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**DYNAMIC PURCHASING SYSTEM  
AGREEMENT**

**FOR**

**ENERGY EFFICIENCY RETROFITTING WORKS**

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

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

**AND**

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

**WHEREAS:**

- A.** The LGOPC conducted a call for competition on [www.etenders.gov.ie](http://www.etenders.gov.ie) and in the Official Journal of the European Union inviting requests to participate in a Dynamic Purchasing System for Energy Efficiency Retrofitting Works (hereinafter referred to as "the DPS") on behalf of the Contracting Authorities specified in Section 1.5 hereto (hereinafter referred to as "the Contracting Authorities").
- B.** The Economic Operator submitted a request to participate in the DPS and, following an assessment by the LGOPC, the LGOPC wishes to admit the Economic Operator to the DPS.
- C.** The Economic Operator has agreed to be admitted to the DPS on the terms set out in this DPS Agreement.
- D.** The Economic Operator enters into this DPS Agreement by electronically accepting this DPS Agreement through [www.supplygov.ie](http://www.supplygov.ie) (hereinafter referred to as "Supplygov") by way of its personal Supplygov account (the formal acceptance of the terms of this DPS Agreement through Supplygov shall operate as if this DPS Agreement had been signed and/or sealed (and witnessed appropriately) by the parties and shall be construed accordingly for all legal purposes).
- E.** The admittance by the LGOPC of the Economic Operator to the DPS, subsequent to the acceptance by the Economic Operator of the terms of this DPS Agreement, shall operate as the acceptance by the LGOPC of the terms of this DPS Agreement and this DPS Agreement shall take effect from such date.
- F.** This DPS Agreement incorporates the DPS Agreement General Terms and Conditions specified in 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 THE LGOPC AND THE ECONOMIC OPERATOR AGREE AS FOLLOWS:

## 1.1 SCOPE OF APPOINTMENT

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

## 1.2 ENTIRE AGREEMENT

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

## 1.3 PERIOD OF VALIDITY

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

## 1.4 LIMITATION ON LIABILITY

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

<sup>1</sup> Supplementary Request for Tender means a request for tender issued by a Contracting Authority to the Economic Operators admitted to the DPS via [www.supplygov.ie](http://www.supplygov.ie).

<sup>2</sup> sRFT Contract means a contract for the Works entered into between an Economic Operator and a Contracting Authority following a Supplementary Request for Tender.

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

<sup>4</sup> Tender Documents mean the Instructions Document, the DPS Agreement, the ESPD, Selection Criteria for each Lot, associated Contract(s) and Forms to be completed.

## **1.5 THE CONTRACTING AUTHORITIES**

1.5.1 The Contracting Authorities partaking in the DPS Agreement include:

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

## 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.

### 2.3 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; 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 qualifying criteria initially established;
  - (b) the succeeding Economic Operator possesses the capability (technical or otherwise), resources and skills in respect of satisfying the requirements of this DPS Agreement and;
  - (c) a formal change in legal status or corporate restructuring as permitted under sub-paragraphs 2.3.1 (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.
- 2.3.5 Without prejudice to such additional circumstances where assignment is permissible under subparagraphs 2.3.1 (a) and (b) herein, assignment to the legal successor of the Economic Operator (subject to the granting of formal written consent to such assignment by the LGOPC) is permissible in the following circumstances:

Change of the Economic Operator's legal status from:

- (i) sole trader to corporation where general ownership and personnel remain the same;
- (ii) corporation to sole trader where general ownership and personnel remain the same;
- (iii) sole trader to partnership where general ownership and personnel remain the same;
- (iv) partnership to sole trader where general ownership and personnel remain the same;
- (v) corporation to partnership where general ownership and personnel remain the same;
- (vi) partnership to corporation where general ownership and personnel remain the same;
- (vii) sole trader to other related sole trader (for example, business transfer from father to son); or
- (viii) change of the Economic Operator's business name.

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

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

## **2.5 SUBCONTRACTING**

- 2.5.1 When responding to a Supplementary Request for Tender where subcontractor(s) are proposed for completion of an sRFT Contract, the Economic Operator shall provide to the Contracting Authority (if requested): (a) the relevant details of the subcontractor(s); (b) an ESPD for the subcontractor(s); (c) evidence of the qualifications and experience of the subcontractor(s); and (d) such other information and documentation in relation to the subcontractor(s) as may be reasonably required by the Contracting Authority.



## **2.6 RELIANCE ON CAPACITY OF OTHER ENTITIES**

- 2.6.1 Where an Economic Operator has relied on the capacities of other entities to satisfy the selection criteria for entry on to 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 and fulfilment of any sRFT Contracts (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 works 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 then apply at the time of the sRFT Contract) and;
  - (b) such other requirements and directions that an individual Contracting Authority may impose in order to satisfy itself that the Economic Operator (and its subcontractor(s) where appropriate) is tax compliant.

## **2.8 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 that apply at the place where the Works are provided, that have been established by EU law, national law, collective agreements or by international, environmental, social and labour law listed in Schedule 7 of the Regulations.
- 2.9.2 This DPS facilitates the inclusion of environmental and social considerations and labour law in the Award Criteria published at Supplementary Request for Tender stage as set out in Section 5 hereunder.

