
**DYNAMIC PURCHASING SYSTEM
AGREEMENT**

FOR

**BUILDING CONTRACTORS FOR NON-
RESIDENTIAL MINOR BUILDING WORKS**

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THIS DYNAMIC PURCHASING SYSTEM AGREEMENT IS MADE BETWEEN:

- 1.** The Local Government Operational Procurement Centre (hereinafter referred to as the "LGOPC") (which expression shall, where the context so admits or requires, be deemed to include its successors and assigns) acting as a central purchasing body under the auspices of Kerry County Council with an address of Unit 9, Ground Floor, Building C, Reeks Gateway, Rock Road, Killarney, Co. Kerry of the one part;

AND

- 2.** The economic operator appointed on foot of the Competition (as defined below) and which has accepted the terms of this Dynamic Purchasing Agreement (as defined below) in accordance with Recital D below (the "Economic Operator") (which expression shall, where the context so admits or requires, be deemed to include its successors and assigns) of the other part.

WHEREAS:

- A.** The LGOPC conducted a call for competition on www.etenders.gov.ie (hereinafter referred to as "eTenders") and in the Official Journal of the European Union (the "Competition") inviting requests to participate in a Dynamic Purchasing System for Building Contractors for Non-Residential Minor Building Works (hereinafter referred to as "the DPS") on behalf of the Contracting Authorities specified in Section 1.5 herein (hereinafter referred to as "the Contracting Authorities").
- B.** The Economic Operator submitted an application and, following an assessment by the LGOPC, the LGOPC wishes to admit the Economic Operator to the DPS in respect of those lots referenced in the Letter of Acceptance/Successful Notification issued by the LGOPC to the Economic Operator (and references in this DPS Agreement to the Economic Operator having been "appointed to" a particular lot shall be construed accordingly).
- C.** The Economic Operator has agreed to be admitted to the DPS on the terms set out in this DPS Agreement.
- D.** The Economic Operator enters into this DPS Agreement by electronically accepting this DPS Agreement through www.supplygov.ie (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 sealed (and witnessed appropriately) by the parties and shall be construed accordingly for all legal purposes).
- E.** By electronically accepting this DPS Agreement, the Economic Operator accepts the terms of this DPS Agreement and this DPS Agreement shall take effect from the date of such acceptance.
- F.** This DPS Agreement incorporates the DPS Agreement General Terms and Conditions specified in 2.0 hereto (hereinafter referred to as "the DPS Agreement General Terms and Conditions").
- G.** Each obligation, warranty, or representation of the Economic Operator under this DPS Agreement is undertaken and/or made for the benefit of both the LGOPC and the Contracting Authorities.

1.0 SCOPE OF APPOINTMENT

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 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, subject to Recital B above, to the DPS for the provision of Non-Residential¹ Minor Building Works (hereinafter collectively referred to as "the Works"), which Works are more particularly specified in Section 4.0 herein ("General Specification"), to the Contracting Authorities when contracted to do so pursuant to this DPS Agreement.
- 1.1.3 The Contracting Authorities are entitled to use the DPS for the purpose of procuring the Works from economic operators who have been admitted to the DPS for the relevant lot.
- 1.1.4 When a Contracting Authority wishes to procure the Works pursuant to the DPS, it will do so by means of a Supplementary Request for Tender² (hereinafter referred to as an "sRFT(s)").
- 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)"³) 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 Regulations⁴, amend the Period of Validity. Any amendment to the Period of Validity shall not necessitate the re-execution or re-affirmation of this DPS Agreement by the parties which terms shall continue in force for the duration of any amended Period of Validity.

1.4 LIMITATION ON LIABILITY

- 1.4.1 Notwithstanding that the LGOPC is: (a) acting as a central purchasing body co-ordinating the establishment of the DPS; and (b) entering into this DPS Agreement with the Economic Operator, nothing within this DPS Agreement or the Tender Documents⁵ shall operate to bind the LGOPC to (or make them a party to) the terms and obligations of an sRFT Contract and the Economic Operator hereby indemnifies and holds harmless the LGOPC from any losses, damages, costs or claims arising from: (a) the failure of the Economic Operator to secure an sRFT Contract; and/or (b) any sRFT Contract entered into by the Economic Operator.

¹ For the purposes of this Competition, Non-Residential Property means a building that is not used as a dwelling.

² Supplementary Request for Tender ("sRFT") means a request for tender issued by a Contracting Authority via Supplygov to the economic operators admitted to the DPS.

³ sRFT Contract means a contract for the Works entered into between an Economic Operator and a Contracting Authority following an sRFT.

⁴ Regulations means the European Union (Award of Public Authority Contracts) Regulations, 2016 (S. I. No. 284 of 2016), as amended (hereinafter referred to as "the Regulations")

⁵ Tender Documents mean the Instructions Document, the DPS Agreement, the ESPD and all accompanying documents published on eTenders in relation to this Competition.

1.5 THE CONTRACTING AUTHORITIES

1.5.1 The Contracting Authorities partaking in the DPS Agreement comprise:

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

2.0 GENERAL TERMS & CONDITIONS

2.1 GENERAL

- 2.1.1 The LGOPC is not bound by any anomalies, errors, or omissions in the Tender Documents. The Economic Operator shall immediately notify the LGOPC if it becomes aware of any ambiguities, anomalies, errors or omissions in the Tender Documents and the LGOPC shall, upon receipt of such notification, notify all economic operators of its ruling in respect of same. Such ruling shall be issued in writing and may, at the LGOPC's discretion, form part of this 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.
- 2.2.9 Capitalised terms not defined herein shall have the meaning given to them in the Instructions Document.

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

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

- 2.3.3 The terms of this DPS Agreement shall govern any succeeding economic operator and the LGOPC may, at its discretion, direct the Economic Operator and the succeeding economic operator to execute a formal Deed of Assignment/Novation.
- 2.3.4 The LGOPC reserves the right to assign, novate or transfer this DPS Agreement to a third party without the consent of the Economic Operator.

