
**MULTI-PARTY FRAMEWORK
AGREEMENT
FOR
ROAD MARKINGS**

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1.0 AGREEMENT

THIS FRAMEWORK AGREEMENT is made on the _____ 2018 **BETWEEN;**

Central Purchasing Body:	The Local Government Operational Procurement Centre (LGOPC) ¹ acting as a Central Purchasing Body (CPB) ² under the auspices of Kerry County Council of the one part which expression shall be deemed to include its successors, assigns and authorised representatives.
Principal Office of Central Purchasing Body:	Unit 9, Ground Floor, Building C, Reeks Gateway, Rock Road, Killarney, Co. Kerry, V93 KVK1
Telephone No:	076 106 40 20
Email Address	eproc@kerrycoco.ie

AND

The Contractor [which expression shall, where the context so admits or requires (and in particular with reference to Clause 2. 6 herein) include its successors and assigns):	
Registered office of Contractor:	
Name of Contractors Representative	
Telephone No:	
Email Address:	

WHEREAS:

- A. The LGOPC enters into this Framework Agreement³ on its own behalf and on behalf of other Contracting Authorities as referenced in Appendix 1 hereunder. The LGOPC has conducted a tender competition on www.etenders.gov.ie⁴ and in the Official Journal of the European Union⁵ inviting tenders for Road Markings.
- B. The Contractor⁶ is engaged in the business of providing Road Markings. The Contractor submitted an Application in response to the LGOPC's tender competition and, following an assessment and evaluation of the Tender Submission, the LGOPC wishes to appoint the Contractor to its multi-party Framework Agreement for Road Markings.
- C. The Contractor has agreed to be appointed to the Framework Agreement on the terms and conditions set out in the Terms & Conditions Document.⁷

¹ The LGOPC is responsible for the sectorial categories of spend through the development, implementation and management of all elements of the Category Councils of Plant Hire and Minor Building Works & Civils as established by the Office of Government Procurement.

² means a contracting authority or a contracting entity within the meaning of Regulation 2(1) of the European Union (Award of Public Authority Contracts) Regulations 2016 providing centralised purchasing activities and, possibly, ancillary purchasing activities.

³ means the Framework Agreement and the Terms & Conditions Document.

⁴ means the Irish Government's electronic tendering platform administered by the Office of Government Procurement.

⁵ means the publication in which all tenders from the public sector which are valued above a certain financial threshold according to EU legislation, must be published.

⁶ means Tenderer admitted to the Framework Agreement and shall have the same meaning as Supplier on the www.supplygov.ie system.

⁷ forming part of the Tender Documents.

2.0 THE CENTRAL PURCHASING BODY AND THE CONTRACTOR AGREE AS FOLLOWS:

2.1 ENTIRE AGREEMENT

- 2.1.1 This Framework 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 Contractor and any Contracting Authority. Without prejudice to the generality of the foregoing, the Framework Agreement shall apply to the exclusion of any terms and conditions which the Contractor may purport to apply at any time, whether contained in any acknowledgement of a purchase order or otherwise.
- 2.1.2 Neither party has relied on any other written or oral agreement, representation, arrangement or understanding.
- 2.1.3 The Contractor acknowledges that it has not been induced to enter into this Framework Agreement by a statement or promise which this Framework Agreement does not contain. Neither the LGOPC nor any Contracting Authority is liable in equity, contract or tort or in any other way for a representation that is not set out in this Framework Agreement.
- 2.1.4 Each obligation, warranty or representation of the Contractor under this Framework Agreement is undertaken or made (as the case may be) in favour of the LGOPC for its own benefit and for the benefit of each Contracting Authority.
- 2.1.5 This agreement can only be changed in writing, signed by authorized representatives of the LGOPC and the Contractor.

2.2 FRAMEWORK TERM

- 2.2.1 The Framework Agreement shall take effect on the Effective Date⁸. The Framework Agreement shall continue in full force and effect for a term of two (2) years, (the Framework Term) with an option to the LGOPC of two further 12 month extensions, subject to available budgets and other factors, unless it is otherwise terminated in accordance with the provisions of this Framework Agreement.
- 2.2.2 Notwithstanding the expiry of the Framework Term, a Supplementary Request for Tender⁹ (sRFT) contract that is not completed prior to the end of the Framework Term shall be governed by this Framework Agreement.

