
DYNAMIC PURCHASING SYSTEM AGREEMENT

FOR

**SAP Specialist Services for a new Integrated Financial
Management System**

for the

HEALTH SERVICE EXECUTIVE

HSE Ref 9900

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THIS DYNAMIC PURCHASING SYSTEM AGREEMENT IS MADE BETWEEN:

The Health Service Executive (hereinafter referred to as the "HSE") (which expression shall, where the context so admits or requires, be deemed to include its successors and assigns) with an address of Health Service Executive, Head Office, Naas, Millennium Park, Co Kildare of the One Part.

AND

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

WHEREAS:

- A.** The HSE conducted a call for competition on www.etenders.gov.ie and in the Official Journal of the European Union inviting Requests to Participate (RTP) in a Dynamic Purchasing System SAP Specialist Services (hereinafter referred to as "the DPS") on behalf of the Contracting Authorities specified in Section 1.5 hereto (hereinafter referred to as "the Contracting Authorities").
- B.** The Economic Operator submitted a request to participate in the DPS and, following an assessment by the HSE, the HSE wishes to admit the Economic Operator to the DPS.
- C.** The Economic Operator has agreed to be admitted to the DPS on the terms set out in this DPS Agreement.
- D.** The Economic Operator enters into this DPS Agreement by electronically accepting this DPS Agreement through www.etenders.gov.ie (hereinafter referred to as "eTenders") by way of its personal eTenders account (the formal acceptance of the terms of this DPS Agreement through eTender shall operate as if this DPS Agreement had been signed and/or sealed (and witnessed appropriately) by the parties and shall be construed accordingly for all legal purposes).
- E.** The admittance by the HSE of the Economic Operator to the DPS, subsequent to the acceptance by the Economic Operator of the terms of this DPS Agreement, shall operate as the acceptance by the HSE of the terms of this DPS Agreement and this DPS Agreement shall take effect from such date.
- F.** This DPS Agreement incorporates the DPS Agreement General Terms and Conditions specified in 2.0 hereto (hereinafter referred to as "the DPS Agreement General Terms and Conditions") and the HSE Standard Terms and Conditions.
- G.** Each obligation, warranty or representation of the Economic Operator under this DPS Agreement is undertaken and/or made for the benefit of both the HSE and the Contracting Authorities.

1.0 THE HSE AND THE ECONOMIC OPERATOR AGREE AS FOLLOWS:

1.1 SCOPE OF APPOINTMENT

- 1.1.1 This DPS Agreement governs the relationship between the HSE and the Economic Operator in respect of the terms and conditions applying to the participation of the Economic Operator in the DPS.
- 1.1.2 In consideration of the performance by the Economic Operator of its obligations under this DPS Agreement, the HSE appoints the Economic Operator to the DPS for the provision of SAP Specialist Service (hereinafter collectively referred to as "the Services") to the Contracting Authorities when contracted to do so pursuant to the DPS.
- 1.1.3 The Contracting Authorities are entitled to use the DPS for the purpose of procuring the Services from Economic Operators who have been admitted to the DPS.
- 1.1.4 When a Contracting Authority wishes to acquire the Services pursuant to the DPS, it will do so by means of a Supplementary Request for Tender¹ only.
- 1.1.5 Notwithstanding the entitlement of the Contracting Authorities to utilise the DPS, neither the HSE nor the Contracting Authorities give any assurances as to their level of engagement or expenditure through the DPS and the Economic Operator hereby acknowledges that it has not entered into this DPS Agreement on the basis of any such expectation. This DPS Agreement does not constitute a commitment from the Contracting Authorities to award contracts under the DPS (hereinafter referred to as "sRFT Contract(s)") to the Economic Operator and the Contracting Authorities reserve the right to engage in separate procurement processes with Economic Operators outside of the DPS should they consider it appropriate to do so.

1.2 ENTIRE AGREEMENT

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

1.3 PERIOD OF VALIDITY

- 1.3.1 The Period of Validity of the DPS shall be six years.
- 1.3.2 The HSE may, subject to compliance with the Regulations³, amend the Period of Validity. Any amendment to the Period of Validity shall not necessitate the re-execution or re-affirmation of this DPS Agreement by the parties which terms shall continue in force for the duration of any amended Period of Validity.

