

# **INSTRUCTIONS DOCUMENT**

**FOR**

**REQUESTS TO PARTICIPATE IN A**

**DYNAMIC PURCHASING SYSTEM**

**FOR**

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

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# 1.0 INTRODUCTION

## 1.1 PRIMARY INFORMATION AND CONTRACTING AUTHORITIES

- 1.1.1 The Local Government Operational Procurement Centre (hereinafter referred to as “the LGOPC”)<sup>1</sup>, acting as a central purchasing body<sup>2</sup> (Central Purchasing Body) under the auspices of Kerry County Council, is coordinating the establishment of a Dynamic Purchasing System of Economic Operators<sup>3</sup> for Building Contractors for Minor Building Works on Non-Residential Properties<sup>4</sup> (hereinafter referred to as “the DPS”) on behalf of contracting authorities<sup>5</sup>.
- 1.1.2 The DPS is for building contractors experienced in carrying out and managing a broad range of minor building works on non-residential properties.
- 1.1.3 The contracting authorities eligible to partake in the DPS (hereinafter referred to as “the Contracting Authorities”) 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);

<sup>1</sup> The LGOPC is responsible for the development and implementation of central purchasing mechanisms for the Category Councils of Plant Hire and Minor Building Works & Civils as established by the Office of Government Procurement.

<sup>2</sup> Central Purchasing Body means a central purchasing body as defined by Regulation 2(1) of the European Union (Award of Public Authority Contracts) Regulations 2016 (S. I. No. 284 of 2016) (hereinafter referred to as “the Regulations”).

<sup>3</sup> Economic Operator means an economic operator as defined by Regulation 2(1) of the Regulations.

<sup>4</sup> For the purposes of this Competition, Non-Residential Property means a building that is not used as a dwelling.

<sup>5</sup> Contracting Authority means a contracting authority as defined by Regulation 2(1) of the Regulations.

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;

- 1.1.4 Economic Operators admitted to the DPS will be invited to participate in Supplementary Requests for Tender<sup>6</sup> (hereinafter referred to as "sRFT/s") issued by the Contracting Authorities through [www.supplygov.ie](http://www.supplygov.ie)<sup>7</sup> (hereinafter referred to as "Supplygov") for Building Contractors for Non-Residential Minor Building Works (hereinafter collectively referred to as "Works") during the Period of Validity<sup>8</sup> of the DPS.
- 1.1.5 It is anticipated that the DPS will commence in Quarter 1, 2025.
- 1.1.6 The Period of Validity will be five years. The LGOPC may, subject to compliance with the Regulations, amend the Period of Validity.
- 1.1.7 The total value of contracts to be awarded under the DPS (hereinafter referred to as "sRFT Contract(s)")<sup>9</sup> is estimated to exceed the threshold whereby Directive 2014/24 EU and the Regulations apply to this call for competition (hereinafter referred to as the "Competition").

## **1.2 DYNAMIC PURCHASING SYSTEM (DPS)**

- 1.2.1 A Dynamic Purchasing System is a two-stage electronic process that Contracting Authorities use to streamline the procurement of commonly available goods, works or services that meet their requirements from all suitably qualified Economic Operators that have been admitted.
- 1.2.2 Following the initial establishment of a Dynamic Purchasing System, the system re-opens to receive requests to participate from new and previously unsuccessful Economic Operators.
- 1.2.3 The initial phase of a Dynamic Purchasing System covers the assessment of exclusion grounds and selection criteria only and all Economic Operators that pass this assessment shall be admitted (there is no limit to the number of Economic Operators that may be admitted to a Dynamic Purchasing System). Individual contracts are subsequently awarded, following further competition, at the second stage of the procurement process.

<sup>6</sup> Supplementary Request for Tender means a request for tender issued by the Contracting Authorities to the Economic Operators admitted to the DPS via [www.supplygov.ie](http://www.supplygov.ie) for a Supplementary Request for Tender Contract (hereinafter referred to as an "sRFT Contract").

<sup>7</sup> [www.supplygov.ie](http://www.supplygov.ie) is a procurement platform operated by the LGOPC facilitating Local Authorities and other state agencies in the public procurement of goods, works and services from Economic Operators.