2.3 SCOPE OF APPOINTMENT

- 2.3.1 This Framework Agreement governs the relationship between the LGOPC and the Contractor in respect of the provision of Road Markings by the Contractor to the LGOPC and to Contracting Authorities.
- 2.3.2 In consideration of the performance by the Contractor of its obligations under this Framework Agreement and for other good and valuable consideration (receipt of which is acknowledged), the LGOPC appoints the Contractor on a non-exclusive basis to provide Road Markings to Contracting Authorities, if instructed to do so from time to time pursuant to the Framework Agreement, and the Contractor accepts such appointment in each case upon the terms and subject to the conditions of this Framework Agreement.
- 2.3.3 The parties acknowledge and agree that a Contracting Authority has the right to order Road Markings pursuant to this Framework Agreement.

⁸ means the date when the Framework Agreement becomes active.

⁹ means a tender request issued via www.supplygov.ie by the Contracting Authority to the Contractors, undertaken in accordance with the procedure set out in this Framework Agreement and the Terms & Conditions Document.

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- 2.3.4 The appointment of the Contractor does not constitute a commitment or guarantee by any of the Contracting Authorities to procure any Road Markings from the Contractor.
- 2.3.5 Contracting Authorities may also procure Road Markings in other ways, and do not guarantee that Road Markings will be procured under this Framework Agreement.
- 2.3.6 No undertakings or any form of statement, promise, representation or obligation shall be deemed to have been made by the LGOPC and/or any Contracting Authority in respect of the total quantities or values of the Road Markings to be ordered by them pursuant to this Framework Agreement and the Contractor acknowledges and agrees that it has not entered into this Framework Agreement on the basis of any such undertaking, statement, promise or representation.

2.4 TERMINATION

- 2.4.1 The LGOPC may terminate this agreement by written notice to the Contractor:
- according to the attached Framework Rules, or
 - if the Contractor breaks this agreement, or
 - if any of the provisions of Regulation 73 of the EU (Award of Public Authority Contracts) Regulations 2016 apply; or
 - if the Contractor is no longer able or capable of providing the required works/services to the LGOPC and/or Contracting Authorities; or
 - if any statement made by the Contractor in connection with the procedure by which this agreement was awarded to the Contractor was untrue when made or subsequently ceases to be true, or
 - without cause, if the LGOPC also terminates its agreements with the other Contractors admitted to the Framework Agreement
- 2.4.2 A Contractor whose Framework Agreement has been terminated will no longer be considered a participant in this Framework Agreement.
- 2.4.3 Termination of this agreement does not affect any existing sRFT contract.
- 2.4.4 The Contractor is not entitled to any payment because this agreement has been terminated.

2.5 LIMITATION ON LIABILITY

- 2.5.1 Neither the Contractor nor the LGOPC have any liability to the other under or in connection with this agreement for breach of contract, negligence, breach of duty or anything else. This does not affect their liability under any sRFT contract.

2.6 COMPANY STATUS

- 2.6.1 This Framework Agreement may be assigned and/or novated by the Contractor and the LGOPC, subject to the granting of formal written consent to such assignment and/or novation by the LGOPC, to the legal successor of the Contractor where:
- a) The specific change in contractor was provided for in the procurement process for the award of this Framework Agreement; or
 - b) The change is as a result of corporate restructuring in a manner permitted under Regulation 72(1)(d) of the European Union (Award of Public Authority Contracts) Regulations 2016.
- 2.6.2 The LGOPC may, prior to granting of formal written consent to assignment and/or novation, require compliance by the succeeding contractor with such conditions the LGOPC deems necessary including, but not limited to, requiring evidence that: (a) the succeeding contractor fulfils the qualifying criteria initially established; (b) the succeeding contractor possesses the capability (technical or otherwise), resources and skills in respect of satisfying the requirements of the Framework and; (c) a formal

change in legal status or corporate restructuring as permitted under sub-paragraphs 2.6.1 (a) and (b) herein has been lawfully undertaken.

