

MULTI-PARTY FRAMEWORK AGREEMENT FOR THE SUPPLY OF PLANT HIRE & HAULAGE 2013

THIS AGREEMENT is made on _____ **BETWEEN**

Kerry County Council of County Buildings, Rathass, Tralee, Co. Kerry, Local Authority (hereinafter called "**KCC**") of the One Part and

Contractor/Supplier _____ having its registered address at _____ (hereinafter called "**the "Supplier"**") of the Other Part.

WHEREAS:

KCC is a central purchasing body within the meaning of Directive 2004/18/EC of the European Parliament and Council. KCC enters into this Framework Agreement on its own behalf and on behalf of other local authorities in Ireland as listed in Schedule 3 hereto ("**the Framework Purchasers**") that may wish from time to time to purchase Plant Hire & Haulage services. The Supplier wishes to provide such Plant Hire & Haulage services as may be described in a Request for Mini-Competition (the "**Services**"), in accordance with this Framework Agreement.

1. Entire Agreement

This Agreement together with:

- Instructions Document for Request For Tenders
- The Tender Submission
- Each relevant Request for Mini-Competitions
- Each relevant Purchase Order
- If applicable, any Form of Contract included by the Framework Purchaser at Request for Mini-Competition stage
- For contracts in excess of €50K, Suppliers will be required to complete the Department of Finance 'Short Public Works Contract'.

shall constitute the entire contract (the "**Framework Agreement**") between the Supplier and each relevant Framework Purchaser with respect to the provision of the Services by the Supplier to a Framework Purchaser and shall prevail over and supersede all prior agreements, understandings, statements and communications between the Supplier and any Framework Purchaser with respect to any Services ordered on or after the commencement of the Framework Period. Without prejudice to the generality of the foregoing, the Framework Agreement shall apply to the exclusion of any terms and conditions which the Supplier may purport to apply at any time, whether contained in any acknowledgement of a Purchase Order or otherwise.

2. Scope of Appointment and Framework Period

The appointment of the Supplier to the Framework does not constitute a commitment or guarantee by any of the Framework Purchasers to procure any Services or any other supplies from the Supplier and does not confer any exclusivity on the Supplier. The Framework Purchasers may procure the Services/Supplies in other ways outside of the Framework from any provider or from other national/regional/local frameworks/tenders in place.

The Framework Agreement shall commence 1st of January 2013 and shall end on 31st December 2013 (the “**Framework Period**”), unless it is otherwise terminated in accordance with the provisions of this Framework Agreement. Notwithstanding the expiry of the Framework Period, a Framework Contract that is not completed prior to the end of the Framework Period shall be governed by this Framework Agreement.

3. Framework Contracts

If a Framework Purchaser selects the Supplier to provide the Services in accordance with the Mini-Competition Procedure in Schedule 4, the Supplier shall enter into a Framework Contract with the Framework Purchaser. Framework Contracts will be formed by the issue of the Purchase Order (as defined in the Mini-Competition Procedure) by the individual Framework Purchaser to the Supplier following completion of the Mini-Competition Procedure.

Each Purchase Order shall constitute a separate Framework Contract and default by a Framework Purchaser or Provider in relation to any one purchase order shall not entitle the other to treat such as a breach of the entire Framework Agreement and/or terminate this Framework Agreement.

Each Framework Purchaser shall be responsible for awarding Framework Contracts in accordance the Mini-Competition Procedure and KCC shall not have any responsibility or liability whatsoever or howsoever arising from the award of any Framework Contract or outcome of a Mini-Competition.

The Supplier shall perform all Framework Contracts in accordance with the requirements of this Framework Agreement, the terms and conditions of the respective Framework Contracts and in accordance with Irish law.

4. The Supplier’s Obligations

The Supplier shall provide the Services meeting the Specification, in accordance with the terms of the Framework Agreement.

The Supplier shall employ sufficient staff to provide the Services who shall be properly trained, skilled and qualified. Failure by the Supplier to meet its obligations under this Clause shall be considered a material breach of the Framework Agreement.

The Supplier shall, and shall ensure that its sub-contractors shall, ensure that the rates of pay and conditions of employment of each employee, including in relation to sick pay and pension contributions of each employee, comply with all applicable law and that those rates of pay are no less favourable than those laid down by the National Minimum Wage Act.

