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**DYNAMIC PURCHASING SYSTEM  
AGREEMENT**

**FOR**

**CIVIL ENGINEERING MATERIALS  
(SUPPLY ONLY)**

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# TABLE OF CONTENTS

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<b>1.</b>	<b>THE LGOPC AND THE ECONOMIC OPERATOR AGREE AS FOLLOWS:</b>	<b>4</b>
1.1	Scope of Appointment	4
1.2	Entire Agreement	4
1.3	Period of Validity	4
1.4	Limitation on liability	4
1.5	The Contracting Authorities	5
<b>2.</b>	<b>GENERAL TERMS &amp; CONDITIONS</b>	<b>6</b>
2.1	General	6
2.2	Interpretation	6
2.3	Legal Status of the Economic Operator – Assignment and/or Novation	6
2.4	Termination of the DPS Agreement	7
2.5	Subcontracting	7
2.6	Tax Compliance	8
2.7	Employees	8
2.8	Planning Compliance	8
2.9	Environmental & Social Considerations	8
2.10	Statutory Obligations and Applicable Law	8
2.11	Freedom of Information Acts	8
2.12	Canvassing	9
2.13	Conflicts of Interest and Registrable Interest	9
2.14	Confidentiality	9
2.15	Data Protection	9
<b>3.</b>	<b>MATERIAL CATEGORIES</b>	<b>12</b>
3.1	Goods Subcategories	12
3.2	Technicians or Technical Bodies responsible for Quality Control	12
<b>4.</b>	<b>STAGE 2 - SUPPLEMENTARY REQUEST FOR TENDER</b>	<b>13</b>
4.1	General	13
4.2	Supplementary Request For Tender Process	13
4.3	Award Criteria – Supplementary Request for Tender	14
4.4	Information/Documentation To Be Provided Prior To Contract Award	16
4.5	SRFT Contract	16
4.6	Electronic Catalogue	17

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

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

**AND**

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

**WHEREAS:**

- A. The LGOPC conducted a call for competition on [www.etenders.gov.ie](http://www.etenders.gov.ie) and in the Official Journal of the European Union inviting requests to participate in a Dynamic Purchasing System for the Supply of Civil Engineering Materials for the Public Service (hereinafter referred to as "the DPS") on behalf of the contracting authorities specified in Section 1.5 hereto (hereinafter referred to as "the Contracting Authorities").
- B. The Economic Operator submitted a request to participate in the DPS and, following an assessment by the LGOPC, the LGOPC wishes to admit the Economic Operator to the DPS.
- C. The Economic Operator has agreed to be admitted to the DPS on the terms set out in this DPS Agreement.
- D. The Economic Operator enters into this DPS Agreement and formally accepts its terms in the following manner:
  - The Economic Operator shall electronically accept this DPS Agreement through [www.supplygov.ie](http://www.supplygov.ie) (hereinafter referred to as "SupplyGov") by way of its personal SupplyGov account (the formal acceptance of the terms of this DPS Agreement through SupplyGov shall operate as if this DPS Agreement had been signed and/or sealed (and witnessed appropriately) by the parties and shall be construed accordingly for all legal purposes).
- E. The admittance by the LGOPC of the Economic Operator to the DPS, subsequent to the acceptance by the Economic Operator of the terms of this DPS Agreement, shall operate as the acceptance by the LGOPC of the terms of this DPS Agreement and this DPS Agreement shall take effect from such date.
- F. This DPS Agreement incorporates the DPS Agreement General Terms and Conditions specified in Part 2 hereto (hereinafter referred to as "the DPS Agreement General Terms and Conditions").
- G. Each obligation, warranty or representation of the Economic Operator under this DPS Agreement is undertaken and/or made for the benefit of both the LGOPC and the Contracting Authorities.