2.6.3 The terms and conditions of this Framework Agreement and the obligations imposed on the parties herein shall govern any succeeding contractor and the LGOPC and the LGOPC may, at its discretion, direct the succeeding contractor to execute a formal Deed of Assignment/Novation for the purposes of same.

2.6.4 Without prejudice to such additional circumstances where assignment and/or novation are permissible under sub-paragraphs 2.6.1 (a) and (b) herein, assignment and/or novation to the legal successor of the Contractor (subject to the granting of formal written consent to such assignment and/or novation by the LGOPC) is permissible in the following circumstances:

- Change of contractor's legal status from sole trader to corporation where general ownership and personnel remain the same.
- Change of contractor's legal status from corporation to sole trader where general ownership and personnel remain the same.
- Change of contractor's legal status from sole trader to partnership where general ownership and personnel remain the same.
- Change of contractor's legal status from partnership to sole trader where general ownership and personnel remain the same.
- Change of contractor's legal status from corporation to partnership where general ownership and personnel remain the same.
- Change of contractor's legal status from partnership to corporation where general ownership and personnel remain the same.
- Change of contractor's business name.
- Change of contractor from sole trader to other related sole trader (for example, business transfer from father to son).

3.0 FRAMEWORK RULES

3.1 SUPPLEMENTARY REQUEST FOR TENDER

- 3.1.1 Where a Contracting Authority wishes to acquire Road Markings pursuant to the Framework Agreement, it will do so by means of a Mini-Competition only.
- 3.1.2 The Contracting Authority shall issue sRFTs to all Contractors via the www.supplygov.ie¹⁰ system.
- 3.1.3 The Contractor shall comply with any procedures, processes, time limits, instructions or other requirements issued by the Contracting Authority in relation to the sRFT and shall bear all costs associated therewith.
- 3.1.4 The acknowledgement of receipt of any proposal shall not constitute any actual or implied agreement between the Contractor and the Contracting Authority.

3.2 SUPPLEMENTARY REQUEST FOR TENDER CONTRACTS

- 3.2.1 If the Contractor is selected to provide any works and/or services according to this agreement, the Contracting Authority and the Contractor agree to enter a contract in the terms established under this agreement.
- 3.2.2 sRFT contracts shall be on the terms of:
- PW-CF 11 Term Maintenance and Refurbishment contract; or
 - PW-CF 6 Public Works Short Form of Contract; or
 - PW-CF 5 Contract for Minor Building & Civil Engineering Works designed by the Employer; or
 - Equivalent contract approved by the Office of Government Procurement/Department of Public Expenditure & Reform/Department of Finance.
- as completed by the Contracting Authority and the Contractor according to this Framework Agreement. The version of the relevant conditions of contract shall be those identified in the sRFT or, failing which, the version published on <http://constructionprocurement.gov.ie/contracts/> on the date 10 days before the latest receipt for a response to the sRFT.
- 3.2.3 The Contractor acknowledges and agrees that, where a Contracting Authority formally accepts its tender in writing in circumstances where the Contractor has been selected to provide any works and/or services according to this agreement, it shall have entered into a legally binding contract with the Contracting Authority for the provision of the Road Markings specified in the relevant sRFT contract to the Contracting Authority. In the event that the Contracting Authority, having selected the Contractor in accordance with this agreement, fails to formally accept the Contractor's tender in writing, but proceeds to instruct the Contractor in respect of the provision of the works and/or services and the Contractor dispatches, delivers or completes the works and/or services pursuant to the instruction, then this shall be deemed conclusive evidence of the acceptance of the sRFT contract and the terms and conditions of the sRFT contract thereby constituted.
- 3.2.4 Each Contracting Authority shall be responsible for awarding sRFT contracts in accordance with the sRFT procedure set out in this Framework Agreement and the LGOPC shall not have any responsibility or liability whatsoever or howsoever arising from the award of any sRFT contract or outcome of a Mini-Competition.

¹⁰ SupplyGov.ie is a procurement platform facilitating Local Authorities and other state agencies in the procurement of goods, works and services from Suppliers (incl. Contractors and Service Providers). The website has been developed by the Local Government Operational Procurement Centre (LGOPC) to streamline the procurement process of contracting authorities in respect of the operation of local authority led Category Councils for Plant Hire and Minor Building Works & Civils.

