irish Government website portal for public tenders, www.etenders.gov.ie and in the Official Journal of the European Union Following an assessment and evaluation of the Application, the LGOPC admitted the Contractor to the Dynamic Purchasing System for Road Marking Supplies and Services.
- C. The following terms and conditions are the terms and conditions that will apply to all contracts awarded pursuant to the DPS. These terms and conditions will be wholly incorporated into any contract awarded under the DPS, unless otherwise amended by a DPS Purchaser in a Request for Tender.

NOW IT IS HEREBY AGREED as follows:-

1) Definitions and Interpretation

- 1.1 In these terms and conditions the following terms shall have the following meanings unless the context otherwise provides:

"Commencement Date" means the date upon which the contract is formally executed by the Contractor with a DPS Purchaser;

"Contractors" shall have the same meaning as 'Service Provider' and means those Contractors (including the Contractor) who have been appointed to the DPS;

"Defects" means non-compliance of any service with these terms and conditions including:

- (a) a failed quality test
- (b) Services that fail to comply with the Request for Tender, the Specification or any applicable law or regulation;

"Delivery Address" means the address stated as such in the Request for Tender documents;

"Delivery Date" means the date or dates stated by the DPS Purchaser in the Request for Tender Contract as the date or dates upon which the Services are to be delivered, such date or dates being consistent with time-scales for delivery previously agreed between the parties;

"Terms and Conditions" mean

- i) these terms and conditions and attached Schedules
- ii) the Letter of Acceptance to be issued by the DPS Purchaser and any post-tender clarifications listed in it or attached
- iii) the form of Contract identified in these terms and conditions as attached at Schedule 4
- iv) Parent Company Guarantee (if applicable)

in the event of any ambiguity or discrepancy between these terms and conditions and the Schedules, then these terms and conditions shall prevail;

in the event of any ambiguity or discrepancy between a Request for Tender and these terms and conditions, then these terms and conditions shall prevail but only to the extent of that inconsistency;

in all other respects, in the event of any inconsistency or conflict between any of the documents identified at (i) to (iv) above, precedence shall be given to the above documents in descending order.

Each of the documents forming part of these terms and conditions is an essential part of these terms and conditions and a requirement occurring in one is as binding as though occurring in all. Subject to the foregoing paragraphs, these documents shall be construed as mutually explanatory of one another.

"Application for Admission" means the Contractor's DPS application for admission submitted via www.Supplygov.ie;

"DPS Purchaser(s)" means such local authorities (within the meaning of Section 2(1) of the Local Government Act, 2001-2014) listed in **Schedule 3** as may wish from time to time to contract for the completion of Road Marking Supplies & Services from the DPS Contractors;

"Establishment Date" means the date upon which the DPS for Road Marking Supplies & Services is formally established;

"Price" means the sum to be paid by the DPS Purchaser to the Contractor in consideration of the Services provided under any DPS Contract under these terms and conditions, in accordance with Clause 8;

"Proposal" means the proposal submitted by the Contractor to the DPS Purchaser in response to a Request for Tender (and the term "DPS Contractor's Proposal" shall be construed accordingly);

"Request for Tender" means a competition between the DPS Contractors conducted in accordance with Clause 6.

"RFT Contract" means the agreement to be entered into by the DPS Purchaser and the Contractor under and pursuant to which the Contractor will provide the Supplies & Services in accordance with these terms and conditions (unless amended by the DPS Purchaser) and any additional terms and conditions contained in the Request for Tender or within the RFT Contract.

"Specification" means the General Specification relating to the required Road Marking Supplies & Services over the period of the DPS (as set out in Section 3), attached as **Schedule 1** hereto;

"Services" means the Road Marking Supplies & Services (including any works or ancillary services described on the order) meeting the Specification referred to in **Schedule 1** and any subsequent amendments agreed by the DPS Purchaser in writing, and supplied in accordance with these terms and conditions;

"Staff" means all persons (including, without limitation, employees, agents and independent contractors) used or engaged by the Contractor in the provision of Services;

"Service Provider" shall have the same meaning as 'Contractors' and means those Service Providers (including the Service Provider) who have been appointed to the DPS;

"The LGOPC" means the Local Government Operational Procurement Centre (the LGOPC) acting as a Central Purchasing Body (CPB) under the auspices of Kerry County Council;

"VAT" means Value Added Tax.

1.2 In these terms and conditions, unless where otherwise specified:

1.2.1 words in the singular include the plural and vice versa;

1.2.2 words importing individuals shall also include reference to incorporated and unincorporated associations and vice versa;

1.2.3 words in any gender shall include all genders;

1.2.4 headings and titles are inserted for convenience only and shall not affect the construction of these terms and conditions;

1.2.5 references to a day mean a calendar day;

1.2.6 references to a working day mean a day that is not a Saturday, Sunday, a public holiday established under the Organisation of Working Time Act 1997 or Good Friday;

1.2.7 any Irish legal or accounting term for any action, remedy, method of judicial proceeding, insolvency proceeding, event of incapacity, legal or accounting document, legal or accounting status, court, governmental or administrative authority or agency, accounting body, official or any legal or accounting concept practice or principle or thing shall in respect of any jurisdiction other than Ireland be deemed to include what most approximates in that jurisdiction to the Irish legal or accounting term concerned;

1.2.8 references to any statute or statutory provision shall be construed as references to the same as it may have been or may from time to time be amended, modified or re-enacted.

1.3 Certain Rules of Construction disappplied:

1.3.1 These terms and conditions shall be construed without regard to the rule of construction known as "ejusdem generis".

1.3.2 If any ambiguity or question of intent or interpretation arises, these terms and conditions shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favouring or disfavouring any party by virtue of the authorship of any of the provisions of these terms and conditions.

2) Entire Agreement

2.1 These terms and conditions together with the RFT Contract contain the entire agreement between the parties and contain all the terms that the parties have agreed with respect to its subject matter and supersedes all previous drafts, agreements, representations, arrangements and understandings between the parties.

2.2 Neither party has relied on any other written or oral agreement, representation, arrangement or understanding.

- 2.3 The Contractor acknowledges that it has not been induced to enter into these terms and conditions by a statement or promise that these terms and conditions does not contain. Neither the LGOPC nor any DPS Purchaser is liable in equity, contract or tort or in any other way for a representation that is not set out in these terms and conditions. Nothing in Clause 2 shall have the effect of limiting or restricting any liability of a party arising as a result of fraud.
- 2.4 Each obligation, warranty or representation of the Contractor under these terms and conditions is undertaken or made (as the case may be) in favour of the LGOPC for its own benefit and for the benefit of each DPS Purchaser.

3) Duration

- 3.1 These terms and conditions shall be incorporated into any RFT Contract awarded by a DPS Purchaser and shall continue in full force and effect up until the date corresponding to a period of 24 months from the Establishment Date plus any additional period under an RFT Contract awarded under these terms and conditions (the "**Contract Period**"), unless it is otherwise terminated in accordance with the provisions of these terms and conditions. For the avoidance of any doubt, the term of a Contract awarded under these terms and conditions may exceed the term of the DPS.

4) Scope

- 4.1 These terms and conditions govern the relationship between the LGPOC, the DPS Purchaser and the Contractor in respect of the provision of Services by the Contractor to the DPS Purchasers.

In consideration of the performance by the Contractor of its obligations under these terms and conditions and for other good and valuable consideration (receipt of which is acknowledged), the Contractor is appointed on a non-exclusive basis to provide Services to DPS Purchasers, if instructed to do so from time to time pursuant to Clause 6, and the Contractor accepts such appointment in each case upon the terms and subject to the conditions of these terms and conditions.

- 4.2 The parties acknowledge and agree that the DPS Purchasers have the right to order Services pursuant to these terms and conditions.
- 4.3 The appointment of the Contractor does not constitute a commitment or guarantee by any of the DPS Purchasers to procure any Road Marking Supplies & Services or any other services from the Contractor. Services shall only be procured from the Contractor in accordance with Clause 6.

The DPS Purchaser may also procure services in other ways (including from Contractors who are not party to these terms and conditions), and neither the LGOPC nor any DPS Purchaser guarantees that any Services will be procured under these terms and conditions.

- 4.4 No undertakings or any form of statement, promise, representation or obligation shall be deemed to have been made by the LGOPC and/or any DPS Purchaser in respect of the total quantities or values of the Services to be ordered by them pursuant to these terms and conditions and the Contractor acknowledges and agrees that it has not entered into these terms and conditions on the basis of any such undertaking, statement, promise or representation.

5) Road Marking Supplies & Services – Division into Lots

- 5.1 These terms and conditions pertain to the completion of Road Marking Supplies & Services Lot 2.