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

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## 1.1 SCOPE OF APPOINTMENT

- 1.1.1 This DPS Agreement governs the relationship between the LGOPC and the Economic Operator in respect of the terms and conditions applying to the participation of the Economic Operator in the DPS.
- 1.1.2 In consideration of the performance by the Economic Operator of its obligations under this DPS Agreement, the LGOPC appoints the Economic Operator to the DPS to provide the Goods to the Contracting Authorities when contracted to do so pursuant to the DPS.
- 1.1.3 The Contracting Authorities are entitled to use the DPS for the purpose of procuring Goods from Economic Operators who have been admitted to the DPS.
- 1.1.4 When a Contracting Authority wishes to acquire Goods pursuant to the DPS, it will do so by means of a Supplementary Request for Tender<sup>1</sup> only.
- 1.1.5 Notwithstanding the entitlement of the Contracting Authorities to utilise the DPS, neither the LGOPC nor the Contracting Authorities give any assurances as to their level of engagement or expenditure through the DPS and the Economic Operator hereby acknowledges that it has not entered into this DPS Agreement on the basis of any such expectation. This DPS Agreement does not constitute a commitment from the Contracting Authorities to award contracts under the DPS (hereinafter referred to as "SRFT Contract/s"<sup>2</sup>) to the Economic Operator and the Contracting Authorities reserve the right to engage in separate procurement processes with economic operators outside of the DPS should they consider it appropriate to do so.

## 1.2 ENTIRE AGREEMENT

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

## 1.3 PERIOD OF VALIDITY

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

## 1.4 LIMITATION ON LIABILITY

- 1.4.1 Notwithstanding that the LGOPC is: (a) acting as a central purchasing body coordinating the establishment of the DPS; and (b) entering into this DPS Agreement with the Economic Operator, nothing within this DPS Agreement or the Tender Documents<sup>4</sup> shall operate to bind the LGOPC to (or make them a party to) the terms and obligations of an SRFT Contract and the Economic Operator hereby indemnifies and holds harmless the LGOPC from any losses, damages, costs or claims arising from: (a)

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<sup>1</sup> Supplementary Request for Tender means a request for tender issued by a Contracting Authority to the economic operators admitted to the DPS via [www.supplygov.ie](http://www.supplygov.ie) (hereinafter referred to as "SupplyGov") for a Supplementary Request for Tender Contract (hereinafter referred to as an "SRFT Contract").

<sup>2</sup> SRFT Contract means a contract for the purchase and sale of Goods entered into between an economic operator and a Contracting Authority following a Supplementary Requests for Tender.

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

<sup>4</sup> Tender Documents mean the Instructions Document, the DPS Agreement, the ESPD, the Online Envelope 1, the Financial Confirmatory Note and the SRFT Contract.

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the failure of the Economic Operator to secure an SRFT Contract ; and/or (b) any SRFT Contract entered into by the Economic Operator.

## **1.5 THE CONTRACTING AUTHORITIES**

1.5.1 The Contracting Authorities partaking in the DPS Agreement include:

- Ministers of the Government of Ireland; Central Government Departments; offices and non-commercial agencies and organisations which have a formal reporting and legal relationship to Central Government Departments, including all local authorities in Ireland (as defined in the Local Government Act 2014), (themselves including regional assemblies, local enterprise boards and library bodies), and those approved housing bodies which also constitute “bodies governed by public law” within the meaning of Regulation 2 of the Regulations listed on the Register of Approved Housing Bodies maintained by the Department of Housing, Planning, Community and Local Environment currently approved under section 6 of the Housing Act 1992;
- Contracting authorities in the Irish health sector including but not limited to the Health Service Executive (HSE); the Health Information and Quality Authority (HIQA) and HSE funded Agencies delivering health & personal social services funded by more than 50% from Exchequer funds;
- Contracting authorities which are Third Level Educational Institutions (including universities, institutes of technology and members of the Education Procurement Service);
- Contracting authorities which are Education and Training Boards (ETBs) and ETB schools, and primary, post-primary, special and secondary schools as well as ETBs acting on behalf of schools;
- An Garda Síochana (Police);
- The Irish Prison Service;
- The Defence Forces
- The Housing Agency.
- Such other contracting authorities as may be notified to the Economic Operator from time to time.