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

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

## **2.11 FREEDOM OF INFORMATION ACTS**

- 2.11.1 The LGOPC and the Contracting Authorities are subject to the Freedom of Information Act, 2014 and the Economic Operator acknowledges that information provided in response to a Supplementary Request for Tender may be considered confidential or commercially sensitive. The Economic Operator should consider if any information supplied by it in response to a Supplementary Request for Tender should not be

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

## **2.12 CANVASSING**

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

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

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

## **2.14 CONFIDENTIALITY**

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

## **2.15 DATA PROTECTION**

- 2.15.1 In this clause, "Data Protection Laws" means: (a) the Irish Data Protection Acts 1988 to 2018; (b) the General Data Protection Regulation (EU) 2016/679 ("GDPR"); and (c) any other applicable law or regulation relating to the processing of personal data and to privacy including (but not limited to) the E-Privacy Directive and the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011 ("E-Privacy Regulations") (as may be amended, updated or re-published by the relevant body from time to time and as then apply at the time of an sRFT Contract).
- 2.15.2 The Contracting Authorities and the LGOPC will each be an Independent Data Controller (where Data Controller has the meaning given under the Data Protection Laws) in respect of any Personal Data (where

Personal Data has the meaning given under the Data Protection Laws) required to be provided by the Economic Operator in response to this DPS Agreement and any Supplementary Request for Tender.

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

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

## **2.16 PUBLIC HEALTH**

2.16.1 All works proposed under this Agreement must be capable of being undertaken in compliance with all safety, health and welfare at work legislation and guidance including, but not limited to, public health advice and requirements, and any applicable public service standard operating procedures which have been put in place by the Government, Government Departments, State Agencies and/or construction industry representative bodies in response to a public health emergency.

## **2.17 CHILD PROTECTION & VETTING**

2.17.1 Contractors Personnel shall strictly adhere to the Contracting Authorities child protection policy which will be included with the sRFT documents for the information of Contractors – if applicable.

2.17.2 Contractors Personnel 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.

## **2.18 PERFORMANCE BOND**

2.18.1 Economic Operators are not required to have a Performance Bond in place when submitting their application for admittance to the DPS. However, if successfully admitted to the Agreement, Economic Operators, if requested to do so by a Contracting Authority, may be required to provide a Performance Bond prior to the award of an sRFT Contract.

## **2.19 BREXIT**

2.19.1 It shall be the responsibility of the Economic Operator to fulfil the obligations under an sRFT Contract and, where applicable, any Task Order notwithstanding any changes in circulars, law, regulations, taxation or duties or other restrictions which might arise following the withdrawal of the United Kingdom from membership of the European Union.

## 3.0 EVIDENCE IN SUPPORT OF MINIMUM STANDARDS

### 3.1 INTRODUCTION

- 3.1.1 An Economic Operator may be required to provide supporting documentation to verify their status with respect to the minimum standards set out below. The supporting documentation must be provided within five working days when requested by the LGOPC and/or Contracting Authority. If the supporting documentation is not provided or is withheld or if there is a serious misrepresentation in supplying such supporting documentation, the LGOPC and/or the Contracting Authority may, at their discretion, exclude the Economic Operator from the sRFT and/or the DPS.
- 3.1.2 Unless otherwise indicated, the evidence in support of minimum standards as set out below applies to all lots.

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

- 3.2.1 The evidence in support of this minimum standard is a written statement naming the Technicians and Technical Bodies, particularly those involved in quality control.

### 3.3 FINANCIAL CONFIRMATORY NOTE

- 3.3.1 The evidence in support of this minimum standard is a signed completed Financial Confirmatory Note in the form published.

### 3.4 LOT-1: ATTIC AND ROOF INSULATION, CAVITY WALL INSULATION, AIR TIGHTNESS AND/OR VENTILATION MEASURES

#### 3.4.1 Contractor and Project Supervisor For The Construction Stage (PSCS)

The evidence relating to the Health and Safety: Contractor and Project Supervisor for the Construction Stage (PSCS) Appointments Declaration, to be provided at the appropriate time, is demonstrating compliance with relevant Health and Safety legislation.

#### 3.4.2 Health and Safety Compliance Declaration – Contractor

The evidence relating to the Health and Safety Compliance Declaration - Contractor, to be provided at the appropriate time, is as follows:

- (a) a copy of the Economic Operator's current general Health and Safety policy.
- (b) an outline of the Economic Operator's management organisational structure with regard to allocation of duties, delegation of responsibilities, etc., in relation to Health and Safety.
- (c) copies of standard forms used for method statements and risk assessments as part of the Economic Operator's duties under the Safety, Health and Welfare at Work Act 2005.
- (d) details of the Economic Operator's arrangements for continuing training of personnel in Health and Safety, including personnel who would be employed on the project.
- (e) details of the Economic Operator's procedures for disseminating up-to-date developments on health and safety issues.
- (f) details of the Economic Operator's arrangements for the coordination of information between the different contractors, suppliers and designers involved in a project.
- (g) details of the Economic Operator's methodology for the dissemination of health and safety information for the construction stage on this or equivalent projects.

#### 3.4.3 Health and Safety Compliance Declaration - Project Supervisor For The Construction Stage (PSCS)

The evidence relating to the Health and Safety Compliance Declaration - Project Supervisor for the Construction Stage (PSCS), to be provided at the appropriate time, is as follows:

- (a) a copy of the Economic Operator's current general Health and Safety policy.
- (b) an outline of the Economic Operator's management organisational structure with regard to allocation of duties, delegation of responsibilities, etc., in relation to Health and Safety.