2.4 TERMINATION OF THE DPS AGREEMENT

- 2.4.1 The LGOPC may, by written notice, terminate this DPS Agreement (without recompense to the Economic Operator) thus ending the participation of the Economic Operator in the DPS, in the following circumstances:
- if the Economic Operator breaches the terms of this DPS Agreement; or
 - if the provisions of Regulation 73 of the Regulations apply; or
 - if the provisions of Regulation 57 of the Regulations apply to the Economic Operator and/or its subcontractors; or
 - if the Economic Operator fails to provide:
 - (a) the requisite evidence of its ongoing compliance with; (i) the declarations submitted in its ESPD or Questionnaire, or (ii) an applicable statutory obligation; or (iii) the selection criteria for entry on to the DPS, or
 - (b) renewed and updated self-declarations, when requested to do so by the LGOPC or a Contracting Authority; or
 - if any information, documentation or declaration furnished by the Economic Operator at any stage of its application to the DPS is found to be false, misleading or incorrect.
- 2.4.2 At any time during the Period Of Validity of the DPS, 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.
- 2.4.3 The termination of the DPS does not affect the validity of any sRFT Contract then in force unless and until the Contracting Authority terminates that sRFT Contract.

2.5 SUBCONTRACTING

- 2.5.1 When responding to an sRFT where subcontractor(s) are proposed for completion of an sRFT Contract, the Economic Operator shall provide to the Contracting Authority (if requested): (a) the relevant details of the subcontractor(s); (b) an ESPD for the subcontractor(s); (c) evidence of the qualifications and experience of the subcontractor(s); and (d) such other information and documentation in relation to the subcontractor(s) as may be reasonably required by the Contracting Authority.
- 2.5.2 In circumstances where the Economic Operator has been awarded an sRFT Contract and subcontractors are proposed for completion of the sRFT Contract, the Economic Operator and the proposed subcontractors shall, if requested by the Contracting Authority, enter into the then current Capital Works Management Framework Collateral Warranty or equivalent.

2.6 RELIANCE ON CAPACITY OF OTHER ENTITIES

- 2.6.1 Where the Economic Operator has relied on the capacities of other entities to satisfy the Selection Criteria for entry onto the DPS:
- it shall, upon request by the Contracting Authority, demonstrate to the Contracting Authority that it will have at its disposal the resources necessary by providing a written undertaking from that other entity, in terms satisfactory to the Contracting Authority and duly evidenced, confirming that the entity in question will place the necessary resources at the disposal of the Economic Operator;
 - such entity must, when requested by the Contracting Authority, provide joint and several liability to the Contracting Authority for the performance of any sRFT Contract (this may take the form of a guarantee, letter of reliance, such entity being a party to the sRFT Contract or other form of commitment as directed by the Contracting Authority).

- 2.6.2 An Economic Operator may only rely on the capacities of other entities where those entities will perform the specific tasks for which these capacities are required.

2.7 TAX COMPLIANCE

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

2.8 EMPLOYEES

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

2.9 ENVIRONMENTAL & SOCIAL CONSIDERATIONS

- 2.9.1 In the performance of an sRFT Contract, the Economic Operator, and its subcontractor(s) (if applicable) shall comply with all applicable obligations in the field of environmental, social, and labour law: (a) that apply at the place where the Works are provided; and (b) that have been established by EU law, national law, collective agreements or by international, environmental, social, and labour law listed in Schedule 7 of the Regulations.
- 2.9.2 This DPS Agreement provides for the inclusion of environmental and social considerations as part of an sRFT⁶ that are consistent with the Programme for Government in seeking to achieve environmental, social and economic goals including, but not limited to, the following (as amended, updated, or re-published by the relevant body from time to time):
- European Commission Buying Green Handbook;
 - Climate Action Plan 2024 published by the Department of the Environment, Climate and Communications;
 - Green Public Procurement Guidance for the Public Sector: April 2024;
 - Buying Greener: Green Public Procurement Strategy and Action Plan 2024-2027;
 - Circular 20/2019: Promoting the use of Environmental and Social Considerations in Public Procurement;
 - Whole of Government Circular Economy Strategy 2022 – 2023: Living more, Using Less;
 - A Waste Action Plan for a Circular Economy: Ireland's National Waste Policy 2020-2025;
 - Best Practice Guidelines for the preparation of resource & waste management plans for construction & demolition projects;
 - Reducing Embodied Carbon in Cement and Concrete through Public Procurement in Ireland;
 - Information Note on Incorporating Social Considerations into Public Procurement published by the Office of Government Procurement;
 - European Commission (2021) Buying Social: A Guide to Taking Account of Social Considerations in Public Procurement.

⁶ Further details are contained within Sections 5.5.5 and 5.5.8 herein.

- 2.9.3** Where applicable, during the performance of an sRFT Contract, the Economic Operator may be required to monitor and report on requested measurable environmental and social considerations that are linked to the subject matter of an sRFT Contract for the purpose of verifying contractual obligations entered into by the Economic Operator.

Environmental Considerations:

- 2.9.4 An sRFT provides an opportunity to convert environmental policy objectives on carbon reduction, air and water quality and waste reduction into actions that can be achieved as part of an sRFT Contract, by seeking solutions that have a reduced impact on the environment throughout their life cycle.

- 2.9.5 Contracting Authorities may incorporate relevant Green Public Procurement ("GPP") measures into the specifications and/or Award Criteria of an sRFT. For example, in accordance with published national and European Union GPP criteria, environmental criteria that target enhanced environmental performance beyond the minimum requirements of the specification may be included insofar as they are linked to the subject matter of an sRFT Contract.

In particular, under this DPS, Contracting Authorities seeking to source works with a reduced environmental impact may consider the following GPP criteria sets;

- Office building design, construction and management (due to be updated in 2024/5)
- Indoor & outdoor lighting
- Heating equipment
- Road transport vehicles & services

- 2.9.6 Good environmental practices should be employed as part of the Economic Operator's normal working arrangements to contribute to the circular economy and objectives for energy and resource efficiency including the prevention of waste. The Economic Operator shall consider all environmental legislation and guidelines, as well as the Contracting Authorities' environmental policies to ensure that negative environmental impacts are reduced and sustainable development initiatives are promoted where relevant to the subject matter of any sRFT Contract awarded.