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## 2.0 GENERAL TERMS & CONDITIONS

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### 2.1 GENERAL

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

### 2.2 INTERPRETATION

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

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

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

- 2.3.3 The terms of this DPS Agreement shall govern any succeeding economic operator and the LGOPC may, at its discretion, direct the Economic Operator and the succeeding economic operator to execute a formal Deed of Assignment/Novation.
- 2.3.4 The LGOPC reserves the right to assign, novate or transfer this DPS Agreement to a third party without the consent of the Economic Operator.
- 2.3.5 Without prejudice to such additional circumstances where assignment is permissible under subparagraphs 2.3.1 (i) and (ii) herein, assignment to the legal successor of the Economic Operator (subject to the granting of formal written consent to such assignment by the LGOPC) is permissible in the following circumstances:
- Change of the Economic Operator's legal status from:
- (a) sole trader to corporation where general ownership and personnel remain the same;
  - (b) corporation to sole trader where general ownership and personnel remain the same;
  - (c) sole trader to partnership where general ownership and personnel remain the same;
  - (d) partnership to sole trader where general ownership and personnel remain the same;
  - (e) corporation to partnership where general ownership and personnel remain the same;
  - (f) partnership to corporation where general ownership and personnel remain the same;
  - (g) sole trader to other related sole trader (for example, business transfer from father to son); or
  - (h) Change of the Economic Operator's business name.

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

- 2.4.1 The LGOPC may, by written notice, terminate this DPS Agreement (without recompense to the Economic Operator) thus ending the participation of the Economic Operator in the DPS, in the following circumstances:
- if the Economic Operator breaches the terms of this DPS Agreement; or
  - if the Economic Operator is sourcing Goods from quarries which are not in compliance (or not shown to be in compliance) with the Planning Acts<sup>5</sup>; or
  - if the provisions of Regulation 73 of the Regulations apply; or
  - if the Economic Operator falls within a relevant exclusion ground under Regulation 57 of the Regulations; or
  - if the Economic Operator fails to provide the requisite evidence of compliance with the declarations submitted in its ESPD following a request from the LGOPC and/or a Contracting Authority; or
  - if the Economic Operator fails to provide, to the LGOPC or the Contracting Authorities, renewed and updated self-declarations in accordance with Regulation 34 (24) of the Regulations; or
  - if any statement made by the Economic Operator in connection with the procedure by which this DPS Agreement was entered into was: (a) untrue when made or subsequently ceases to be true; or (b) was materially incorrect, inaccurate or misleading (whether intentionally so or not).
- 2.4.2 The LGOPC, acting in its sole discretion, may, by giving written notice, collapse the DPS and therefore end the DPS Agreements with all economic operators appointed thereto, without recompense to any economic operator, at any time during the Period of Validity.

## **2.5 SUBCONTRACTING**

- 2.5.1 When responding to a Supplementary Request for Tender where subcontractor(s) are proposed for completion of an SRFT Contract, the Economic Operator shall provide to the Contracting Authority (if requested): (a) the relevant details of the subcontractor(s); (b) an ESPD for the subcontractor(s); (c)

<sup>5</sup> The Planning Acts means such legislation and regulations enacted from time to time to regulate planning including, but not limited to, the Local Government (Planning and Development) Act, 1963 and the Planning and Development Acts 2000 to 2019 (as amended).

evidence of the qualifications and experience of the subcontractor(s); and (d) such other information and documentation in relation to the subcontractor(s) as may be reasonably required by the Contracting Authority.

## **2.6 TAX COMPLIANCE**

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

## **2.7 EMPLOYEES**

- 2.7.1 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.

## **2.8 PLANNING COMPLIANCE**

- 2.8.1 If the Economic Operator is sourcing Goods from quarries, such quarries must be operating in compliance with the Planning Acts.
- 2.8.2 The Contracting Authority may seek from the Economic Operator, such information and documentary evidence as it deems reasonably necessary to ensure any quarry source is operating in compliance with the Planning Acts and such information and documentary evidence may be verified by the relevant Planning Authority.