- (c) copies of standard forms used for method statements and risk assessments as part of the Economic Operator's duties under the Safety, Health and Welfare at Work Act 2005.
- (d) details of the Economic Operator's arrangements for continuing Health and Safety training of PSCS personnel, including personnel who would be employed on the project.
- (e) details of the Economic Operator's procedures for disseminating up-to-date developments on health and safety issues.
- (f) details of the Economic Operator's arrangements for the coordination of information between the different contractors, suppliers and designers involved in a project.
- (g) details of the Economic Operator's methodology for the dissemination of health and safety information for the design and construction stage on this or equivalent projects.

#### 3.4.4 **Educational and Professional Qualifications (Management) – Health and Safety**

The evidence in support of the Health and Safety Competence of Management Staff is for the Economic Operator to satisfy both **A** and **B** below:

**A.** To provide sufficient Management Staff with Health and Safety qualifications, training and experience, relevant to the works anticipated to be completed under this Agreement by:

- (i) providing a Safe-T-Cert, or OHSAS 18001 Certification, or other equivalent independently certified health and safety management system with appropriate health and safety training and resources,

**Or**

(ii) providing the following details:

- the educational qualifications, professional qualifications (e.g. professionally qualified project managers, architects, engineers etc – with dates obtained), and experience in so far as they are relevant to health and safety, and/or
- educational qualifications, professional qualifications (as above) with at least one member of the contractor or its managerial staff who has experience in relation to projects of similar nature, size and complexity.
- The curriculum vitae of the contractor and its managerial staff in so far as they relate to health and safety training and/or experience and also the organisation structure of the firm.
- having at least 8 hours annual (i.e. in-house or a CPD course) health and safety training in relation to projects of similar nature, size and complexity.

**B.** To provide at least one (1) site manager/site agent, or equivalent, with Health and Safety qualifications, training and experience, relevant to the works anticipated to be completed under this Agreement by:

- (i) providing a Safe-T-Cert, or OHSAS 18001 Certification, or other equivalent independently certified health and safety management system with appropriate health and safety training and resources,

**Or**

(ii) providing the following details:

- the educational qualifications, professional qualifications (e.g. professionally qualified project managers, engineers etc – with dates obtained), and experience in so far as they are relevant to health and safety, and/or
- the educational qualifications, professional qualifications (as above) and experience in so far as it is relevant to health and safety on projects of similar size and complexity.
- The curriculum vitae in so far as they relate to health and safety training and/or experience.
- having at least 8 hours annual (i.e. in-house or a CPD course) health and safety training in relation to works projects.

### 3.4.5 **Educational and Professional Qualifications (Management) – Technical Capability**

The evidence in support of the Technical Capability of Management Staff is for the Economic Operator to satisfy both **A** and **B** below:

- A.** To provide at least one (1) member of the managerial staff who holds a National Framework of Qualifications (NFQ) Level Seven (7) or higher, plus five (5) years experience, or equivalent, in managing projects relevant to the works under this Agreement:

Note:

Equivalent managerial staff technical capability offered by the Economic Operator must include as a minimum an NFQ Level Six (6) qualification, plus eight (8) years experience in managing projects relevant to the works under this Agreement,

Or

Ten (10) years' experience in managing projects relevant to the works under this Agreement.

- B.** To provide at least one (1) site manager/site agent, or equivalent, that holds a NFQ Level Six (6) or higher, plus five (5) years experience, or equivalent, in managing projects relevant to the works under this Agreement.

Note:

Equivalence to an NFQ Level Six (6) or higher, plus five (5) years experience, is a minimum of eight (8) years experience in managing projects relevant to the works under this Agreement.

### 3.4.6 **Educational and Professional Qualifications (Personnel) – Health and Safety Competence**

The evidence in support of the Health and Safety competence of personnel, relevant to the works anticipated to be completed under this Agreement is a Safe Pass Card, or equivalent.

## **3.5 LOT-2: MULTIPLE ENERGY EFFICIENCY MEASURES**

### 3.5.1 **Contractor and Project Supervisor For The Construction Stage (PSCS)**

The evidence relating to the Health and Safety: Contractor and Project Supervisor for the Construction Stage (PSCS) Appointments Declaration, to be provided at the appropriate time, is demonstrating compliance with relevant Health and Safety legislation.

### 3.5.2 **Health and Safety Compliance Declaration – Contractor**

The evidence relating to the Health and Safety Compliance Declaration - Contractor, to be provided at the appropriate time, is as follows:

- (a) a copy of the Economic Operator's current general Health and Safety policy.
- (b) an outline of the Economic Operator's management organisational structure with regard to allocation of duties, delegation of responsibilities, etc., in relation to Health and Safety.
- (c) copies of standard forms used for method statements and risk assessments as part of the Economic Operator's duties under the Safety, Health and Welfare at Work Act 2005.
- (d) details of the Economic Operator's arrangements for continuing training of personnel in Health and Safety, including personnel who would be employed on the project.
- (e) details of the Economic Operator's procedures for disseminating up-to-date developments on health and safety issues.
- (f) details of the Economic Operator's arrangements for the coordination of information between the different contractors, suppliers and designers involved in a project.
- (g) details of the Economic Operator's methodology for the dissemination of health and safety information for the construction stage on this or equivalent projects.