<sup>8</sup> Period of Validity means the duration ('lifetime') of the DPS. The Period of Validity will commence on the day the DPS is established (this is referred to as the "DPS Tender Start Time") - being the first date on which the Contracting Authorities may issue Supplementary Requests for Tender.

<sup>9</sup> sRFT Contract means a contract for Works entered between an Economic Operator and a Contracting Authority following an sRFT.

### 1.3 DIVISION INTO LOTS

1.3.1 The DPS will be divided into three lots as follows:

| LOT REFERENCE | DESCRIPTION                                                                       |
|---------------|-----------------------------------------------------------------------------------|
| <b>Lot 1</b>  | Non-Residential Minor Building Works for works $\leq$ €500k                       |
| <b>Lot 2</b>  | Non-Residential Minor Building Works for works $>$ €500k and $\leq$ €2million     |
| <b>Lot 3</b>  | Non-Residential Minor Building Works for works $>$ €2million and $\leq$ €5million |

1.3.2 **Important Note: Economic Operators wishing to participate in the lots above must apply for each lot separately. Economic Operators admitted to the DPS for a particular lot may apply to participate in an additional lot at any time (see Section 4.0 herein for further details).**

## 2.0 ESTABLISHMENT AND OPERATION OF THE DPS

### 2.1 STAGE 1 – CALL FOR COMPETITION – DPS QUALIFICATION

**This stage is hosted on [www.etenders.gov.ie](http://www.etenders.gov.ie)<sup>10</sup> (hereinafter referred to as “eTenders”).**

- 2.1.1 Stage 1 is the call for competition issued by the LGOPC seeking requests to participate (hereinafter referred to as “Application(s)”) in the DPS. In stage 1, the LGOPC assesses the Economic Operator against the exclusion grounds under Regulation 57 of the Regulations and selection criteria only. All Economic Operators that pass this assessment are admitted to the DPS as there is no limit to the number of Economic Operators that may be admitted.
- 2.1.2 Instructions on how to complete an Application are outlined in **Section 4.0: Application Process** of this document.
- 2.1.3 Applications will be assessed in accordance with **Section 5.0: Evaluation of Applications and Admittance to the DPS**.

#### **Initial Application Period and Establishment of the DPS**

- 2.1.4 The deadline for submission of Applications for the initial establishment of the DPS (“Initial Application Period Deadline”) is **Thursday, 17<sup>th</sup> April 2025, at 17:00 Hrs**. An Economic Operator may submit an Application for the initial establishment of the DPS any time prior to the Initial Application Period Deadline.
- 2.1.5 Once the Initial Application Period Deadline has passed, the LGOPC will assess all Applications received prior to the Initial Application Period Deadline. On completion of this assessment, the LGOPC will notify all Economic Operators of the outcome of their Application.
- 2.1.6 A minimum standstill period of 14 days will apply following notifications to all Economic Operators that submitted Applications prior to the Initial Application Period Deadline.
- 2.1.7 Following the standstill period, the LGOPC will:
  - a) invite the successful Economic Operators to execute the DPS Agreement on Supplygov; and
  - b) formally establish the DPS.
- 2.1.8 The DPS will then become operative and open to the Contracting Authorities to issue sRFTs and award sRFT Contracts (this is the DPS Tender Start Time and the date of the commencement of the Period of Validity).
- 2.1.9 Contracting Authorities may not issue sRFTs or award sRFT Contracts prior to the DPS Tender Start Time.

#### **New Applications After the Expiry of the Initial Application Period**

- 2.1.10 An applicant that submits an Application after the end of the Initial Application Period but before the DPS Tender Start Time shall not be notified of the result of the Application until after the DPS Tender Start Time.
- 2.1.11 Subject to section 2.1.12 herein, the DPS will remain open to receive Applications from new and previously unsuccessful Economic Operators throughout the Period of Validity. These Applications must be submitted through eTenders.

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<sup>10</sup> eTenders is a procurement platform administered by the Office of Government Procurement facilitating local authorities and other state agencies in the public procurement of goods, works and services.

