

DATED

2017

**LOCAL GOVERNMENT OPERATIONAL
PROCUREMENT CENTRE**

and

[

]

MULTI-PARTY FRAMEWORK AGREEMENT

for

**Road Making Materials
(Supply Only)**

For

Local Authorities

THIS FRAMEWORK AGREEMENT is made on 2017

BETWEEN

1. The Local Government Operational Procurement Centre (LGOPC) of The Reeks Gateway, Killarney, County Kerry as Central Purchasing Body (CPB) under the auspices of Kerry County Council, County Buildings, Rathass, Tralee, Co. Kerry a Local Authority of the One Part and
2. [] having its registered office at
[] (hereinafter referred to as "**the Supplier**") of the other part.

WHEREAS:

- A. LGOPC is a central purchasing body within the meaning of Directive 2014/24/EC of the European Parliament and Council (as amended). LGOPC enters into this Framework Agreement on its own behalf and on behalf of other Framework Purchasers as listed in Schedule 3 hereto that may wish from time to time to purchase road making materials and ancillary products.
- B. The Supplier is engaged in the business of supplying road making materials and ancillary products. The Supplier submitted the Tender Submission (as defined below) in response to LGOPC's tender competition and, following an assessment and evaluation of the Tender Submission, LGOPC wishes to appoint the Supplier to its multi-party framework to provide road making materials and ancillary products, if instructed to do so from time to time by Framework Purchasers, subject to and in accordance with the terms and conditions of this Framework Agreement.
- C. The Supplier has agreed to be appointed to the framework on the terms and conditions set out in this Framework Agreement.

NOW IT IS HEREBY AGREED as follows:-

Definitions and Interpretation

In this Framework Agreement the following terms shall have the following meanings unless the context otherwise provides:

"Commencement Date" means the date when the Framework Agreement goes live on www.supplygov.ie;

"Contract Period" means the period of duration of this Framework Agreement as set out in Clause 2;

"Delivery Date" means the date or dates stated by the Framework Purchaser in the Mini-Competition Contract as the date or dates upon which Product is to be delivered;

"Effective Date" means the date when the Framework Agreement is signed and returned to the LGOPC;

"Framework Agreement" means:

- (i) these terms and conditions, including the Schedules; and
- (ii) the Tender Submission

In the event of any inconsistency or conflict between the documents identified at (i) to (ii) above, precedence shall be given to the above documents in descending order.

“Framework Suppliers” or **“Suppliers”** means those suppliers who have been appointed to the framework;

“Framework Purchaser” means those bodies listed in Schedule 3 hereto that may wish from time to time to purchase the Product from Framework Suppliers pursuant to this Framework Agreement;

“Mini-Competition Contract” means the agreement to be entered into by the Framework Purchaser and the Supplier under and pursuant to which the Supplier will provide the Product in accordance with the terms and conditions contained therein;

“Mini-Competition” means a tender competition between the Framework Suppliers conducted in accordance with Clause 3;

“Mini Competition Request for Tender or Request for Tender (RFT)” means an invitation to submit a Proposal issued by the Framework Purchaser pursuant to Clause 3;

“Price” shall have the meaning given to it by Clause 5;

The “Product” means Road Making Materials and Ancillary products in line with the Specification attached at Schedule 1

“Proposal” means the proposal submitted by the Supplier to the Framework Purchaser in response to a Mini Competition Request for Tender (and the term “Framework Supplier’s Proposal” shall be construed accordingly);

“Request for Applications” means the request for applications as issued by the LGOPC on **13th March, 2017** together with any clarifications issued in respect of same;

“Specification” means the specifications or other information relating to the Products over the Contract Period, attached at Schedule 1 hereto;

“Tender Submission” or **“Application”** means the Supplier’s application for admittance to the Framework submitted to Corporate Affairs, Kerry County Council by the Closing Deadline.

“Ceiling/Key Rate” means the rates tendered by the Supplier in the Form of Tender completed at application stage. Key Rates form part of this Framework Agreement. These rates remain preserved for the initial 12 month period from the Framework Application Closing Deadline only and for any Mini Competition carried out during that period, Suppliers will not be able to charge hourly rates higher than the corresponding rates submitted in the Form of Tender.

1. Entire Agreement

- 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 Supplier and any Framework Purchaser. 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.
- 1.2 Neither party has relied on any other written or oral agreement, representation, arrangement or understanding.
- 1.3 The Supplier 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. The LGOPC is not liable in equity, contract or tort or in any other way for a representation that is not set out in this Framework Agreement.

2. Scope of Appointment

- 2.1 In consideration for payment by the LGOPC of the sum of €1 and for other good and valuable consideration to the Supplier (receipt of which is hereby acknowledged by the Supplier) and subject to the terms and conditions set out in this Framework Agreement, the LGOPC hereby appoints the Supplier on a non-exclusive basis to supply the Products if instructed to do so from time to time pursuant to Clause 3, and the Supplier hereby accepts such appointment, in each case upon the terms and subject to the conditions of this Framework Agreement.
- 2.2 The appointment of the Supplier to the framework does not constitute a commitment or guarantee by any of the Framework Purchasers to procure any Product from the Supplier and does not confer any exclusivity on the Supplier. The Framework Purchasers may procure the Product in other ways outside of the framework from any provider or from other national/regional/local frameworks/tenders in place.
- 2.3 The Framework Agreement shall take effect on the Effective Date. The Framework Agreement shall continue in full force and effect for a period of up to twenty four (24) months from and including the Commencement Date (the "Contract Period") unless it is otherwise terminated in accordance with the provisions of this Framework Agreement or otherwise lawfully extended in line with the provisions of the Instructions Document. For the avoidance of any doubt, the term of a Mini-Competition Contract may last longer than the Contract Period. Notwithstanding the expiry of the Contract Period, a Mini-Competition Contract that is not completed prior to the end of the Contract Period shall be governed by this Framework Agreement.

3. Mini-Competition Contracts

- 3.1 Where a Framework Purchaser wishes to acquire Product pursuant to the Framework Agreement, it will do so by means of a Mini-Competition. The Framework Purchaser shall issue a Mini Competition Request for Tender to all Framework Suppliers capable of performing the contract via the Supplygov system, inviting each to submit a Proposal.
- 3.2 The Supplier shall comply with any procedures, processes, time limits, instructions or other requirements issued by the Framework Purchaser in relation to the Mini-Competition and shall bear any and all costs associated therewith.
- 3.3 If a Supplier is awarded a Mini-Competition Contract during the initial 12 month period from the Framework Application Closing Deadline it shall provide the Product at the Key Rates specified in their Tender Submissions or such lower prices tendered pursuant to a Mini-Competition Request for Tender. For the avoidance of doubt, in the Proposals submitted in response to a Mini-Competition Request for Tender the Key Rates are the maximum prices that can be charged for Products.
- 3.4 Proposals received in response to a Mini-Competition Request for Tender will be evaluated on the basis of the most economically advantageous tender, identified on the basis of price only.
- 3.5 The Framework Purchaser shall not be bound to accept the lowest priced or any Proposal submitted in response to a Mini-Competition Request for Tender.
- 3.6 If following a Mini-Competition, a Framework Purchaser selects the Supplier to provide the Product, the Framework Purchaser may raise a purchase order and issue it directly by email to the Supplier. Each purchase order shall constitute a separate contract for the Product.
- 3.7 By signing and returning or otherwise acknowledging a Mini-Competition Contract, the Supplier acknowledges and agrees that it shall have entered into a legally binding contract with the Framework Purchaser to supply the Product specified in the relevant Mini-Competition Contract to the Framework Purchaser. In any circumstance where the Supplier does not formally accept a Mini-Competition Contract, dispatch or delivery of the Product by the Supplier pursuant to an instruction issued by the Framework Purchaser shall be deemed conclusive evidence of the acceptance of a

Mini-Competition Contract and the terms and conditions of the Mini-Competition contract thereby constituted.

- 3.8 Each Framework Purchaser shall be responsible for awarding Mini-Competition Contracts in accordance with the Mini-Competition procedure set out in this Framework Agreement and LGOPC shall not have any responsibility or liability whatsoever or howsoever arising from the award of any Mini-Competition Contract or outcome of a Mini-Competition.
- 3.9 A sample Mini-Competition Contract is set out at Schedule 5. At Mini-Competition stage a Contracting Authority will indicate whether the sample Mini-Competition Contract or other form of contract will apply.
- 3.10 The Supplier shall perform all Mini-Competition Contracts in accordance with the requirements of this Framework Agreement, the terms and conditions of the respective Mini-Competition Contract and in accordance with Irish law.
- 3.11 Default by a Framework Purchaser or Supplier in relation to any one Mini-Competition Contract shall not entitle the other to treat such as a breach of the entire Framework Agreement and/or terminate this Framework Agreement.

4. The Supplier's Obligations

- 4.1 The Supplier shall supply the Product meeting the Specification to the Framework Purchaser and shall ensure that its staff shall provide the Product to the Framework Purchaser:
 - 4.1.1 in accordance with the terms of the Framework Agreement, including, for the avoidance of doubt the Tender Submission, the Proposal and the Mini-Competition Contract;
 - 4.1.2 diligently, conscientiously and in a professional manner and with all due care and skill;
 - 4.1.3 in compliance with all reasonable instructions of the Framework Purchaser in relation to the supply of the Product;
 - 4.1.4 in adherence with best industry standards as regards quality control and assurance
 - 4.1.5 in compliance with all requirements and/or obligations of any law, statute, statutory instrument, rule, order, regulation, directive and/or byelaws or other legislative measures;
 - 4.1.6 in absolute co-operation with the Framework Purchaser;
 - 4.1.7 maintaining the minimum quality levels of Product as set out in the Specification appended at Schedule 1.
- 4.2 The Supplier shall employ sufficient staff to provide the supply of the Product that shall be properly trained, skilled and qualified.
- 4.3 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.
- 4.4 Failure by the Supplier to meet its obligations under this Clause shall be considered a material breach of the Framework Agreement.

5. Price

- 5.1 Subject to 3.3 above the Price shall be as set out in the Mini-Competition Contract.

- 5.2 The Supplier shall supply the Product at the price(s) tendered in the Proposal submitted pursuant to a Mini-Competition or pursuant to an instruction issued by the Framework Purchaser.
- 5.3 Unless otherwise stated, the Price shall be:
- 5.3.1 exclusive of any applicable Value Added Tax (which shall be payable by the Framework Purchaser subject to receipt of a VAT invoice in accordance with the Mini-Competition Contract);
 - 5.3.2 payable in euro (€); and
 - 5.3.3 inclusive of any costs and/or expenses incurred by the Supplier in the supply of the Product and the Supplier shall not seek to recover such costs and/or expenses from the Framework Purchaser.
- 5.4 As provided under clause 3.3, during the initial 12 month period from the Framework Application Closing Deadline the hourly rates in the price must not exceed the Key Rates tendered by the Supplier in its Tender Submission. The Key Rates are the maximum hourly rates that can be charged.