6) Award of Contracts

- 6.1 The DPS Purchaser shall issue electronically any requests for tender and award Contracts through www.supplygov.ie.
- 6.2 The DPS Purchaser shall issue the invitation to all Contractors admitted to DPS who have registered for the geographic area of that DPS Purchaser.
- 6.3 Contractors may only submit one tender in response to a Request for Tenders. Contractors may choose at their discretion not to submit a tender.
- 6.4 Contractors shall comply with any procedures, processes, time limits, instructions or other requirements as issued by the relevant DPS Purchaser in relation to the tender and shall bear any and all costs associated therewith. Contractors shall be required to meet the requirements as published for each Contract and to complete or submit all other information as requested prior to the award of any contract.
- 6.5 Unless otherwise agreed, Contractors will be given a minimum of 5 days to submit a tender from the date on which the Request for Tender is sent.
- 6.6 Tenders submitted in response to a request for tenders will be evaluated on the basis of the Contract Evaluation Criteria as defined by the Purchaser, in accordance with the provisions set out in **Schedule 2**, which may be formulated more precisely in the Request for Tender.
- 6.7 Prior to evaluating any Tender, the DPS Contractor must satisfy the minimum requirements (Contract Evaluation Criteria) set out in **Schedule 2**, which may be formulated more precisely in the Request for Tender.
- 6.8 Compliance with these minimum requirements shall be on a Pass/Fail basis and any DPS Contractor that fails to achieve a Pass rating may be excluded from further consideration.
- 6.9 Contract Award shall be completed in accordance with the criteria and provisions set out in **Schedule 2**.
- 6.10 The specifics of each individual Contract awarded under this Clause 6 shall be recorded in the Contract between the DPS Purchaser and the successful DPS Contractor(s). Each Contract shall constitute a separate contract for Services and default by a DPS Purchaser in relation to any one Contract shall not entitle the Contractor to treat such as a breach of these terms and conditions and/or terminate these terms and conditions.
- 6.11 Each Contract shall contain a precise description of the Services to be provided; output; deliverables; Price; timing or schedule for provision of the Services; and such other terms and conditions as the Contractor and the relevant DPS Purchaser may agree in respect of the Services.
- 6.12 Each DPS Purchaser shall be responsible for carrying out the Request For Tender competition in accordance with this Clause 6 and the LGOPC shall not have nor accept any responsibility or liability whatsoever or howsoever arising from the conduct or outcome of such a competition.
- 6.13 By signing and returning or otherwise acknowledging a Contract, the Contractor acknowledges and agrees that it shall have entered into a legally binding contract with the relevant DPS Purchaser to provide the Services specified in the relevant Contract to that DPS Purchaser

incorporating terms and conditions set out in these terms and conditions. In any circumstance where the Contractor does not formally accept a Contract, dispatch or delivery of Services by the Contractor to a DPS Purchaser shall be deemed conclusive evidence of the acceptance of a Contract, on the terms and conditions set out therein and in these terms and conditions.

7) The Contractor's Obligations

- 7.1 The Contractor shall provide the Road Marking Supplies & Services in compliance with the outlined Specification (**Schedule 1**) to the DPS Purchasers, and shall ensure that its Staff shall complete the Road Marking Supplies & Services to the DPS Purchasers:
- 7.1.1 in accordance with these terms and conditions, the Contract, and the Request for Tender where relevant;
 - 7.1.2 with skill and expertise and in a first class, professional, diligent, expeditious, conscientious and timely manner;
 - 7.1.3 in compliance with all instructions of the DPS Purchasers in relation to the Services; and
 - 7.1.4 in compliance with all requirements and/or obligations of any law, statute, statutory instrument, rule, order, regulation, directive and/or byelaws or other legislative measures.
- 7.2 The Contractor's obligations also include, but are not limited to:
- 7.2.1 open communication with the DPS Purchasers and with any third parties appropriately authorised by the DPS Purchasers so as to facilitate the efficient provision of Services;
 - 7.2.2 maintaining the minimum quality levels of Services as set out in the Specification appended at **Schedule 1**;
 - 7.2.3 permitting nominated officers of the DPS Purchasers at any time for the duration of the DPS to inspect the manufacturer or production facilities used by the Contractor for the purpose of carrying out quality tests to ensure compliance with the minimum quality levels as set out in the Specification;
 - 7.2.4 providing the LGOPC with details of the deliveries made to each DPS Purchaser, including information regarding the quantities of the deliveries, on request from time to time;
 - 7.2.5 notifying the LGOPC in writing of any notice or order by any court, governmental agency, local authority or regulatory agency which may have an impact on the Contractor's ability to provide the Services as soon as such notice or order is received by the Contractor; and
 - 7.2.6 notifying the LGOPC immediately in respect of any claims arising in connection with these terms and conditions within seven (7) days of such a claim arising.

8) Pricing

- 8.1 Pricing shall be in accordance with the provisions set out in **Schedules 1 & 2**.
- 8.2 Unless otherwise stated, the Price shall be:

- 8.2.1 exclusive of any applicable VAT (which shall be payable by the DPS Purchasers subject to receipt of a valid VAT invoice); and
- 8.2.2 payable in euro (€).
- 8.3 The Price shall be inclusive of any and all costs and/or expenses incurred by the Contractor in the provision of the Road Marking Supplies & Services.

9) Terms of Payment

- 9.1 Subject as hereinafter provided, the Contractor shall be entitled to invoice the relevant DPS Purchaser in accordance with each Contract awarded.
- 9.2 Each invoice shall be sent by the Contractor on completion of the relevant Road Marking Supplies & Services or at such other interval(s) as otherwise agreed in writing between the DPS Purchaser and the Contractor. Each invoice must:
 - 9.2.1 quote the DPS Purchaser Contract number;
 - 9.2.2 quote the Price; and
 - 9.2.3 contain a detailed narrative describing the Services provided.
- 9.3 VAT shall be itemised separately on each invoice. Where appropriate, invoices must show the Contractor's VAT Number.
- 9.4 The Price for the Services provided pursuant to each individual Contract shall be invoiced to the DPS Purchaser separately.
- 9.5 Unless otherwise agreed by the Contractor and the relevant DPS Purchaser and recorded in the Contract, each DPS Purchaser shall pay the Contractor for the provision of the Services within fifteen 15 days of receipt of the invoice, provided all monies specified on the Contractor's invoice are properly due and payable in accordance with these terms and conditions and the invoice meets the requirements set out in this Clause 9. The Prompt Payments of Accounts Act 1997 (as amended by the Late Payments in Commercial Transactions Regulations 2002) shall apply to the payment of invoices under these terms and conditions.
- 9.6 Each DPS Purchaser may retain or set off against the Price any amount owed to that DPS Purchaser by the Contractor on any account whatsoever.
- 9.7 In the event that a DPS Purchaser determines at any time that the quality of any Services provided by the Contractor are of a standard below that required by these terms and conditions, or that any Services in any other respect are not being rendered in accordance with these terms and conditions, that DPS Purchaser will notify the Contractor accordingly and will be entitled to withhold a proportionate amount (determined at the discretion of the DPS Purchaser) of any future payment due to the Contractor pursuant to these terms and conditions until such time as the matter in question has been remedied to the reasonable satisfaction of that DPS Purchaser. The rights of each DPS Purchaser pursuant to this Clause 9.7 shall be without prejudice to any other rights it may have under these terms and conditions or at law, including the right of termination as provided in Clause 19.

10) Time

- 10.1 The Contractor shall deliver the Supplies & Services on or before the Delivery Date specified in the Request for Tender or in the Contract, unless otherwise agreed to in writing by the relevant DPS Purchaser. The Supplies & Services to be completed, locations, and the time for completion shall be as specified by the DPS Purchaser in the Request for Tender.
- 10.2 If a Delivery Date cannot be met by the Contractor, the Contractor shall promptly notify the DPS Purchaser. Notwithstanding such notice and unless a substitute delivery date for the Services has been expressly agreed by the relevant DPS Purchaser in writing, the Contractor's failure to effect the delivery of the Services on the Delivery Date shall entitle the relevant DPS Purchaser, without prejudice to any other remedy it may have, to invoke the remedies set out in Clause 11.2 below.
- 10.3 When fulfilling a Contract, the Contractor shall provide a Services docket specific to each delivery with a minimum of the following information indicated on same:
 - 10.3.1 The Contractor's name and address;
 - 10.3.2 The Contractor's VAT registration number;
 - 10.3.3 The DPS Purchaser's order number and reference number from the www.SupplyGov.ie system;
 - 10.3.4 A description of the Services and locations where completed;
 - 10.3.5 A CE marking statement specific to the relevant product applied or an attached CE marking statement with an unambiguous reference to the Services docket and consignment and linked to the relevant declaration of performance as provided by the Contractor when requested. The CE marking statement must reference the location where the product was applied.

11) Acceptance

- 11.1 Notwithstanding completion of the Road Marking Supplies & Services, a DPS Purchaser shall not be deemed to have accepted any Services until:
 - 11.1.1 those Services have been inspected and checked to the satisfaction of the DPS Purchaser; and
 - 11.1.2 a Certificate of Completion or equivalent document has been signed by a duly authorised representative of the DPS Purchaser
- 11.2 Without prejudice to any other remedy that the LGOPC or a DPS Purchaser may have if the Services are not supplied in accordance with these terms and conditions, including the Specification, the Request for Tender or the Contract, where the Contractor has failed to deliver on time in accordance with Clause 10, or where a DPS Purchaser has discovered Defects or a discrepancy in the Road Marking Supplies & Services contracted, and has given the Contractor a reasonable opportunity to investigate and remedy the Defects or shortage, a DPS Purchaser may:
 - 11.2.1 require the Contractor, at the Contractor's expense, to fulfil its obligations in all respects within such period as is specified by that DPS Purchaser; or
 - 11.2.2 require the Contractor to provide that DPS Purchaser with a credit note for any part of the Price which has been paid in respect of such Services; or

- 11.2.3 purchase substitute Services elsewhere and recover from the Contractor any actual losses, cost and liabilities whatsoever incurred by that DPS Purchaser (including without limitation the costs of any replacement Services); or
- 11.2.4 terminate the relevant Contract in accordance with the provisions of Clause 19 and require repayment of any part of the agreed contract sum that has been paid in respect of the relevant Services and that the DPS Purchaser shall be entitled to recover from the Contractor actual losses, cost and liabilities howsoever incurred by it (including without limitation the costs of any replacement Services).