Construction and Demolition Waste:

- 2.9.7 Construction and Demolition waste is waste arising from any building works, demolition or development. Approximately 80% of this waste arises from excavated soil and stone, with the remainder including concrete, brick, tiles, glass, metal, plastic and wood. Construction and Demolition waste is the largest single waste stream in the European Union, making up around one third of all waste produced annually.

- 2.9.8 National policy and best practice guidance seeks to shift the focus away from waste disposal in favour of circularity and sustainability by identifying and maximising the value of material through improved design, durability, repair, and recycling.

- 2.9.9 Under this DPS, Contracting Authorities may at sRFT stage, prior to the commencement of work on-site, require economic operators to submit details for the proposed management of waste. Such details shall be as specified by the Contracting Authority at sRFT stage, and may include but are not limited to -:

- an inventory of the estimated waste to arise under the sRFT Contract;
- proposed systems to be used for the separate collection, monitoring and quantifying of wastes arising and materials segregated on-site for re-use, recycling and other forms of recovery;
- tracking and verifying the destination of consignments of waste

Social Considerations:

- 2.9.10 Contracting Authorities may incorporate relevant social considerations measures into the Award Criteria of an sRFT. For example, issues that contribute to employee wellbeing such as inclusivity, equality, working conditions, educational opportunities and workplace accessibility may be included insofar as they are linked to the subject matter of an sRFT Contract.

2.10 STATUTORY OBLIGATIONS AND APPLICABLE LAW

- 2.10.1 This 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 same.

2.11 COUNCIL REGULATION (EU) 2022/1031 (INTERNATIONAL PROCUREMENT INSTRUMENT)

- 2.11.1 Council Regulation (EU) 2022/1031 on the access of third country economic operators, goods and services to the Union's public procurement and concession markets and procedures supporting negotiations on access of Union economic operators, goods and services to the public procurement and concession markets of third countries (International Procurement Instrument – IPI) applies to this DPS Agreement. This Regulation aims to restrict access to public contracts for third countries that have placed constraints on access to their markets for EU operators. The Economic Operator shall provide the requisite evidence of its compliance with measures taken under this Regulation when requested to do so by the LGOPC or a Contracting Authority.

2.12 COUNCIL REGULATION (EU) No 833/2014 (SANCTIONS ON RUSSIA)

- 2.12.1 Council Regulation (EU) No 833/2014, as amended by Council Regulation (EU) No 2022/576, concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, applies to this DPS Agreement. This Regulation aims to minimise Russian involvement in public contracts and contains restrictive measures to that effect. The Economic Operator shall provide the requisite evidence of its ongoing compliance with this Regulation when requested to do so by the LGOPC or a Contracting Authority.

2.13 FREEDOM OF INFORMATION ACTS

- 2.13.1 The LGOPC and the Contracting Authorities are subject to the Freedom of Information Act, 2014 and the European Communities (Access to Information on the Environment) Regulations 2007. The Economic Operator should consider if any information supplied by it in response to an sRFT should not be disclosed because it is commercially sensitive or confidential. If so, the Economic Operator should, when providing the information, identify same and specify the reasons for its commercial sensitivity or confidentiality. The LGOPC and the Contracting Authorities shall have regard to such statement but shall not be bound by it. If the Contracting Authority and/or the LGOPC, in their discretion, are satisfied that the information should be properly regarded as being confidential or commercially sensitive, the information shall be kept confidential subject to the LGOPC's and/or the Contracting Authority's obligations under public procurement and Freedom of Information laws. The LGOPC and the Contracting Authorities shall not be liable in respect of information provided by the Economic Operator, which is subsequently released as a result of such obligations or in respect of any consequential damage suffered as a result.

2.14 CANVASSING

- 2.14.1 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 an sRFT, 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 sRFT.
- 2.14.2 Where the Economic Operator has an existing relationship with personnel and/or agents of the LGOPC and/or the Contracting Authorities, any discussions, correspondence, or other communications with regards to the DPS and/or an sRFT may be treated as canvassing.
- 2.14.3 In accordance with the Ethics in Public Office Act, 1995, any money, gift or other consideration furnished by the Economic Operator seeking to obtain an sRFT Contract or otherwise influence the DPS will be deemed to have been paid or given corruptly unless the contrary is proved.

2.15 CONFLICTS OF INTEREST AND REGISTRABLE INTEREST

- 2.15.1 Any actual or potential conflict of interest involving the Economic Operator and the LGOPC and/or a Contracting Authority must be disclosed by the Economic Operator as soon as it becomes apparent.
- 2.15.2 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 or an sRFT.
- 2.15.3 Where the LGOPC and/or a Contracting Authority determines that a material conflict of interest arises, it may, at its discretion, permit the situation to continue subject to the Economic Operator's satisfactory compliance with safeguards specified by the LGOPC and/or the Contracting Authority.

- 2.15.4 Where a Contracting Authority determines that a material conflict of interest arises and same can only be remedied by the exclusion of the Economic Operator from an sRFT and/or an sRFT Contract, the Contracting Authority shall exclude the Economic Operator from the sRFT and/or terminate the sRFT Contract in relation to which the conflict of interest has arisen.
- 2.15.5** 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.

2.16 CONFIDENTIALITY

- 2.16.1 All documents and information provided to the Economic Operator by the LGOPC in relation to the DPS shall be treated as confidential by the Economic Operator.