5. Payment

The Supplier shall send an invoice to the Framework Purchaser on completion of the relevant Services or at such other interval(s) as otherwise agreed in writing between the Framework Purchaser and the Supplier. The LAQuotes mini-competition reference number must be included on the invoice(s).

Subject to the Framework Purchaser being satisfied as to the due performance of the Framework Contract, the Supplier shall be paid the Price established through the Mini-Competition as set out in the Purchase Order.

Each Framework Purchaser may retain or set off against the Price any amount owed to that Framework Purchaser by the Supplier on any account whatsoever.

If a Framework Purchaser determines at any time that the quality of any Services provided by the Supplier is of a standard below that required by this Framework Agreement, or that any Services in any other respect are not being rendered in accordance with this Framework Agreement, that Framework Purchaser will notify the Supplier accordingly and will be entitled to withhold a proportionate amount of any future payment due to the Supplier pursuant to this Framework Agreement until such time as the matter in question has been remedied to the reasonable satisfaction of that Framework Purchaser. The rights of each Framework Purchaser pursuant to this Clause shall be without prejudice to any other rights it may have under this Framework Agreement or at law, including the right of termination.

The Supplier shall provide a current tax clearance certificate prior to the first payment being made under this agreement. Payments will not be made until a current tax clearance certificate is furnished to Framework Purchaser by the Supplier and the Supplier will not be entitled to and the Framework Purchaser will not pay any interest or penalties as a result of late payment caused by the Supplier's failure to provide a current tax clearance certificate in a timely manner.

Wherever under this Agreement any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Framework Purchaser in respect of any breach of this Agreement), the Parties may agree to deduct that sum from any sum then due, or which at any later time may become due to the Supplier under the Agreement or under any other agreement or contract with the Framework Purchaser. Any overpayment by either Party, whether of the Charges or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

6. Confidentiality

Each of the Parties to this Agreement agrees to hold confidential all information, documentation and other material received, provided or obtained arising from their participation in this Agreement and shall not disclose same to any third party except to:

- its professional advisors subject to the provisions of this clause 6; or
- as may be required by law; or
- as may be necessary to give effect to the terms of this Agreement subject to the provisions of this clause 6; or
- In the case of the Framework Purchaser by request of any person or body or authority whose request the Framework Purchaser or persons associated with the Framework Purchaser considers it necessary or appropriate to so comply.

The Supplier undertakes that it will properly instruct its staff on the absolute need to maintain privacy and confidentiality of all matters affecting the business of the Framework Purchaser or any persons doing business with the Framework Purchasers or in any way arising from documents or records of any kind which may come under the hand of the Supplier or its staff while engaged by a Framework Purchaser.

The Supplier undertakes to comply with all reasonable directions of the Framework Purchaser with regard to use and application of all and any confidential information.

The Supplier acknowledges that the security of the Local Authorities and the State and its information is of paramount important to the Framework Purchaser. Accordingly the Supplier confirms that it will from time to time, during the currency of this Agreement as may be requested by the Framework Purchaser submit full personal details (including those of subcontractors) who are assigned to provide the Services (or any part thereof) under this Agreement. The Supplier further acknowledges that checks may be carried out in relation to

all such personnel by police authorities and the Supplier shall comply with all reasonable directions of the Framework Purchaser arising there from.

7. Contract Review

The performance of the Supplier under this Framework Agreement shall be subject to review on an on-going basis. Bi-annual evaluations meetings may be held during the Framework Period. Mutually agreeable dates will be determined for these meetings, the purpose of which will be to provide a forum for KCC or any Framework Purchaser and the Supplier to review performance and other key issues in connection with the Framework Agreement. The Framework Purchasers and the Supplier shall be committed to continuously improving the Supplier / Framework Purchaser relationship.

The Supplier shall implement such recommendations and comply with any Framework Purchaser's findings to the extent necessary to ensure that the Services continue to be delivered and the Supplier continues to meet its related obligations in accordance with the requirements set out in this Framework Agreement.

Where a Framework Purchaser has reasonable grounds to believe that the Supplier is not complying with its obligations under this Agreement, an audit may be carried out without prior notice.