## **2.9 ENVIRONMENTAL & SOCIAL CONSIDERATIONS**

- 2.9.1 In the performance of an SRFT Contract, the Economic Operator and its subcontractors (if applicable) shall comply with all applicable 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 law, national law, collective agreements or by international, environmental, social and labour law listed in Schedule 7 of the Regulations.
- 2.9.2 This DPS facilitates the inclusion of environmental and social considerations and labour law in the Award Criteria published at Supplementary Request for Tender stage as set out in Section 4 hereunder.

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

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

## **2.11 FREEDOM OF INFORMATION ACTS**

- 2.11.1 The LGOPC and the Contracting Authorities are subject to the Freedom of Information Act, 2014 and the Economic Operator acknowledges that information provided in response to a Supplementary Request for Tender may be considered confidential or commercially sensitive. The Economic Operator should consider if any information supplied by it in response to a Supplementary Request for Tender



should not be disclosed because it is commercially sensitive or confidential and if this is the case, the Economic Operator should, when providing the information, identify same and specify the reasons for its commercial sensitivity or confidentiality. The LGOPC and the Contracting Authorities shall have regard to such statement but shall not be bound by it. If the Contracting Authority and/or the LGOPC, in their discretion, are satisfied that the information should be properly regarded as being confidential or commercially sensitive, the information shall be kept confidential subject to the LGOPC's and/or the Contracting Authority's obligations under public procurement and freedom of information laws.

## **2.12 CANVASSING**

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

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

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

## **2.14 CONFIDENTIALITY**

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

## **2.15 DATA PROTECTION**

- 2.15.1 In this clause, "Data Protection Laws" means: (a) the Irish Data Protection Acts 1988 to 2018; (b) the General Data Protection Regulation (EU) 2016/679 ("GDPR"); and (c) any other applicable law or regulation relating to the processing of personal data and to privacy including (but not limited to) the E-Privacy Directive and the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011 ("E-Privacy Regulations") (as may be

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amended, updated or re-published by the relevant body from time to time and as then apply at the time of an SRFT Contract).