- 2.1.12 The LGOPC may temporarily suspend the receipt and acceptance of Applications to the DPS for operational and logistical reasons during the Period of Validity. During such periods, the LGOPC will not be in a position to receive or accept Applications from Economic Operators. In circumstances where the receipt or acceptance of Applications is being temporarily suspended, the LGOPC shall: (a) advise Economic Operators in advance of the dates when Applications are temporarily suspended and cannot be accepted; (b) minimise such temporary suspensions for as short a period as possible; and (c) advise Economic Operators when the suspension will come to an end and when Applications can be received and accepted again.
- 2.1.13 An Application submitted after the DPS Tender Start Time, other than during a period of suspension as identified in accordance with section 2.1.12, will be assessed and receive notification of the outcome within 10 working days following receipt of same<sup>11</sup>.
- 2.1.14 No standstill period applies to Applications received after the DPS Tender Start Time.
- 2.1.15 The LGOPC shall invite all successful Economic Operators to execute the DPS Agreement on Supplygov.

## **2.2 STAGE 2 – SUPPLEMENTARY REQUESTS FOR TENDER (“SRFT/S”)**

### **This stage is hosted on Supplygov.**

- 2.2.1 Stage 2 involves the Contracting Authorities inviting the Economic Operators admitted to the DPS to tender for sRFT Contracts. A Contracting Authority shall invite all Economic Operators admitted to a particular Lot of the DPS that have indicated an interest in tendering for those region(s) selected as part of their Application, to tender for the sRFT Contract.
- 2.2.2 Economic Operators are required to select one or more regions to receive sRFT notifications from as part of an Application. Economic Operators will receive sRFT notifications only for the regions it has selected. Regions are selected in the Online Questionnaire. Economic Operators admitted to the DPS can amend the regions they have selected at any time during the term of the DPS by contacting the Supplygov helpdesk.

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<sup>11</sup> This time limit may be extended to 15 working days in individual cases in accordance with the provisions of Regulation 34 (16).

## 3.0 INSTRUCTIONS

### 3.1 POINTS TO NOTE PRIOR TO MAKING AN APPLICATION

- 3.1.1 All documentation, information and communications relating to the DPS, including the Tender Documents<sup>12</sup>, are published on eTenders under the Contract Notice, and which supersede and replace all previous documentation, communications and correspondence issued by the LGOPC and/or the Contracting Authorities in relation to same. While every effort has been made to provide comprehensive and accurate information in the Tender Documents, the LGOPC does not accept any liability or provide any express or implied warranty in respect of any such information.
- 3.1.2 If an Economic Operator becomes aware of any ambiguity, discrepancy, error, or omission in the Tender Documents or in the online application process, it shall immediately notify the LGOPC through the eTenders messaging system.
- 3.1.3 The LGOPC gives no assurances as to the level of expenditure by the Contracting Authorities through the DPS and the admittance of an Economic Operator to the DPS does not constitute a commitment from the Contracting Authorities to enter into sRFT Contracts with the Economic Operator. Any costs incurred by the Economic Operator, howsoever arising, in participating in this Competition shall be the Economic Operator's own liability.
- 3.1.4 The Tender Documents, in whole or in part, may not be reproduced, stored, transmitted, or used for purposes other than this Competition without the prior written permission of the LGOPC.
- 3.1.5 The LGOPC, acting in its sole discretion, may, by giving written notice, cancel this Competition at any stage prior to the formal establishment of the DPS (or at any time during the Period of Validity) without recompense to the Economic Operator.
- 3.1.6 It shall be the responsibility of the Economic Operator to fulfil the obligations under the DPS Agreement and any sRFT Contract, notwithstanding any changes in circulars, law, regulations, taxation or duties or other restrictions that might arise.
- 3.1.7 An Economic Operator can make only one Application per Lot. An Economic Operator cannot make an Application in its own name and separately as part of a consortium/joint venture or vice versa.
- 3.1.8 Economic Operators not currently registered on eTenders must register as a "Supplier" on eTenders in order to make an Application.
- 3.1.9 Economic Operators must:
- fully comply with this Instructions Document and a failure to do so may result in the Application being deemed non-compliant. An Economic Operator that makes an Application that is deemed non-compliant will result in the exclusion of the Economic Operator from the Competition for the relevant Lot(s);
  - read the Tender Documents carefully and ensure that they fully understand the requirements of this Competition and the terms of the DPS Agreement prior to applying;
  - take into account: (a) upload speeds may vary and (b) the maximum size of a tender response file is 2GB. The largest single file size of an uploaded document is 250MB;
  - ensure electronic documents are not corrupt.
- 3.1.10 The LGOPC will not issue hard copy correspondence relating to any aspect of this Competition.
- 3.1.11 All correspondence will be issued via eTenders only and it is the responsibility of the Economic Operator to ensure that its correct email address for the receipt of electronic correspondence is recorded on its eTenders account.