12) Risk and Title

- 12.1 Nothing in these terms and conditions shall be deemed to give the Contractor any right, title, licence, trade name, trademark, patent, packaging design, intellectual property right or other interest of a DPS Purchaser, unless otherwise agreed between the Contractor and the relevant DPS Purchaser.
- 12.2 Risk of damage or loss of the Services shall, unless otherwise agreed between the Contractor and a DPS Purchaser, remain with the Contractor until their delivery to, and acceptance by, a DPS Purchaser in accordance with the provisions of these terms and conditions and, in particular, Clause 11.1.

13) Staff

- 13.1 The Contractor shall employ sufficient Staff to provide Services who shall be properly trained, skilled and qualified. Failure by the Contractor to meet its obligations under this Clause 13.1 shall be considered a material breach of these terms and conditions for the purposes of Clause 19.3.1.
- 13.2 The Contractor shall, and shall ensure that its sub-contractors shall, ensure that the rates of pay and conditions of employment of each employee, including in relation to pension contributions of each employee, comply with all applicable law and that those rates of pay are no less favourable than those laid down by the National Minimum Wage Act, 2000. For the purposes of Clause 13.2, 'employee' means an individual employed by or otherwise working for the Contractor, or any of its sub-contractors, as applicable.

14) Warranties and Indemnities

- 14.1 The Contractor shall be responsible for and shall indemnify and keep indemnified the LGOPC and each DPS Purchaser, its agents, employees, officers, subsidiaries, associated companies, assigns and, where a DPS Purchaser is acting as an agent, that DPS Purchaser's principal, on demand and in full against any and all losses, costs, judgments, claims or liabilities in respect of:
 - 14.1.1 any death or personal injury to any person;
 - 14.1.2 any loss of or damage to any property (including property belonging to a DPS Purchaser or for which it is responsible);
 - 14.1.3 any breach of statutory duty; and
 - 14.1.4 any losses, actions, claims or demands by third parties against the LGOPC and/or a DPS Purchaser, and any costs, charges and expenses (including legal expenses) suffered or incurred by the LGOPC and/or a DPS Purchaser in respect of same,

in each case arising directly or indirectly out of, or in connection with any negligent act or omission, or breach of these terms and conditions committed by the Contractor or its employees, agents or sub-Contractors.

- 14.2 The LGOPC and each DPS Purchaser undertakes that the Contractor shall be given notice of any third party action or claim described in Clause 14.1 above that is made against the LGOPC and/or the relevant DPS Purchaser within seven (7) days and the Contractor shall, subject to the LGOPC and/or the relevant DPS Purchaser being indemnified and secured by the Contractor to its reasonable satisfaction against any costs, liabilities, losses or expenses it may suffer in so doing, have the right to defend any such claims, following consultation with the LGOPC and/or the DPS Purchaser who shall be kept fully informed at all times of all such claims or proceedings arising from such actions or claims, and make settlements thereof at its own discretion in order to settle or oppose any such claims.
- 14.3 The Contractor hereby warrants and undertakes to the LGOPC and each DPS Purchaser that:
- 14.3.1 it has the appropriate skills and technical capacity, legal right and full power and authority to perform its obligations under these terms and conditions;
- 14.3.2 all Services are and will be fit for the purpose for which they are intended; and
- 14.3.3 it shall not do anything to prejudice the name or reputation of the LGOPC or any DPS Purchaser, or the LGOPC or any DPS Purchaser's business interests.
- 14.4 The Contractor and each DPS Purchaser acknowledge and understand their respective duties of care in respect of the Safety, Health and Welfare at Work Act, 2005 and all regulations made thereunder, including but not limited to the Safety, Health and Welfare at Work (Construction) Regulations 2013.
- 14.5 Any approval, testing or acceptance by a DPS Purchaser in accordance with these terms and conditions shall not, in any way, limit the Contractor's liability and obligations under these terms and conditions.

15) Insurance

- 15.1 As and from the Commencement Date, the Contractor shall maintain in force during the Contract Period full and comprehensive insurance policies as set out in **Schedule 1 – General Specification**.

16) Tax Clearance

- 16.1 The Contractor shall, and shall ensure that its sub-Contractors shall, continue to hold, in good standing, current issues of all tax clearance certificates from the Irish Revenue Commissioners for the duration of the DPS and until final payment has been made.

17) Confidentiality

- 17.1 For the purposes of this Clause 17 **"Confidential Information"** means all confidential information disclosed (whether in writing, orally or by another means and whether directly or indirectly) by a party (the "Disclosing Party") to the other party/another party (the "Receiving Party") whether before or after the date of these terms and conditions.
- 17.2 Subject to Clause 17.3, during the DPS and at any time after the termination or expiry of these terms and conditions (for any reason) the Receiving Party:

- 17.2.1 may not use any Confidential Information for any purpose other than in the performance of its obligations or the enjoyment of its rights under these terms and conditions;
 - 17.2.2 may not disclose any Confidential Information to any person except with the prior written consent of the Disclosing Party or in accordance with Clause 17.3; and
 - 17.2.3 shall make every effort to prevent the use or disclosure of Confidential Information.
- 17.3 The Receiving Party may disclose information which would otherwise be Confidential Information if and to the extent that:
- 17.3.1 it is required by law;
 - 17.3.2 the Receiving Party can demonstrate that it has come into the public domain, otherwise than through a breach of these terms and conditions by the Receiving Party;
 - 17.3.3 it is required by existing contractual obligations (as of the Commencement Date) of which the Disclosing Party is aware;
 - 17.3.4 it is required by any securities exchange or regulatory or governmental body to which it is subject; or
 - 17.3.5 the disclosure is to its professional advisers, auditors or banker; or to any of its directors, other officers, employees and sub-Contractors (a "Recipient") to the extent that disclosure is reasonably necessary for the purposes of these terms and conditions.
- 17.4 The Receiving Party shall ensure that a Recipient is made aware of and complies with the Receiving Party's obligations of confidentiality under this Contract as if the Recipient was a Party to these terms and conditions.
- 17.5 Upon any termination or expiry of these terms and conditions, each party shall cause all Confidential Information belonging to the other party in whatever medium, to be returned, deleted or destroyed, according to the written instructions of the other party.

18) Contract Review/Audit

- 18.1 The DPS Purchasers may review the Contractor's performance from time to time over the period of the DPS according to the Performance Measurement Table hereunder.
- 18.2 On completion of a Contract, if so requested by the DPS Purchaser, the Contractor shall collate and provide to the DPS Purchaser the information required for the DPS Purchaser to review the Contractor's performance according to the Performance Measurement Table below. The DPS Purchaser will complete a Performance Evaluation Form using a copy of the document included in **Schedule 5** and shall also record performance against the Performance Measurement Table.
- 18.3 The Contractor is said to have reached Level 1, Level 2 or Level 3, if, during the review for one of the indicators listed in the below table, the number of occurrences of that indicator equals or exceeds the number listed in the column headed "Level 1", "Level 2", or "Level 3".
- 18.4 If the Contractor has reached Level 1, the DPS Purchaser will give the Contractor a written notification and the Contractor must demonstrate to the DPS Purchaser's satisfaction that it has implemented steps to redress the problem.
- 18.5 If the Contractor has reached Level 2, the DPS Purchaser will exclude that Contractor from any Request for Tender competition in which it is due to participate until the Contractor has

demonstrated to the DPS Purchaser's satisfaction that it has implemented steps to redress the problem. Until the foregoing has been satisfactorily remedied, Requests for Tender may be run without prejudice as if the Contractor was excluded and these terms and conditions had been terminated with the Contractor.

- 18.6 The DPS Purchaser may notify the LGOPC if a Contractor has reached Level 3 and a DPS Purchaser may terminate the Contractor pursuant to Clause 19 below.