- 2.15.2 The Contracting Authorities and the LGOPC will each be an Independent Data Controller (where Data Controller has the meaning given under the Data Protection Laws) in respect of any Personal Data (where Personal Data has the meaning given under the Data Protection Laws) required to be provided by the Economic Operator in response to this DPS Agreement and any Supplementary Request for Tender.
- 2.15.3 The Economic Operator, as Data Controller in respect of any Personal Data provided by it, in its application to the DPS and in response to an Supplementary Request for Tender, is required to confirm that all Data Subjects (where Data Subject has the meaning given under the Data Protection Laws) whose Personal Data is provided by the Economic Operator have consented to the processing of such Personal Data by the Economic Operator, the LGOPC, the Contracting Authorities, the evaluation teams and the operator of [www.supplygov.ie](http://www.supplygov.ie) (hereinafter referred to as "SupplyGov") for the purpose of the participation of the Economic Operator in the DPS and/or Supplementary Request for Tender or that the Economic Operator otherwise has a legal basis for providing such Personal Data to the foregoing for the purpose of its participation in the DPS.
- 2.15.4 The Contracting Authorities and the LGOPC, each as an independent Data Controller, may process the Personal Data as follows:
- by the Contracting Authorities disclosing data (including Personal Data of the Economic Operator and/or their employees or other related third-party agents such as those persons' names, contact details, work experience etc.) to the LGOPC.
- 2.15.5 The Contracting Authorities, as an independent Data Controller, may share the Personal Data as follows:
- share such Personal Data with other bodies within the public and/or semi-state sectors that use the SupplyGov service as required by this DPS Agreement. The list of such public and/or/semi-State bodies is maintained on SupplyGov and is updated from time to time. In addition, such Personal Data may be shared with the Office of Government Procurement, the Local Government Management Agency and with other bodies as required under law.
- 2.15.6 The Contracting Authorities and the LGOPC shall enter into a Data Sharing Agreement, which shall govern the sharing of the Personal Data between them and their respective rights, obligations and liability in relation to this.
- 2.15.7 The Economic Operator shall be individually responsible, as an independent Data Controller, for its own processing of the Personal Data and must fully comply with its obligations as a Data Controller under the Data Protection Laws in this regard.
- 2.15.8 Neither the Economic Operator nor the LGOPC shall be construed as a Data Processor (where Data Processor has the meaning given under the Data Protection Laws) in relation to the other, unless the conditions for processing of the Personal Data change so that one party processes Personal Data on behalf of and on the instructions of the other party.
- 2.15.9 The Economic Operator and the LGOPC shall not be construed as Joint Data Controllers (where Joint Data Controllers has the meaning given under the Data Protection Laws) unless the conditions for processing of the Personal Data change such that the parties in conjunction with one another jointly, in a collaborative fashion, determine the purposes and means of processing the Personal Data.
- 2.15.10 The Economic Operator will inform the LGOPC as soon as possible of any requests from Data Subjects regarding rectification or erasure of Personal Data included in a tender, or restriction of or objection to the processing of such Personal Data for the purposes set out herein. The Economic Operator shall, to the extent that such a request affects the processing of such Personal Data by the LGOPC, provide reasonable assistance to the LGOPC and or the Contracting Authorities to enable compliance with the Data Protection Laws. Notwithstanding the foregoing, the Economic Operator shall remain responsible itself for dealing with requests from Data Subjects in respect of Personal Data, to the extent that such requests are directed by the Data Subject to the Economic Operator (or any of its agents, employees or sub-contractors).
- 2.15.11 The Economic Operator shall notify the LGOPC immediately if the Economic Operator becomes aware of, or suspects: (i) any breach of this section; or (ii) a Personal Data breach which is likely to affect or invoke the LGOPC's obligations under the Data Protection Laws; or (iii) any situation or envisaged development that shall in any way influence, change or limit the processing of the Personal Data included

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in the tender for the purposes set out herein. The Economic Operator shall document all Personal Data breaches in accordance with the Data Protection Laws and fully co-operate with the LGOPC and/or the Contracting Authorities to ensure compliance with the Data Protection Laws. The Economic Operator shall use reasonable endeavours to mitigate any damage suffered by a Data Subject in these circumstances.

- 2.15.12 The Economic Operator hereby indemnifies the LGOPC and the Contracting Authorities against all claims, liabilities, costs, expenses, damages and losses suffered or incurred by the LGOPC and/or the Contracting Authorities arising out of or in connection with any breach by the Economic Operator (or any of its employees/agents/sub-contractors) of any terms of this section, or its obligations under the Data Protection Laws, or any use by the Economic Operator of the Personal Data.

## 3.0 MATERIAL CATEGORIES

### 3.1 GOODS SUBCATEGORIES

- 3.1.1 The Goods subcategories described in the tables below are broadly indicative of the Goods that will be procured by Contracting Authorities at Supplementary Request for Tender stage.
- 3.1.2 The Technical Standards, Legislation, Guidelines and Codes of Practice relating to the Goods subcategories are outlined in Schedule 1 of the SRFT Contract and may be more precisely specified and defined by the Contracting Authority in the Supplementary Request for Tender.
- 3.1.3 The Goods subcategories may be further specified and defined in the Supplementary Request for Tender depending on Contracting Authority requirements.

#### Lot 1 - Bound and Unbound Aggregate Materials (Supply Only)

	GOODS SUBCATEGORIES
1	Bituminous Bound Materials
2	Cold Mix Bitumen Bound Materials
3	Cold Mix Delay Set Bituminous Macadam
4	Fill Material & Unbound Material
5	Sand, Gravels and Topsoil
6	Stone
7	Surface Dressing Chips
8	All-in aggregate for concrete

#### Lot 2 – Ready-Mix Concrete (Supply Only)

	GOODS SUBCATEGORIES
1	Ready-mix Concrete to Concrete Standard EN206
2	Ready-mix 'low carbon' Concrete
3	Mortar
4	Cement Bound Mixtures