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<sup>12</sup>Tender Documents mean the Instructions Document, the DPS Agreement, the ESPD and all accompanying documents published on eTenders in relation to this competition.

- 3.1.12 If links are not working in any electronic correspondence (due to internal firewalls or IT security), log in directly via the eTenders portal to view.
- 3.1.13 All Economic Operators should include [noreply@delos.eurodyn.com](mailto:noreply@delos.eurodyn.com) in their spam filters (if they use a filtering tool) in order to receive notifications.
- 3.1.14 Should an Economic Operator experience any technical difficulty with any aspect of its Application on eTenders, please contact the eTenders Support Desk using the contact details available on the 'contact us' page on [www.etenders.gov.ie](http://www.etenders.gov.ie).
- 3.1.15 The LGOPC reserves the right to update or amend the information contained in the Tender Documents at any time before the 'DPS EXPIRY DATE AND TIME' and/or to extend the 'DPS EXPIRY DATE AND TIME'. The 'DPS EXPIRY DATE AND TIME' is displayed on the "DPS core information" option included under the "Show DPS Menu" for this Call for Tenders (CfT) on eTenders at [www.etenders.gov.ie](http://www.etenders.gov.ie).
- 3.1.16 The LGOPC refers Economic Operators to the provisions of 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), and to their obligation to comply therewith. Economic Operators should note in Article 6 of Regulation (EU) 2022/1031, the obligations for the LGOPC and the Contracting Authorities in the context of a procurement procedure where the EU Commission has adopted an IPI measure.
- 3.1.17 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 Competition. This Regulation prohibits the award of any public or concession contract to any of the entities set out in Article 5k 1(a) to (c). Economic Operators are required to make a declaration that the Economic Operator, or where the Economic Operator is a consortium, each consortium member, and any third parties whose resources are relied upon to meet the selection criteria are not any of the entities set out in Article 5k 1(a) to (c) of Regulation (EU) No 833/2014, as amended by Council Regulation (EU) No 2022/576. Any Economic Operator that is unable to make the declaration will result in the exclusion of the Economic Operator from the Competition.

### **3.2 COMPANY REGISTRATION DETAILS**

- 3.2.1 Where an Economic Operator is registered with the Companies Registration Office (hereinafter referred to as the "CRO") it must ensure that:
- the registered company name and address as recorded in the CRO are used in all relevant parts of the Application.
- 3.2.2 Where an Economic Operator is not registered with the CRO it must ensure that:
- the Economic Operator's name and address as registered with its VAT/Tax Registration Number is used in all relevant parts of the Application.

### **3.3 CONSORTIUM/JOINT VENTURE**

- 3.3.1 An Economic Operator comprising of a consortium or joint venture (hereinafter collectively referred to as the "Consortium") must provide details of all members of the Consortium and their role in the Application. The Consortium will not be required to convert into a specific legal entity to submit an Application but may be required to do so prior to admittance to the DPS. In this respect the LGOPC may, at its discretion, enter into the DPS Agreement with:
- one member who will carry overall responsibility for the performance of an sRFT Contract;
  - each member of the Consortium on a joint and several liability basis;
  - one member of the Consortium with the other members being subcontractors; or

- at its discretion, the LGOPC may require the Consortium to enter into any other contracting arrangement.

3.3.2 Failure by a Consortium to adhere to the requirements of the LGOPC in relation to the above may result in the exclusion of the Consortium from this Competition and the DPS.