6. Terms of Payment

- 6.1 The Supplier shall send an invoice to the Framework Purchaser on delivery of the Product or at such other time(s) as set out in the Mini-Competition Contract. Each invoice must include -:
- 6.1.1 The Suppliers name and address;
 - 6.1.2 The Suppliers VAT Registration Number;
 - 6.1.3 Invoice number and date;
 - 6.1.4 The Framework Purchaser's purchase order number;
 - 6.1.5 The reference number from the Supplygov system where the Mini Competition Request for Tender is published;
 - 6.1.6 The origin of the Product (naming the quarry / depot from where the Product will be supplied)
 - 6.1.7 The quantity of Product supplied;
 - 6.1.8 The Price;
 - 6.1.9 A CE marking statement on the docket specific to delivery consignment or an attached CE marking statement with an unambiguous reference to the delivery docket and consignment and linked to the relevant Declaration of Performance; and
 - 6.1.10 The CE marking statement must reference the point of delivery of the product and distribution process as appropriate
- 6.2 Subject to the Framework Purchaser being satisfied as to the due performance of the Mini-Competition Contract in line with clause 8, the Supplier shall be paid the Price established through the Mini-Competition as set out in the purchase order and in the Mini-Competition Contract.
- 6.3 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.
- 6.4 Discharge of any invoice shall be subject to the Framework Purchaser being in possession of the Supplier's current tax clearance certificate. The Supplier shall not be entitled to payment for and the Framework Purchaser shall not be obliged to pay any interest or penalties incurred as a result of late payment caused by the Supplier's failure to provide a current tax clearance certificate in a timely manner.

7. Confidentiality

- 7.1 During the Contract Period and at any time after the termination or expiry of this Framework Agreement (for any reason) each of the Parties to this Framework Agreement agrees to hold confidential all information, documentation and other material received, provided or obtained (whether in writing, orally or by another means and whether directly or indirectly) arising from their participation in this Framework Agreement ("Confidential Information") and shall not disclose same to any third party except -:
- 7.1.1 to its professional advisors subject to the provisions of this clause 7; or
 - 7.1.2 as may be required by law; or
 - 7.1.3 as may be necessary to give effect to the terms of this Framework Agreement subject to the provisions of this clause 7; or
 - 7.1.4 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 (including but not limited to the Legislature and/or the Executive and/or the Civil Service) considers it necessary or appropriate to so comply.
- 7.2 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.
- 7.3 The Supplier undertakes to comply with all reasonable directions of the Framework Purchaser with regard to the 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 importance to the Framework Purchaser. Accordingly the Supplier confirms that it will from time to time, during the currency of this Framework Agreement as may be requested by the Framework Purchaser submit full personal details (including those of subcontractors) of persons who are assigned to supply the Product under this Framework Agreement. The Supplier further acknowledges that checks may be carried out in relation to all such personnel by authorities and the Supplier shall comply with all reasonable directions of the Framework Purchaser arising there from.

8. Contract Performance Review

- 8.1 The Framework Purchasers may review the Supplier's performance from time to time during the Contract Period or the term of the Mini-Competition Contract according to the below Performance Measurement Table.
- 8.2 On completion of a Mini-Competition Contract, if so requested by the Framework Purchaser, the Supplier shall collate and provide to the Framework Purchaser the information required for the Framework Purchaser to review that Supplier's performance according to the Performance Measurement Table below. The Framework Purchaser will complete a Performance Evaluation Form using a copy of the document included in **Schedule 6** and shall also record performance against the Performance Measurement Table.
- 8.3 The Supplier 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".
- 8.4 If the Supplier has reached Level 1, the Framework Purchaser will give that Supplier a written notification and the Supplier must demonstrate to the Framework Purchaser's satisfaction that it has implemented steps to redress the problem.

- 8.5 If the Supplier has reached Level 2, the Framework Purchaser will exclude that Supplier from each Mini-Competition in which it is due to participate until the Supplier has demonstrated to the Framework Purchaser’s satisfaction that it has implemented steps to redress the problem. Until the foregoing has been satisfactorily remedied, Mini-Competitions may be run without prejudice as if the Supplier was excluded and the Framework Agreement had been terminated with the Supplier.
- 8.6 Only the LGOPC has authority to terminate a Supplier from this Framework Agreement. The Framework Purchaser may notify the LGOPC if a Supplier has reached Level 3 and the LGOPC may terminate the Framework Agreement as between the LGOPC and that Supplier pursuant to clause 9 below.

Performance Measurement Table

Employers Objective	Indicator	Measurement Period	Level 1 (Rule 8.4)	Level 2 (Rule 8.5)	Level 3 (Rule 8.6)
Health and Safety					
Management of Safety	Failure to maintain safety measures as set out in the Safety and Health Plan and/or Supplier’s Safety Statement	Contract/Term	N/A	2	3
	Requirement for immediate cessation of services delivery 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	Contract/Term	N/A	1	2
	Requirement for immediate cessation of services delivery on foot of failure to comply with reasonable Direction(s) issued by the PSCS or Framework Purchaser’s Representative or HSA	Contract/Term	N/A	1	2
Performance					
Execution of the Mini-Competition Contract	Failure of the Supplier to execute the Mini-Competition Contract in a proper and workmanlike manner and using good practice	Contract/Term	2	3	5
Delivery of the Mini-Competition Contract	Failure to commence works by the nominated start date identified in the Mini-Competition Request for Tender	Contract/Term	2	1	2
	With respect to Response Maintenance/Emergency Works, failure to commence works within the nominated response time identified in the Mini-Competition Request for Tender	Contract/Term	2	1	2
Personnel	Requirement for immediate removal of Supplier’s personnel on foot of their negligence or insufficient competence to carry out their tasks in compliance with the Supplier’s obligations under the Mini-Competition Contract	Contract/Term	N/A	1	2
Legal Requirements	Requirement for immediate cessation of services delivery on foot of committing or causing the Framework Purchaser 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 competed work, caused by the provision of non-compliant materials by the Supplier, requiring re-visiting to repair	180 days	1	2	3

- 8.7 The Supplier shall implement such recommendations and comply with any Framework Purchaser's findings to the extent necessary to ensure that the Supplier continues to meet its obligations in accordance with the requirements set out in this Framework Agreement.
- 8.8 In addition to the performance review as may be conducted by the Framework Purchasers pursuant to Clause 8.1 above, the performance of the Supplier under this Framework Agreement shall be subject to review on an annual basis by the LGOPC. Annual evaluation meetings may be held during the term of this Framework Agreement. Mutually agreeable dates will be determined for these meetings, the purpose of which will be to provide a forum for the Framework Purchaser, LGOPC and the Supplier to review performance and other key issues in connection with the Framework Agreement. The LGOPC, the Framework Purchasers and the Supplier shall be committed to continuously improving the Supplier/Framework Purchaser relationship.
- 8.9 The Supplier shall implement such recommendations and comply with the LGOPC's findings to the extent necessary to ensure that the Supplier continues to meet its obligations in accordance with the requirements set out in this Framework Agreement.
- 8.10 The Supplier shall keep and maintain until a minimum of six (6) years after the expiry of the Contract Period, full and proper records and all documents relating to the performance of its obligations under this Framework Agreement and shall allow the LGOPC and/or each Framework Purchaser and any auditors of or other advisers to the LGOPC and/or a Framework Purchaser to access at any time and from time to time any of the Supplier's premises, personnel and such records and documents for the purposes of -:
- 8.10.1 fulfilling any legally enforceable request by any court, tribunal or regulatory body; or
 - 8.10.2 undertaking verifications of the accuracy of the Price or identifying suspected fraud; or
 - 8.10.3 undertaking verifications that the Product is being (and has been) provided in accordance with this Framework Agreement.
- 8.11 Conduct of Audits:
- 8.11.1 The requirement for audits is not applicable to this Framework Agreement

9. Termination

- 9.1 Without prejudice to any other rights or remedies to which it may be entitled, the LGOPC shall be entitled at any time to terminate this Framework Agreement without liability to the Supplier by giving written notice to the Supplier to take effect immediately or on the date specified in the said notice if -:
- 9.1.1 the Supplier commits a material breach of any term or condition of this Framework Agreement or the relevant Mini-Competition Contract or fails to perform any obligation or responsibility hereunder, and if such breach is capable of being remedied, fails to remedy the breach within thirty (30) days of the notice given by the Framework Purchaser or the LGOPC requiring the Supplier to do so;
 - 9.1.2 the Supplier delivers the Product which does not meet the requirements of this Framework Agreement, the Specification and/or a Mini-Competition Contract including the Delivery Date;
 - 9.1.3 the Supplier contravenes any of Clause 4;
 - 9.1.4 the Supplier contravenes Clause 7;

- 9.1.5 the Supplier reached Level 3 under the Performance Measurement Table as described in Clause 8;
 - 9.1.6 the Supplier becomes bankrupt, or convenes a meeting for the purposes of, proposes to make or makes any composition or arrangement with, or conveyance or assignment for the benefit of its creditors, or any application is made under any bankruptcy Act for the time being in force for a sequestration of its estate, or a trustee is granted by it on behalf of its creditors, or if the Supplier, being a company, enters into a voluntary or compulsory liquidation (other than for the purpose of an amalgamation or reconstruction, the terms of which have been agreed by the LGOPC), or if a receiver or examiner is appointed over any of its assets, or if the Supplier is unable to pay its debts within the meaning of Section 570 of the Companies Act, 2014, or the Supplier takes or suffers any analogous action under any other applicable law;
 - 9.1.7 the LGOPC reasonably believes that any of the events mentioned in the clause above or any analogous event is about to occur in relation to the Supplier in any jurisdiction and notifies the Supplier accordingly;
 - 9.1.8 the Supplier ceases or threatens to cease to carry on business;
 - 9.1.9 the Supplier is struck off the register of companies;
 - 9.1.10 any representation or warranty made by the Supplier in connection with this Framework Agreement or a Mini-Competition Contract shall in the opinion of the LGOPC prove to be untrue or incorrect in a material respect as of the date when made;
 - 9.1.11 the Supplier has committed any fraudulent act or any criminal activity or is guilty of gross negligence in the performance of this Framework Agreement or a Mini-Competition Contract; or
 - 9.1.12 the LGOPC has reason to believe that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Supplier or any agent or representative of the Supplier, to any employee of the LGOPC or the Framework Purchaser with a view towards securing any agreement for the provision of the Product or any other contract. Paying the expenses of normal business meals shall not be prohibited by this provision;
 - 9.1.13 the LGOPC suspects that the Supplier has entered into or implemented an agreement or has made or implemented a decision or has engaged in a concerted practice that is prohibited by Section 4(1) of the Competition Act 2002 in which case the Supplier may be reported by the LGOPC or the Framework Purchaser to the Competition Authority of Ireland; and
 - 9.1.14 there is a direct or indirect change of control of the Supplier to which the LGOPC reasonably objects; or
 - 9.1.15 without cause, the LGOPC also terminates its agreements with the other Framework Suppliers.
- 9.2 Should conditions arise which, in the opinion of the LGOPC in its absolute discretion, necessitate the termination of this Framework Agreement and/or a Mini-Competition Contract, the LGOPC may terminate the Framework Agreement and/or a Mini-Competition Contract upon written notice to the Supplier.
- 9.3 Should conditions arise which, in the opinion of a Framework Purchaser in its absolute discretion, necessitate the termination of a Mini-Competition Contract, the Framework Purchaser may terminate the Mini-Competition Contract upon written notice to the Supplier. Such termination shall take effect on the date specified in the said notice and shall be without prejudice to any claims which either party may have against the other party under this Framework Agreement and/or a Mini-Competition Contract.