### 3.2 TECHNICIANS OR TECHNICAL BODIES RESPONSIBLE FOR QUALITY CONTROL

- 3.2.1 The Contracting Authority may seek details in the form of a list of the relevant technicians or technical bodies upon whom the tenderer can call on in regard to Quality Control (Part II of Annex XII of Directive 2014/24/EC and Schedule 8 of SI No 284 of 2016). Particularly in the context of ensuring quality both in the administration of a Contract and the delivery of a high quality end-product.
- 3.2.2 Such details may include evidence in regard registration to appropriate standards or relevant accredited bodies.

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## 4.0 STAGE 2 - SUPPLEMENTARY REQUEST FOR TENDER

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### 4.1 GENERAL

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

### 4.2 SUPPLEMENTARY REQUEST FOR TENDER PROCESS

- 4.2.1 Contracting Authorities may issue Supplementary Requests for Tender for the purpose of awarding SRFT Contracts throughout the Period of Validity of the DPS.
- 4.2.2 Supplementary Requests for Tender will be issued electronically via SupplyGov to all economic operators admitted to the DPS that have expressed an interest in receiving Supplementary Requests for Tender for their selected regions and lots.
- 4.2.3 The Economic Operator shall comply with all instructions and rules issued by the Contracting Authority in relation to the Supplementary Request for Tender.
- 4.2.4 Unless otherwise agreed and where applicable pursuant to the Regulations, economic operators will be given a minimum of 5 days from the date on which the Supplementary Request for Tender is issued to submit a tender.
- 4.2.5 Tenders will be evaluated in accordance with the provisions set out below.
- 4.2.6 The Supplementary Request for Tender will include:
- (a) details in relation to the Contracting Authority's specific requirements in respect of the supply of Goods;
  - (b) the instructions and rules of the Contracting Authority in relation to the Supplementary Request for Tender; and
  - (c) the Contracting Authority's intention to award the SRFT Contract to:
    - a Preferred Tenderer only, or
    - a Preferred Tenderer and a specified number of substitute suppliers (which substitute suppliers will be placed on a substitution list ranked in descending order).
- 4.2.7 Where the Contracting Authority indicates in the Supplementary Request for Tender its intent to award the SRFT Contract to a Preferred Tenderer only, the Contracting Authority shall enter into an SRFT Contract with the Preferred Tenderer only.
- 4.2.8 Where the Contracting Authority indicates in the Supplementary Request for Tender its intent to award the SRFT Contract to a Preferred Tenderer and a specified number of substitute suppliers, the Contracting Authority shall enter into SRFT Contracts with the Preferred Tenderer and each of the ranked substitutes.
- 4.2.9 Where, following a Supplementary Request for Tender, the Contracting Authority has entered into SRFT Contracts with a Preferred Tenderer and substitute suppliers, the Contracting Authority shall, in the first instance, procure the Goods by way of a Task Order from the Preferred Tenderer.
- 4.2.10 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 being the subject matter of a specific Task Order; 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 being the subject matter of a specific Task Order, then, and in those circumstances, the Contracting Authority may assign the specific Task Order and procure the Goods from the highest ranking substitute (beginning with the substitute ranked No. 1) then capable of fulfilling the specific Task Order.

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

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

4.3.2 The economic operator that achieves the highest Total Marks will be deemed to have submitted the most economically advantageous tender and identified as the Preferred Tenderer. The remaining economic operators will be ranked in descending order based on their Total Marks.

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

- 4.3.3 In a Supplementary Request for Tender, a Contracting Authority may, at its discretion:
- (a) identify that the Award Criteria will be based on Price (Total Cost) only; and/or
  - (b) divide the Price (Total Cost) Criteria into a number of sub-criteria; or
  - (c) where Price (Total Cost) and Quality Criteria are used, divide the Price (Total Cost) criteria and Quality criteria into a number of sub-criteria; and
  - (d) in circumstances where sub-criteria are identified, shall specify the percentage weighting and associated marks applicable to each criterion/sub-criterion in the Supplementary Request for Tender.
  - (e) in circumstances where Quality criteria/sub-criteria are used in a Supplementary Request for Tender, the economic operator shall be required to achieve a minimum pass mark of 40% for each Quality criterion/sub-criterion adopted and a failure to do so shall result in the economic operator’s exclusion from the Supplementary Request for Tender.