2.17 DATA PROTECTION

- 2.17.1 In this clause, "Data Protection Laws" means: (a) the Irish Data Protection Acts 1988 to 2018; (b) the General Data Protection Regulation (EU) 2016/679 ("GDPR"); and (c) any other applicable law or regulation relating to the processing of personal data and to privacy including (but not limited to) the Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) and the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011 ("E-Privacy Regulations").
- 2.17.2 The Contracting Authorities and the LGOPC will each be an independent Data Controller (where Data Controller has the meaning given under the Data Protection Laws) in respect of any Personal Data (where Personal Data has the meaning given under the Data Protection Laws) provided by the Economic Operator in response to this DPS or an sRFT.
- 2.17.3 The Economic Operator, as Data Controller in respect of any Personal Data provided by it in its application for admittance to the DPS and in response to an sRFT, was required to confirm in their tender submission that all Data Subjects (where Data Subject has the meaning given under the Data Protection Laws) whose Personal Data is provided by the Economic Operator have consented to the processing of such Personal Data by the Economic Operator, the LGOPC, the Contracting Authorities, the evaluation teams and the operators of eTenders and Supplygov for the purpose of the participation of the Economic Operator in the DPS and/or an sRFT or that the Economic Operator otherwise has a legal basis for providing such Personal Data to the foregoing for the purpose of its participation in the DPS.
- 2.17.4 The Contracting Authorities and the LGOPC, each as an independent Data Controller, may process the Personal Data as follows:
- by the Contracting Authorities disclosing data (including Personal Data of the Economic Operator and/or its employees or other related third-party agents such as those persons' names, contact details, work experience etc.) to the LGOPC.
- 2.17.5 The Contracting Authorities, as independent Data Controllers, may share the Personal Data as follows:
- with other bodies within the public and/or semi-state sectors that use the Supplygov service as required by the DPS. 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.
- 2.17.6 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.
- 2.17.7 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.
- 2.17.8 Neither the Economic Operator nor the LGOPC and/or the Contracting Authorities shall be construed as a Data Processor (where Data Processor has the meaning given under the Data Protection Laws) in relation to the other, unless the conditions for processing of the Personal Data change so that one party processes Personal Data on behalf of and on the instructions of the other party.

- 2.17.9 The Economic Operator and the LGOPC and/or the Contracting Authorities shall not be construed as Joint Data Controllers (where Joint Data Controllers has the meaning given under the Data Protection Laws) unless the conditions for processing of the Personal Data change such that the parties in conjunction with one another jointly, in a collaborative fashion, determine the purposes and means of processing the Personal Data.
- 2.17.10 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 subcontractors).
- 2.17.11 The Economic Operator shall notify the LGOPC immediately if the Economic Operator becomes aware of, or suspects: (i) any breach of this section 2.17; or (ii) a Personal Data breach which is likely to affect or invoke the LGOPC's and/or the Contracting Authorities' obligations under the Data Protection Laws; or (iii) any situation or envisaged development that shall in any way influence, change or limit the processing of the Personal Data included in the tender for the purposes set out herein. The Economic Operator shall document all Personal Data breaches in accordance with the Data Protection Laws and fully co-operate with the LGOPC and/or the Contracting Authorities to ensure compliance with the Data Protection Laws. The Economic Operator shall use reasonable endeavours to mitigate any damage suffered by a Data Subject in these circumstances.
- 2.17.12 The Economic Operator hereby indemnifies the LGOPC and the Contracting Authorities against all claims, liabilities, costs, expenses, damages, and losses suffered or incurred by the LGOPC and/or the Contracting Authorities arising out of or in connection with any breach by the Economic Operator (or any of its employees/agents/sub-contractors) of any terms of this section 2.17, or its obligations under the Data Protection Laws, or any use by the Economic Operator of the Personal Data.

2.18 PUBLIC HEALTH

- 2.18.1 The Economic Operator must, in its participation in the DPS, comply with all legislation, public service standards, operating procedures or other guidance which have been put in place by the Government and/or the relevant state agencies or bodies in response to a public health emergency.

2.19 CHILD PROTECTION & VETTING

- 2.19.1 Economic operators, during any visits to Contracting Authorities' sites, including at sRFT stage and in the performance of a sRFT Contract, shall strictly adhere to the Contracting Authorities child protection policy which will be included with the sRFT documents for the information of economic operators (if applicable).
- 2.19.2 Economic operators, during any visits to Contracting Authorities' sites, including at sRFT stage and in the performance of a sRFT Contract, may be subject to routine Garda Security Clearance procedures prior to being allowed entry onto certain sites, including but not limited to Local Authority, An Garda Síochána, Health Service Executive, Department of Defence and Department of Education sites. Co-operation with these procedures is mandatory.

2.20 PERFORMANCE BOND

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

3.0 EVIDENCE IN SUPPORT OF SELECTION CRITERIA

3.1 INTRODUCTION

- 3.1.1 The Economic Operator shall provide the requisite evidence of its ongoing compliance with selection criteria for entry on to the DPS when requested to do so by the LGOPC or a Contracting Authority. This Section 3.0 outlines the evidence that may be sought in that respect.
- 3.1.2 Any reference in this DPS Agreement to a qualification under the National Framework of Qualifications shall include an equivalent qualification obtained in another EU member state.

3.2 LOT 1 - TECHNICAL AND PROFESSIONAL ABILITY

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

3.2.1 Health and Safety

Construction Duty Holder Role Appointments

The evidence to be provided to the Contracting Authority at sRFT Contract stage is proof of statutory (or other reasonably necessary) qualifications and the completion of a questionnaire similar to the requirements of the BPC 2 Competency Assessment for PSCS/Contractor (as issued by the Contracting Authority) and/or a PSDP questionnaire similar to the requirements of the BPC 1 Competency Assessment for PSDP/Designer (as issued by the Contracting Authority).

Health and Safety Policy and Health and Safety Statement

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

3.2.2 Educational and Professional Qualifications

Company Director/Owner/Managerial Staff

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

- National Framework of Qualification (NFQ) Level Seven (7) or higher, plus five (5) years' experience in managing non-residential projects that are of similar scale, nature and complexity to the Works anticipated to be completed under this DPS Agreement; OR,
- National Framework of Qualification (NFQ) Level Six (6) qualification, plus eight (8) years' experience in managing non-residential projects that are of similar scale, nature and complexity to the Works anticipated to be completed under this DPS Agreement; OR,
- Ten (10) years' experience in managing non-residential projects that are of similar scale, nature and complexity to the Works anticipated to be completed under this DPS Agreement.