- 9.4 Neither the LGOPC nor any Framework Purchaser shall be liable to the Supplier for any loss of profit, loss of contracts or other economic losses and/or expenses or for any indirect, economic, or consequential loss suffered or incurred by the Supplier arising out of or in connection with this Framework Agreement or any Mini-Competition Contract.
- 9.5 In the event of the Framework Agreement being terminated by the LGOPC on any of the grounds listed above during a Mini-Competition Contract, the Supplier shall be liable for any loss incurred by the LGOPC 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 supply of the Product.
- 9.6 Termination of this Framework Agreement or any Mini-Competition Contract pursuant to the above clauses shall not relieve or discharge either party from any obligations which have accrued prior to such termination. Unless expressly stated to the contrary, the service of a notice to terminate the Framework Agreement shall not operate as a notice to terminate any Mini-Competition Contract made under the Framework Agreement. Termination or expiry of the Framework Agreement shall not cause any Mini-Competition Contracts to terminate automatically. For the avoidance of doubt, all Mini-Competition Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.

10. Assignment, Transfer and Sub-Contracting

10.1 The Supplier shall not:

- 10.1.1 sub-contract, assign or transfer (whether voluntarily or involuntarily, by operation of law or otherwise) this Framework Agreement or any part thereof or the create or permit to exist any right, title or interest (including, without limitation, any security interest and any beneficial interest under any trust) in, to or under, any of its rights under this Framework Agreement; or
- 10.1.2 purport to transfer, sub-contract or delegate any of its obligations under this Framework Agreement to any third party without the prior written consent of the relevant Framework Purchaser or LGOPC. Save as expressly permitted by clause 10.2 any purported sub-contracting, assignment or transfer in breach of this clause 10.1 shall be void.

10.2 In the event of consent to sub-contract being given, the Supplier shall ensure that the sub-contractor is a reasonable and prudent supplier and that the sub-contractor shall carry out its obligations in accordance with the terms of this Framework Agreement. Notwithstanding the foregoing, the Supplier acknowledges that it remains fully liable and responsible for the supply of the Products and the acts and omissions of the sub-contractor as if they were its own.

10.3 The Supplier shall also maintain during the term of this Framework Agreement and for 6 years thereafter records and documentation relating to the sub-contractor and the Product provided by it and shall make same available to the LGOPC upon request.

10.4 This Framework Agreement shall be binding upon successors and assigns of each Framework Purchaser and the Supplier and the name of a party appearing in this Framework Agreement shall be deemed to include the names of its successors and assigns provided always that nothing shall permit any assignment by either party except as expressly provided.

10.5 The Supplier shall notify the LGOPC in writing immediately upon the occurrence of a direct or indirect change of control of the Supplier.

11. Waiver

11.1 Failure or neglect by any Framework Purchaser to enforce at any time any provision of this Framework Agreement or any Mini-Competition 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.

12. Force Majeure

- 12.1 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, as defined in clause 12.2. Unless otherwise instructed by Framework Purchasers, the Supplier shall recommence performance as soon as possible after the Force Majeure has ceased.
- 12.2 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.
- 12.3 If any delay or failure in performance, as set out above, persists for 14 days or more, Framework Purchasers shall have the right to terminate the relevant Mini-Competition Contract by giving 7 days' notice in writing to the Supplier.

13. Conflicts Registrable Interests and Corrupt Gifts

- 13.1 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 supply of the Product and its obligations undertaken under this Framework 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 Framework 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.
- 13.2 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 sub-contractor, agent, or employee under the Prevention of Corruption Acts, 1889 to 2005 shall entitle the Framework Purchaser to terminate this Framework 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.

14. Delivery

- 14.1 The Supplier shall deliver the Product on the Delivery Date, unless otherwise agreed to in writing by the Framework Purchaser in accordance with the Framework Purchaser's requirements. Time of delivery of the Product shall be the essence of this Framework Agreement, unless otherwise agreed in writing.
- 14.2 If a Delivery Date cannot be met by the Supplier, the Supplier shall promptly notify the Framework Purchaser. Notwithstanding such notice, unless a substitute delivery date for the

Product has been expressly agreed by the Framework Purchaser in writing, the Supplier's failure to effect the delivery of the Product on the Delivery Date shall entitle the Framework Purchaser, without prejudice to any other remedy it may have, to terminate the Mini-Competition Contract.

- 14.3 The Framework Purchaser shall not be deemed to have taken delivery of the Product until a delivery note has been signed by a duly authorised representative of the Framework Purchaser. For the avoidance of doubt, the taking of delivery of the Product shall not infer that the Framework Purchaser has satisfied itself as to the quality and conformance to Specification of the Product.

15. Insurance

- 15.1 The Supplier shall maintain in force during the term of this Agreement full and comprehensive insurance policies in respect of all customary liabilities and risks undertaken by the Supplier in connection with the supply of the Product in accordance with the requirements in the Specification and any Mini-Competition Contract including but not limited to:

15.1.1 Employers liability insurance with a limit of indemnity of no less than €13 million. Such policy shall include an indemnity to each Framework Purchaser as principal.

15.1.2 Public liability insurance with a limit of indemnity of no less than €6.5 million. Such policy shall include an indemnity to each Framework Purchaser as principal.

15.1.3 Products Liability Policy with a limit of indemnity of no less than €6.5 million. Such policy shall include an indemnity to each Framework Purchaser as principal.

- 15.2 The Supplier shall ensure that its insurance policies are taken out with reputable insurers acceptable to the LGOPC within the jurisdiction of the EU and that the level of cover and other terms of insurance are acceptable to and agreed by the Framework Purchasers.

- 15.3 The Supplier shall comply with all terms and conditions of its insurance policies at all times. If cover under the insurance policies shall lapse or not be renewed or be changed in any material way or if the Supplier is aware of any reason why the cover under its insurance policies may lapse or not be renewed or be changed in any material way, the Supplier shall notify the LGOPC without delay.

- 15.4 It shall be the Supplier's responsibility to ensure that any agent or sub-contractor of the Supplier effects and maintains all insurance required by law and all such other insurance as are necessary for the provision of the supply of the Product. Any deficiencies in the cover or policy limits of the insurance policy of such agents or sub-contractors shall be the sole responsibility of the Supplier.

- 15.5 The Supplier shall not do or suffer to be done anything which may render the said policy or policies of insurance void or voidable.

16. Risk and Title

- 16.1 Title to the Product (if applicable) shall pass on delivery to the Framework Purchaser unless payment is made prior to the Delivery Date, in which event, title shall pass to the Framework Purchaser on payment. Where title in the Product has passed to the Framework Purchaser prior to the Delivery Date pursuant to this Clause 16, the Supplier shall keep such Product separate from other Product and clearly mark the product as the property of the Framework Purchaser.

17. Miscellaneous Provisions

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

- 17.2 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.
- 17.3 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.
- 17.4 This Framework Agreement and any contractual obligations or disputes arising out of or in connection with this Framework Agreement shall be governed and construed in accordance with the laws of Ireland. The Parties irrevocably agree that the courts of Ireland shall have exclusive jurisdiction to hear and decide any suits, actions or proceedings and to settle any disputes which may arise out of or are in connection with this Framework Agreement.
- 17.5 This Framework Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

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

Signed on behalf of LGOPC by:

A duly authorised representative

Date

Signed on behalf of the Supplier by:

A duly authorised representative

Date

SCHEDULE 1: GENERAL SPECIFICATION DOCUMENT

1.1 Technical Standards

- 1.1.1 The Road Making Materials product(s) to be supplied shall comply with the Technical Specifications set out in this section.
- 1.1.2 The proposed material to be supplied include but are not limited to those as listed in **Schedule 4** attached hereto.
- 1.1.3 Road Making Materials shall comply with the requirements of the following -:
- Transport Infrastructure Ireland (TII) Design Manual for Road and Bridges and NRA Manual of Contract Documents for Road Works with particular reference to the Specification for Road Works
 - Must meet the specifications set out by the Contracting Authorities as outlined in the Mini Competition.
 - IAT Guidelines for Surface Dressing in Ireland, 3rd Edition, 2014
 - Various tests and CE certification may be required and will be communicated at Mini Competition stage, for example: Duriez test results and grading curves must be supplied for stabilised wetmix products.
- 1.1.4 The appointed Supplier 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.
- 1.1.5 All materials supplied will be in compliance with the technical standards as detailed in this Schedule and Schedule 2 and any further technical requirements as set out in the Mini Competitions.
- 1.1.6 In relation to each Irish and/or British and/or European Norm Standard Specification that is referred to in the tender document it shall be taken as meaning the latest edition/year of that standard specification together with all amendments relating thereto which were published six months before the closing date for this tender.
- 1.1.7 Suppliers will be fully liable for all products supplied by them through the course of any Mini-Competition Contract. Suppliers will confirm -:
- that all construction products associated with harmonised Standards will be CE marked and have a Declaration of Performance
 - that the Supplier by submitting a Declaration of Performance (even if prepared by others) is assuming full legal responsibility for the conformity of the construction product with its declared performance
 - that together with the technical specification, the Declaration of Performance will give all the information to the Framework Purchaser needed to assess whether the product(s) meets the essential characteristics in accordance with the applicable harmonised technical specifications
 - that the CE mark shall be followed by the two last digits of the year in which it was affixed (and remains current), the name and the registered address of the manufacturer, or the identifying mark allowing identification of the name and address of the manufacturer easily and without any ambiguity

- that certification of an organisation’s factory production control system by a notified body will be available if so required under the regulation and requested

1.1.8 Sand Particulars

- Sand (0/4) (CP) - is to conform with IS EN 12620:2013...
- Sand (0/2) (MP) - is to conform with IS EN 12620:2013...
- Bedding Sand (GF 85 0/4 (MP) Fine Aggregate) - to conform with Table 2 IS EN 12620:2013 and BS 7533-4 2006 Clause 5.4.6.2
- Jointing Sand (GF 85 0/4 (MP) Fine Aggregate) - to conform with Table 2 IS EN 12620:2013 and BS 7533-4 2006 Clause 5.4.6.4)

1.1.9 Where reference is made in this tender document to a particular make, source, process, trademark, type or patent, this is not to be regarded as a de facto requirement. In all such cases it should be understood that such indications are to be treated for reference purposes only, to which the words “or equivalent” will always be appended.