### 3.5.3 **Health and Safety Compliance Declaration - Project Supervisor For The Construction Stage (PSCS)**

The evidence relating to the Health and Safety Compliance Declaration - Project Supervisor for the Construction Stage (PSCS), to be provided at the appropriate time, is as follows:

- (a) a copy of the Economic Operator's current general Health and Safety policy.
- (b) an outline of the Economic Operator's management organisational structure with regard to allocation of duties, delegation of responsibilities, etc., in relation to Health and Safety.
- (c) copies of standard forms used for method statements and risk assessments as part of the Economic Operator's duties under the Safety, Health and Welfare at Work Act 2005.
- (d) details of the Economic Operator's arrangements for continuing Health and Safety training of PSCS personnel, including personnel who would be employed on the project.
- (e) details of the Economic Operator's procedures for disseminating up-to-date developments on health and safety issues.
- (f) details of the Economic Operator's arrangements for the coordination of information between the different contractors, suppliers and designers involved in a project.
- (g) details of the Economic Operator's methodology for the dissemination of health and safety information for the design and construction stage on this or equivalent projects.

### 3.5.4 **Educational and Professional Qualifications (Management) – Health and Safety**

The evidence in support of the Health and Safety Competence of Management Staff is for the Economic Operator to satisfy both **A** and **B** below:

**A.** To provide Management Staff with Health and Safety qualifications, training and experience, relevant to the works anticipated to be completed under this Agreement by:

- (i) providing a Safe-T-Cert, or OHSAS 18001 Certification, or other equivalent independently certified health and safety management system with appropriate health and safety training and resources,

Or

- (ii) providing the following details:

- the educational qualifications, professional qualifications (e.g. professionally qualified project managers, architects, engineers etc – with dates obtained), and experience in so far as they are relevant to health and safety, and/or
- educational qualifications, professional qualifications (as above) with at least one member of the contractor or its managerial staff who has experience in relation to projects of similar nature, size and complexity.
- The curriculum vitae of the contractor and its managerial staff in so far as they relate to health and safety training and/or experience and also the organisation structure of the firm.
- having at least 8 hours annual (i.e. in-house or a CPD course) health and safety training in relation to projects of similar nature, size and complexity.

**B.** To provide at least one (1) site manager/site agent, or equivalent, with Health and Safety qualifications, training and experience, relevant to the works anticipated to be completed under this Agreement by:

- (i) providing a Safe-T-Cert, or OHSAS 18001 Certification, or other equivalent independently certified health and safety management system with appropriate health and safety training and resources,

**Or**

- (ii) providing the following details:

- the educational qualifications, professional qualifications (e.g. professionally qualified project managers, engineers etc – with dates obtained), and experience in so far as they are relevant to health and safety, and/or



- the educational qualifications, professional qualifications (as above) and experience in so far as it is relevant to health and safety on projects of similar size and complexity.
- The curriculum vitae in so far as they relate to health and safety training and/or experience.
- having at least 8 hours annual (i.e. in-house or a CPD course) health and safety training in relation to works projects.

### 3.5.5 **Educational and Professional Qualifications (Management) – Technical Capability**

The evidence in support of the Technical Capability of Management Staff is for the Economic Operator to satisfy both **A** and **B** below:

- A.** To provide at least one (1) member of the managerial staff who holds a National Framework of Qualifications (NFQ) Level Seven (7) or higher, plus five (5) years experience, or equivalent, in managing projects relevant to the works under this Agreement:

Note:

Equivalent managerial staff technical capability offered by the Economic Operator must include as a minimum an NFQ Level Six (6) qualification, plus eight (8) years experience in managing projects relevant to the works under this Agreement.

- B.** To provide at least one (1) site manager/site agent, or equivalent, that holds a NFQ Level Six (6) or higher, plus five (5) years experience, or equivalent, in managing projects relevant to the works under this Agreement.

Note:

Equivalence to an NFQ Level Six (6) or higher, plus five (5) years experience, is a minimum of eight (8) years experience in managing projects relevant to the works under this Agreement.

### 3.5.6 **Educational and Professional Qualifications (Personnel) – Health and Safety Competence**

The evidence in support of the Health and Safety competence of personnel, relevant to the works anticipated to be completed under this Agreement is a Safe Pass Card, or equivalent.

## 4.0 GENERAL SPECIFICATION

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### 4.1 GENERAL INTRODUCTION

- 4.1.1 The nature, scale and complexity of works targeted to be completed under this DPS for both Lots and the technical specifications associated with each is set out hereunder.

### 4.2 LOT DESCRIPTION

4.2.1 **Lot-1: Attic and Roof Insulation, Cavity Wall Insulation, Air tightness and/or Ventilation Measures:**

The relevant activities associated with energy efficiency retrofitting works for this Lot may include but are not limited to:

- Attic and Roof Insulation;
- Cavity Wall Insulation;
- Air tightness and/or Ventilation measures;
- Other activities associated with energy efficiency retrofitting works relevant to the Lot;
- Post-works Building Energy Rating (BER) Certificate for each individual property. The BER shall be undertaken by a fully trained SEAI registered BER Assessor.

4.2.2 **Lot-2: Multiple Energy Efficiency Measures:**

The relevant activities associated with energy efficiency retrofitting works for this Lot may include but are not limited to:

- Attic and Roof Insulation;
- Floor Insulation;
- External Wall Insulation;
- Dry Lining;
- Cavity Wall Insulation;
- Window and Door Replacement;
- Air tightness and/or Ventilation measures;
- Heat Pump Systems;
- Heat Pumps;
- Solar Heating System;
- Solar Photovoltaic (PV) Systems;
- Mechanical Ventilation and Heat Recovery Systems;
- LED domestic lighting;
- Other activities associated with energy efficiency retrofitting works relevant to the Lot;
- Post-works Building Energy Rating (BER) Certificate for each individual property. The BER shall be undertaken by a fully trained SEAI registered BER Assessor.