Site Manager/Site Agent

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

- National Framework of Qualification (NFQ) Level Six (6) or higher, plus five (5) years' experience in managing non-residential projects that are of similar scale, nature and complexity to the Works anticipated to be completed under this DPS Agreement; OR,
- Eight (8) years' experience in managing non-residential projects that are of similar scale, nature and complexity to the Works anticipated to be completed under this DPS Agreement.

3.2.3 Technicians or Technical Bodies Responsible for Quality Control

The evidence to be provided to the Contracting Authority at sRFT Contract stage is a list of the technicians or technical bodies involved that the Economic Operator can call on in order to carry out work or can use in regard to Quality Control, for the delivery of a high quality end-product.

3.2.4 Details of Projects Completed During the Past 5 Years

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

3.3 LOT 2 AND LOT 3 - TECHNICAL AND PROFESSIONAL ABILITY

NOTE – This Section 3.3 applies only if the Economic Operator has been appointed to Lot 2 and/or Lot 3.

3.3.1 Health and Safety

Construction Duty Holder Role Appointments

The evidence to be provided to the Contracting Authority at sRFT Contract stage is proof of statutory (or other reasonably necessary) qualifications and the completion of a questionnaire similar to the requirements of the BPC 2 Competency Assessment for PSCS/Contractor (as issued by the Contracting Authority) and/or a PSDP questionnaire similar to the requirements of the BPC 1 Competency Assessment for PSDP/Designer (as issued by the Contracting Authority).

Health and Safety Policy and Health and Safety Statement

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

3.3.2 Educational and Professional Qualifications

Company Director/Owner/Managerial Staff

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

- National Framework of Qualification (NFQ) Level Seven (7) or higher, plus eight (8) years' experience in managing non-residential projects that are of similar scale, nature and complexity to the Works anticipated to be completed under this DPS Agreement; OR,
- National Framework of Qualification (NFQ) Level Six (6) qualification, plus ten (10) years' experience in managing non-residential projects that are of similar scale, nature and complexity to the Works anticipated to be completed under this DPS Agreement; OR,
- Fifteen (15) years' experience in managing non-residential projects that are of similar scale, nature and complexity to the Works anticipated to be completed under this DPS Agreement.

Project Manager

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

- National Framework of Qualification (NFQ) Level Seven (7) or higher, plus five (5) years' experience in managing non-residential projects that are of similar scale, nature and complexity to the Works anticipated to be completed under this DPS Agreement; OR,
- National Framework of Qualification (NFQ) Level Six (6) qualification, plus eight (8) years' experience in managing non-residential projects that are of similar scale, nature and complexity to the Works anticipated to be completed under this DPS Agreement; OR,
- Ten (10) years' experience in managing non-residential projects that are of similar scale, nature and complexity to the Works anticipated to be completed under this DPS Agreement.

Site Manager/Site Agent

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

- National Framework of Qualification (NFQ) Level Six (6) or higher, plus five (5) years' experience in managing non-residential projects that are of similar scale, nature and complexity to the Works anticipated to be completed under this DPS Agreement; OR,

- Eight (8) years' experience in managing non-residential projects that are of similar scale, nature and complexity to the Works anticipated to be completed under this DPS Agreement.

3.3.3 Technicians or Technical Bodies Responsible for Quality Control

The evidence to be provided to the Contracting Authority at sRFT Contract stage is a list of the technicians or technical bodies involved that the Economic Operator can call on in order to carry out work or can use in regard to Quality Control, for the delivery of a high quality end-product.

3.3.4 Details of Projects Completed During the Past 5 Years

The Selection Criteria requires the uploading of completed Lot 2 Project Verification Forms and/or Lot 3 Project Verification Forms as part of the application process.

3.4 FINANCIAL AND ECONOMIC STANDING

3.4.1 Financial Confirmatory Note

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

3.4.2 Insurance

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

The minimum levels of insurance cover required are:

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

4.0 GENERAL SPECIFICATION

4.1 SCOPE OF WORKS

- 4.1.1 The DPS is for minor building works on non-residential properties across the public service as required by Contracting Authorities.
- 4.1.2 The proposed Works at sRFT Contract stage may include, but are not limited to:
- Alteration, conversion, renovation, repair, maintenance and extension of existing buildings and structures including works to:
 - the interior of structures/buildings;
 - the exterior of structures/buildings;
 - associated works including;
 - demolition works
 - building fabric and external envelope upgrade and modifications including roofing
 - mechanical and electrical works
 - internal fit out works
 - conservation works
 - ancillary works
 - New buildings and structures.

4.2 LEGISLATION

- 4.2.1 The Economic Operator shall, in its performance of an sRFT Contract, comply with all relevant legislation and byelaws that apply during the term of the sRFT Contract including, but not limited to, the following (as may be amended, updated, replaced, or re-published by the relevant body from time to time):
- The Safety, Health and Welfare at Work Act 2005;
 - The Safety, Health and Welfare at Work (Repeals)(Commencement) Order, 2015;
 - The Safety in Industry Act 1980;
 - The Safety, Health, and Welfare at Work (General Application) Regulations 2007 to 2023;
 - The Safety, Health and Welfare at Work (Construction) Regulations 2006 to 2013;
 - Chemicals (Asbestos Articles) Regulations 2011 (S.I. No. 248 of 2011);
 - The Safety, Health, and Welfare at Work (Exposure to Asbestos) (Amendment) Regulations, 2010 (S.I. No. 589 of 2010);
 - The Safety, Health, and Welfare at Work (Exposure to Asbestos) Regulations, 2006 (S.I. No. 386 of 2006);
 - The Safety, Health, and Welfare at Work (Chemical Agents) Regulations, 2001 (S.I. No. 619 of 2001);
 - The Safety, Health, and Welfare at Work (Carcinogens) Regulations, 2001 (S.I. No. 078 of 2001);
 - European Communities (Carriage of dangerous goods by road & use of transportable pressure equipment regulations, 2011 (S.I. No. 349 of 2011), 2018 (S.I. No. 197 of 2018), 2021 (S.I. No. 711 of 2021), 2023 (S.I. No. 197 of 2023);
 - Electricity Regulation Act 1999;
 - The Air Pollution Act 1987;
 - The Construction Products Regulations (CPR) 2013;
 - The Waste Management Acts, 1996 to 2013;
 - The Waste Management (Amendment) Act, 2001;
 - Law and good industry practice on Disability including those of the National Disability Authority;
 - Fire Services Act 1981;
 - Local Byelaws and Regulations;
 - Regulations and requirements of all relevant authorities;

- Such further and/or new relevant legislation, regulations, byelaws, that may be introduced or come into being during the term of the DPS.