1.1.10 In order to ensure compliance with environmental technical standards, Applicants who intend to tender for an alternative environmentally friendly product at Mini-Competition stage will be required, at that stage, to submit an Environmental Product Declaration (EPD) in accordance with EN 15804 for each alternative environmentally friendly product they propose.

1.2 Insurances

1.2.1 No Supplier will be awarded a Mini-Competition Contract unless satisfactory evidence of insurance is submitted online by the Insurance Broker/Company, prior to the award of a Mini-Competition Contract. Where the Insurance Policy in question is due to expire prior to the end of the period outlined in the Mini-Competition Contract, it shall be the responsibility of the Supplier to ensure that, in advance of the expiration date, said policy is renewed, that the relevant Contracting Authorities are so informed, and that the insurance details are updated on www.Supplygov.ie.

1.2.2 It is the responsibility of the Supplier to advise the LGOPC and the Framework Purchaser when their insurance has lapsed or has been cancelled. All Suppliers must notify the LGOPC and the Framework Purchaser of alterations, cancellations and to confirm the renewal of policies. Any failure to do so may result in the immediate termination of the Supplier from the Framework Agreement.

1.2.3 The following Insurances are required to be in place for a Mini-Competition Contract to be awarded -:

(i) **Public Liability Insurance**

- €6,500,000 for any one event
- Maximum Excess: €6,500

The €6,500,000 limit is for any one event. The limit of indemnity under the Public Liability Insurance must be for the full policy limit of €6,500,000. No inner limit reduction is permissible. The maximum permissible excess is €6,500. The successful Supplier will be required to include the Framework Purchaser as joint insured and must include a non-vitiation clause.

Public Liability Insurance must specifically be extended to include all motorised vehicles to which the Road Traffic Acts do not apply (such as rollers, pavers, off site vehicles, etc.). Alternatively, such vehicles should be scheduled (by Registration or VIN) in the Motor Policy.

(ii) **Products Liability Insurance**

A separate Products Liability Policy with cover to €6,500,000 will be required, or as an extension to the Public Liability Policy.

(iii) **Motor Policy Insurance**

- €6,500,000 for any one event
- Maximum Excess: €6,500

The Motor Policy Insurance shall comply with the following requirements -:

- The Cover must indemnify the Framework Purchaser as principal
- The Cover shall provide for loading and unloading risks both on and beyond public thoroughfares
- The Limit of Indemnity shall be not less than € 6,500,000 on any one event, for third party injury or property damage, and not less than €6,500,000 for third party working risk, unlimited for any one period.

(iv) **Employers Liability Insurance**

- €13,000,000 for any one event
- Maximum Excess: €6,500

The Employers Liability Insurance shall comply with the following requirements -:

- Cover must apply to all employees of the Supplier engaged on the Mini-Competition Contract
- The liability for death or injury to employees must be covered on an unlimited basis
- The cover must indemnify the Framework Purchaser as principal and must include a non-vitiation clause
- Cover must be extended to cover the Supplier in respect of liability assumed by him under the Mini-Competition Contract, i.e. the description of the insured's business must be unambiguous

1.2.4 The Supplier shall be liable for and shall indemnify the Contracting Authority (Framework Purchaser) for and in respect of all and any losses, claims, demands, damages or expenses that a Framework Purchaser may suffer due to and arising directly as a result of the negligence, act or omission, breach of contract, breach of duty, willful default or fraud of the Supplier, its employees, sub-contractors or agents, or any of them.

1.2.5 Applicants do not need to have the insurances outlined above in place at the time of submitting an Application for inclusion on the Framework but will be required to put those insurances in place should they be successful in a Mini-Competition Contract. The Contracting Authority (Framework Purchaser) will not be responsible for any cost incurred by Suppliers for putting in place the required insurances.

1.2.6 Insurance of Subcontractors

Suppliers who are successful in being invited to participate in the Framework Agreement must confirm that their insurance will cover the acts and omissions (including negligence) of any subcontractor employed by them in connection with any Mini-Competition Contract awarded under the Framework Agreement or purchase order issued. Subcontractors cannot be employed by the Supplier to carry out activities that are specifically excluded from the Suppliers insurance policies.

1.2.7 Exclusions

If Suppliers are successful in being invited to participate in the Framework and have specific exclusions noted in their insurance policies which restrict or prohibit their ability to carry out certain works under any contract (asbestos, working at heights etc) the Supplier at time of Mini-Competition will be required to either -:

- Have the exclusion removed from their insurance policy and employ a competent and appropriately insured specialist subcontractor to carry out the excluded activity and put in place contingency cover on the Supplier's insurance policy

or

- Have the specialist subcontractor included with the Framework Supplier as a full joint insured on the subcontractors insurance policy and have the Contracting Authority (Framework Purchaser) joint insured on the subcontractor's insurance policy. Suppliers should note that the Contracting Authority (Framework Purchaser) will not be responsible for any cost incurred by Supplier in complying with the insurance requirements outlined above.

1.3 Payment, Tax Clearance, etc.

1.3.1 Payment will be made at the rates agreed in the Mini-Competition.

1.3.2 The Supplier's **invoice** shall show the following information:

- The Suppliers name and address
- The Suppliers VAT Registration Number
- Invoice number and date
- The Framework Purchaser's purchase order number
- The RFT (Request For Tender) reference number from the [Supplygov](#) system
- The quarry/depot of origin from which the materials have been supplied
- Information on Product Type and Quantity
- The Price
- A CE marking statement on the docket specific to delivery consignment or an attached CE marking statement with an unambiguous reference to the delivery docket and consignment and linked to the relevant Declaration of Performance
- The CE marking statement must reference the point of delivery of the product and distribution process as appropriate

1.3.3 Prior to invoicing, some Contracting Authority (Framework Purchasers) may require Suppliers to submit periodic (e.g. weekly or monthly) statements of materials/services provided during the period, for the purpose of certification.

1.3.4 A number of the Contracting Authorities only pay via EFT (Electronic Fund Transfer) and the remittance is sent to Supplier via email.

1.3.5 Each of the Contracting Authority (Framework Purchasers) is subject to the provisions of the Freedom of Information(FOI) Act 1997 and the Freedom of Information (Amendment) Act 2003. If you consider that any of the information supplied by you is either commercially sensitive or confidential in nature, this should be highlighted and the reasons for its sensitivity specified in a separate letter. In such cases, the relevant material will, in response to FOI requests, be examined in the light of the exemptions provided for in the Act.

1.4 Weights (if applicable after a Mini-Competition)

- 1.4.1 All loads of Bituminous Materials; Fill; Sand; Gravel; Topsoil; Stone; Chips etc. delivered will have to have a docket showing the net weight of the amount delivered.
- 1.4.2 All deliveries must be weighed at an LMS certified and in-calibration weighbridge. A copy of the certification may be requested.

1.5 Machinery/Operator Requirements & Conditions (where applicable)

- 1.5.1 The delivery vehicles in use should be capable of delivery of materials for which they were intended. It should also be noted that any delivery vehicles accepted for work by the respective Contracting Authority (Framework Purchaser) might be dismissed from a work site, if found, on examination not to comply with the current Road Traffic Act (if applicable), or Health and Safety Regulations, or by non-compliance of any terms and conditions, in any particular instance. This will be at the discretion of the Framework Purchaser.
- 1.5.2 The Contracting Authority (Framework Purchaser) will not provide storage of materials/vehicles and the Framework Purchaser will not accept any responsibility for any loss or damage to materials or vehicles placed on any work site by the Supplier or his agents. The Suppliers shall make their own arrangements for the protection of their vehicles and materials.
- 1.5.3 **PLEASE NOTE** the terms and conditions in this Specification (Schedule 1) and in the Framework Agreement and in any purchase order issued by the Framework Purchasers shall apply, to the exclusion of any terms and conditions which the Supplier may purport to apply at any time, whether contained in any invoice, delivery docket or other document produced by or furnished to the Framework Purchaser by the Supplier, its agents or employers.
- 1.5.4 Suppliers engaged by Framework Purchasers shall provide the names and addresses of all drivers, in the "Driver's Details" section of www.Supplygov.ie and enter updates as the need arises during the Contract Period.
- 1.5.5 All drivers operating vehicles shall also possess a current full driver's licence pertaining to the vehicle that they are operating. Copies must be available on request on any given day.
- 1.5.6 The driver in charge of a vehicle shall be skilled in its the operation and thoroughly conversant with the vehicle, which he/she is operating The driver must remain in constant attendance on the vehicle while it is employed and under no circumstances shall a vehicle be operated by any person other than those for whom the relevant documentation as required by these terms and conditions has been submitted.
- 1.5.7 All vehicles for which a Road Fund Licence (Tax Disc) is required must display a current Tax Disc correctly.
- 1.5.8 All vehicles for which an "Insurance Disc" is required must display a current "Insurance Disc" correctly
- 1.5.9 A valid and current Certificate of Road Worthiness (CRW) must be available in respect of vehicles and trailers required to possess one. All goods trailers with a Gross Vehicle Weight (GVW) of more than 3,500kg require a Certificate of Road Worthiness. In addition, such vehicles shall comply with the provisions of the Road Safety Authority (Commercial vehicle roadworthiness) (vehicle maintenance and repair) Regulations 2013.
- 1.5.10 All vehicles used by the Supplier will be required to have suitable flashing/warning beacons in working order at all times.