3.2.5 The Contractor shall perform all sRFT contracts in accordance with the requirements of this Framework Agreement, the terms and conditions of the respective sRFT contract, and in accordance with Irish law.

3.2.6 Where, after a sRFT and before the award of contract, the preferred Contractor is:

- deemed by the Contracting Authority as being unable or unsuitable to provide the required works and/or services due to a change in circumstances; or
- not able or is unwilling to provide the required works and/or services

then the Contracting Authority reserves the right to award the contract to the Contractor ranked next highest. The Contracting Authority may repeat this process until a contract is awarded or there are no further Contractors to provide the required works and/or services.

3.2.7 Where any Contractor fails to satisfactorily perform a sRFT contract, or a termination event under the sRFT contract occurs, the sRFT contract may be terminated and the Contracting Authority shall have the right to re-tender the contract under the Framework Agreement or outside of the Framework Agreement.

3.3 SUPPLEMENTARY REQUEST FOR TENDER AWARD CRITERIA

3.3.1 The Terms and Conditions document details the evaluation and award criteria for the award of sRFT contracts under the Framework Agreement. The Terms & Conditions also detail the information to be provided by the Contractor prior to Contract Award.

3.3.2 As part of their online tender submission, Contractors submitted ceiling rates for the provision of a number of Road Markings works items.

3.3.3 The rates submitted shall be fixed as the ceiling rates for these works items applying over the initial 12 months of the Framework Agreement only. Thereafter, these 'ceiling rates' will not apply.

3.3.4 Contractors who submit responses to sRFTs may reduce the ceiling rates for these works items but may not exceed them over the initial 12 months of the Framework Agreement.

3.3.5 Where, after a competition, two or more Contractors are level on marks, the Contracting Authority reserves the right to either;

- Ask the equally ranked Contractors to resubmit prices and continue this process until there is a winner, or
- To divide the works and/or services between the equally ranked Contractors, or
- Award the contract by random selection concluded in an open and transparent forum, or
- To re-tender the works and/or services.

3.4 PERFORMANCE MEASUREMENT

3.4.1 The Contracting Authority may measure the Contractor's performance from time to time during the Framework Term or the duration of the sRFT contract according to the Performance Measurement Table hereunder.

3.4.2 On completion of a sRFT contract, if so requested by the Contracting Authority, the Contractor shall collate and provide to the Contracting Authority the information required for the Contracting Authority to review and measure the Contractor's performance according to the Performance Measurement Table hereunder.

3.4.3 On completion of its review, the Contracting Authority shall provide the Contractor with a written report summarising the Contracting Authority's assessment of the Contractor's performance against the Performance Measurement Table and the basis for each assessment.

- 3.4.4 The Contractor is said to have reached Level 1, Level 2 or Level 3, if, during the review for one of the indicators listed in the below table, the number of occurrences of that indicator equals or exceeds the number listed in the column headed "Level 1", "Level 2", or "Level 3".
- 3.4.5 If the Contractor has reached Level 1, the Contracting Authority will give the Contractor a written notification and the Contractor must demonstrate to the Contracting Authority's satisfaction that it has implemented steps to redress the problem.
- 3.4.6 If the Contractor has reached Level 2, the Contracting Authority may exclude that Contractor from any sRFT in which it is due to participate until the Contractor has demonstrated to the Contracting Authority's satisfaction that it has implemented steps to redress the problem. Until the foregoing has been satisfactorily remedied, sRFTs may be run without prejudice as if the Contractor was excluded and the Framework Agreement had been terminated with the Contractor.
- 3.4.7 Only the LGOPC has authority to terminate a Contractor from this Framework Agreement. The Contracting Authority may notify the LGOPC if a Contractor has reached Level 3 and the LGOPC may terminate the Framework Agreement as between the LGOPC and that Contractor.
- 3.4.8 The Contractor shall implement such recommendations and comply with any Contracting Authority's findings to the extent necessary to ensure that works and/or services continue to be executed, and the Contractor continues to meet its obligations in accordance with the requirements set out in this Framework Agreement.