### **3.4 CONFIRMATION OF ECONOMIC OPERATOR DETAILS**

3.4.1 The LGOPC may examine and verify the Economic Operator's details as contained in the Application including, but not limited to, the following:

- Legal structure of the Economic Operator;
- Name of the Economic Operator;
- Address of the Economic Operator;
- VAT/Tax Registration Number of the Economic Operator (if applicable); and/or
- Company Registration Number of the Economic Operator (if applicable).

3.4.2 Where, in the course of such examination, the LGOPC determines that an Economic Operator has provided details that contain discrepancies, it may, at its discretion, contact the Economic Operator requesting that the Economic Operator provide or confirm the correct details. Failure of the Economic Operator to provide or confirm the correct details to the satisfaction of the LGOPC may result in an unsuccessful application to the DPS.

### **3.5 COMMUNICATIONS, QUERIES AND CLARIFICATIONS**

3.5.1 All queries from Economic Operators in relation to this Competition may only be submitted online through the messaging function on eTenders.

3.5.2 The LGOPC will endeavour to respond to all reasonable queries validly received without delay. However, the LGOPC is not obliged, nor does it undertake, to respond to all queries received and queries seeking interpretation of this Instructions Document may not result in a response.

3.5.3 Any queries, along with the LGOPC's response to same, will, where appropriate, be communicated to all those who have expressed an interest in this Competition without disclosing the name of the Economic Operator who initiated the query.

3.5.4 If an Economic Operator believes that a query and/or its response relates to a confidential or commercially sensitive aspect of its application, it must mark the query as "Confidential" and state the reason(s) why it believes it to be confidential or commercially sensitive. The LGOPC shall have regard to such statement but shall not be bound by same. If the LGOPC, in its absolute discretion, is satisfied that the query and/or its response should be properly regarded as being confidential or commercially sensitive, the nature of the query and its response shall be kept confidential subject to the LGOPC's and/or the Economic Operators obligations under public procurement and freedom of information legislation. If the LGOPC determines, in its absolute discretion, that the query and/or its response should not be regarded as confidential or commercially sensitive, it will invite the Economic Operator concerned to withdraw the query or it will communicate the query and its response to all Economic Operators who have expressed an interest in this Competition. LGOPC accepts no liability whatsoever in respect of any information provided which is subsequently released (irrespective of notification) or in respect of any consequential damage suffered as a result of such obligations.

### **3.6 CANVASSING**

- 3.6.1 Canvassing or any effort by an Economic Operator to influence any staff or agents of the LGOPC in relation to any aspect of this Competition may result in the Economic Operator's disqualification.
- 3.6.2 Where an Economic Operator has an existing relationship with the LGOPC (or its staff or agents), any discussions, correspondence or other influences relating to this Competition may be treated as canvassing.
- 3.6.3 In accordance with Section 38 of the Ethics in Public Office Act 1995, any money, gift, or other consideration from an Economic Operator holding, or seeking to obtain, admittance to the DPS will be deemed to have been paid or given corruptly unless the contrary is proved.

### **3.7 CONFLICT OF INTEREST**

- 3.7.1 Any actual or potential conflict of interest involving the Economic Operator, a Subcontractor or employee or agent of either must be fully disclosed by the Economic Operator as soon as it becomes apparent.
- 3.7.2 Where the LGOPC determines that an actual or potential conflict of interest arises, it will, at its absolute discretion, decide on the appropriate course of action which may include excluding the Economic Operator from the Competition or terminating any DPS Agreement.
- 3.7.3 Any registrable interest (having the meaning prescribed by the Ethics in Public Office Act, 1995) involving the Economic Operator and the LGOPC must be fully disclosed to the LGOPC immediately upon such information becoming known to the Economic Operator.

### **3.8 DATA PROTECTION**

- 3.8.1 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") (as may be amended, updated or re-published by the relevant body from time to time).
- 3.8.2 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 the DPS and any sRFT.
- 3.8.3 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, is required to confirm in their Application 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.
- 3.8.4 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.
- 3.8.5 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.
- 3.8.6 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.
- 3.8.7 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.
- 3.8.8 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.
- 3.8.9 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.
- 3.8.10 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).
- 3.8.11 The Economic Operator shall notify the LGOPC immediately if the Economic Operator becomes aware of, or suspects: (i) any breach of this section 3.8; or (ii) a Personal Data breach which is likely to affect or trigger 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.
- 3.8.12 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 3.8, or its obligations under the Data Protection Laws, or any use by the Economic Operator of the Personal Data.