1.4 LIMITATION ON LIABILITY

- 1.4.1 Notwithstanding that the HSE is: (a) acting as a Central Purchasing Body coordinating the establishment of the DPS; and (b) entering into this DPS Agreement with the Economic Operator, nothing within this DPS Agreement or the Tender Documents⁴ shall operate to bind the HSE to (or make them a party to) the terms and obligations of an sRFT Contract and the Economic Operator hereby indemnifies and holds harmless the HSE from any losses, damages, costs or claims arising from: (a) the failure of the Economic Operator to secure an sRFT Contract; and/or (b) any sRFT Contract entered into by the Economic Operator.

¹ Supplementary Request for Tender means a request for tender issued by a Contracting Authority to the Economic Operators admitted to the DPS via eTenders

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

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

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

1.5 THE CONTRACTING AUTHORITIES

1.5.1 The Contracting Authorities partaking in the DPS Agreement include:

- HSE
- HSE Funded Organisations
- Section 38 Organisations
- Section 39 Organisations
- Such other Contracting Authorities as may be notified to the Economic Operator from time to time.

2.0 GENERAL TERMS & CONDITIONS

2.1 GENERAL

- 2.1.1 The HSE is not bound by any anomalies, errors or omissions in the Tender Documents. The Economic Operator shall immediately notify the HSE if it becomes aware of any ambiguities, anomalies, errors or omissions in the Tender Documents and the HSE shall, upon receipt of such notification, notify all Economic Operators of its ruling in respect of same. Such ruling shall be issued in writing and may, at the HSE'S discretion, form part of this DPS Agreement.

2.2 INTERPRETATION

- 2.2.1 If any term or provision in this DPS Agreement is held to be illegal or unenforceable, in whole or in part, such term or provision shall be deemed not to form part of this DPS Agreement and the enforceability of the remainder of this DPS Agreement shall not be affected.
- 2.2.2 Words importing the singular shall, where the context so requires, include the plural and vice versa.
- 2.2.3 Words of the masculine gender include the feminine and neuter genders and words denoting natural persons include where the context so requires corporations and firms and all such words shall, where appropriate, be construed interchangeably in that manner.
- 2.2.4 The headings and captions in this DPS Agreement are inserted for convenience of reference only and shall not be considered as part of or affect the construction or interpretation of this DPS Agreement.
- 2.2.5 Reference to a Statute or Act or a provision of a Statute or Act shall include any Statute or Act or provision of a Statute or Act amending, consolidating or replacing it for the time being in force.
- 2.2.6 Words denoting an obligation on a party to do any act, matter or thing shall include an obligation to procure that it be done and words placing a party under a restriction includes an obligation not to permit or allow infringement of the restriction.
- 2.2.7 The terms of this DPS Agreement shall be construed without regard to the rule of construction known as "ejusdem generis".
- 2.2.8 If any ambiguity or question of intent or interpretation arises, this DPS Agreement shall be construed as if drafted jointly by the Economic Operator and the HSE and no presumption or burden of proof shall arise favouring or disfavouring either party by virtue of the authorship of any of the provisions of this DPS Agreement.

2.3 LEGAL STATUS OF THE ECONOMIC OPERATOR – ASSIGNMENT AND/OR NOVATION

- 2.3.1 This DPS Agreement may be assigned or novated by the Economic Operator, subject to the granting of formal written consent to such assignment or novation by the HSE, to the legal successor of the Economic Operator where:
- (a) the specific change was provided for in the procurement process for the award of this DPS Agreement; or
 - (b) the change is as a result of corporate restructuring in a manner permitted under Regulation 72 of the Regulations.
- 2.3.2 The HSE may, prior to granting consent to such assignment or novation, require compliance by the succeeding Economic Operator with such conditions the HSE deems necessary including, but not limited to, requiring evidence that:
- (a) the succeeding Economic Operator fulfils the qualifying criteria initially established;
 - (b) the succeeding Economic Operator possesses the capability (technical or otherwise), resources and skills in respect of satisfying the requirements of this DPS Agreement and;
 - (c) a formal change in legal status or corporate restructuring as permitted under sub-paragraphs 2.3.1 (a) and (b) herein has been lawfully undertaken.
- 2.3.3 The terms of this DPS Agreement shall govern any succeeding Economic Operator and the HSE may, at its discretion, direct the Economic Operator and the succeeding Economic Operator to execute a formal Deed of Assignment/Novation.