1.6 Health & Safety (Legal/Paperwork) – where applicable

- 1.6.1 All Suppliers shall comply with the Safety, Health and Welfare at Work Act 2005 and all Regulations, Codes of Practice and Guidance arising thereunder. All articles and substances supplied for use at work, including any plant, machine, tool or hazardous substance, shall comply with the requirements of the current Safety, Health & Welfare at Work Act, Regulations, Codes of Practice and Guidance.
- 1.6.2 All employees entering Local Authority sites shall have a Safe Pass Card, with FÁS accreditation.
- 1.6.3 The operator in charge of a delivery vehicle shall be provided with the necessary Personal Protective Equipment (P.P.E.) by the Supplier in order to safely carry out his duties; e.g. safety boots, reflective vests, helmets etc.
- 1.6.4 All employees operating delivery vehicles shall have a current full driver's licence pertaining to the item(s) of plant they are operating. Copies to be available upon request on site on any given day.
- 1.6.5 Driver CPC (Certificate of Professional Competence) is a legal requirement that **all professional drivers** of C1, C1E, C and CE vehicles (trucks) and D1, D1E, D and DE vehicles (buses) must comply with. Professional Drivers must possess a Driver CPC qualifications Card for the appropriate license category and be CPC compliant. The legal basis for the Driver CPC programme is EU Directive 2003/59/EC which was transposed into Irish law in 2008 as SI No 359.
- 1.6.6 If applicable, delivery vehicles must be fitted with a reverse alarm which cannot be disabled.

1.7 Health & Safety - Safety Statement

- 1.7.1 Applicants applying for admission to the Framework must submit a copy of the company's Safety Statement or equivalent document with their application, that sets out the details of the company's overall safety management system, and that describes the measures, procedures, systems, roles and responsibilities used by the Applicant to secure and manage the safety, health, and welfare at work of its staff, other workers, clients, and the general public in the place of work.
- 1.7.2 The Safety Statement shall be prepared in accordance with Section 20 of the Safety, Health & Welfare at Work Act 2005, and implementing Regulations.
- 1.7.3 The Safety Statement must be signed, dated and Company Registrations Office Company Name referenced where applicable.
- 1.7.4 The minimum requirement is that the evidence provided will demonstrate compliance with the Safety, Health and Welfare at Work Act 2005, including but not limited to the Safety, Health and Welfare at Work (General Application) Regulations 2007, and the Safety Health and Welfare at Work (Construction) Regulations 2013.
- 1.7.5 Where the Supplier has 3 or Less Employees, the documents included in the Health & Safety Authority **Code of Practice for Contractors with Three or Less Employees** can be used to satisfy the requirement for submission of a Safety Statement. The Supplier shall complete and sign the documents included as Appendix E to the Code of Practice and submit these along with the associated Safe System of Work Plans.
- 1.7.6 The requirements under Health and Safety legislation will only be evaluated by the relevant Contracting Authority at Mini-Competition Stage when the Supplier is being evaluated in response to a Mini-Competition Request for Tender. Please refer to the Mini-Competition Evaluation Criteria included in Schedule 2.

1.8 Quarry Compliance

- 1.8.1 Suppliers applying for admittance to this Framework that are sourcing materials from quarries must comply with the requirements set out in this section for each quarry source.
- 1.8.2 The suppliers quarry sources must be compliant with the relevant provisions of:
- SI No. 566 of 2009, The Waste Management (Management of Waste from the Extractive Industries) Regulations 2009; and
 - Section 261 of the Planning and Development Acts, 2000 to 2011 and/or have planning permission pursuant to the above Acts (as may be amended), and
 - that all statutorily required permits as may be necessary for each quarry source facility nominated are in place and current (for example discharge licence under Section 4 of the Water Pollution Acts 1977 - 1990).
- 1.8.3 These provisions will be verified by the Contracting Authority at Mini-Competition stage, at which stage a schedule of the Suppliers quarry sources must be provided when responding to a Mini-Competition Request For Tender. Please refer to the Mini-Competition Contract Evaluation and Award Criteria set out in **Schedule 2** to this document.
- 1.8.4 As part of the Mini-Competition contract evaluation, compliance with these provisions will be verified by the Contracting Authority with the relevant Local Authority having jurisdiction over the quarry sources identified. Suppliers found to be non-compliant for any source may be temporarily removed from the Framework for all Local Authorities.

1.9 Supplies and Services Terms and Conditions

- 1.9.1 Suppliers and their employees are expected to adhere to acceptable standards of behaviour, i.e. standards expected of Contracting Authorities staff.
- 1.9.2 Except in relation to Health & Safety matters within their control, the Supplier or his/her agent will take their instructions from the Director of Services, or authorised employees of the Contracting Authority (Framework Purchaser) who have been authorized in writing to issue instructions.
- 1.9.3 The Supplier is responsible for ensuring that the supplied materials meet the required Specification as detailed in the Instructions Document, and in any Mini-Competition.
- 1.9.4 The Supplier may be required to produce evidence of a quality control plan and quality control documentation to prove testing against and compliance with the required specification. The supplied materials shall be in accordance with the relevant Specification. Should the material not conform to the standards, the Supplier will be excluded from the Framework. All samples specified here and in the Mini-Competition shall be provided free of charge, when required, to the Contracting Authority (Purchaser). Testing & sampling shall be carried out to the relevant standards. Suppliers should note that the requirements of the Specification identified in Schedule 1 must be met.
- 1.9.5 If applicable, maximum weight restrictions will apply and the Contracting Authority (Framework Purchaser) will not pay for material in excess of such maximum weight.
- 1.9.6 At Mini-Competition stage, Suppliers may be required to submit a schedule of quarry sources when responding to Requests for Tender, where applicable to the Products required under such a Request for Tender.
- 1.9.7 All Contracting Authorities (Framework Purchasers) will be advised of Suppliers appointed to the Framework who are eligible to compete in Mini-Competitions within their Contracting Authority

area. Quarry or pit sources as identified by Suppliers at Mini-Competition stage will be checked for compliance with the requirements of the Planning & Development Acts and other relevant Statutes and Regulations in force by the Planning Department of the Contracting Authority.

- 1.9.8 In addition, each Supplier shall ensure that operations at the site specified in his/her Proposal comply with the requirements of the Planning and Development Acts and other relevant Statutes and Regulations in force. Suppliers found to be non-compliant for any source may be temporarily suspended from the Framework for all Contracting Authorities.
- 1.9.9 Suppliers of materials are required to submit copies of the most recent Type Test Certs and C.E. marking certifications with any Proposal.
- 1.9.10 If applicable, Suppliers may be required at their own expense to take their trucks to independent weighbridges on a spot check basis to verify gross weights and to confirm delivery docket weights and compliance with loading limits.
- 1.9.11 If applicable, delivery of materials shall be made as and where required by the Framework Purchaser. No material shall be delivered on site by a Supplier unless there is an authorized representative of the Contracting Authority (Framework Purchaser), on site to receive, check and sign for the material.
- 1.9.12 If applicable, Suppliers of surface dressing chippings, base course, binder course and surface course materials are required to submit copies of the most recent TypeTest Certs and C.E. Marking Certifications with any Proposal.
- 1.9.13 If applicable, Material Safety Data Sheet (MSDS) must be supplied with all hazardous substances.
- 1.9.14 The Contracting Authority(s), whose finding(s) will be final, will measure distances by road from the Suppliers quarry to the various work sites.
- 1.9.15 Where the Contracting Authority (Framework Purchaser) is satisfied that a particular Supplier cannot supply the required materials at such rate of delivery or in such quantity as will enable the work on hand to be carried out expeditiously and with such convenience as may be required, the Framework Purchaser may decide to purchase from such other supplier as he considers appropriate.

1.10 Supplier Performance

- 1.10.1 It is intended that the Supplier's performance will be monitored by the Framework Purchaser during the execution of all Mini-Competition Contracts.
- 1.10.2 A Performance Evaluation Report will be completed by the Framework Purchaser at the end of or any time during the Mini-Competition, that will record the performance of the Supplier on the Mini-Competition Contract. Such reports will be copied to the Supplier and the content of such reports may be considered when formulating new award criteria for future centralised procurement competitions for Road Making Materials (Supply Only) for Local Authorities. A copy of the Performance Evaluation Reports are included in **Schedule 6**.
- 1.10.3 Where any Supplier fails to satisfactorily perform a Mini-Competition Contract awarded, the Mini-Competition Contract may be terminated and the Framework Purchaser shall have the right to re-tender the contract.
- 1.10.4 Please refer to Clause 8 – Contractor Performance Review of the Framework Agreement for full details of the Mini-Competition Contract performance review mechanism.

SCHEDULE 2: MINI-COMPETITION CONTRACT EVALUATION & AWARD CRITERIA

2.1 Contract Evaluation Criteria

- 2.1.1 Suppliers submitting a response to a Mini-Competition Request for Tender must submit the information listed in the table hereunder, that will be assessed on a Pass/Fail basis. Suppliers shall note that not all of the criteria listed may apply to every Mini-Competition Request for Tender.
- 2.1.2 If the Supplier is a subsidiary, a parent company guarantee may be sought at Mini-Competition stage if relevant.
- 2.1.3 Only those Suppliers passing all of the following contract evaluation criteria will proceed for assessment in accordance with the contract award criteria set out in part 2.2 below.

Contract Evaluation Criteria		Weighting
1	<p>Compliance with Site specific Requirements</p> <p>Submit confirmation in writing confirming compliance with the requirements of the General Specification set out in Schedule 1 to the Framework Agreement and as more specifically set out in the particular Road Making Materials requirements of the Mini Competition.</p>	Pass/Fail
2	<p>Proposed Resources Availability</p> <p>Submit confirmation in writing that the Supplier has sufficient resources and availability to provide the requested Road Making Materials within the specified timeframes, respecting the nominated start and finish dates outlined in the Request for Tender documents.</p>	Pass/Fail
3	<p>Health & Safety Competency of Supplier's Personnel</p> <p>For all Suppliers Personnel entering a Contracting Authority site, details of the following must be entered on www.supplygov.ie under 'My Checklist' -:</p> <ul style="list-style-type: none"> ▪ Solas/Fás Safepass Card, or equivalent ▪ A valid CSCS card for any additional skill covered under the Construction Skills Certification Scheme required in relation to the delivery of the requested Road Making Materials as defined in this Request For Tender ▪ Any additional Health and Safety qualifications required in relation to the supply of requested Road Making Materials as defined in the Request For Tender 	Pass/Fail
4	<p>Quarry Sources (if relevant)</p> <p>Where Suppliers are sourcing materials from quarries or pits, the Supplier shall submit a list of such quarry sources for checking in regard to the provisions set out section 1.8 of the General Specification in regard to compliance with Waste Management Regulations and Planning and Development Acts as stated in Section 1.8 of the General Specification, Schedule 1, and to confirm that all relevant statutorily required permits are in place and current.</p>	Pass/Fail
5	<p>Safety Statement (Code of Practice for 3 or Less Employees)</p> <p>The company's Safety Statement or equivalent document submitted prior to admittance to the Framework Agreement will be assessed for compliance with the provisions set out in the Safety, Health & Welfare at Work Act 2005 and enforcing Regulations.</p>	Pass/Fail

2.1.4 Suppliers that pass the Pass/Fail criteria above will proceed for assessment in accordance with the award criteria set out below.