### **3.9 NOTICE OF ADDENDA**

- 3.9.1 The LGOPC reserves the right, where necessary for the efficient and compliant operation of the DPS, to update or alter this Instructions Document, other Tender Documents and/or any information and documents pertaining to the DPS by written notice via eTenders and any such notification will automatically become part of the Tender Documents.

## 4.0 APPLICATION PROCESS

### 4.1 GENERAL

- 4.1.1 All Applications in response to this Cft must be made using the online application process on eTenders only.
- 4.1.2 Applications in any other format will not be accepted.
- 4.1.3 A 'Detailed User Manual for Companies' (EO User Manual) is available to download on eTenders under the 'Help' menu option. It provides detailed information and guidance on the steps required to make an application for admittance to the DPS.
- 4.1.4 In order for the Economic Operator to express an interest in the Cft, select the "**Expression of Interest**" option from the "Show DPS Menu" and complete the system prompt on 'Association with Cft'.
- 4.1.5 Select 'DPS Tenders' from the "Show DPS Menu" and click 'Accept & confirm all the above' to confirm validity of the user details.
- 4.1.6 Selecting the "**Create Tender Online**" option opens a new webpage that requires the Economic Operator to enter a title for the Application<sup>13</sup> and to select the Lots being applied for. Once complete, click '**Save**' which will then display the Eligibility Criteria<sup>14</sup> where the Economic Operator can prepare, edit and submit an Application for the DPS.

### 4.2 COMPLETING THE ONLINE ELIGIBILITY CRITERIA (QUESTIONNAIRE)

- 4.2.1 The Economic Operator must activate the application process by clicking on the red menu option ('Tender Response Options') at the top of the page and selecting the '**Edit**' option. Once '**Edit**' is selected, the menu option will change from red to green.
- 4.2.2 The Lots selected by the Economic Operator will appear in the dropdown menu at the top of the page. The selected Lots can be edited at any point prior to submission of the tender response by clicking on the red icon beside the Lots dropdown menu.
- 4.2.3 A separate online Questionnaire must be completed for each Lot selected.
- 4.2.4 The Economic Operator must select each lot separately and complete the associated online Questionnaire.
- 4.2.5 For each questionnaire, the number of questions to be answered and the number answered as the application progresses will be displayed beside 'Criteria Completed', which is located under the Lot title at the top of the questionnaire. All questions must be completed to enable the tender response to be submitted.
- 4.2.6 Progress of the Economic Operator's overall tender response will be displayed as a percentage beside 'Eligibility Criteria' that is visible on the upper left of the application page or by clicking on the 'Completion Summary' menu option also available on the page.
- 4.2.7 After the actions in each required question are completed, the colour of the text will change to green and the draft response will be saved.

<sup>13</sup> Submitting a Tender Response on eTenders has the same meaning as making an Application.

<sup>14</sup> Eligibility Criteria means exclusion grounds (ESPD) and selection criteria.

- 4.2.8 **Note:** Each Questionnaire includes Notes that do not require any input from the Economic Operator.
- 4.2.9 Economic Operators do not need to complete the entire application process at one time. The application process can be started, paused, updated, edited, and saved at any point prior to completion and submission of the tender response.
- 4.2.10 Economic Operators are not required to submit evidence of compliance with the declarations at tender response stage except where indicated in the online Questionnaire. Economic Operators must be in a position to provide the requisite evidence of compliance with the declarations when requested by the LGOPC and/or Contracting Authority.

#### 4.3 ESPD FOR OTHER ENTITIES

- 4.3.1 Where the Economic Operator is a consortium, the Economic Operator must submit a separate ESPD for each member of the consortium.
- 4.3.2 Where the Economic Operator, or where relevant, any member of a consortium, is reliant on the capacity of other entities to meet the selection criteria, a separate ESPD must be submitted for each of the other entities concerned.