8. Termination

Without prejudice to any other remedies this Agreement may be terminated by KCC with immediate effect if the Supplier ceases to carry on business in the normal course, commits an act of bankruptcy or is adjudicated bankrupt or enters into liquidation, whether compulsory or voluntary other than for the purposes of amalgamation or reconstruction, or compounds with its creditors generally or has a receiver or manager appointed over all or any of its assets.

Without prejudice to any other rights, KCC may terminate this Agreement at any time and for no reason upon giving the Supplier three weeks notice. Termination by KCC shall be without prejudice to any rights KCC or any Framework Purchasers may have arising from this Agreement or any prior breach hereof.

For the avoidance of doubt if this Agreement is terminated without prejudice to any other provision the Supplier shall not be entitled to payment for any costs incurred or services supplied after the effective date of termination. Neither shall KCC or any Framework Purchasers be held liable for damages howsoever arising or loss of anticipated profits on account of such termination. In the event of the Agreement being terminated by KCC on any of the grounds in the first paragraph of this clause 8 during a Framework Contract, the Supplier shall be liable for any loss incurred by KCC or the relevant Framework Purchaser as a result of such termination including the cost of finding an alternative Supplier to carry out the Supplier's uncompleted Services.

9. Force Majeure

No delay or failure in performance by either party hereto shall constitute default hereunder or give rise to any claim for damages or loss including anticipated profits if such delay or failure is caused by Force Majeure. Unless otherwise instructed by Framework Purchasers, the Supplier shall recommence performance as soon as possible after the Force Majeure has ceased.

Force Majeure shall mean an occurrence beyond the control and without the fault or negligence of the party affected and which the said party is unable to prevent or provide

against by the exercise of reasonable diligence including, but not limited to: - acts of God or the public enemy; expropriation or confiscation of facilities; any form of Government intervention; war, hostilities, rebellion, terrorist activity; local or national emergency, sabotage or riots; floods, unusually severe weather conditions which could not reasonably have been anticipated; fires, explosions or other catastrophes; national or district strikes or any other concerted acts of workmen or other similar occurrences other than strikes or concerted acts of the Supplier's workforce.

If any delay or failure in performance, as set out above, persists for 7 days or more, Framework Purchasers shall have the right to terminate the relevant Framework Contract by giving 7 days notice in writing to the Supplier.

10. Conflicts, Registrable Interests and Corrupt Gifts

The Supplier confirms that it has carried out a conflicts of interest check and is satisfied that it has no conflicts in relation to the Services and its obligations undertaken under this Agreement. The Supplier hereby undertakes to advise the Framework Purchaser forthwith should any conflict or potential conflict of interest come to its attention during the currency of this Agreement and to comply with the Framework Purchaser's directions in respect thereof.

Any registrable interest involving the Supplier (and any subcontractor or agent as the case may be) and the Framework Purchaser, or their relatives must be fully disclosed to the Framework Purchaser immediately upon such information becoming known to the Supplier and to comply with the Framework Purchaser's directions in respect thereof, to the satisfaction of the Framework Purchaser. The terms "registrable interest" and "relative" shall be interpreted as per section 2 of the Ethics in Public Office Act, 1995.

The Supplier shall not offer or agree to give any public servant any gift or consideration or commission of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this or any other public contract. Any breach of this clause 10 or the commission of any offence by the Supplier, any subcontractor, agent, or employee under the Prevention of Corruption Acts, 1889 to 2005 shall entitle the Framework Purchaser to terminate this Agreement forthwith and to recover the amount of any loss resulting from such cancellation, including but not limited to recovery from the Supplier of the amount or value of any such gift, consideration or commission.

11. Miscellaneous Provisions

Any amendments to the terms of this Agreement shall be signed by the Parties to this Agreement and endorsed on this Agreement.

The Supplier shall not assign this Framework Agreement or any Framework Contract or sub-contract any aspect of the provision of Services to any third party without the prior written consent of the relevant Framework Purchaser or KCC. In the event of such consent being given, the Supplier shall remain fully responsible for the provision of the Services and the acts and omissions of the sub-contractor as if they were its own. The Supplier shall also maintain during the term of this Agreement and for 6 years thereafter records and documentation relating to the sub-contractor and the Services provided by it and shall make same available to the KCC upon request.