Performance Measurement Table

Employers Objective	Health and Safety		Performance	Contract Administration
	<i>Management of Safety</i>		<i>Mobilisation</i>	<i>Every request for Tender should be answered</i>
Indicator	Failure to maintain safety measures as set out in the Contractor's Safety Statement	Requirement for immediate cessation of the delivery of services on foot of H&S concerns	Failure to deliver the nominated services on the dates as agreed at RFT stage	Failure to tender when invited
Measurement Period	Term	Term	Term	Term
Level 1 (Rule 18.4)	N/A	N/A	2	2
Level 2 (Rule 18.5)	1	1	3	4
Level 3 (Rule 18.6)	2	2	5	5

- 18.7 The Contractor shall implement such recommendations and comply with any DPS Purchaser's findings to the extent necessary to ensure that the Road Marking Supplies & Services continue to be delivered and the Contractor continues to meet its obligations in accordance with the requirements set out in these terms and conditions.
- 18.8 In addition to the performance review as may be conducted by the DPS Purchasers pursuant to Clause 18.1 above, the performance of the Contractor under these terms and conditions shall be subject to review by the LGOPC, when deemed necessary for the purpose of addressing continued non-performance issues. Mutually agreeable dates will be determined for these meetings, the purpose of which will be to provide a forum for the DPS Purchaser, the LGOPC and the Contractor to review performance and other key issues in connection with these terms and conditions. The LGOPC, the DPS Purchasers and the Contractor shall be committed to continuously improving the Contractor/DPS Purchaser relationship.
- 18.9 The Contractor shall implement such recommendations and comply with the LGOPC's findings pursuant to Clause 11 to the extent necessary to ensure that the Services continue to be delivered and the Contractor continues to meet its related obligations in accordance with the requirements set out in these terms and conditions.
- 18.10 The Contractor shall keep and maintain until a minimum of six (6) years after the expiry of the Contract Period, full and proper records and all documents relating to the performance of its obligations under these terms and conditions and shall allow the LGOPC and/or each DPS Purchaser and any auditors of or other advisers to the LGOPC and/or a DPS Purchaser to access at any time and from time to time any of the Contractor's premises, personnel and such records and documents for the purposes of:
- 18.10.1 fulfilling any legally enforceable request by any court, tribunal or regulatory body; or

- 18.10.2 undertaking verifications of the accuracy of the Price in accordance with Clause 8 or identify suspected fraud; or
 - 18.10.3 undertake verification that Services are being (and have been) provided in accordance with these terms and conditions.
- 18.11 Conduct of Audits:
- 18.11.1 Subject to Clause 18.11.2 below, any audit shall be carried out with reasonable prior notice and in a reasonable way so as to cause as little disruption as is reasonably possible to the Contractor's business.
 - 18.11.2 Where the LGOPC and/or a DPS Purchaser has reasonable grounds to believe that the Contractor is not complying with its obligations under these terms and conditions, an audit may be carried out without prior notice.
 - 18.11.3 The LGOPC and/or any DPS Purchaser, its agents or designees may exercise a right of audit under this Clause 18.11 and shall comply with the Contractor's reasonable security and access rules and procedures. Persons that the LGOPC and/or a DPS Purchaser may designate include that DPS Purchaser's or the LGOPC's independent auditors, representative of governmental or regulatory authorities having jurisdiction under applicable law for the activities relating to these terms and conditions.
 - 18.11.4 During any audit, the LGOPC and any DPS Purchaser shall ensure that its agents or designees shall treat as confidential any information, data or documents relating to the Contractor to which they may have access.
 - 18.11.5 The Contractor shall provide all assistance reasonably requested by the LGOPC and/or a DPS Purchaser (and its auditors and other advisers) in relation to any audit, including access to the Contractor's personnel, records and premises.
 - 18.11.6 Each DPS Purchaser (or the LGOPC where relevant) shall pay its own cost and expenses for any audit undertaken pursuant to this Clause 18 save where such audit identifies that the Contractor has overcharged a DPS Purchaser by 2% or more of the invoice amount for the Services under audit, or overstated the Contractor's Pricing by more than 2%, in which case the Contractor shall reimburse the LGOPC and/or the DPS Purchaser, for its out of pocket expenses in conducting such audit. This Clause 18.11.6 is intended as a fair allocation of audit expenses and not as damages or a penalty.

19) Termination

- 19.1 These terms and conditions may be terminated by any party providing not less than three (3) months' written notice.
- 19.2 Without prejudice to any other rights or remedies to which it may be entitled, the LGOPC may without affecting the rights or remedies of any other DPS Purchaser, require the Contractor to re-submit its Application for Admission to the DPS and following an assessment by the LGOPC, the Contractor may be excluded from the DPS without liability to the Contractor.
- 19.3 Without prejudice to any other rights or remedies to which it may be entitled, a DPS Purchaser may without affecting the rights or remedies of any other DPS Purchaser, terminate the Contract without liability to the Contractor by giving written notice to the Contractor to take effect immediately or on the date specified in the said notice if:

- 19.3.1 the Contractor commits a material breach of any term or condition of these terms and conditions, and if such breach is capable of being remedied, fails to remedy the breach within thirty (30) days of the notice given by the DPS Purchaser requiring the Contractor to do so;
 - 19.3.2 the Contractor has reached Level 3 following a review conducted by a DPS Purchaser pursuant to Clause 18;
 - 19.3.3 the Contractor contravenes any of Clause 6;
 - 19.3.4 the Contractor contravenes Clause 20;
 - 19.3.5 the Contractor becomes bankrupt, or makes any composition or arrangement with, or conveyance or assignment for the benefit of its creditors, or any application is made under any bankruptcy act for the time being in force for a sequestration of its estate, or a trustee is granted by it on behalf of its creditors, or if the Contractor, being a company, enters into a voluntary or compulsory liquidation (other than for the purpose of an amalgamation or reconstruction the terms of which have been agreed by the relevant DPS Purchaser), or if a receiver or examiner of any of its assets is appointed, or if the Contractor is unable to pay its debts within the meaning of Section 570 of the Companies Act, 2014, or the Contractor takes or suffers any analogous action under any other applicable law;
 - 19.3.6 the Contractor ceases or threatens to cease to carry on business;
 - 19.3.7 the Contractor is struck off the register of companies;
 - 19.3.8 a DPS Purchaser reasonably believes that any of the events mentioned in **Sub-clauses 19.3.4 to 19.3.7** inclusive or any analogous event is about to occur in relation to the Contractor in any jurisdiction and notifies the Contractor accordingly;
 - 19.3.9 any representation made by the Contractor in connection with these terms and conditions shall in the opinion of a DPS Purchaser prove to be untrue or incorrect in a material respect as of the date when made;
 - 19.3.10 the Contractor has committed any fraudulent act or any criminal activity or is guilty of gross negligence in the performance of these terms and conditions;
 - 19.3.11 a DPS Purchaser has reason to believe that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any employee of any DPS Purchaser or the LGOPC with a view towards securing any agreement for the provision of the Services or any other contract. Paying the expenses of normal business meals shall not be prohibited by this provision; or
 - 19.3.12 it is suspected (acting reasonably) that the Contractor has entered into or implemented an agreement or has made or implemented a decision or has engaged in a concerted practice that is prohibited by Section 4(1) of the Competition Acts 2002 to 2014; in which case the Contractor may be reported by the LGOPC or a DPS Purchaser to the Competition & Consumer Protection Commission, and the LGOPC or a DPS Purchaser may take any other steps permitted by law.
- 19.4 Should conditions arise which, in the opinion of a DPS Purchaser in its absolute discretion, necessitate the termination of these terms and conditions, the Purchaser may terminate these terms and conditions upon written notice to the Contractor. Such termination shall take effect on the date specified in the said notice and shall be without prejudice to any claims which either

the Contractor or the DPS Purchaser may have against the other under these terms and conditions. In the event of such termination pursuant to this Clause 19.4, the Contractor shall, subject to Clause 19.6, be paid such reasonable costs as were accrued prior to the date of termination in respect of Services reasonably ordered and vouched to the satisfaction of the DPS Purchaser but not completed.

- 19.5 Termination of these terms and conditions pursuant to Clauses 19.1, 19.2, 19.3 or 19.4 above shall not relieve or discharge either the Contractor or the relevant DPS Purchaser from any obligations which have accrued prior to such termination.
- 19.6 Neither the LGOPC nor any DPS Purchaser shall be liable to the Contractor for any loss of profit, loss of contracts or other economic losses and/or expenses or for any indirect, economic, or consequential loss suffered or incurred by the Contractor arising out of or in connection with these terms and conditions or the termination of these terms and conditions or any Contract awarded.
- 19.7 The provisions of Clauses 1) (*definitions and interpretation*) 14)(*warranties and indemnities*), 15)(*insurance*), 16)(*tax clearance*) 17)(*confidentiality*), 18.10 and 18.11(*audit*) 19) (*termination*) 21) (*notices*) 22) (*waiver*) 26) (*publicity*) 27) (*data protection*) 29) (*freedom of information*) 30) (*governing law*) and 31) (*dispute resolution*) shall survive the termination or expiry of these terms and conditions.

20) Assignment, Transfer and Sub-Contracting

- 20.1 The Contractor shall not sub-contract, assign or transfer these terms and conditions or any part thereof or the benefit or advantage of these terms and conditions or any part thereof without the prior written consent of the LGOPC and any other DPS Purchaser that is directly affected.
- 20.2 Where sub-contracting is consented to pursuant to Clause 20.1 above, the Contractor shall ensure that the sub-contractor is a reasonable and prudent Contractor, and that the sub-contractor shall carry out its obligations in accordance with the terms of these terms and conditions. Notwithstanding the foregoing, the Contractor acknowledges that it remains liable for the acts and omissions of its employees, servants, agents and sub-contractors as if they were its own acts and omissions.
- 20.3 These terms and conditions shall be binding upon successors and assigns of the LGOPC and each DPS Purchaser and the Contractor and the name of a party appearing in these terms and conditions shall be deemed to include the names of its successors and assigns provided always that nothing shall permit any assignment by either party except as expressly provided.