- 2.3.4 The HSE reserves the right to assign, novate or transfer this DPS Agreement to a third party without the consent of the Economic Operator.
- 2.3.5 Without prejudice to such additional circumstances where assignment is permissible under subparagraphs 2.3.1 (a) and (b) herein, assignment to the legal successor of the Economic Operator (subject to the granting of formal written consent to such assignment by the HSE) is permissible in the following circumstances:

Change of the Economic Operator's legal status from:

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

2.4 TERMINATION OF THE DPS AGREEMENT

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

2.5 SUBCONTRACTING

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

2.6 RELIANCE ON CAPACITY OF OTHER ENTITIES

- 2.6.1 Where an Economic Operator has relied on the capacities of other entities to satisfy the selection criteria for entry on to the DPS:
- it shall, upon request by the Contracting Authority, demonstrate to the Contracting Authority that it will have at its disposal the resources necessary by providing a written undertaking from that other entity, in terms satisfactory to the Contracting Authority and duly evidenced, confirming that the entity in question will place the necessary resources at the disposal of the Economic Operator;
 - such entity must, when requested by the Contracting Authority, provide joint and several liability to the Contracting Authority for the performance and fulfilment of any sRFT Contracts (this may take the form of a guarantee, letter of reliance, such entity being a party to the sRFT Contract or other form of commitment as directed by the Contracting Authority).
- 2.6.2 An Economic Operator may only rely on the capacities of other entities where those entities will perform the Services for which these capacities are required.

2.7 TAX COMPLIANCE

- 2.7.1 All payments under an sRFT Contract are conditional upon the Economic Operator (and its subcontractor(s) where appropriate) being tax compliant.
- 2.7.2 The Economic Operator (and its subcontractor(s) where appropriate) must comply with the following:
- (a) at a minimum, the terms of the Department of Finance Circulars 43/2006 and 44/2006: Tax Clearance Procedures Public Sector Contracts (as may be amended, updated or re-published by the relevant body from time to time and as then apply at the time of the sRFT Contract) and;
 - (b) such other requirements and directions that an individual Contracting Authority may impose in order to satisfy itself that the Economic Operator (and its subcontractor(s) where appropriate) is tax compliant.

2.8 EMPLOYEES

- 2.8.1 The Economic Operator (and its subcontractor(s) where appropriate) must comply with all legal requirements in relation to PAYE and PRSI and must ensure that the rates of pay and conditions of employment, including pension contributions: (a) comply with all applicable laws; and (b) are at least as favourable as those for the relevant category of worker in any sectoral employment orders, employment regulation orders or registered employment agreements.

2.9 ENVIRONMENTAL & SOCIAL CONSIDERATIONS

- 2.9.1 In the performance of an sRFT Contract, the Economic Operator and its subcontractor(s) (if applicable) shall comply with all applicable obligations in the field of environmental, social and labour law that apply at the place where the Services are provided, that have been established by EU law, national law, collective agreements or by international, environmental, social and labour law listed in Schedule 7 of the Regulations.

2.10 STATUTORY OBLIGATIONS AND APPLICABLE LAW

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

2.11 FREEDOM OF INFORMATION ACTS

- 2.11.1 The HSE and the Contracting Authorities are subject to the Freedom of Information Act, 2014 and the Economic Operator acknowledges that information provided in response to a Supplementary Request for Tender may be considered confidential or commercially sensitive. The Economic Operator should consider if any information supplied by it in response to a Supplementary Request for Tender should not be disclosed because it is commercially sensitive or confidential and if this is the case, the Economic Operator should, when providing the information, identify same and specify the reasons for its commercial

sensitivity or confidentiality. The HSE and the Contracting Authorities shall have regard to such statement but shall not be bound by it. If the Contracting Authority and/or the HSE, in their discretion, are satisfied that the information should be properly regarded as being confidential or commercially sensitive, the information shall be kept confidential subject to the HSE's and/or the Contracting Authority's obligations under public procurement and freedom of information laws.