### 4.3 SCOPE OF WORKS

- 4.3.1 The works will involve Energy Efficiency Retrofitting measures within publicly owned properties across the public service.
- 4.3.2 The works will take place within a residential works environment or similar non residential properties.
- 4.3.3 The performance, materials and workmanship for Energy Efficiency Retrofitting Works are set out in the General Specification herein.

- 4.3.4 The technical requirements set out in the General Specification are non-specific. All Energy Efficiency Retrofitting Works shall be undertaken in compliance with the technical standards herein as detailed and any further technical requirements as set out in the sRFT.

#### **4.4 LEGISLATION, REGULATIONS, GUIDELINES AND CODES OF PRACTICE**

- 4.4.1 The Contractor shall comply with all national and EU legislation, Guidelines and Codes of Practice that apply during the construction stage and maintenance period. The contractor shall ensure that, as a minimum, all aspects of the works shall not compromise the ventilation, air quality, humidity and quality of the living environment and comply with good industry practice, law and all necessary consents including, but not limited to the following:

**General:**

- SEAI Domestic Technical Standards and Specifications Version 1.3 2020;
- S.R. 54:2014 Code of Practice for the energy efficient retrofit of dwellings;
- Building Regulations Technical Guidance Documents;
- Guidance in the 'Energy Efficiency in Traditional Buildings' (DECLG 2010);
- Energy Efficiency Best Practice in Housing, Internal Wall Insulation in Existing Housing, A Guide for Specifiers and Contractors;
- Product Manufacturer Guidelines;
- NSAI Agrément certificates;
- The Construction Products Regulations (CPR) 2013 and as amended;
- Relevant Irish Standards ("Irish Standards"), Codes of Practice ("Codes of Practice"), EU Directives ("Directives") or equivalent European Standards ("European Standards");
- The Building Regulations Technical Guidance Document C and the DHPLG publication Radon in Existing Buildings – Corrective Options;
- ETCI<sup>5</sup> - All electrical works must be in full compliance with the applicable National Rules for Electrical Installations Fourth Edition ET101 2008;
- Earthing and Bonding must be in accordance with ET 101:2008 Chapter 54 (544 Equipotential bonding conductors) and Annex 63B (Guidelines for certification for alterations to existing installations);
- 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 CIBSE);
- Air Pollution Act, 1989;
- The Waste Management Acts, 1996 to 2013;
- Law and good industry practice on Disability including those of the National Disability Authority;
- Fire Services Act 1981;
- Good industry practice in respect of Fire;
- Requirements of utility providers;
- Local Bye-Laws and Regulations;
- Regulations and requirements of all relevant authorities;

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<sup>5</sup> Electro Technical Council of Ireland.

- 4.4.2 The above is a non-exhaustive list of standards that are being continuously updated and changed. Each project brief and the person accepting responsibility for design shall specify the appropriate and applicable standards and agree them with the Contracting Authority, the Contractor and shall liaise with the Assigned Certifier where appropriate.
- 4.4.3 The Contractor will be fully responsible for the quality of the materials and their compliance with the technical requirements as set out in the Tender Documents. Compliance will be verified by use of material conformance testing (remote and in-situ) and reference to the quality management systems within the production plant.
- 4.4.4 The Contractor shall provide for complying with the above including all mandatory notifications and notices for display. Compliance with these regulations, standards and guidelines shall relate to those most up to date or reasonably foreseeable as being in force or published at the time of contract award.
- 4.4.5 The Contractor shall adhere to and ensure compliance with all relevant product manufacturer's instructions.

## **4.5 BUILDING CONTROL REGULATIONS**

- 4.5.1 The contractor shall ensure compliance with the Building Control Regulations 1997 – 2020, the requirements of the Building Control (Amendment) Regulations 2014, SI 243 of 2012 Energy Performance of Buildings Regulations 2012, S.I. No. 183/2019 - European Union (Energy Performance Of Buildings) Regulations 2019 and any further amendments to the Regulations having regard to:
- The minimum requirements for the design and construction of buildings as set out in the Building Regulations;
  - Detailed Technical Guidance Documents showing how these requirements can be achieved in practice;
  - Procedures set out in the Building Control Regulations for demonstrating compliance in respect of an individual building or works.
- 4.5.2 The contractor shall comply with relevant Irish Standards and Guidance Documents having regard to the suite of technical guidance documents which accompany the Building Regulations:
- 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.
- 4.5.3 The contractor may be required to undertake the role of 'Builder' as defined in the Building Control (Amendment) Regulations 2014. In such cases the successful contractor will be required to comply with the following requirements as laid down by the regulations:

- Comply with the Inspection Plan<sup>6</sup> and agreed Inspection Notification Framework<sup>7</sup> and any reasonable amendment during the works;
- Give notice for any inspection as set out in the inspection notification framework;
- Complete works in accordance with the documents lodged with the Commencement Notice<sup>8</sup> and with all other documents and instructions issued by the design team and Assigned Certifier;
- Ensure that the workmanship and materials and any design by the contractor or his suppliers comply with the Building Regulations;
- Provide the Assigned Certifier (either directly or via the architect as directed) with such documents as reasonably may be required by them such as:
  - Ancillary certificates<sup>9</sup> of compliance (design and completion) by sub-contractors, Specialists.
  - Test Certificates
  - Technical documents/product manuals.
- Provide a full set of records at the completion of the job, including safety file and as-built drawings;
- Provide all such information, as noted above, to the 'Builder' in a timely manner to allow the 'Builder' to submit the Certificate of Completion and all other related documentation to the Building Control Authority in order that the works can be entered on the Register without undue delay to the completion date. The building cannot be occupied or used until so registered;
- Comply with procedures set out in the Building Control Regulations for demonstrating compliance in respect of an individual building or works.