2.2 Mini-Competition Contract Award Criteria

2.2.1 The Supplier that achieves the highest ranking score by reference to the criteria in the Table below will be awarded the Mini-Competition Contract.

Mini-Competition Award Criteria	Weighting	Maximum Marks Available
<p>Most Economically Advantageous Tender: Price (1,000 Marks) (100%) Prices will be assessed based on the <u>sum</u> of the prices (ex. VAT) submitted for the required road making material products as follows:</p>		
1a	The supply only of [XX] units of road making materials expressed as <u>total cost</u> for the required quantities of all products specified	100% 1,000
1b	If applicable - the delivery to location(s) specified by the Contracting Authority in the Mini Competition Request for Tender, expressed as the <u>tendered cost</u> for delivery of the specified quantities to these locations which may be specified in the Mini-Competition Request for Tender.	
1c	If applicable, - additional requirements specified by the Contracting Authority in the Mini-Competition Request for Tender which may give rise to charges associated with deliveries; loading; part loads; standing time; availability of materials; disposal of excess material and/or distances from quarries/batching plants etc.	
Total		100% 1,000

2.2.2 The price component(s) will be specified by the Contracting Authority at Request for Tender stage.

2.2.3 The Supplier’s Proposal submitted to a Mini-Competition Request for Tender must not exceed the Key Rates tendered by the Supplier in its Tender Submission for similar items (**Key Rates**).

2.2.4 The Supplier’s Proposal submitted in response to a Mini-Competition Request for Tender will set the prices for the Products and price components specified by the Contracting Authority in the Request for Tender. As the requirement for the supply of Products arises, the Contracting Authority will evaluate the Proposals and enter into a Mini-Competition Contract with the most economically advantageous tender. The holding of a Mini-Competition Request for Tender does not constitute a commitment or guarantee from a Contracting Authority to enter into a Mini-Competition Contract with the Supplier and does not guarantee the Supplier that any particular Product will be procured pursuant to the Mini-Competition Request for Tender.

2.2.5 The lowest total cost tendered for the supply and if applicable the delivery and any other additional specified requirements of the required products (1a + 1b + 1c above) will be awarded 100% of the **1,000** marks available for Price.

2.2.6 The remaining Suppliers for that Mini-Competition will receive a pro rata mark for price based on the difference between their total tendered cost and that of the lowest priced tenderer, expressed as a percentage of the lowest tendered cost, i.e.

$$\text{Marks Awarded} = \frac{\text{Lowest Price}}{\text{Price being evaluated}} \times \text{Available Marks For Price (1,000)}$$

- 2.2.7 The marks awarded above will determine the highest scoring Supplier who will be ranked No. 1 for the Mini-Competition. The remaining Suppliers will be ranked in descending order, i.e. the next highest cumulative mark ranked No. 2, etc.
- 2.2.8 In the event that, after a competition, more than one Supplier are level on marks, the Framework Purchaser reserves the right to either:
- 1) Ask the Suppliers to resubmit prices and continue this process until there is a winner, or
 - 2) To divide the project between the equally ranked Suppliers, or
 - 3) Award the contract by random selection concluded in an open and transparent forum, or
 - 4) To re-tender the project
- 2.2.9 The acknowledgement of receipt of any Mini Competition Request for Tender shall not constitute an actual or implied agreement between the Suppliers and the Contracting Authority.
- 2.2.10 All Suppliers submitting a tender in response to a Mini-Competition Request for Tender will be informed of the outcome of the competition without delay following conclusion of the Mini-Competition evaluation process.

2.3 Information to be provided by the preferred Tenderer prior to Contract Award

- 2.3.1 In addition to the information to be provided when submitting a tender in response to a Mini-Competition Request for Tender (as outlined in part 2.1 above), the preferred Supplier must provide to the Framework Purchaser for their review and approval, prior to formal award of contract (if not already submitted), the specific information listed below or any such relevant information as requested by the Framework Purchaser:
- Satisfactory evidence of insurance submitted online by the Insurance Broker/Company

SCHEDULE 3: CONTRACTING AUTHORITIES (FRAMEWORK PURCHASERS)

Ref	Contracting Authorities (Framework Purchasers)
1	Cavan County Council
2	Carlow County Council
3	Clare County Council
4	Cork City Council
5	Cork County Council
6	Donegal County Council
7	Dun-Laoghaire-Rathdown County Council
8	Fingal County Council
9	Galway City Council
10	Galway County Council
11	Kerry County Council
12	Kildare County Council
13	Kilkenny County Council
14	Laois County Council
15	Leitrim County Council
16	Limerick City and County Council
17	Longford County Council
18	Louth County Council
19	Mayo County Council
20	Meath County Council
21	Monaghan County Council
22	Tipperary County Council
23	Offaly County Council
24	Roscommon County Council
25	Sligo County Council
26	South Dublin County Council
27	Waterford Council
28	Westmeath County Council
29	Wexford County Council
30	Wicklow County Council

SCHEDULE 4: CATEGORIES OF MATERIALS TO BE SUPPLIED

Refer to **Schedule 1 – General Specification** attached to the Framework Agreement for Technical Standards of the Materials to be supplied.

Please note that:

- (1) Items 1 to 13 below are associated with **Series 900** of the NRA *Specification for Road Works* dated **March 2011**.
- (2) Items 14 to 20 below are associated with the latest version of **Series 900** of the TII *Specification for Road Works* (CC-SPW-00900).
- (3) The product descriptions in the table below are broadly indicative of the products that will be required by Contracting Authorities at Mini-Competition stage. At Mini-Competition stage a Contracting Authority may require an equivalent product and this will be specified in the Request for Tender.
- (4) When responding to a Mini-Competition Request for Tender, Suppliers admitted to the Framework Agreement may only provide prices for Products that they priced as part of their application for admittance to the Framework (i.e. at Mini-Competition stage, a Supplier may not provide a Price for a Product that was not priced at Framework application stage).

	Sub Category	Product Description
<u>1</u>	Bituminous Bound Materials	906 Dense Base Course Asphalt Concrete (Recipe Mixtures)
<u>2</u>	Bituminous Bound Materials	906 Dense Binder Course Asphalt Concrete (Recipe Mixtures)
<u>3</u>	Bituminous Bound Materials	907 Regulating Course
<u>4</u>	Bituminous Bound Materials	910 Hot Rolled Asphalt Surface Course (Recipe Mixtures)
<u>5</u>	Bituminous Bound Materials	912 Close Graded Asphalt Concrete Surface Course
<u>6</u>	Bituminous Bound Materials	915 Coated Chippings for Application to Hot Rolled Asphalt Surface Course
<u>7</u>	Bituminous Bound Materials	916 Open Graded Asphalt Concrete Surface Course
<u>8</u>	Bituminous Bound Materials	929 Dense Base Course (Design Mixture)
<u>9</u>	Bituminous Bound Materials	929 Dense Binder Course (Design Mixture)
<u>10</u>	Bituminous Bound Materials	930 EME2 Base and Binder Course Asphalt Concrete
<u>11</u>	Bituminous Bound Materials	930 EME2 Base and Binder Course Asphalt Concrete
<u>12</u>	Bituminous Bound Materials	942 Polymer Modified Stone Mastic Asphalt Surface Course
<u>13</u>	Bituminous Bound Materials	Clause 920 Bond or Tack or other Bituminous sprays
<u>14</u>	Bituminous Bound Materials	Asphalt Concrete Products (Clause 3 of Series 900)
<u>15</u>	Bituminous Bound Materials	Hot Rolled Asphalt Products (Clause 4 of Series 900)
<u>16</u>	Bituminous Bound Materials	Stone Mastic Asphalt Products (Clause 5 of Series 900)
<u>17</u>	Bituminous Bound Materials	Porous Asphalt Products (Clause 6 of Series 900)
<u>18</u>	Bituminous Bound Materials	Surface Treatments (Clause 7 of Series 900)
<u>19</u>	Bituminous Bound Materials	Regulating Course (Clause 2.2 of Series 900)
<u>20</u>	Bituminous Bound Materials	Bond Coat (10.1.4 of Series 900)
<u>21</u>	Cold Mix Bitumen Bound Materials	Stabilised Wetmix/Foam Mix
<u>22</u>	Cold Mix Delay Set Bituminous Macadam	10mm Normal Delay Set
<u>23</u>	Cold Mix Delay Set Bituminous Macadam	10mm Short Delay Set
<u>24</u>	Cold Mix Delay Set Bituminous Macadam	14mm Normal Delay Set
<u>25</u>	Cold Mix Delay Set Bituminous Macadam	14mm Short Delay Set
<u>26</u>	Cold Mix Delay Set Bituminous Macadam	6mm Normal Delay Set
<u>27</u>	Cold Mix Delay Set Bituminous Macadam	6mm Short Delay Set
<u>28</u>	Fill Material & Unbound Material	Clause 503 Bedding, Laying and Surrounding of Pipes