Failure or neglect by any Framework Purchaser to enforce at any time any provision of this Framework Agreement or any Framework Contract shall not be construed or deemed to be a waiver of that Framework Purchaser's rights hereunder, nor in any way affect the validity of the whole or any part of this Framework Agreement, nor prejudice the Framework Purchaser's rights to take subsequent action.

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

It is acknowledged by all parties that the Supplier will at all times be an independent contractor, and nothing in this Framework Agreement will be construed (and the Supplier will not hold out its relationship) as constituting a partnership, joint venture, representation, agency or employer and employee relationship between any Framework Purchaser and the Supplier.

IN WITNESS whereof the parties hereto have executed this Framework Agreement the day and year first herein WRITTEN.

Signed on behalf of Kerry County Council by:

A duly authorised representative

Date

Signed on behalf of the Supplier by:

A duly authorised representative

Date

SCHEDULE 1 - The Services

Plant Hire & Haulage Services shall comply with the Specification in the Instructions To Contractor/Suppliers Document for Request for Tenders and with any requirements set out in any Mini-Competition.

SCHEDULE 2 – DECLARATIONS (*Please complete this schedule*)

- A. Do you have Employees? Yes/No
- B. If yes to Question A, Is there a Pension & Sickness Scheme in place for Employees? Yes/No
- C. I confirm that the Contractor/Supplier complies with all statutory requirements in relation to PAYE and PRSI, registered employment agreements, relevant sick pay and pension schemes and minimum standard conditions and pay rates of the relevant industry.
- D. I confirm that the relevant insurance requirements as outlined in the terms and conditions will be put in place and the online questionnaire at www.LAQuotes.ie will be completed by the Insurance Company/Broker prior to commencing any contract.
- E. I confirm that the Contractor/Supplier is fully Tax Compliant
- F. I confirm that the Contractor/Supplier complies with all Health & Safety Legislation
- G. I confirm that details of valid Safe Pass Cards for all Employees have been entered online at www.LAQuotes.ie
- H. I confirm that the 'Contractor's Pre-Qualification Questionnaire has been completed online at www.LAQuotes.ie

Signed on behalf of the Contractor/Supplier by:

A duly authorised representative(Company Name)

Date

SCHEDULE 3 - Framework Purchasers

Framework Participant
Carlow Local Authorities
Cavan Local Authorities
Clare Local Authorities
Cork City Council
Cork County Council & Town Councils
Donegal Local Authorities
Dun-Laoghaire-Rathdown County Council
Fingal County Council
Galway City Council
Galway County Local Authorities
Kerry Local Authorities
Kildare Local Authorities
Kilkenny Local Authorities
Laois Local Authorities
Leitrim Local Authorities
Limerick City Council
Limerick County Council
Longford Local Authorities
Louth Local Authorities
Mayo Local Authorities
Meath Local Authorities
Monaghan Local Authorities
North Tipperary Local Authorities
Offaly Local Authorities
Roscommon Local Authorities
Sligo Local Authorities
South Dublin County Council
South Tipperary Local Authorities
Waterford City Council
Waterford County Local Authorities
Westmeath Local Authorities
Wexford Local Authorities
Wicklow Local Authorities

SCHEDULE 4 – MINI-COMPETITION PROCEDURE

1. When the Framework Purchaser decides to procure Services through the Framework, the Framework Purchaser will send each Framework Participant capable of performing the Services and delivering the Supplies (and who are compliant with the requirements of the Framework Agreement including the Specification) a request for mini-competition tenders (the “Request”). The Request will be sent by email only to each Framework Participant’s current email address as provided by the Framework Participant to KCC via www.LAQuotes.ie.
2. The Request will include specific information about the Services required by the Framework Purchaser. The Request will fix a time limit for Participants to submit tenders. It will state the award procedure, whether most economically advantageous tender (MEAT) or by the Lowest price.
3. At mini-competition stage, Framework Participants will be required to submit fixed prices in accordance with the specific requirements of the mini-competition. The Request will set out which pricing method for the particular Services such as: – hourly rate – plant only, hourly rate – plant and operator, daily rate, price per job etc. The Framework Participants will be required to submit their prices online only through www.LAQuotes.ie.
4. The award process of Framework Contracts will be conducted in accordance with this Procedure and any procedures stated in the Request. Tenders will be assessed in accordance with the following criteria which may be supplemented as appropriate in relation to the specific mini-competition requirements.
 - 4.1 Firstly, Tenders will be assessed to see if they meet the pass/fail criteria below as may be supplemented or amended depending the specific service requirement of the Mini-Competition. Any Contractor/Supplier that fails to meet the required pass/fail criteria will be excluded from further consideration.