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

4.3 TECHNICAL STANDARDS, GUIDELINES & CODES OF PRACTICE

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

- Building Regulations Technical Guidance Documents:
 - Part A – Structure
 - Part B - Fire Safety
 - Part C - Site Preparation and Resistance to Moisture
 - Part D - Materials and Workmanship
 - Part E – Sound
 - Part F – Ventilation
 - Part G – Hygiene
 - Part H - Drainage and Waste Water Disposal
 - Part J - Heat Producing Appliances
 - Part K - Stairways, Ladders, Ramps and Guards
 - Part L - Conservation of Fuel and Energy
 - Part M - Access and Use
- SEAI Domestic Technical Standards and Specifications Version 1.3 2020;
- Guidance in the 'Energy Efficiency in Traditional Buildings' (DECLG 2010);
- SI 243 of 2012_Energy Performance of Buildings Regulations 2012
- BS5228:2009 'Code of Practice for Noise Control on Construction and Open Sites';
- Any other recommendation or Code of Practice issued by the Health and Safety Authority;
- Department of Housing, Local Government and Heritage publication Radon in Existing Buildings – Corrective Options;
- I.S. EN ISO 13788:2012 – Hygrothermal Performance of Building Components and Building Elements – Internal Surface Temperature to Avoid Critical Surface Humidity and Interstitial Condensation – Calculation Methods;
- I.S. EN 15026:2007 – Hygrothermal Performance of Building Components and Building Elements – Assessment of Moisture Transfer by Numerical Simulation;
- All ASHRAE guidance for specific Mechanical Systems and Components (where more comprehensive than CIBSE⁷);
- All CIBSE Publications- Guides, Codes, Technical Memoranda, Application Guides, Lighting Guides, etc;
- Law and good industry practice on Disability including those of the National Disability Authority;
- I.S. 10101:2020 - National Rules for Electrical Installations (5th Edition) and any Amendments, Corrigenda & Errata lists;
- Commission for Regulation of Utilities (CRU) document entitled 'Definition of the Scope of Controlled Works';
- Irish Standard I.S. 813 Domestic gas installations (Edition 3) and Amendment 1:2017;

⁷ Chartered Institute of Building Services Engineers.

- Commission for Regulation of Utilities (CRU) document entitled 'Gas Safety Regulatory Framework for Ireland';
- All BSRIA⁸ Publications;
- All HVCA⁹ Publications;
- ECTI¹⁰ Guidance on Generator installation;
- ETCI¹¹ - National Rules for Electrical Installations Fourth Edition ET101 2008 NSAI I.S. 10101: 2020 National Rules for Electrical Installations;
- ETCI T103 Electrical Installations above 1KV AC & 1.5kv DC;
- Current Edition of IS3218 Fire Alarm & Detection Systems;
- Current Edition of IS3217 Emergency Lighting;
- Relevant Irish Standards ("Irish Standards"), Codes of Practice ("Codes of Practice"), EU Directives ("Directives") or equivalent European Standards ("European Standards");
- Such further and/or new relevant technical standards, guidelines and codes of practice that may be introduced or come into being during the term of the DPS.

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

4.4 QUALITY OF MATERIALS

- 4.4.1 The Economic Operator will be fully responsible for the quality of the materials and their compliance with the technical requirements as set out in the Tender Documents.
- 4.4.2 The Economic Operator must adhere to and ensure compliance with all relevant product manufacturer's instructions.
- 4.4.3 All construction products associated with harmonised Standards will be CE marked and have a Declaration of Performance.
- 4.4.4 In order to ensure compliance with environmental technical standards, economic operators tendering for an alternative environmentally friendly product at sRFT stage will be required at that stage to submit an Environmental Product Declaration (EPD) in accordance with EN 15804 for each alternative environmentally friendly product they propose.

4.5 HEALTH AND SAFETY - GENERAL

- 4.5.1 In fulfilling an sRFT Contract, the Economic Operator must comply with its obligations under Health and Safety legislation, which legislation includes, but is not limited to, the Safety, Health, and Welfare at Work Act, 2005 and all regulations, codes of practice and guidelines arising thereunder, including, but not limited to, the Safety, Health and Welfare at Work (Construction) Regulations 2013 and the Safety, Health and Welfare at Work (General Application) Regulations 2007 – 2023 (collectively referred to as "Health and Safety legislation").
- 4.5.2 In order to comply with its requirements under Health and Safety legislation, the Contracting Authority ("the Client"¹²), at sRFT stage, shall assess the competence of parties appointed to or that will have a Construction Duty Holder¹³ role, taking into account the specific requirements of the sRFT Contract.
- 4.5.3 The Contracting Authority may seek evidence of the Economic Operator's competence in this respect including, but not limited to, proof of statutory (or other reasonably necessary) qualifications and the completion of a questionnaire similar to the requirements of the BPC 2 Competency Assessment for PSCS/Contractor (as issued by the Contracting Authority) and/or a PSDP questionnaire similar to the requirements of the BPC 1 Competency Assessment for PSDP/Designer (as issued by the Contracting Authority).

⁸ BSRIA is a UK-based testing, instrumentation, research and consultancy organisation, providing specialist services in construction and building services engineering.

⁹ Heating & Ventilating Contractors Association UK.

¹⁰ Electrical Engineering/Electronics, Computer, Communications and Information Technology Association (ECTI).