**4.3.4 Price (Total Cost)**

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

- Costs relating to acquisition;
- Costs of use;
- Cost of Delivery;
- Disposal of excess material and/or distances from quarries/batching plants etc.;
- Environmental Externalities linked to Product;
- Quality Assurance testing;
- Maintenance Costs;
- End of life costs.

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

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

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

4.3.7 **Quality**

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

- Technical Merit;
- Functional Characteristics;
- After-sales service and technical assistance;
- Delivery conditions;
- Accessibility;
- Social Considerations;
- Environmental Considerations;
- Innovative Characteristics;
- Organisation, qualification and experience of staff assigned to perform the Contract;
- Risk Management.

4.3.8 Minimum pass marks will apply to each Quality criterion included in the Award Criteria.

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

4.3.10 The marking scale for Quality criteria is provided below:

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

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

- (i) The economic operator who was awarded the highest overall mark for the Quality Award Criteria of its tender will be deemed to have submitted the most economically advantageous tender;

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- (ii) In circumstances where the tie-break approach in Par. (i) does not identify the most economically advantageous tender, the economic operator who was awarded the highest overall mark for the specific Quality Award Criterion with the largest weighting will be deemed to have submitted the most economically advantageous tender (in circumstances where this approach does not identify the most economically advantageous tender the approach will continue to be applied to each of the Qualitative Award Criteria in descending order of weighting);
- (iii) In circumstances where the tie-break approach in Par. (ii) does not identify the most economically advantageous tender, the economic operator who was awarded the highest overall mark for the specific Quality Award Criterion which was listed first in the Supplementary Request for Tender will be deemed to have submitted the most economically advantageous tender (in circumstances where this approach does not identify the most economically advantageous tender the approach will continue to be applied to each of the specific Quality Award Criterion in the order they were listed in the Supplementary Request for Tender);
- (iv) In circumstances where the tie-break approach in Par. (iii) does not identify the most economically advantageous tender, the Contract Authority, may, at its discretion either:
- re-issue the Supplementary Request for Tender to all economic operators; or
  - award the SRFT Contract to one of the tied economic operators by random selection concluded in an open and transparent manner; or
  - ask the tied economic operators to resubmit prices and continue this process until there is a winner; or
  - implement such other open and transparent tie break approach as it deems appropriate.

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

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

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

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

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

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.

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

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

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

#### **4.5 SRFT CONTRACT**

4.5.1 If, following a Supplementary Request for Tender, the Economic Operator is awarded an SRFT Contract (either as the Preferred Tenderer or a substitute), the Economic Operator will enter into an SRFT Contract with the Contracting Authority in the form and manner of the template SRFT Contract published with the Tender Documents.



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- 4.5.2 The LGOPC reserves the right, where necessary for: (i) the efficient and compliant operation of the DPS; and (ii) the utilisation of an electronic catalogue in a Supplementary Request for Tender, to: (a) amend provisions of the template SRFT Contract; and (b) amend the required form and manner of the parties accepting the terms of an SRFT Contract.

#### **4.6 ELECTRONIC CATALOGUE**

- 4.6.1 In accordance with Regulation 36, the Contracting Authorities may, at their discretion, during the Period of Validity of the DPS, award contracts based on the DPS by requiring that tenders for a specific contract are to be presented by the Economic Operator in the form of (or to include) an electronic catalogue.
- 4.6.2 In circumstances where Contracting Authorities require tenders to be presented in the form of an electronic catalogue, the Economic Operator shall be provided, in advance, the necessary details as to the procedure for the award of the contract to include, amongst other details, the format of the electronic catalogue required, the award criteria and the form of contract to be awarded.