4.5.4 The contractor shall, on request, provide to the client, at the time of substantial completion, a certificate confirming that the completed works comply with the requirements of legislation and the sRFT Contract.

#### **4.6 TESTING**

4.6.1 Following the completion of retrofitting works, a post works Building Energy Rating (BER) advisory report must be completed for each property. The results of these reports must be registered on the SEAI database. The programme and scope of BER testing works must be agreed in advance with the relevant Contracting Authority representative prior to commencement of the works.

#### **4.7 LIAISON WITH HOUSEHOLDERS**

4.7.1 The Contracting Authority will, if applicable, provide contact details (name, address and phone number) for householder(s) associated with the sRFT. The Economic Operator will, unless specified otherwise in the sRFT, be responsible for liaising (and fostering good relations) with these householders for the duration of the works.

#### **4.8 HEALTH AND SAFETY - GENERAL**

4.8.1 The Preferred Tenderer (and Substitute Tenderers if applicable) will be required to comply with the Safety, Health and Welfare at Work Act 2005 and any other relevant Safety, Health and Welfare legislation including the requirement to have a Safety Statement.

4.8.2 The Preferred Tenderer (and Substitute Tenderers if applicable) will also be required to comply with the Safety, Health and Welfare at Work (Construction) Regulations 2013, particularly in relation to the

<sup>6</sup> means the document prepared by the Assigned Certifier in accordance with the Code of Practice for Inspecting and Certifying Buildings and Works having regard to the works requirements. The Inspection Plan also includes the Inspection Notification Framework, both of which may be amended by the Assigned Certifier from time to time.

<sup>7</sup> means the document prepared by the Assigned Certifier and agreed with the Contractor and the Employer in accordance with the Code of Practice for Inspecting and Certifying Buildings and Works identifying key stages or items of work that individual certifiers and the Assigned Certifier are to be notified by the Contractor as the Works are ready for inspection.

<sup>8</sup> means to give notice to Building Control Authorities of the erection of such buildings, or classes of buildings, or the carrying out of such works, or classes of works, as may be specified in the regulations.

<sup>9</sup> means a certificate as prescribed by the Building Control Regulations, other than a statutory certificate of compliance, given by a competent person to confirm compliance of elements of the building, design or Works with Building Regulations; and "Ancillary Certifier" means the person proposed to issue such a certificate.

appointment (as applicable) of the Contractor, Designer, Project Supervisor for the Construction Stage (PSCS), and the Project Supervisor for the Design Process (PSDP).

- 4.8.3 The competency of those to be appointed in a duty holder role<sup>10</sup> will be assessed by the Client (the Contracting Authority) at sRFT Stage in accordance with the Safety, Health and Welfare at Work Act 2005, the Safety, Health and Welfare at Work (Construction) Regulations 2013 and any other relevant Safety, Health and Welfare legislation.
- 4.8.4 The LGOPC is not the Client and is not responsible for the appointment of any duty holder role.

#### **4.9 INSURANCE**

- 4.9.1 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 Operators Personnel.
- 4.9.2 The required insurances for an sRFT shall be specified by the Contracting Authority in the sRFT or will be identified in the form of sRFT contract specified in the sRFT. Economic Operators do not need to have the insurances in place when making their application in response to a sRFT but will be required to put those insurances in place prior to the award of any contract should they be successful in a sRFT. The Contracting Authority will not be responsible for any cost incurred by Economic Operators in putting in place the required insurances.
- 4.9.3 No Economic Operator shall be awarded a contract under a sRFT unless satisfactory evidence of insurance is submitted prior to contract award by the Economic Operator's insurance broker/company. Where the insurance policy in question lapses prior to the end of the period of the DPS, it shall be the responsibility of the Economic Operator to ensure that said policy is renewed.
- 4.9.4 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).
- 4.9.5 Where required, limits for Professional Indemnity Insurance cover will vary depending on the nature of the contract. The actual level of professional indemnity insurance cover required for individual sRFT's 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.
- 4.9.6 The required insurance coverage will vary from contract to contract as will the style of insurance cover available to Economic Operators, particularly in relation to professional indemnity risks.
- 4.9.7 Economic Operators may be required to arrange Contractors All Risks Insurance as part of a sRFT. 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.

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<sup>10</sup> Roles applicable under the relevant Health and Safety legislation.