¹¹ Electro Technical Council of Ireland.

¹² As defined in the Safety, Health, and Welfare at Work (Construction) Regulations, 2013.

¹³ A Construction Duty Holder role means a role which has legal duties under the Safety, Health, and Welfare at Work (Construction) Regulations, 2013.

- 4.5.4 For the purpose of an sRFT Contract, the LGOPC is not the Client and is not responsible for the appointment of any duty holder role.

4.6 INSURANCE

- 4.6.1 The Economic Operator shall be liable for and shall indemnify the Contracting Authority for and in respect of all and any losses, claims, demands, damages, or expenses which the Contracting Authority may suffer due to and arising directly because of the negligence, act or omission, breach of contract, breach of duty, wilful default or fraud of the Economic Operator and the Economic Operator's Personnel.
- 4.6.2 The required insurances for an sRFT shall be specified by the Contracting Authority in the sRFT. The minimum insurance levels that Contracting Authorities are likely to require are set out at section 3.4.2. Economic operators do not need to have the insurances in place when making their application in response to an sRFT but will be required to put those insurances in place prior to the award of any sRFT Contract should they be successful. The Contracting Authority will not be responsible for any cost incurred by economic operators in putting in place the required insurances.
- 4.6.3 No Economic Operator shall be awarded an sRFT Contract unless satisfactory evidence of insurance is submitted prior to contract award by the Economic Operator's insurance broker/company.
- 4.6.4 The onus is on the Economic Operator to advise the Contracting Authority when their insurance has lapsed or has been cancelled. All economic operators must notify the Contracting Authority of alterations, cancellations and confirm renewal of policies. Any failure to do so may result in immediate termination of an sRFT Contract and/or this DPS Agreement (thus ending the participation of the Economic Operator in the DPS).
- 4.6.5 Where required, limits for Professional Indemnity Insurance cover will vary depending on the nature of the sRFT Contract. The actual level of professional indemnity insurance cover required for individual sRFT Contracts will be specified by the relevant Contracting Authority after they have conducted a risk assessment to identify the level of risk associated with a potential failure, delay, or error in the provision of the Works associated with the specific sRFT.
- 4.6.6 The required insurance cover will vary from contract to contract as will the type of insurance cover available to economic operators, particularly in relation to professional indemnity risks.
- 4.6.7 Economic operators may be required to arrange Contractors All Risks Insurance as a requirement for the award of an sRFT Contract. The successful Economic Operator will be required to include the Contracting Authority as joint insured and may be required to include a non-vitiation clause.

5.0 STAGE 2 - SUPPLEMENTARY REQUEST FOR TENDER

5.1 GENERAL

- 5.1.1 This section applies to all Lots 1, 2 and 3.
- 5.1.2 A response to an sRFT must be made electronically via Supplygov (responses in any other form will not be accepted). The Economic Operator is only allowed to submit one response to an sRFT.
- 5.1.3 The Economic Operator, having submitted a response to an sRFT, will be informed of the outcome at the earliest reasonable opportunity following conclusion of the evaluation process.
- 5.1.4 Any costs incurred by the Economic Operator in responding to an sRFT or in the performance of an sRFT Contract or howsoever else arising from its general participation in the DPS shall be the Economic Operator's sole liability.

5.2 SUPPLEMENTARY REQUEST FOR TENDER PROCESS

- 5.2.1 Contracting Authorities may issue sRFTs for the purpose of awarding sRFT Contracts throughout the Period of Validity of the DPS.
- 5.2.2 sRFTs will issue electronically via Supplygov to all economic operators admitted to the DPS for a particular Lot that have expressed an interest in receiving sRFTs for the relevant region. Economic operators admitted to the DPS can amend the regions they wish to receive sRFTs for at any stage during the Period of Validity of the DPS by contacting the Supplygov Helpdesk using the contact details available on www.supplygov.ie.
- 5.2.3 The Economic Operator shall comply with all instructions and rules issued by the Contracting Authority in relation to the sRFT.
- 5.2.4 Unless otherwise agreed, economic operators will be given a minimum of 5 days within which to submit a tender from the date an sRFT is issued by a sub-central contracting authority¹⁴. In circumstances where the sRFT is issued by a non-sub-central contracting authority, economic operators will be given a minimum of 10 days within which to submit a tender from the date the sRFT is issued.
- 5.2.5 sRFTs will be evaluated in accordance with the provisions set out below.
The sRFT will include:
 - (a) details of the Contracting Authority's specific requirements in relation to the Works;
 - (b) the instructions and rules of the sRFT; and
 - (c) the Contracting Authority's intention to award the sRFT Contract to:
 - (i) a Preferred Tenderer only, or
 - (ii) a Preferred Tenderer with Substitution List.
- 5.2.6 Where the Contracting Authority indicates its intent to award the sRFT Contract to a Preferred Tenderer only, the Contracting Authority shall enter into an sRFT Contract with the Preferred Tenderer only.
- 5.2.7 Where the Contracting Authority indicates its intent to award sRFT Contracts to a Preferred Tenderer and substitute tenderers, the Contracting Authority shall enter into sRFT Contracts with the Preferred Tenderer and each of the substitute tenderers. In such circumstances, the sRFT Contract will be a PW-CF11 Public Works Term Maintenance and Refurbishment Contract (or equivalent).
- 5.2.8 Where, following an sRFT, the Contracting Authority has entered into a PW-CF11 Public Works Term Maintenance and Refurbishment Contract with a Preferred Tenderer and substitute tenderers, the Contracting Authority shall, in the first instance, procure the Works from the Preferred Tenderer. In circumstances where the Preferred Tenderer: (a) has confirmed to the Contracting Authority that it is unable or unwilling (through lack of capacity or otherwise) to provide the Works; or (b) is deemed by the Contracting Authority to be unable or unwilling (through change in circumstances, lack of capacity or otherwise) to provide the Works, then and in those circumstances, the Contracting Authority may procure the Works from the highest ranking substitute (beginning with the substitute ranked No. 1) then capable of providing the Works.