2.12 CANVASSING

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

2.13 CONFLICTS OF INTEREST AND REGISTRABLE INTEREST

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

2.14 CONFIDENTIALITY

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

2.15 PUBLIC HEALTH

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

2.16 CHILD PROTECTION & VETTING

- 2.16.1 Contractors Personnel shall strictly adhere to the Contracting Authorities child protection policy which will be included with the sRFT documents for the information of Contractors – if applicable.
- 2.16.2 Contractors Personnel may be subject to routine Garda Security Clearance procedures prior to being allowed entry onto certain sites, including but not limited to Local Authority, An Garda Síochána, Health

Service Executive, Department of Defence and Department of Education sites. Co-operation with these procedures is mandatory.

2.17 BREXIT

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

3.0 STAGE 2 - SUPPLEMENTARY REQUEST FOR TENDER

SUPPLEMENTARY REQUEST FOR TENDER AWARD CRITERIA		
Mini Competition Award Criteria	Sub Criteria	Range of Weightings
Technical Merit	Methodology	10-70%
	Human Resources	00-70%
	Project Plan	00-70%
Ultimate Cost	Ultimate Cost	20-80%

3.1 GENERAL

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

3.2 SUPPLEMENTARY REQUEST FOR TENDER PROCESS

- 3.2.1 Contracting Authorities may issue Supplementary Requests for Tender for the purpose of awarding sRFT Contracts throughout the Period of Validity of the DPS.
- 3.2.2 Supplementary Requests for Tender will be issued electronically via eTenders to all Economic Operators admitted to the DPS that have expressed an interest in receiving Supplementary Requests for Tender for their selected regions and lots.
- 3.2.3 The Economic Operator shall comply with all instructions and rules issued by the Contracting Authority in relation to the Supplementary Request for Tender.
- 3.2.4 Unless otherwise agreed, Economic Operators will be given a minimum of 10 days within which to submit a tender from the date a Supplementary Request for Tender is issued by the contracting authority.
- 3.2.5 Supplementary Requests for Tender will be evaluated in accordance with the provisions set out below.
- The Supplementary Request for Tender will include:
- (a) details in relation to the Contracting Authority's specific requirements in respect of the Services;
 - (b) the instructions and rules of the Contracting Authority in relation to the Supplementary Request for Tender; and
 - (c) the Contracting Authority's intention to award the sRFT Contract.

3.3 AWARD CRITERIA – SUPPLEMENTARY REQUEST FOR TENDER

- 3.3.1 Tenders submitted in response to a Supplementary Request for Tender will be evaluated in accordance with the Award Criteria outlined.
- 3.3.2 The Economic Operator that achieves the highest Total Marks will be deemed to have submitted the most economically advantageous tender and identified as the Preferred Tenderer. The remaining Economic Operators will be ranked in descending order based on their Total Marks.
- 3.3.3 **Price (Total Cost)**
- Total Cost criteria may comprise of one or more of the following:

- Daily costs;
- Travel;
- Systems;
- Costs imputed to externalities linked to the subject matter.

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

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

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

3.3.6 **Quality**

Quality criteria may comprise of one or more of the following:

- Technical
- Innovative characteristics;
- Organisation, qualification and experience of staff assigned to perform the Contract;
- After-sales service and technical assistance;
- Delivery conditions such as delivery date, delivery process and delivery period or period of completion.

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

3.3.8 The marking scale for Quality criteria is provided below:

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

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

3.4 INFORMATION/DOCUMENTATION TO BE PROVIDED PRIOR TO CONTRACT AWARD

- 3.4.1 In addition to the information and documentation to be provided when submitting a response to a sRFT, successful Economic Operators may be required to provide to the Contracting Authority for their review and approval, prior to formal award of the contract (if not already submitted), the specific information and/or documentation as requested by the Contracting Authority:
- 3.4.2 The Contracting Authority is not obliged to accept from the Economic Operator any information and/or documentation that it reasonably considers to be insufficient or otherwise unsatisfactory.

3.5 SRFT CONTRACT

- 5.5.1 If, following a Supplementary Request for Tender, the Economic Operator is awarded an sRFT Contract (either as the Preferred Tenderer or a substitute), the Economic Operator will enter into an sRFT Contract with the Contracting Authority.

3.6 NOTICE OF ADDENDA

- 3.6.1 The HSE reserves the right, where necessary for the efficient and compliant operation of the DPS, to update the Tender Documents and/or any information pertaining to the DPS by written notice via eTenders and any such notification will automatically become part of the Tender Documents.