Selection Criteria for Mini-Competitions

<ul style="list-style-type: none"> • The Contractor/Supplier has the required machines/plant available 	Pass/Fail
<ul style="list-style-type: none"> • The Contractor/Supplier can supply the Plant Hire & Haulage Services within the delivery period required. 	Pass/Fail
<ul style="list-style-type: none"> • Confirmation that the requirements of the Specification identified in Schedule 1 to the Framework Agreement and Terms and Conditions set out in Schedule 1 of this document can and will be complied with. 	Pass/Fail
<ul style="list-style-type: none"> • If applicable, confirmation that requirements specified in the mini-competition can be met. This criterion may be broken down into sub-criteria to take account of the particular characteristics of the job, the subject of the mini competition. 	Pass/Fail
<ul style="list-style-type: none"> • If applicable, confirmation that evidence of the relevant specific qualification/certification can and will be provided. 	Pass/Fail

<ul style="list-style-type: none"> If applicable, the Contractor/Supplier has provided evidence to demonstrate its competence to carry out the role of Project Supervisor for the Construction Stage (PSCS) as specified by the Safety, Health and Welfare at Work (Construction) Regulations 2006 (where applicable, a detailed questionnaire will be included in the request for mini tenders for the purposes of assessing compliance with this criterion). 	Pass/Fail
<ul style="list-style-type: none"> Relevant Experience, if applicable, confirmation that the minimum level(s) of experience set out in the mini-competition can and will be complied with. <p>The Contractor/Supplier must have satisfactory experience and must have successfully completed similar works to the contract being offered. The Framework Purchaser may request submission of details of other similar work carried out by the Contractor/Supplier and/or Operator being provided. In assessing the similarity of the works completed the Council will assess the type and variety of works done and the conditions under which and the locations where the contract work was carried out. In assessing whether the contracts were satisfactorily carried out and were similar, the Council may be requesting reports from the previous employer or employer's representative.</p>	Pass/Fail
<ul style="list-style-type: none"> If applicable, confirmation that the plant concerned will be available outside of normal working hours, and that any maximum response time specified can and will be complied with. 	Pass/Fail

4.2 Contractors/Suppliers that pass the criteria above will be assessed in accordance with the award criteria below. The Contractor/Supplier that achieves the highest ranking score by reference to the award criteria below will be awarded the drawdown contract.

Award Criteria	Percentage Weighting	Minimum Requirements
Overall Price	[60%-100%]	[]%
Quality This criterion may be broken down into sub-criteria, including such matters as the age of machine, backup support services, etc. The particular characteristics of the job, the subject of the mini competition including where appropriate the requirement for a safety plan/quality plan for the specific Framework Contract(s), may also be taken into account. If applicable, it will also take account of green procurement.	[0%-40%]	[]%

Where, after a competition, two tenders are level on price, the Framework Purchaser reserves the right to either:

1. Ask the drawn Contractor/Suppliers to resubmit prices and continue this process until there is a winner
 2. To divide the contract between the two drawn Contractor/Suppliers.
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5. The award criteria for Framework Contracts will be Most Economically Advantageous Tender (MEAT) or the Lowest price depending on the type of procedure stated in the mini-competition.
 6. The Framework Purchasers do not undertake to accept the lowest tender for any individual contract, or part or all of any such tender and the acknowledgement of receipt of any tender for an individual framework contract shall not constitute any actual or implied agreement between the relevant Framework Purchaser(s) and the Framework Participants.
 7. Following completion of the Mini-Competition, the Framework Purchaser shall issue a purchase order to the successful Supplier which shall set out the specifics of the individual Framework Contract awarded under the Mini-Competition such as a description of the required Services to be provided; output; deliverables; Price; timing or schedule for provision of the Services; and such other terms and conditions as the Supplier and the relevant Framework Purchaser may agree in respect of the Services(the "**Purchase Order**").
 8. For the avoidance of doubt, individual Framework Purchasers can award Framework Contracts on behalf of one or more Framework Purchasers.