21) Notices

- 21.1 The address and telephone numbers of the LGOPC and the Contractor for the purpose of the giving of notices under these terms and conditions are as follows:

THE LGOPC		Contractor	
Name:	Catherine Carmody, Head of the LGOPC	Name:	
Email:	eproc@kerrycoco.ie	Email:	
		Attention:	

Each DPS Purchaser shall agree a contact name with the Contractor for the purpose of any Contract. Notice given by a Contractor to a DPS Purchaser shall not constitute a notice given to the LGOPC.

- 21.2 Any notice required or authorised by these terms and conditions to be given by a party (which for these purposes of this Clause 21 includes any DPS Purchaser) to the other shall be in writing and may be forwarded electronically only to the email address set out at and marked for the attention of the person identified in Clause 21.1
- 21.3 Any notice or other communication shall be deemed to have been duly given when transmitted by electronic means on receipt of 'read receipt' or equivalent.
- 21.4 All notices, documents and communications provided under these terms and conditions or RFT Contract shall be in the English language save that nothing in this Clause 21.4 shall restrict or prejudice the ability of a DPS Purchaser to comply with its obligations under the Official Languages Act 2003.
- 21.5 Any party may, by notice to the others in compliance with this Clause 21 change the contact details set out at Clause 21.1.

22) Waiver

Failure or neglect by the LGOPC or any DPS Purchaser to enforce at any time any provision of these terms and conditions shall not be construed nor deemed to be a waiver of the LGOPC's or that DPS Purchaser's rights hereunder, nor in any way affect the validity of the whole or any part of these terms and conditions, nor prejudice the LGOPC's or that DPS Purchaser's rights to take subsequent action.

23) Severability

If any provision of these terms and conditions is held by any competent authority to be invalid, unlawful or unenforceable in whole or part, the validity of the other provisions of these terms and conditions and the remainder of the provision in question shall not be affected thereby.

24) Relationship

- 24.1 The Contractor shall not be the authorised agent of the LGOPC or any DPS Purchaser or have the right or authority either express or implied to create or incur any liability against or on behalf of the LGOPC or any DPS Purchaser. In particular, the Contractor shall not hold itself out, nor permit any person to hold it out, as being authorised to bind or pledge the credit of the LGOPC or any DPS Purchaser in any way and shall not do any act that might reasonably create the impression that it is so authorised.
- 24.2 It is acknowledged by all parties that the Contractor will at all times be an independent contractor, and nothing in these terms and conditions will be construed (and the Contractor will not hold out its relationship) as constituting a partnership, joint venture, representation, agency or employer and employee relationship between the LGOPC and/or any DPS Purchaser and the Contractor.

25) Force Majeure

- 25.1 In these terms and conditions, "**Force Majeure**" means an occurrence that is beyond the control of the Contractor, the LGOPC or any DPS Purchaser (each an "**Affected Party**") to the extent that event is not attributable to the fault or negligence of the Affected Party, including, but not limited to, the following: acts of God; war; riot; civil disorder; fire; flood; storm; acts or failures or refusals to act by a central government authority; and other similar occurrences beyond the control of the Affected Party which such the Affected Party is unable to prevent by exercising reasonable diligence but excludes, for the avoidance of doubt, any labour dispute, strike or industrial dispute affecting the Contractor or any other event which a prudent

Contractor of Road Marking Supplies & Services could have reasonably foreseen and provided for the cause in question.

- 25.2 If an Affected Party becomes aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.
- 25.3 No Affected Party shall in any circumstances be liable to the other(s) for any loss of any kind whatsoever directly or indirectly caused or incurred by the other(s) by reason of any failure or delay by the Affected Party in the performance of its obligations to the extent such failure or delay is due to Force Majeure. Notwithstanding the foregoing, each Affected Party shall use all reasonable endeavours to mitigate the effects of the Force Majeure on the performance of its obligations under these terms and conditions. The Affected Party shall resume performance of its obligations under these terms and conditions once the Force Majeure has ended.
- 25.4 In the event that the Force Majeure event is continuing for a period at least one (1) month, then the other person in whose favour the affected obligation was to be performed may terminate the relevant Contract upon fourteen (14) days written notice to the Affected Party.
- 25.5 It is agreed that any failure by the Contractor to perform, or any delay by the Contractor in performing its obligations under these terms and conditions, which results from any failure or delay in the performance of its obligations by any person, firm or company with which the Contractor has a contract, supply arrangement or sub-contract or otherwise, shall be regarded as a failure or delay due to Force Majeure only in the event that such person, firm or company shall itself be prevented from or delayed in complying with its obligations under such contract, supply arrangement or sub-contract or otherwise, as a result of circumstances of Force Majeure.

26) **Publicity**

The Contractor shall ensure that no publicity relating to the completion of the Services shall take place without the prior written consent of the LGOPC. For the avoidance of doubt, this restriction includes internal publicity and using any DPS Purchaser as a referee.

27) **Data Protection**

- 27.1 The Contractor shall comply with its obligations under the Data Protection Acts 1988 and 2003 and all regulations made thereunder ("**Applicable Data Protection Legislation**"), in the collection and storage of data pursuant to these terms and conditions. In particular, the Contractor shall, where required, register with the Office of the Data Protection Commissioner and shall put in place safeguards sufficient to comply with its obligations under the Applicable Data Protection Legislation and must ensure that all staff are aware of and comply with the obligations imposed by the Applicable Data Protection Legislation.
- 27.2 The Contractor shall indemnify the LGOPC and each DPS Purchaser against all claims and proceedings and all liabilities, losses, costs, claims, actions, proceedings, demands by third parties and expenses incurred in connection therewith made or brought by any person in respect of any loss, damage or distress caused to that person as a result of the Contractor's unauthorised or unlawful processing or the Contractor's destruction of or damage to any personal data held by the Contractor, its employees or agents or due to any failure by the Contractor to comply with this Clause 27).

28) Conflict of Interest

The Contractor shall ensure that neither the Contractor nor its Staff shall accept any professional or other commitment or engagement during the term of the Services which conflicts or might reasonably be expected to conflict with the duties and obligations undertaken by the Contractor hereunder ("**Conflict of Interest**"). The Contractor warrants that it has disclosed to the LGOPC any such Conflict of Interest as may already be in existence on the date hereof. The Contractor undertakes that it shall notify the LGOPC of any actual or potential Conflict of Interest arising during the period of the DPS. In particular, the Contractor shall note its obligations under Section 179 of the Local Government Act 2001. This Code is available for download from the Department of the Environment, Heritage & Local Government website <http://www.environ.ie/en/Publications/LocalGovernment/Administration/FileDownload,8776,en.pdf>

29) Freedom of Information

Each DPS Purchaser and the LGOPC is subject to the provisions of the Freedom of Information Act, 2014. If, for any reason, the Contractor wishes that information provided to the LGOPC or a DPS Purchaser is not disclosed because of its commercially sensitive nature, then it is incumbent upon the Contractor, when providing the information, to identify same and specify the reasons for its sensitivity. It shall not be sufficient for the Contractor to furnish the LGOPC or a DPS Purchaser with a general statement of confidentiality in respect of all information furnished to the LGOPC or that DPS Purchaser.

30) Governing Law

These terms and conditions and any non-contractual obligations arising out of or in connection with these terms and conditions shall be governed and construed in accordance with the laws of Ireland.

31) Dispute Resolution

31.1 All disputes that arise between the Contractor, the LGOPC and/or any DPS Purchaser (each a "disputing party") in connection with these terms and conditions or the subject matter of these terms and conditions shall be dealt with as follows:

31.1.1 In the first instance, the disputing parties shall submit the dispute to the personnel nominated specifically to participate in the escalation process in Clause 31.1.2 in the order set out therein.

31.1.2 Escalation Procedure: In the event of a dispute in relation to the interpretation or fulfilment of any of the provisions of these terms and conditions, the disputing parties shall, in accordance with Clause 31.1.1, submit the dispute to the following personnel:

- | | | |
|----|--|---|
| 1. | DPS Purchaser Representative: | As directed by the Purchasers Chief Executive |
| 2. | Contractor Representative: | Director |
| 3. | THE LGOPC Representative:
(where the dispute concerns THE LGOPC) | As directed by the LGOPC's Chief Executive |

31.1.3 If a dispute cannot be resolved pursuant to the escalation procedure set out at Clause 31.1.2 within a period of ten (10) days, either of the disputing parties may request that the matter is submitted to conciliation. If any such request is made, the matter will be submitted to conciliation by a conciliator to be appointed, in the absence

of agreement between the disputing parties, by the President for the time being of the Law Society of Ireland (or in the event of his being unwilling or unable to do so by the next senior officer of the Society who is willing and able to make the appointment). The determination of such conciliator shall be final and binding on both disputing parties unless, within fourteen (14) days following the date of the determination, either party notifies the other in writing that it rejects the determination of the conciliator. Each disputing party shall bear its own costs in the conciliation and shall each pay half of the costs of the conciliator.