## 5.0 STAGE 2 - SUPPLEMENTARY REQUEST FOR TENDER

### 5.1 GENERAL

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

### 5.2 SUPPLEMENTARY REQUEST FOR TENDER PROCESS

- 5.2.1 Contracting Authorities may issue Supplementary Requests for Tender for the purpose of awarding sRFT Contracts throughout the Period of Validity of the DPS.
- 5.2.2 Supplementary Requests for Tender will be issued electronically via Supplygov to all Economic Operators admitted to the DPS that have expressed an interest in receiving Supplementary Requests for Tender for their selected regions and lots.
- 5.2.3 The Economic Operator shall comply with all instructions and rules issued by the Contracting Authority in relation to the Supplementary Request for Tender.
- 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 a Supplementary Request for Tender is issued by a sub-central contracting authority<sup>11</sup>. In circumstances where the Supplementary Request for Tender 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 Supplementary Request for Tender is issued.
- 5.2.5 Supplementary Requests for Tender will be evaluated in accordance with the provisions set out below. The Supplementary Request for Tender will include:
- (a) details in relation to the Contracting Authority's specific requirements in respect of the Works;
  - (b) the instructions and rules of the Contracting Authority in relation to the Supplementary Request for Tender; and
  - (c) the Contracting Authority's intention to award the sRFT Contract to:
    - a Preferred Tenderer only, or
    - where the sRFT Contract will be a PW-CF11 Public Works Term Maintenance and Refurbishment Contract (or equivalent) a Preferred Tenderer and a specified number of substitute suppliers (which substitute suppliers will be placed on a substitution list ranked in descending order).
- 5.2.6 Where the Contracting Authority indicates in the Supplementary Request for Tender its intent to award the sRFT Contract to a Preferred Tenderer only, the Contracting Authority shall enter into an sRFT Contract with the Preferred Tenderer only.
- Preferred Tenderer with Substitutes for the PW-CF11 Public Works Term Maintenance and Refurbishment Contract (or equivalent)**
- 5.2.7 Solely in circumstances where the sRFT Contract will be a PW-CF11 Public Works Term Maintenance and Refurbishment Contract (or equivalent) and where the Contracting Authority indicates in the Supplementary Request for Tender its intent to award the sRFT Contract to a Preferred Tenderer and a specified number of substitute suppliers, the Contracting Authority shall enter into sRFT Contracts with the Preferred Tenderer and each of the ranked substitutes.

<sup>11</sup> Sub-central contracting authority" means a contracting authority that is not a central government authority.

- 5.2.8 Where, following a Supplementary Request for Tender, the Contracting Authority has entered into sRFT Contracts with a Preferred Tenderer and substitute suppliers, the Contracting Authority shall, in the first instance, procure the Works by way of a Task Order from the Preferred Tenderer.
- 5.2.9 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 being the subject matter of a specific Task Order; or (b) is deemed by the Contracting Authority to be unable or unwilling (through change in circumstances, lack of capacity or otherwise) to provide the Works being the subject matter of a specific Task Order, then, and in those circumstances, the Contracting Authority may assign the specific Task Order and procure the Works from the highest ranking substitute (beginning with the substitute ranked No. 1) then capable of fulfilling the specific Task Order.

### 5.3 AWARD CRITERIA – SUPPLEMENTARY REQUEST FOR TENDER

- 5.3.1 Tenders submitted in response to a Supplementary Request for Tender will be evaluated in accordance with the Award Criteria outlined below.
- 5.3.2 The Economic Operator that achieves the highest Total Marks will be deemed to have submitted the most economically advantageous tender and identified as the Preferred Tenderer. The remaining Economic Operators will be ranked in descending order based on their Total Marks.

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

- 5.3.3 In a Supplementary Request for Tender, 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 a number of sub-criteria; or
  - where Price (Total Cost) and Quality Criteria are used, divide the Price (Total Cost) criteria and Quality criteria into a number of 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 Supplementary Request for Tender.

In circumstances where Quality criteria/sub-criteria are used in a Supplementary Request for Tender, the Economic Operator shall be required to achieve a minimum pass threshold of 40% for each Quality criterion/sub-criterion adopted.

#### 5.3.4 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.

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



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

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

5.3.7 **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.

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

5.3.9 The marking scale for Quality criteria is provided below:

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

- 5.3.10 In the event of a tie in a Supplementary Request for Tender that includes both quality and cost criteria, the following tie-break approach may, at the discretion of the Contracting Authority, be adopted:
- (i) The Economic Operator who was awarded the highest overall mark for the Quality Award Criteria of its tender will be deemed to have submitted the most economically advantageous tender;
  - (ii) In circumstances where the tie-break approach in Par. (i) does not identify the most economically advantageous tender, the Economic Operator who was awarded the highest overall mark for the specific Quality Award Criterion with the largest weighting will be deemed to have submitted the most economically advantageous tender (in circumstances where this approach does not identify the most economically advantageous tender the approach will continue to be applied to each of the Qualitative Award Criteria in descending order of weighting);
  - (iii) In circumstances where the tie-break approach in Par. (ii) does not identify the most economically advantageous tender, the Economic Operator who was awarded the highest overall mark for the specific Quality Award Criterion which was listed first in the Supplementary Request for Tender will be deemed to have submitted the most economically advantageous tender (in circumstances where this approach does not identify the most economically advantageous tender the approach will continue to be applied to each of the specific Quality Award Criterion in the order they were listed in the Supplementary Request for Tender);
  - (iv) In circumstances where the tie-break approach in Par. (iii) does not identify the most economically advantageous tender, the Contract Authority, may, at its discretion either:
    - re-issue the Supplementary Request for Tender to all Economic operators; or
    - award the sRFT Contract to one of the tied Economic Operators by random selection concluded in an open and transparent manner; or
    - ask the tied Economic Operators to resubmit prices and continue this process until there is a winner; or
    - implement such other open and transparent tie break approach as it deems appropriate.
- 5.3.11 The Contracting Authority is not bound to adopt the tie break approach outlined above and may adopt in the first instance such other open and transparent tie break approach as it deems appropriate.
- 5.3.12 In the event of a tie in a Supplementary Request for Tender that includes price (total cost) criteria **only**, the Contracting Authority may, at its discretion, either:
- award the sRFT Contract to one of the tied Economic Operators by random selection concluded in an open and transparent manner; or
  - re-issue the Supplementary Request for Tender to all Economic Operators; or
  - ask the tied Economic Operators to resubmit prices and continue this process until there is a winner.
- 5.3.13 Where, following an evaluation but prior to the award of an sRFT Contract, the Preferred Tenderer is:
- deemed by the Contracting Authority to be unable or unsuitable to supply the Works due to a change in circumstances; or
  - by its own admission, is unable or unwilling to supply the Works,
- 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.