#### 4.4 UPLOADING AND ATTACHING FILES

- 4.4.1 The tender response requires the Economic Operator to upload and attach Files, where indicated in the Questionnaire.
- 4.4.2 To upload and attach a File in response to a particular criterion -:
- Click on the Folder Icon to the right of the Criterion. A new window opens.
  - Click on 'Upload a new File' and choose the file to be uploaded.
  - Click 'Upload' to upload the selected file.
  - After the upload is complete, the progress against the 'Name' will show 100%.
  - Click on 'Back', select the relevant 'Filename' from the list, and click 'Save'.
  - Your uploaded file name should then appear under 'Referenced Files' for the relevant criterion, confirming that this file has been associated with the criterion.

#### 4.5 SUBMISSION OF TENDER RESPONSE

- 4.5.1 Economic Operators must respond to all required questions in the online Questionnaire so that the overall completion percentage displays 100%.
- 4.5.2 Economic Operators must submit their response by clicking on the 'Submit' button at the top of the page.
- Note** – During preparation of the tender response, the 'Submit' button will be inactive and appear in the colour grey. Once 100% completion is reached, the 'Submit' button will become active and change colour.
- 4.5.3 Once the response has been submitted, a status of 'Submitted' will be displayed on the page.
- 4.5.4 Submitted responses can be viewed by selecting the 'Related Responses' option on the page.

## 5.0 EVALUATION OF APPLICATIONS AND ADMITTANCE TO THE DPS

### 5.1 GENERAL

5.1.1 Applications for admittance to the DPS will be assessed by the LGOPC as follows:

| PROCESS                   | ACTION                                                                                                                                                                                                                     |
|---------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Compliance</b>         | Assess completeness of Application for compliance with requirements of the Tender Documents, including completion of ESPD and confirmation that none of the exclusion grounds in Regulation 57 of the Regulations are met. |
| <b>Selection Criteria</b> | Assessment in accordance with the Selection Criteria published for admittance to the DPS.                                                                                                                                  |

### 5.2 COMPLIANCE

5.2.1 Applications will be assessed to determine whether they include all information and documentation required. In addition, Applications will be assessed to determine whether any of the exclusion grounds set out in Regulation 57 of the Regulations are met. Economic operators to whom a mandatory ground for exclusion applies will be excluded from the Competition unless they can provide evidence to the effect that measures taken by them are sufficient to demonstrate their reliability despite the existence of any such exclusion ground. The LGOPC reserves the right to exclude an Economic Operator to whom a discretionary ground for exclusion applies.

5.2.2 Compliant Applications will proceed to be assessed in accordance with the Selection Criteria published for admittance to the DPS. Non-compliant Applications will not be assessed any further.

### 5.3 SELECTION CRITERIA

5.3.1 Applications will be assessed against the Selection Criteria as set out on eTenders as part of the online Questionnaire. The Selection Criteria relate to: (1) Economic and Financial Standing, and (2) Technical and Professional Ability. Economic Operators must meet the Selection Criteria for admittance to the DPS.

5.3.2 The Selection Criteria are assessed on a Pass/Fail basis. Failure to pass any one or more of the Selection Criteria set out in the online Questionnaire (including failure to satisfy one or more requirements of a particular Selection Criterion) will result in the exclusion of the Economic Operator from the Competition.

### 5.4 CLARIFICATION OF TENDERS

5.4.1 During the assessment of an Application, the LGOPC may seek clarifications or further information (or take such other legally permissible actions) from Economic Operators via eTenders.

5.4.2 The Economic Operator's response to a request for clarification or further information shall be submitted via eTenders no later than the date specified by the LGOPC. Any response provided by an Economic Operator may not constitute a material alteration of the Application initially submitted.

### 5.5 NOTIFICATION OF EVALUATION OUTCOME

5.5.1 Following assessment of an Application, Economic Operators will be informed of the outcome via eTenders.

- 5.5.2 Notification of a successful Application by the LGOPC to the Economic Operator shall not, in and of itself, give rise to any enforceable rights by the Economic Operator.

## **5.6 DPS AGREEMENT**

- 5.6.1 When an Economic Operator has submitted a successful Application, it will be invited to formally enter the DPS by accepting the terms and conditions of the DPS Agreement electronically through Supplygov. Economic Operators may not amend the DPS Agreement and by submitting an Application they agree to be bound to the terms and conditions of same.