- 31.1.4 In the event that the conciliation procedure under Clause 31.1.3 fails to result in a satisfactory resolution of the dispute within thirty (30) days of the date of the notice to refer to conciliation (or such other longer period as is agreed between the disputing parties); or if either disputing party notifies the other in writing in accordance with Clause 31.1.3 that it rejects the determination of the conciliator; or if both disputing parties agree to submit the dispute directly to arbitration after the conclusion of the escalation process under Clause 31.1.2, either disputing party may submit the dispute to be decided at arbitration by an arbitrator agreed by the parties or, in default of agreement, appointed by the President for the time being of the Law Society of Ireland or in the event of his being unwilling or unable to do so by the next senior officer of the Society who is willing and able to make the appointment provided always that these provisions shall apply also to the appointment (whether by agreement or otherwise) of any replacement arbitrator where the original arbitrator (or any replacement) has been removed by order of the High Court, or refuses to act, or is incapable of acting or dies.

Any such arbitration shall be governed by the Arbitration Act 2010 as amended or re-enacted from time to time. If the dispute to be referred to arbitration raises issues which are substantially the same as/or connected with issues raised in a related dispute between either Party and any third party and if such related dispute has already been referred for determination to an arbitrator or any court the Parties hereby agree that the difference or dispute under or in connection with these terms and conditions can be referred to such arbitrator or such court and that such arbitrator shall have power to make such directions and all necessary awards in the same way as if the procedure in the High Court as to the joining of one or more co-defendants or third parties was available to both Parties and to such arbitrator.

32) Health & Safety

- 32.1 Notwithstanding any of the provisions of these terms and conditions, national Health & Safety legislation will apply to these terms and conditions, as set out in **Schedule 1** attached. As set out in **Schedule 2** attached, DPS purchasers will complete an assessment of the company's Health & Safety competencies as part to the Contract Award Evaluation.

SCHEDULE 1: GENERAL SPECIFICATION

1.1 Specifications and Guidelines

- 1.1.1 All Road Marking Supplies & Services undertaken as part of this Dynamic Purchasing System shall be in full compliance with this Specification.
- 1.1.2 This specification is compiled for the purposes of establishing a DPS for Road Marking Supplies & Services for Local Authorities. The technical requirements set out in this General Specification are non-specific. All Road Marking Supplies & Services will be undertaken in compliance with the technical standards as detailed and any further technical requirements as set out in the Requests for Tender.

1.2 Works, Supplies and/or Services

- 1.2.1 Service Providers supply and place all regulatory and non-regulatory Road Markings, Road studs and Removal of Road Markings/Road Studs.
- 1.2.2 The Road Marking Supplies & Services will be carried out on nominated Local, Regional, National Roads and Car Parks as required by Contracting Authorities during the Term for the DPS (two years).

1.3 Technical Standards of Materials and Workmanship

- 1.3.1 Service Providers must have adequate relevant experience with regard to Road Marking Supplies & Services.
- 1.3.2 It is the absolute responsibility of the Service Provider to be able to unambiguously demonstrate that a proper standard of workmanship has been executed, that the persons who have undertaken the Road Marking Supplies & Services are competent, possessing sufficient training, experience and knowledge appropriate to the nature of the work that has been performed and having particular regard to the size and complexity of such Road Marking Supplies & Services.
- 1.3.3 The materials and workmanship for thermoplastic road markings shall, as a minimum, comply with the following:
- Department of the Environment Manual : Guidelines and Tender Documentation for Road Marking Materials
 1. Chapter 7 of the Traffic Signs Manual as published by the Department of Transport November 2010 and as amended.
- 1.3.4 In addition, the quality of the materials and workmanship shall comply with all relevant European Standards including IS EN 1423, IS EN 1424, IS EN 1436, IS EN 1871, IS EN1463 and Specification for Roadworks Series 1200 (Traffic Signs & Road Markings) as published by Transport Infrastructure Ireland, as may be required for any contract.
- 1.3.5 The appointed Service Provider will be fully responsible for the quality of the materials supplied and placed by them and their compliance with these technical requirements.
- 1.3.6 Proof of compliance with Work Requirements set out during a Request for Tender may be sought at any time during the contract. When requested, Service Providers shall confirm -:
- that all construction products associated with harmonised Standards will be CE marked and have a Declaration of Performance

- that the Service Provider by submitting a Declaration of Performance (even if prepared by others) is assuming full legal responsibility for the conformity of the construction product with its declared performance
- that together with the technical specification, the Declaration of Performance will give all the information needed to judge whether the product(s) meets the essential characteristics in accordance with the applicable harmonised technical specifications
- that the CE mark shall be followed by the two last digits of the year in which it was first affixed, the name and the registered address of the manufacturer, or the identifying mark allowing identification of the name and address of the manufacturer easily and without any ambiguity
- That certification of an organisation's Factory Production Control system by a notified body will be available if so required under the regulation and requested

1.3.7 Permanent road markings shall be guaranteed for a minimum of 2 years as defined in IS EN 1436.

1.3.8 Where required, a Guarantee will be requested by the Contracting Authority for Permanent Thermoplastic Road Markings laid on cement bound and bituminous bound road surfacing including surface dressing during the course of a draw down Contract. During any guarantee, the Service Provider shall be required to replace or renew markings which fail to comply with one or more minimum values established in the draw down contract. The Guarantee will cover parameters from IS EN 1436 in respect of Durability, Reflectivity, Skid Resistance, Luminance and Chromaticity as set out in the Project Requirements for a contract being tendered.

1.3.9 The appointed Service Provider will be fully responsible for the quality of the materials and their compliance with the technical requirements as set out in the tender documents. Compliance will be verified by use of material conformance testing (remote and in-situ) and reference to the quality management systems within the production plant.

1.3.10 The proposed Road Marking Supplies & Services include but are not limited to those as described in this Schedule.

1.3.11 All works will be undertaken in compliance with the technical standards set out in this Schedule and any further technical requirements as set out in the Request for Tender.

1.4 Insurances

1.4.1 Applicants will be required to get their Insurance Brokers/Company to complete the Insurance Questionnaires online at www.Supplygov.ie prior to award of a Contract at Request for Tender stage.

1.4.2 The following Insurances are required prior to award of a Contract:

1.4.3 **Public/Product Liability Insurance**

- a. €6,500,000 for any one event
- b. Maximum excess: €6,500

The €6,500,000 limit is for any one event. The limit of indemnity under the Public Liability Insurance must be for the full policy limit of €6,500,000. No inner limit reduction is permissible. The maximum permissible excess shall be € 6,500 for property only with no excess for death, injury or illness.

The policy shall include an indemnity to principals clause.

The successful Service Provider will be required to include the Contracting Authority as joint insured and may be required to include a non-vitiating clause.

The Service Provider will also be required to extend a public liability policy to include for products liability insurance to indemnify the Contracting Authority in relation to defective products supplied whether manufactured, altered or just sold by the Service Provider.

Public Liability Insurance must specifically be extended to include all motor vehicles to which the Road Traffic Acts does not apply (such as rollers, pavers, off site vehicles, etc.), alternatively such vehicles should be Scheduled (by Reg or VIN) in the Motor Policy.

1.4.4 **Employers Liability Insurance**

- a. €13,000,000 for any one event
- b. Maximum excess: €6,500

The Employers Liability Insurance will meet the following requirements:

1. Cover must apply to the employees of the Contractor engaged on the Contract
2. The liability for death or injury to employees must be covered on an unlimited basis
3. The cover must indemnify the Contracting Authority as principal and must include a non-vitiation clause
4. Cover must be extended to cover the Contractor in respect of liability assumed by him under the Draw-down Contract, e.g. the description of the insurers business must be unambiguous

1.4.5 The Contractor shall be liable for and shall indemnify the Contracting Authority for and in respect of all and any losses, claims, demands, damages or expenses which a Contracting Authority may suffer due to and arising directly as a result of the negligence, act or omission, breach of contract, breach of duty, wilful default or fraud of the Contractor, its employees, sub-contractors or agents or any of them.

1.4.6 Contractors do not need to have the insurances outlined above in place at the time of submitting an Application but will be required to put those insurances in place should they be successful in a Request for Tender Competition. The Contracting Authority will not be responsible for any cost incurred by Contractors in putting in place the required insurances.

1.4.7 **Employer Provisions**

The insurance on which the Employer is to be insured must provide that the term "insured" applies to each insured person as if a separate policy had been issued to each (without increasing the overall limit of indemnity) and non-compliance by the Contractor or any other insured person does not affect the Employer's rights and the insurer waives all rights of subrogation and other action against each insured person.

The Contractor's public liability policy must insure the Employer and Contractor as insured, with a cross-liability clause. The Contractor's employer's liability policy must indemnify the Employer against the liability for which it indemnifies the Contractor, including costs.

From the Starting Date until the date the Defects Certificate is issued, the Contractor shall insure itself against liability for death, injury or illness of Contractor's Personnel. For employees of Subcontractors, this obligation may be satisfied by ensuring that the Subcontractor maintains the insurance. The Contractor shall ensure that this insurance includes a provision that indemnifies the Employer against any liability for which the Contractor would be entitled to an indemnity, including costs, charges and expenses.