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

- 5.4.1 In addition to the information and documentation to be provided when submitting a response to a sRFT, successful Economic Operators may be required to provide to the Contracting Authority for their review and approval, prior to formal award of the contract (if not already submitted), the specific information and/or documentation listed below or any such relevant information and/or documentation as requested by the Contracting Authority:
- Updated confirmation that the Economic Operator complies with the requirements of Regulation 57 of the European Union (Award of Public Authority Contracts) Regulations 2016 (SI 284 of 2016);

- Confirmation that any Subcontractor/Specialist proposed for completion of the works complies with the requirements of Regulation 57 of the European Union (Award of Public Authority Contracts) Regulations 2016 (SI 284 of 2016) by providing an ESPD or equivalent;
- The Economic Operator's Tax Clearance Access Number and Tax Reference Number to facilitate online verification of the Economic Operator's tax status. By supplying the aforementioned numbers, the successful Economic Operator acknowledges and agrees that the Contracting Authority has the permission of the successful Economic Operator to verify its tax clearance position online.
- Subcontractors engaged at sRFT stage are required to produce an in-date (not older than 30 days) Notification of Determination to the Contracting Authority or the Economic Operator, before any contract is awarded;
- Satisfactory evidence of insurance in accordance with the minimum standards referenced in the tender documents or as outlined in the sRFT,
- The Economic Operator's Safety Statement or equivalent document may be assessed for compliance with the provisions set out in the Safety, Health & Welfare at Work Act 2005 and enforcing Regulations,
- Agreement to the use of specific electronic tools where appropriate,
- Appointment and acceptance of duty holder role(s), where appropriate as outlined in the Safety Health & Welfare at Work (Construction) Regulations 2006 – 2013,
- SOLAS Safepass Cards for all Contractors Personnel and where appropriate to the works required in the Supplementary Request for Tender, Construction Skills Certification Scheme ("CSCS") cards or equivalent,
- Site Specific Risk Assessment, if applicable,
- Site Specific Method Statement, if applicable,
- The Economic Operator's Waste Management Plan (WMP) for the management of all waste arising on site, if applicable,
- Confirmation and associated evidence of up to date membership of National Standards Authority of Ireland ("NSAI") Agrément scheme e.g. NSAI Agrément Registered Blown Cavity Wall Installation Companies, NSAI Agrément registered External Insulation installers, by demonstrating that information provided in response to the electronic Suitability Assessment Questionnaire at DPS application stage is up to date,
- Confirmation and associated evidence of competence for the individual employee in the installation of Internal wall Insulation, Ceiling Level Attic Insulation, Rafter Level Attic or Flat Roof Insulation, specifically in accordance with S.R. 54 -2016 (Code of Practice for the energy efficient retrofit of dwellings),
- Confirmation and associated evidence of competence for the individual employee in the installation of Floor Insulation in accordance with Domestic floors: construction, insulation and damp-proofing (GBG 28 Part 1) published by BRE and Insulating ground floors (GBG 45), published by BRE,
- Confirmation and associated evidence of competence for the individual employee in holding a Level 6 National Craft Certificate in Plumbing or an equivalent Plumbing qualification such as City and Guilds,
- Confirmation and associated evidence of competence for the individual employee in the installation of gas boilers in holding a Gas Contractors Domestic Certificate (GID, GI2 or GI3) and must be Register of Gas Installers of Ireland ("RGII") registered,
- Confirmation and associated evidence of competence for the individual employee in the installation of Heat Pump Systems in holding a Quality and Qualifications Ireland ("QQI") Level 6 Advanced Craft in Plumbing, including a module on minor electrical works, or equivalent or QQI Level 6 Heat Pump Systems (Course Code C30263) and supplemental Domestic Heat Pump Installation (Code 700606) or equivalent,
- Parent Company Guarantee (if applicable),

- Performance Bond (if applicable),
- Any other details specified in the sRFT consistent with the terms and conditions of the Agreement.

**Note:** The aforementioned information and/or documentation may, at the discretion of the Contracting Authority, form part of the contract award criteria for a Supplementary Request for Tender.

- 5.4.2 In addition to the information and/or documentation to be provided when submitting a response to a Supplementary Request for Tender, the Preferred Tenderer and, if applicable, the substitute(s) shall provide to the Contracting Authority for its review and approval, prior to the formal award of an sRFT Contract, the information and/or documentation requested by the Contracting Authority.
- 5.4.3 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.

## **5.5 SRFT CONTRACT**

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

## **5.6 NOTICE OF ADDENDA**

- 5.6.1 The LGOPC reserves the right, where necessary for the efficient and compliant operation of the DPS, to 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.