<u>29</u>	Fill Material & Unbound Material	Clause 505 Backfilling of Trenches and Filter Drains
<u>30</u>	Fill Material & Unbound Material	Clause 803 Granular Material Type A
<u>31</u>	Fill Material & Unbound Material	Clause 804 Granular Material Type B
<u>32</u>	Fill Material & Unbound Material	Clause 805 Granular Material Type C
<u>33</u>	Fill Material & Unbound Material	Clause 806 Granular Type D (Wet-Mix Macadam)
<u>34</u>	Fill Material & Unbound Material	Clause 807 Granular Type E (Close Grained Unbound Mixtures)
<u>35</u>	Fill Material & Unbound Material	Clause 808
<u>36</u>	Fill Material & Unbound Material	Clause 821 Cement Bound Granular Mixtures A (CBGM A)
<u>37</u>	Fill Material & Unbound Material	Clause 822 Cement Bound Granular Mixtures B (CBGM B)
<u>38</u>	Fill Material & Unbound Material	Clause 823 Cement Bound Granular Mixtures C (CBGM C).
<u>39</u>	Geotextiles (woven)	Geotextile
<u>40</u>	Geotextiles (nonwoven)	Geotextile
<u>41</u>	Geosynthetic Geogrids	Geogrid
<u>42</u>	Sand, Gravels and Topsoil	Bedding Sand (Paving)
<u>43</u>	Sand, Gravels and Topsoil	Clean Sharp Sand
<u>44</u>	Sand, Gravels and Topsoil	Gravel Filling
<u>45</u>	Sand, Gravels and Topsoil	Jointing Sand
<u>46</u>	Sand, Gravels and Topsoil	Natural or Crushed Gravel
<u>47</u>	Sand, Gravels and Topsoil	Pea-Gravel, 12.5mm to 5mm only
<u>48</u>	Sand, Gravels and Topsoil	Pit Run Gravel
<u>49</u>	Sand, Gravels and Topsoil	Screened Gravel
<u>50</u>	Sand, Gravels and Topsoil	Top Soil, Class 5B, 5C
<u>51</u>	Sand, Gravels and Topsoil	Unwashed Sand
<u>52</u>	Sand, Gravels and Topsoil	Washed Sand (Building)
<u>53</u>	Sand, Gravels and Topsoil	Washed Sand (Plastering)
<u>54</u>	Stone	100mm - 50mm broken stone
<u>55</u>	Stone	100mm Down Broken Stone
<u>56</u>	Stone	150mm -100mm broken stone
<u>57</u>	Stone	225mm - 100mm Down Broken Stone
<u>58</u>	Stone	225mm Down Broken Stone
<u>59</u>	Stone	37.5mm Down Broken Stone
<u>60</u>	Stone	400mm Down Broken Stone
<u>61</u>	Stone	50mm - 20mm Down Broken Stone
<u>62</u>	Stone	50mm Down Broken Stone
<u>63</u>	Stone	Boulders
<u>64</u>	Stone	Drainage Stone Single Size - 100mm
<u>65</u>	Stone	Drainage Stone Single Size - 35mm
<u>66</u>	Stone	Drainage Stone Single Size - 50mm
<u>67</u>	Stone	Drainage Stone Single Size -150mm
<u>68</u>	Stone	Drainage Stone Single Size -37.5mm
<u>69</u>	Stone	Granular Material (Rock fill) 500mm Class 6B
<u>70</u>	Stone	Grit 6/4mm
<u>71</u>	Stone	Quarry Fines
<u>72</u>	Stone	Screenings - 20 mm Down
<u>73</u>	Stone	Screenings - 25 mm Down
<u>74</u>	Stone	Screenings - 37.5 mm Down
<u>75</u>	Stone	Selected Well Graded Granular Material (Rock Fill) 125mm Class 6C

<u>76</u>	Stone	Single Size Broken Stone - 37.5mm
<u>77</u>	Stone	Single Size Broken Stone - 50mm
<u>78</u>	Stone	Single Size Broken Stone - 75mm
<u>79</u>	Surface Dressing Chips	10/14mm Chippings
<u>80</u>	Surface Dressing Chips	14/20mm Chippings
<u>81</u>	Surface Dressing Chips	2/6mm Chippings
<u>82</u>	Surface Dressing Chips	6/10mm Chippings

Note: Suppliers appointed to the Framework will be invited to tender at Mini-Competition stage by their nominated Contracting Authorities for the products they have priced in the Form of Tender submitted at Framework application stage.

SCHEDULE 5: SAMPLE MINI-COMPETITION CONTRACT

MINI-COMPETITION CONDITIONS

MINI-COMPETITION CONDITIONS FOR PRODUCTS

ORDER FORM TEMPLATE

To: [Insert Supplier's Details]

Issue Date:	Purchase Order Number:
Description of the Products Unit/ number/ unit price VAT	
Indicate if any of the Terms and Conditions are not applicable	
Relevant documents Specification Proposal	
Optional information e.g. quarry source	
Delivery location	
Delivery date	
Price breakdown including any discounts	
Approver	

In accordance with the provisions of the conditions, you are instructed to proceed with the delivery of the Products as identified above. The Products must be delivered on or before the Delivery Date.

In delivering the Products, as required under this Purchase Order, you are to comply with all requirements and the mini-competition terms and conditions for the supply of road making materials (supply only) and ancillary products contained at Appendix 1.

APPENDIX 1

TERMS AND CONDITIONS FOR THE SUPPLY OF ROAD MAKING MATERIALS (SUPPLY ONLY) AND ANCILLARY PRODUCTS

SCOPE

These terms and conditions (the “**Conditions**”) (together with any Purchase Order) shall govern the provision of any Products by the Supplier pursuant to the Framework Agreement from time to time.

1. DEFINITIONS

The **Conditions** means these conditions as defined in clause 2.1;

The **Framework Agreement** means the multi-party framework to provide the Products for Local Authorities issued by the LGOPC and dated [Insert date];

The **LGOPC** means the Local Government Operational Procurement Centre of The Reeks Gateway, Killarney, County Kerry as Central Purchasing Body (CPB) under the auspices of Kerry County Council, County Buildings, Rathass, Tralee, Co. Kerry;

The **Mini-Competition Request for Tender or Request for Tender (RFT)** means an invitation to submit a Proposal issued by the Employer;

The **Proposal** means the proposal submitted by the Supplier to the Employer in response to a Mini-Competition Request for Tender;

The **Products** means the road making materials and ancillary products the Supplier is to provide as described in the Specification and the Purchase Order(s);

The **Specification** means the document identified as Schedule 1 of the Framework Agreement;

A **Purchase Order** means a written order given to the Supplier in the form included in this document;

The **Term** means the period delimited in clause 3.

2. INTERPRETATION

2.1 These Conditions are the entire agreement between the parties about the Products and consists of, in order of precedence:

- 2.1.1 the Purchase Order; and
- 2.1.2 these Conditions.

2.2 The Supplier must deliver the Products at its own expense, complying with these Conditions, the Specification, each Purchase Order, the Employer’s instructions, and the law.

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

2.4 It is acknowledged by all parties that the Supplier will at all times be an independent contractor, and nothing in these Conditions will be construed (and the Supplier will not hold out its relationship) as constituting a partnership, joint the Employer and the Supplier.

3. DURATION OF TERM

3.1 The Term starts on the date the Employer accepts the Supplier’s Proposal or issues a Purchase Order and ends on the delivery of the Products specified in a Purchase Order to the reasonable satisfaction of the Employer unless otherwise terminated in accordance with these Conditions.

3.2 Each Purchase Order shall constitute a separate contract for the Products and default by the Employer in relation to any one Purchase Order shall not entitle the Supplier to treat such as a breach of the Framework Agreement and/or these Conditions.

3.3 By signing and returning or otherwise acknowledging a Purchase Order, the Supplier acknowledges and agrees that it shall have entered into a legally binding contract with the Employer to provide the Products specified in the relevant Purchase Order to the Employer incorporating these Conditions. In any circumstances where the Supplier does not formally accept a Purchase Order, dispatch or delivery of Products by the Supplier to the Employer shall be deemed conclusive evidence of the acceptance of a Purchaser Order and the terms and conditions of the contract thereby constituted.

3.4 Without prejudice to any other rights or remedies to which it may be entitled, the Employer may terminate a Purchase Order issued by it without liability to the Supplier by giving written notice to the Supplier to take effect immediately or on the date specified in the said notice if:

3.4.1 the Supplier commits a material breach, in the opinion of the Employer, of any of these Conditions, and if such breach is capable of being remedied, fails to remedy the breach within thirty (30) days of the notice given by the Employer requiring the Supplier to do so;

3.4.2 the Supplier is, or is deemed for the purposes of any relevant law to be, unable to pay its debts as they fall due or to be insolvent, or admits inability to pay its debts as they fall due; or the Supplier suspends making payments on all or any class of its debts or announces an intention to do so, or a moratorium is declared in respect of any of its indebtedness;

3.4.3 any step (including the making of any proposal, the convening of any meeting, the passing of any resolution, the presenting of any petition or the making of any order) is taken with a view to a composition, assignment or arrangement with any creditors of, or the winding up, liquidation or dissolution of, the Supplier; or any liquidator, receiver or examiner is appointed to or in respect of the Supplier or any of its assets;

3.4.4 the Supplier ceases or threatens to cease to carry on business;

3.4.5 any representation made by the Supplier in connection with the Mini-Competition Request for Tender shall in the opinion of the Employer prove to be untrue or incorrect in a material respect as of the date when made;

3.4.6 the Supplier has committed any fraudulent act or any criminal activity or is guilty of gross negligence in the performance of its obligations; or

3.4.7 the Employer has reason to believe that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Supplier or any agent or representative of the Supplier, to any employee of the Employer with a view towards securing any agreement for the provision of the Products. Paying the expenses of normal business meals shall not be prohibited by this provision.

3.5 The Employer may terminate a Purchase Order at any time by giving 30 days' notice in writing to that effect to the Supplier.

3.6 Termination of any Purchase Order pursuant to Clauses 3.4 or 3.5 above shall not relieve or discharge either the Supplier or the Employer from any obligations which have accrued prior to such termination.

3.7 The Employer shall not be liable to the Supplier for any loss of profit, or other economic losses and/or expenses or for any indirect, economic, or consequential loss suffered or incurred by the Supplier arising out of or in connection with these Conditions or the termination of any Purchase Order

4. PAYMENT

4.1 Subject to these Conditions and in accordance with the provisions of this clause, the Purchase Order and the Specification, the Employer will pay the Supplier the value of delivered Products.

4.2 The price for any Products ordered by the Employer shall be the price set out in the applicable Purchase Order. If no price is specified therein, the price of the Products shall be the price last quoted by the Supplier. The payment terms for any Products ordered by the Employer shall be set out in the applicable Purchase Order.

4.3 The rates and prices in the Proposal exclude VAT.

4.4 The Employer may deduct from amounts due to the Supplier any amount that the Employer considers is due, or likely to become due, to the Employer from the Supplier under these Conditions.

5. INSPECTION

5.1 At any time, prior to any dispatch of Products to it, the Employer (or any other person whom it may nominate) shall be entitled to inspect, examine and test the Products at the Supplier's premises and, if any Products or any part of them are being sourced at other premises, the Supplier shall obtain for the Employer permission to carry out a like inspection on such premises.

5.2 The Supplier shall make available to the Employer (or its nominee) (at the Supplier's cost unless otherwise agreed in writing), all necessary resources making it possible for the Employer to check the conformity of the Products to the relevant Purchase Order.

5.3 The Supplier must be able to supply all documentary evidence concerning the origin and quality of the raw materials used in its supply.

5.4 Any inspection, examination or test required or carried out by the Employer shall not in any way

affect the Supplier's warranties or reduce or relieve the Supplier of its obligations under these Conditions or constitute a waiver by the Employer and shall be without prejudice to any of the Employer's other rights under these Conditions. Without prejudice to the generality of the foregoing, the Employer shall be entitled to inspect the Products upon their arrival at the final destination and to issue a refusal at any of these times, or to express any reservations. The Supplier's responsibility shall not be reduced or relieved by any observations that the Employer may make regarding instructions detailed in the Employer's designs or drawings and concerning the nature and quality of the materials used.