All insurance requirements for the Road Marking Supplies & Services under these terms and conditions must be met by the Contractor themselves or/and any subcontractors.

1.4.8 Insurance of Subcontractors

Contractors who are successful in being admitted to the DPS must confirm that their insurance will cover the acts and omissions (including negligence) of any subcontractor employed by them in connection with any Contract awarded under these terms and conditions. Subcontractors cannot be employed by the Contractor to carry out activities that are specifically excluded from the Contractors insurance policies.

It shall be the Contractor's responsibility to ensure that any agent or sub-contractors of the Contractor effect and maintain all insurance required by law and all other insurances as are necessary for the provision of the Road Marking Supplies & Services and remain valid for the duration of the contract. Any deficiencies in the cover or policy limits of such agents or sub-contractors shall be the sole responsibility of the Contractor.

1.4.9 Exclusions

If Contractors are successful in being invited to participate in the DPS and have specific exclusions noted in their insurance policies which restrict or prohibit their ability to carry out certain Road Marking Supplies & Services of any contract (asbestos, working at heights etc.) under these terms and conditions, the Contractor at time of contract award will be required to either :

- o Have the exclusion removed from their insurance policy and employ a competent and appropriately insured specialist subcontractor to carry out the excluded activity and put in place contingency cover on the Contractors insurance policy.

or

- o Have the specialist subcontractor included with the DPS Contractor as a full joint insured on the subcontractors insurance policy and have the Purchaser joint insured on the subcontractor's insurance policy. Contractors should note that the Contracting Authority will not be responsible for any cost incurred by the Contractor in complying with the insurance requirements outlined above.

1.4.10 No DPS Service Provider shall be awarded a contract unless satisfactory evidence of insurance is submitted prior to contract award by the Insurance Broker/Company. Where the Insurance Policy in question lapses prior to the end of the Contract Period, it shall be the responsibility of the Service Provider to ensure that said policy is renewed and to ensure that the insurance details are updated on www.SupplyGov.ie as noted above.

1.4.11 The onus is on the Service Provider to ensure that their insurance is up to date and has not lapsed or been cancelled. Any failure to do so may result in immediate exclusion of the Contractor for the Contract Period.

1.4.12 For Lot 1, Insurances must also cover the Service Provider's role as Project Supervisor for the Construction Stage (PSCS).

1.5 Payment & Invoicing

1.5.1 Payment will be made at the rates agreed in the Contract.

1.5.2 The Service Provider invoice shall show the following information:

- The Service Providers name and address
- The Service Providers VAT Registration Number
- Invoice number and date

- The Contracting Authorities order number
 - The RFT (Request for Tender) reference number from the www.SupplyGov.ie system
 - A detailed narrative describing the Supplies and Services provided
- 1.5.3 Payment: A number of the Contracting Authorities only pay via EFT (Electronic Fund Transfer) and the remittance is sent to Service Provider via email.
- 1.5.5 Where Contracting Authorities request clarification or further information on any matters relating to the tender or supporting documentation, such information shall be submitted no later than the date specified in the request.
- 1.5.6 Service Providers and their employees are expected to adhere to acceptable standards of behavior, i.e. standards expected of Contracting Authorities staff.

1.6 Health & Safety (Legal/Paperwork)

- 1.6.1 DPS Contractors will be required to comply with the Safety, Health and Welfare at Work Act 2005 and all Regulations, Codes of Practice and Guidance arising thereunder, including the Safety Health and Welfare at Work (Construction) Regulations 2013 and the Safety, Health and Welfare at Work (General Applications) Regulations 2007. All articles and substances supplied for use at work, including any plant, machine, tool or hazardous substance, shall comply with the requirements of the current Safety, Health & Welfare at Work Act, Regulations, Codes of Practice and Guidance.
- 1.6.2 All employees entering Local Authority sites shall have a Safe Pass Card, with SOLAS accreditation or equivalent.
- 1.6.3 The Safe Pass Card and CSCS equivalent qualifications (e.g. CSCS equivalent in Northern Ireland (CSR card)) will also be accepted. Details must be submitted or updated on www.Supplygov.ie under the Service Providers 'checklist' and original cards must be available upon request on site on any given day.
- 1.6.4 Plant operators, as listed in the Schedule 5 of Safety, Health and Welfare at Work (Construction) Regulations 2013, must be in possession of a valid Construction Skills Certification Scheme (CSCS) card for the item of plant being operated.
- 1.6.5 All employees operating plant/vehicles shall have a current full driver's license pertaining to the item(s) of plant they are operating. Copies must be available upon request on site on any given day.
- 1.6.6 For construction work on roads the Contractor shall ensure the following:
- i) Compliance with Regulation 97 of the Safety, Health and Welfare at Work (Construction) Regulations 2013 is complied with. The provision and maintenance of adequate Signing, Lighting and Guarding arrangements in compliance with DoT, 2010, Chapter 8 of the "Traffic Signs Manual" and "Guidance for the Control and Management of Traffic at Roadworks" – 2nd Edition where required.
 - ii) The provision of a person/persons in possession of a current CSCS card for Signing, Lighting and Guarding at roadworks when erecting, modifying and removing signing, lighting and guarding.
 - iii) All persons working on Roads shall be in possession of a current CSCS for Health and Safety at Roadworks or equivalent.
 - iv) If successfully appointed to the DPS, details of cards must be submitted or updated on www.Supplygov.ie under the Service Providers 'checklist' prior to the award of any Contract.
 - v) The provision of a written, site-specific traffic management plan(s) for all projects as defined in Chapter 8 as Category A and B type works, where required.

1.7 Supplies and Services Terms & Conditions

- 1.7.1 The Service Provider is responsible for ensuring that the supplied materials and services meet the required Specification as detailed in this schedule and in any Request for Tender.
- 1.7.2 The Service Provider may be required to produce evidence of a quality control plan and quality control documentation to prove testing against and compliance with the required specification. The materials and workmanship shall be in accordance with the relevant Specification for each particular operation. Should the material and/or workmanship not conform to the standards, the Service Provider will be excluded from the DPS. All samples specified here and in the Request for Tender shall be provided free of charge, when required, to the Contracting Authority.
- 1.7.3 A Safety Data Sheet (SDS) must be supplied with all hazardous substances.
- 1.7.4 Delivery of materials shall be made as and where required by the Purchaser. No material shall be delivered on site by a Service Provider unless there is an authorized representative of the Contracting Authority, on site to receive, check and sign for the material.
- 1.7.5 Where a Purchaser is satisfied that a particular Service Provider cannot supply the required materials at such rate of delivery or in such quantity as will enable the work on hand to be carried out expeditiously and with such convenience as may be required, he may decide to procure from such other Service Provider as he considers appropriate.

1.8 Contract Performance

- 1.8.1 It is intended that Service Provider's performance will be monitored by the Contracting Authority during the execution of all contracts.
- 1.8.2 A **Performance Evaluation Report** will be completed by the Contracting Authority at the end of the Contract or earlier if necessary, that will record the performance of the Service Provider on the Contract. Such Reports will be copied to the Service Provider and consideration of such Reports may be incorporated into the Award Criteria for future centralised procurement competitions for Road Marking Supplies & Services. A copy of the **Performance Evaluation Report** is included in **Schedule 5**.
- 1.8.3 Where any Service Provider fails to satisfactorily perform a Contract, the Contract may be terminated and the Purchaser shall have the right to re-tender the contract.
- 1.8.4 Please refer to Clause 18 of these terms and conditions for full details of the Contract and Performance Review mechanism.

SCHEDULE 2: CONTRACT EVALUATION & AWARD CRITERIA (LOT 2)

1.1 Contract Evaluation Criteria

- 1.1.1 Service Providers submitting a response to a Request for Tender must comply with the requirements listed in the Table hereunder, that will be assessed on a Pass/Fail basis. Applicants should note that not all of the criteria listed may apply to every Request for Tender.
- 1.1.2 Only those Tenderers passing all of the following contract evaluation criteria will proceed for assessment in accordance with the Contract Award Criteria set out in part 1.2 below.