Performance Measurement Table

CONTRACTING AUTHORITIES OBJECTIVE	INDICATOR	MEASUREMENT TERM	LEVEL 1	LEVEL 2	LEVEL 3
HEALTH AND SAFETY					
Management of Safety	Failure to maintain safety measures as set out in the Safety and Health Plan and/or Contractors Safety Statement.	Contract/Term	N/A	2	3
	Requirement for immediate cessation of works and/or services on foot of committing a breach of the Safety, Health & Welfare at Work Act 2005 or any regulations or code of practice made under it concerning the works and/or service.	Contract/Term	N/A	1	2
	Requirement for immediate cessation of works and/or services on foot of failure to comply with reasonable Direction(s) issued by the PSCS or Contracting Authority Representative or the Health & Safety Authority (HSA).	Contract/Term	N/A	1	2
PERFORMANCE					
Execution of the Supplementary Request for Tender contract	Failure of the Contractor to execute the sRFT contract in a proper and workmanlike manner and using good practice.	Contract/Term	2	3	5

Delivery of the Supplementary Request for Tender contract	Failure to commence works and/or service by the nominated start date identified in the sRFT contract.	Contract/Term	2	1	2
	With respect to Response Maintenance/Emergency Works, failure to commence works and/or service within the nominated response time identified in the sRFT contract.	Contract/Term	2	1	2
Personnel	Requirement for immediate removal of Contractors Personnel on foot of their negligence or insufficient competence to carry out their tasks in compliance with the Contractors obligations under the sRFT contract.	Contract/Term	N/A	1	2
Legal Requirements	Requirement for immediate cessation of works and/or service on foot of committing or causing the Contracting Authority to commit a serious breach of Legal or Statutory requirements concerning the project.	Contract/Term	N/A	1	2
QUALITY OF WORK					
Quality of the Material(s) supplied	Failure to provide required Certification / Inspection results / Test results.	Contract	2	1	2
	Defects in completed works, caused by the provision of non-compliant materials by the Contractor, requiring re-visiting to repair.	Contract/Term	1	2	3

3.5 CONTRACT PERFORMANCE EVALUATION

- 3.5.1 It is intended that Contractors' performance will be monitored during the Framework Agreement term and specifically during the execution of sRFT contracts.
- 3.5.2 The Contractor shall furnish the Contracting Authority with such information and assistance as the Contracting Authority may reasonably require in order to assess the Contractor's performance.
- 3.5.3 The Contracting Authority will complete a Performance Evaluation Form in the manner described in the Terms and Conditions.
- 3.5.4 This review is a separate and distinct exercise from the measurement of the Contractor's performance as identified above at 3.4 (Performance Measurement).

3.6 GENERAL**3.6.1 Certain Rules of Construction disapplied:**

- i) This Framework Agreement shall be construed without regard to the rule of construction known as "ejusdem generis".
- ii) If any ambiguity or question of intent or interpretation arises, this Framework Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Framework Agreement.

SIGNED by the Central Purchasing Body and the Contractor on the date at the top of this agreement:

Signed on behalf of the Local Government Operational Procurement Centre:	
Signature of person duly authorised to sign contracts on behalf of the Local Government Operational Procurement Centre:	
Signed on behalf of the Contractor:	
Signature of person duly authorised to sign contracts on behalf of the Contractor:	

APPENDIX 1

1.1 CONTRACTING AUTHORITY

1.1.1 The Contracting Authorities 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 (themselves including regional assemblies, local enterprise boards and library bodies);
- Contracting authorities in the Irish health sector including but not limited to the Health Service Executive (HSE); the Health Information and Quality Authority (HIQA) and HSE funded Agencies delivering health & personal social services funded by more than 50% from Exchequer funds;
- Contracting authorities which are Third Level Educational Institutions (including universities, institutes of technology and members of the Education Procurement Service);
- Contracting authorities which are Education and Training Boards (ETBs) and ETB schools, and primary, post-primary, special and secondary schools as well as ETBs acting on behalf of schools;
- An Garda Síochana (Police);
- The Irish Prison Service;
- The Defence Forces.

1.1.2 Notwithstanding the entitlement of the above mentioned Contracting Authorities to utilise this Framework Agreement, neither the LGOPC nor the Contracting Authorities give any assurances as to the level of engagement or expenditure by Contracting Authorities through this Framework Agreement.