6. DELIVERY

6.1 The Supplier must deliver the Products ordered on the delivery date or dates specified in the applicable Purchase Order (or such other delivery date as may be specified by the Employer) to such place as the Purchase Order may specify and otherwise upon the terms and conditions set out in the Purchase Order and in accordance with the Specification. For the purpose of delivery of the Products, time is of the essence.

6.2 If the Supplier fails to deliver the Products to the Employer on or before the due date for delivery as specified in the relevant Purchase Order, the Supplier shall pay to the Employer as and by way of agreed liquidated damages an amount in euro equal to [X%] of the contract price stipulated in this Purchase Order per week subject to a maximum amount in euro equal to [X] % of the contract price. The parties acknowledge and agree that damages payable pursuant to this sub-clause 6.2 are a genuine pre-estimate of the loss likely to be suffered by the Employer as a result of failure of the Supplier to deliver the Products on or before the delivery date.

6.3 If the Supplier fails to deliver the Products to the Employer on or before the due date for delivery as specified in the relevant Purchase Order, the Employer may (without prejudice to any other right it may have under the terms of these Conditions or otherwise) cancel the order.

6.4 The Employer may postpone delivery by reasonable notice given to the Supplier at any time before delivery. Without prejudice to the generality of the foregoing, in the event of an industrial dispute or other action preventing the Employer from operating in its normal course of business, the Employer reserves the right to suspend acceptance of deliveries of Products until the dispute or other action has ceased.

7. ACCEPTANCE

7.1 The Employer shall not be deemed to have accepted any Products until after the Employer has actually inspected the Products and carried out all tests which it may, in its absolute discretion, deem appropriate to ascertain that the Products are in accordance with its requirements, notwithstanding any prior acknowledgement of receipt or prior payment. The Employer may reject Products which are not in accordance with its requirements. In those circumstances, the Employer shall be entitled to return any such Products to the Supplier at the Supplier's cost and risk to the fullest extent permitted by law.

8. TRANSPORTATION AND CLAIMS

8.1 The Supplier is solely responsible for compliance with all laws relating to the sourcing, packaging and carriage of the Products until delivery and for ensuring that such sourcing, packaging, carriage and delivery are made in accordance with the best current industry practice and all applicable legal requirements and meet with all relevant government and local authority requirements. For the avoidance of doubt, the Supplier shall be obliged to procure that all third party carriers and other contractors engaged by it shall comply with the foregoing.

8.2 The Supplier agrees to indemnify and hold harmless the Employer and the employees and sub-contractors of the Employer from and against any and all losses arising out of any injury (including death) to any person or damage to any property resulting from or in any way connected with

8.2.1 the sourcing of the Products; and/or

8.2.2 any breach by the Supplier of the provisions of sub-clause 8.1;

except for such losses that have been caused solely and exclusively by the negligence of the Employer or the employees or sub- contractors of the Employer.

9. RISK AND TITLE

9.1 Title to the Products (if applicable) shall pass on delivery to the Employer unless payment is made prior to the delivery date, in which event, title shall pass to the Employer on payment. Where title in the Products has passed to the Employer prior to the delivery date pursuant to this clause 9, the Supplier shall keep such Products separate from other products and clearly mark the Products as the property of the Employer.

9.2 The risk in the Products shall remain with the Employer until delivery in accordance with Clause 6.

10. WARRANTIES

10.1 The Supplier represents and warrants to the Employer that on an ongoing basis:

10.1.1 it has examined the Specification and/or other documents provided by the Employer and has satisfied itself that same are suitable to enable the Supplier to proceed with the sourcing of the Products;

10.1.2 all Products delivered to the Employer shall conform to the Specification and/or other documents provided by the Employer and to any description given by the Supplier in respect of the Products concerned;

10.1.3 any Products delivered to the Employer shall be of merchantable quality, free from defects in materials and workmanship and shall, unless a different period is specified in the applicable Purchase Order, remain fit for use in their intended purpose for the period of [430] days commencing on the date on which the Products concerned are delivered;

10.1.4 if a sample of the Products was provided to the Employer before delivery, the bulk of the Products will correspond with the sample; and

10.1.5 the Products when delivered with comply with all applicable laws.

10.2 In the event of any breach of these warranties or representations, and in addition to and without prejudice to any other rights which the Employer may have, the Employer may:

10.2.1 require the Supplier to remedy the defect(s) in the Products and any damage to other property arising directly or indirectly out of any defect(s) in the Products in which event the Supplier shall proceed to carry out such remedial works with all possible speed and/or supply replacement products; or

10.2.2 arrange for a person other than the Supplier to remedy the defect(s) in the Products and any damage to other property arising directly or indirectly out of the defect(s) in the Products, in which event the Supplier shall indemnify the Employer on demand against all costs incurred in connection with such remedial works and/or supply replacement products.

10.3 The provisions of these terms and conditions shall apply to any products supplied by the Supplier to the Employer in place of any defective Products.

11. LOSS AND DAMAGE

11.1 The Supplier shall indemnify and keep indemnified the Employer (on demand) from and against all losses suffered or incurred by the Employer arising out of or in connection with any of the following:

11.1.1 any injury or death to any person or in respect of any loss of or damage to any property caused by or arising out of any act, omission or negligence of the Supplier, its servants, agents, employees or contractors in connection with these Conditions;

11.1.2 any damage caused by the Products or any defects therein owing to the act, omission or negligence of the Supplier, or any of its employees, servants, agents or contractors.

12. INSURANCES

12.1 During the entire Term the Supplier shall maintain in force full and comprehensive insurance policies in respect of all customary liabilities and risks undertaken by the Supplier in connection with the provision of the Products in accordance with this clause and the Specification, including but not limited to:

12.1.1 Employer's liability insurance with a limit of indemnity of no less than €13 million. Such policy shall include an indemnity to the Employer as principal.

12.1.2 Public liability insurance with a limit of indemnity of no less than €6.5 million. Such policy shall include an indemnity to the Employer as principal.

12.1.3 Products Liability Policy with a limit of indemnity of no less than €6.5 million. Such policy shall include an indemnity to the Employer as principal.

12.1.4 Motor Insurance with a limit of indemnity of no less than €6.5 million. Such policy shall include an indemnity to the Employer as principal.

12.2 The Supplier shall ensure that its insurance policies

are taken out with reputable insurers acceptable to the Employer within the jurisdiction of the EU and that the level of cover and other terms of insurance are acceptable to and agreed by the Employer.

12.3 The Supplier shall comply with all terms and conditions of its insurance policies at all times. If cover under the insurance policies shall lapse or not be renewed or be changed in any material way or if the Supplier is aware of any reason why the cover under its insurance policies may lapse or not be renewed or be changed in any material way, the Supplier shall notify the Employer without delay.

12.4 It shall be the Supplier's responsibility to ensure that any agent or sub-contractors of the Supplier effects and maintains all insurances required by law and all such other insurances as are necessary for the provision of the Products. Any deficiencies in the cover or policy limits of the insurance policy of such agents or sub-contractors shall be the sole responsibility of the Supplier.

12.5 The Supplier shall not do or suffer to be done anything which may render the said policy or policies of insurance void or voidable.

13. ETHICS IN PUBLIC OFFICE

13.1 The Supplier warrants to the Employer that neither the Supplier nor any person on the Supplier's behalf has committed any offence under the Prevention of Corruption Acts 1889 to 2010 or the Ethics in Public Office Acts 1995 and 2001 in connection with this Conditions or the Products, and nor will they commit any such offence.

14. LAW AND DISPUTES

14.1 These Conditions and any contractual obligations or disputes arising out of or in connection with these Conditions shall be governed and construed in accordance with the laws of Ireland. The parties irrevocably agree that the courts of Ireland shall have exclusive jurisdiction to hear and decide any suits, actions or proceedings and to settle any disputes which may arise out of or are in connection with these Conditions.

SCHEDULE 6: PERFORMANCE EVALUATION REPORT

Road Making Materials (Supply Only) for LA's Mini-Competition Performance Evaluation		
Details of Mini-Competition		
Framework Purchaser:		
Framework Purchaser Name:		
RFT Reference No.:		
Name of Supplier:		
Supplier Contact Name:		
Supplier Ranking:		
Products Purchased:	Product Name	Quantity Purchased
Total Out-turn Cost (incl. VAT):	€	
Comments:		

Evaluation Completed By -	
Framework Purchaser Contact Name:	
Framework Purchaser Contact No:	
Framework Purchaser email address:	
Date of Review:	
Signature:	

Performance Evaluation of Road Making Materials					
Scoring Range	Excellent	Very Good	Good	Moderate	Poor
Please give one rating for each criteria. Add comments as required to justify your rating.					
Evaluation Criteria (Total score available – 100)					Score
1	Performance Delivery [20]				
	<i>How dependable was the Supplier in delivering orders? Were they flexible in regard to Time & Quantity?</i>				
	<i>What percentage of deliveries were on time?</i>				
	<i>Were difficulties encountered - No. of Breakdowns, Any driver issues (were Drivers experienced)?</i>				
	Comments				
2	Availability of Required Products and/or Services [20]				
	<i>Were the requested Product quantities available when ordered?</i>				
	<i>Was there a significant Lead Time involved at any stage?</i>				
	<i>Did this have any knock-on effect on planned works (e.g. did it lead to work stoppage)?</i>				
	Comments				
3	Supplier Responsiveness [20]				
	<i>Could the Framework Purchaser communicate easily with the Supplier?</i>				
	<i>Were all issues arising addressed in a professional and timely manner?</i>				
	<i>Did the same issue occur more than once?</i>				
	<i>Did the Framework Purchaser have to issue any requests for corrective action(s)?</i>				
4	Technical Support and After Sales Support [20]				
	<i>Was the Supplier's Technical and/or After Sales support available when required and easily accessible?</i>				
	<i>Did the Supplier provide the requested assistance when asked?</i>				
	<i>Any difficulties encountered in relation to verifying product quality?</i>				
	<i>Were all issues arising addressed in a professional and timely manner?</i>				
5	Compliance with requirements of Health & Safety; Road Traffic and Road Transport Legislation [20]				
	<i>If applicable - Did the Supplier comply with Safety, Health & Welfare legislation e.g. Construction Regulations 2013?</i>				
	<i>If applicable - Did operation of the plant item(s) create or contribute to a Health & Safety risk?</i>				
	<i>If applicable - Was the Vehicle(s) / Plant item(s) fitted with a reverse alarm?</i>				
	Comments				
Total Score					