Contract Evaluation Criteria (Lot 2)		Weighting
1	<p>Proposed Project Team and Availability</p> <p>Upload confirmation in writing on company headed paper that the Service Provider has the required resources available to complete the Road Marking Supplies & Services within the specified timeframe, respecting the nominated start and finish date outlined in the Request for Tender documents.</p>	Pass/Fail
2	<p>Details of Service Providers Proposed Project Team</p> <p>Upload details of the staff assigned to perform the contract in the form of an Organogram of the Project Team</p>	Pass/Fail
3	<p>Health & Safety Competency of Workers</p> <p>For each member of the Project Team listed in the Organogram, details of the following must be entered on your Supplygov.ie account under 'My Checklist' -:</p> <ul style="list-style-type: none"> ▪ Solas/Fás Safepass Card, or equivalent ▪ Valid 3-Day CSCS Certification for Signing, Lighting, Guarding at Roadworks, or equivalent for at least one member of the Project Team ▪ Valid CSCS Certification for Working on Roads, or equivalent, for all members of the Project Team 	Pass/Fail
4	<p>Temporary Traffic Management Plan</p> <p>Upload confirmation in writing on company headed paper that <u>prior to the award of the Contract</u>, the Service Provider will provide the Purchaser with a Temporary Traffic Management Plan demonstrating compliance with section 1.6.6 of the General Specification.</p>	Pass/Fail
5	<p>Safety Statement</p> <p>Upload confirmation in writing on company headed paper that the Service Provider agrees <u>prior to the award of the Contract</u>, to submit a copy of the company's Safety Statement or equivalent document for examination and assessment for compliance with the provisions set out in the Safety, Health & Welfare at Work Act 2005, and ensuing Regulations.</p>	Pass/Fail
6	<p>Compliance with Specification and Particular Requirements</p> <p>Upload confirmation in writing on company headed paper that the completed supplies & services will comply with the requirements of the General Specification set out in Schedule 1 of the DPS Terms and Conditions for Lot 2, and as more specifically set out in the particular requirements of the Request for Tender.</p>	Pass/Fail

1.2 Contract Award Criteria

1.2.1 The Applicant that achieves the highest ranking score by reference to the criteria below will be awarded the Contract.

Contract Award Criteria – Lot 2	Weighting
Most Economically Advantageous Tender Price (500 Marks)	100%

1.2.2 The lowest lump sum priced tendered for completion of the project will be awarded 100% of the **500** marks available for Price.

1.2.3 The remaining Tenders for the Competition will receive a pro rata mark for Price based on the difference between their total tendered cost and that of the lowest priced tenderer, expressed as a percentage of the lowest cost, i.e.

$$\text{Marks Awarded} = \frac{\text{Lowest Lump Sum Price}}{\text{Lump Sum Price being evaluated}} \times \text{Available Marks For Price (500)}$$

1.2.4 The marks awarded above will determine the highest scoring Service Provider who will be ranked No. 1 for the Tender Competition. The remaining Service Providers will be ranked in descending order, i.e. the next highest mark ranked No. 2, etc.

1.2.5 The Roadmarking Services will be completed in accordance with the sample Contract attached as Schedule 4 to these terms and conditions.

1.2.6 The acknowledgement of receipt of any Tender shall not constitute an actual or implied agreement between the Service Provider and the DPS Purchaser.

1.2.7 Where, after a competition, two or more Service Providers are level on marks the DPS Purchaser reserves the right to either;

1. Ask the equally ranked Service Providers to resubmit prices and continue this process until there is a winner, or
2. To divide the project between the equally ranked Applicants, or
3. Award the contract by random selection concluded in an open and transparent forum, or
4. To re-tender the project

1.2.8 All Service Providers submitting a Tender in response to a Request for Tender will be informed of the outcome of the competition without delay following conclusion of the Request for Tender evaluation process. There is no standstill period for a specific contract entered into on the basis of a dynamic purchasing system. Details of the DPS Contract awarded will be published in a Contract Award Notice (or in a quarterly batch of Contract Award Notices) on the Official Journal of the European Union.

1.3 Documentation to be provided for Contract Award

1.3.1 In addition to the information to be provided when submitting a tender in response to a Request for Tender (as outlined in part 1.1 above), the successful Service Provider must provide to the Purchaser, any additional documentation required for execution of the Contract, as provided for in these terms and conditions.

SCHEDULE 3: DPS PURCHASERS

Ref	Purchasers (Contracting Authorities)
1	Carlow County Council
2	Cavan County Council
3	Clare County Council
4	Cork City Council
5	Cork County Council
6	Donegal County Council
7	Dublin City Council
8	Dun-Laoghaire-Rathdown County Council
9	Fingal County Council
10	Galway City Council
11	Galway County Council
12	Kerry County Council
13	Kildare County Council
14	Kilkenny County Council
15	Laois County Council
16	Leitrim County Council
17	Limerick City and County Council
18	Longford County Council
19	Louth County Council
20	Mayo County Council
21	Meath County Council
22	Monaghan County Council
23	Offaly County Council
24	Roscommon County Council
25	Sligo County Council
26	South Dublin County Council
27	Tipperary County Council
28	Waterford City and County Council
29	Westmeath County Council
30	Wexford County Council
31	Wicklow County Council

SCHEDULE 4: SAMPLE CONTRACT

[Insert Date]

[Insert Name and Address of the Service Provider]

(hereinafter referred to as "the *Service Provider*")

[Road Marking Supplies & Services Contract Number/Purchase Order Number: [●]]

Dear Sirs,

We refer to the Dynamic Purchasing System (DPS) for the provision of **Road Marking Supplies & Services** for Local Authorities dated [●]. The terms and conditions set out in the *Road Markings – Standard Terms and Conditions* shall be incorporated into this Contract. Terms and expressions defined in the *Road Markings – Standard Terms and Conditions* shall bear the same meanings where used in this Contract.

[Insert name of DPS Purchaser] issued a Request for Tender in accordance with Clause 6 – Award of Contracts of the *Road Marking - Standard Terms and Conditions* and invited a Proposal from you for the provision of [●] on [●].

You submitted a Proposal on [●], which is attached at Appendix 1 hereto. [Insert name of DPS Purchaser] now wishes to engage the Service Provider to provide the Road Marking Supplies & Services more particularly described in paragraph 1 below subject to and in accordance with the provisions of the *Road Marking - Standard Terms and Conditions* and this Contract. [Insert name of DPS Purchaser] has issued the attached Purchase Order to effect this Contract.

1. **Road Marking Supplies & Services**

The Service Provider shall provide the following Road Marking Supplies & Services :

[Insert precise description/specification of the Road Marking Supplies & Services to be delivered]

2. **Delivery Date**

The Service Provider shall deliver the Road Marking Supplies & Services :

[Insert date(s)]

3. **Other terms and conditions**

[Insert as applicable]

4. **Price and Payment**

Subject to the provisions of the *Road Marking - Standard Terms and Conditions* and to the due compliance by the Service Provider with the Service Provider's obligations and undertakings under the *Road Marking - Standard Terms and Conditions* and delivery of the Road Marking Supplies & Services, the [insert name of DPS Purchaser] agrees to pay the Service Provider the [sum(s)] stated hereunder at the [time(s)] stated hereunder:

[Insert price and payment terms].

No contract in respect of the Road Marking Supplies & Services described in this Contract shall exist until this Contract is signed by both parties.

We would be obliged if you would kindly counter-sign and return this letter to acknowledge acceptance of the terms outlined above.

Yours faithfully,

SIGNED by

a duly authorised representative
for and on behalf of the [*insert name of DPS Purchaser*]
in the presence of:-

COUNTER-SIGNED in acceptance of the above instructions by:

For and on behalf of [*insert name of the Service Provider*]
in the presence of:-

Date:

[Insert Proposal as Appendix 1 of the Contract]

SCHEDULE 5: PERFORMANCE EVALUATION REPORT

Road Marking Supplies & Services Contract Performance Evaluation (Lot 2)	
Details of Contract	
DPS Purchaser:	
Buyer Contact Name:	
RFT Reference No.:	
Name of Service Provider:	
Service Provider Contact Name:	
Service Provider Ranking (RFT):	
Details of Contract Awarded:	
Total Out-turn Cost (incl. VAT):	€
Comments:	

Evaluation Completed By -	
Buyer Contact Name:	
Buyer Contact No:	
Buyer email address:	
Date of Review:	
Signature:	

Performance Evaluation of Road Marking Supplies & Services (Lot 2)

Scoring Range		Excellent	Very Good	Good	Moderate	Poor
(Maximum of 25 to be scored for each criteria below)		17 - 25	13 - 16	9 - 12	5 - 8	0 - 4
Please give one rating for each criteria. Add comments as required to justify your rating.						
Evaluation Criteria (Total score available – 100)						Score
1	Adherence to the specified Project Programme [25]					0
	<i>Did the Contractor complete the project within the specified timeframe?</i>					
	<i>Were any difficulties or Delays encountered?</i>					
	<i>Were there any issues arising from Temporary Traffic Management on site?</i>					
	Comments					
2	Quality of Workmanship [25]					0
	<i>Was the required work completed in a good workmanlike manner?</i>					
	<i>Did the Project Team demonstrate a desire to complete the work to a high quality?</i>					
	<i>Did the Contractor provide the required confirmation of Quality of materials when requested?</i>					
	Comments					
3	Contractor Responsiveness [25]					0
	<i>Could the Purchaser communicate easily with the Contractor?</i>					
	<i>Were all issues arising addressed in a professional and timely manner?</i>					
	<i>Did the Purchaser have to issue any requests for corrective action(s)?</i>					
	Comments					
4	Compliance with the requirements of Health & Safety Legislation [25]					0
	<i>Did the Contractor/Supplier comply with the Safety, Health and Welfare at Work (Construction) Regulations 2013?</i>					
	<i>Did all on-site members of the Project Team possess FÁS accredited Safe Pass cards and where applicable, CSCS cards ?</i>					
	<i>Did the activities of the Project Team demonstrate awareness of Health & Safety risks associated with the project?</i>					
	<i>Did the Contractor's site activities create any Health & Safety risks?</i>					
Comments						
Total Score						0