¹⁴ "Sub-central contracting authority" means a contracting authority that is not a central government authority.

5.3 EVIDENCE – SUPPLEMENTARY REQUEST FOR TENDER

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

5.4 CLARIFICATIONS – SUPPLEMENTARY REQUEST FOR TENDER

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

5.5 AWARD CRITERIA – SUPPLEMENTARY REQUEST FOR TENDER

- 5.5.1 Tenders submitted in response to an sRFT will be evaluated in accordance with the Award Criteria outlined below.
- 5.5.2 The Economic Operator that achieves the highest Total Marks will be deemed to have submitted the most economically advantageous tender and identified as the Preferred Tenderer. The remaining economic operators will be ranked in descending order based on their Total Marks.

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

- 5.5.3 In an sRFT, a Contracting Authority may, at its discretion:
- identify that the Award Criteria will be based on Price (Total Cost) only and divide the Price (Total Cost) Criteria into sub-criteria; or
 - where Price (Total Cost) and Quality Criteria are used, divide the Price (Total Cost) criteria and Quality Criteria into sub-criteria.

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

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

5.5.5 Price (Total Cost)

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

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

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

5.5.7 The Economic Operator submitting the lowest Price (Total Cost) will achieve the maximum marks available for Price (Total Cost). Marks for **Total Cost** for the remaining Economic Operators will be allocated using the following formula:

$$\text{Marks Awarded for Total Cost} = \frac{\text{Total Cost of Lowest Valid Tender}}{\text{Total Cost of Valid Tender being Evaluated}} \times \text{Maximum Marks Available}$$

5.5.8 Quality

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

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

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

5.5.10 The marking scale for Quality criteria is provided below:

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

5.5.11 In the event of a tie in an sRFT that includes both quality and cost criteria, the following tie-break approach may, at the discretion of the Contracting Authority, be adopted:

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

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

5.5.12 In the event of a tie in an sRFT that includes Price (Total Cost) criteria **only**, the Contracting Authority may, at its discretion, either:

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

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

5.5.14 Where, following an evaluation but prior to the award of an sRFT Contract, the Preferred Tenderer is: (a) deemed by the Contracting Authority to be unable or unsuitable to complete the sRFT Contract due to a change in circumstances; or (b) by its own admission, is unable or unwilling to complete the sRFT Contract then the Contracting Authority may award the sRFT Contract to the tenderer ranked next highest and may repeat this process until the sRFT Contract is awarded.

5.6 INFORMATION/DOCUMENTATION TO BE PROVIDED PRIOR TO CONTRACT AWARD

5.6.1 In addition to the information and documentation to be provided when submitting a response to an sRFT, the Economic Operator may be required to provide to the Contracting Authority for its approval, prior to award of an sRFT Contract, the information and/or documentation listed below:

- updated confirmation that the Economic Operator complies with the requirements of Regulation 57 of the Regulations;
- subcontractors proposed for fulfilment of an sRFT Contract are required to: (a) confirm that they comply with the requirements of Regulation 57 of the Regulations by providing an ESPD or equivalent; and/or (b) produce an in-date (not older than 30 days) Notification of Determination¹⁵;
- the Economic Operator's (or its subcontractors') Tax Clearance Access Number and Tax Reference Number to facilitate online verification of its (or its subcontractors') tax status. By supplying these details, the Economic Operator confirms that the Contracting Authority has consent to verify its (or its subcontractors') tax status online;

¹⁵ Notice of Determination means notification of a formal ruling in relation to specific Value-Added Tax (VAT) matters.

- agreement to the use of specific electronic systems/tools where appropriate;
- evidence of insurance in accordance with the minimum standards referred to in the Tender Documents or sRFT;
- Parent Company Guarantee, if applicable;
- Performance Bond, if applicable;
- the Economic Operator's Safety Statement (or equivalent) may be assessed for compliance with the Safety, Health & Welfare at Work Act 2005 and enforcing regulations;
- Appointment and acceptance of duty holder role(s), where appropriate as outlined in the Safety Health & Welfare at Work (Construction) Regulations 2013;
- SOLAS Safepass Cards or equivalent Safety Awareness Scheme registration card, and, where required in the sRFT, Construction Skills Certification Scheme ("CSCS") cards;
- Site Specific Risk Assessment, if applicable;
- Site Specific Method Statement, if applicable;
 - For Works which do not require a Completion Certificate, the Contracting Authority reserves the right to seek an appropriate form of certification in respect of that type of work
 - Proof of compliance with work requirements set out during an sRFT may be sought at any time during the sRFT Contract
- Temporary Traffic Management Plan, if applicable;
- the Economic Operator's Waste Management Plan (WMP) for the management of all waste arising on site, if applicable,
- evidence of compliance with laws in relation to rates of pay and the conditions of employment (including pension contribution);
- Such other relevant information and/or documentation deemed necessary by the Contracting Authority.

5.6.2 Depending on the nature of the Works, the Contracting Authority reserves the right to seek proof of additional qualifications/training that are either statutory or deemed necessary for undertaking the Works. The following is a non-exhaustive list of additional qualifications/training that may be sought from the Economic Operator:

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

5.6.3 All the aforementioned information and/or documentation may, at the discretion of the Contracting Authority, be sought from the Economic Operator at sRFT stage.

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

5.7 SRFT CONTRACT

- 5.7.1 If, following an sRFT, the Economic Operator is awarded an sRFT Contract (either as the preferred tenderer or a substitute), the Economic Operator will enter into an sRFT Contract with the Contracting Authority. Subject to Section 5.2 herein, the sRFT Contract to be entered into shall, at the discretion of the Contracting Authority, be one of the following:
- PW-CF11 Public Works Term Maintenance and Refurbishment Contract;
 - PW-CF6 Short Public Works Contract;
 - PW-CF5 Public Works Contract Minor Building & Civil Engineering Works Designed by the Employer;
 - Other applicable Capital Works Management Framework Contracts for Public Works;
 - Approved equivalent as identified in the relevant sRFT.

5.8 NOTICE OF ADDENDA

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