

Framework Agreement for Construction Design Professional Services for the Pyrite Remediation Scheme

Agreement

THIS FRAMEWORK AGREEMENT is made on ...[date]..... between the Housing and Sustainable Communities Agency, 53 Mount Street Upper, Dublin 2] (the **Employer**), and a) with its registered office at] (the **Consultant**).

THE EMPLOYER AND THE CONSULTANT AGREE as follows:

Framework

- 1.1 The Consultant and other **Participants** are part of a framework for the Consultant and those other Participants to do construction design consultancy work for the Employer.
- 1.2 The framework shall be managed to support programme delivery, maintain consultant capacity, avoid over-reliance on any one Participant and ensure an appropriate spread of work across the panel, having regard to performance, capacity, quality and value for money.
- 1.3 If, during the **Framework Period**, defined in the attached Framework Rules, the Employer or any participating local authority needs construction design professional services in connection with the Pyrite Remediation Scheme, it may procure the work by awarding **Services Contracts** according to the attached Framework Rules. The Employer and participating local authorities may also procure the work in other ways, and the Employer does not guarantee that any work will be procured under this framework agreement.

2 Services Contracts

- 2.1 If the Consultant is selected for any work according to the attached Framework Rules, the Consultant agrees to enter a Services Contract in the terms established under this framework agreement with the Employer or participating local authority.
- 2.2 Services Contracts will be on the terms of the Standard Conditions of Engagement for Consultancy Services (Technical), published by the Department of Public Expenditure and Reform, as completed according to the attached Framework Rules.
- 2.3 Services Contracts awarded within the Framework Period may be for work that continues after that period.

3 Communications

- 3.1 The Consultant's contact person and e-mail address for communications with the Employer in relation to this framework agreement and Services Contracts is as stated

in the tenderer's tender submission for inclusion on the framework. The Consultant may change the e-mail address by notice given under this clause.

If that person (or any subsequent replacement) is no longer able to fulfil the role, the Consultant must promptly appoint a replacement, who must be a director or senior manager of the Consultant, and notify the Employer of the new contact person.

- 3.2 The Employer's contact person for communications with the Consultant in relation to this framework agreement is as stated in the tender documents for the framework. The Employer may change these details by notice [including e-mail] to the Consultant.

4 Tax Clearance Certificate

At all times during the Framework Period, the Consultant must hold a valid tax clearance certificate issued by the Revenue Commissioners.

5 Performance Measurement

- 5.1 On completion of each Services Contract, and other times requested by the Employer, the Consultant must collate and give the Employer the data necessary to demonstrate compliance with the performance indicators listed in the attached Performance Measurement Table.
- 5.2 The Employer may review the Consultant's performance according to the attached Framework Rules and Performance Measurement Table. The Consultant must provide any information required by the Employer for this purpose.
- 5.3 Performance review outcomes may be taken into account by the Employer when determining future invitations, call-offs, workload allocation, participation in mini-competitions and the distribution of work across the framework.

6 Key Personnel

- 6.1 The Consultant relied on the skills of key personnel (which may include subconsultants and key personnel of subconsultants) in its submission to become a Participant in the framework. Should any of these key personnel/subconsultants become unavailable to perform Services Contracts during the lifetime of the framework, the Consultant must notify the Employer in writing as soon as the Consultant becomes aware of the unavailability.
- 6.2 The Consultant may propose alternative personnel to the Employer subject to the proposed replacement personnel meeting the minimum education, professional qualification and experience criteria as set out in the Suitability Assessment Questionnaires used in establishing the Framework.
- 6.3 If, in the opinion of the Employer, replacement personnel do not meet the minimum criteria outlined in clause 6.2, the Employer will consider the replacement a Failure Level 1 event under the Performance Review and Termination section of the Framework Rules.
- 6.4 Any proposed replacement for key personnel shall require the prior written approval of the Employer and must be demonstrably equivalent or superior to the person originally

proposed, having regard to qualifications, experience, seniority, availability, role suitability and continuity of service delivery.

7 Subconsultants

- 7.1 The Consultant shall not appoint, replace, remove or materially alter the role of any nominated subconsultant without the prior written approval of the Employer.
- 7.2 The Consultant shall remain fully responsible for the acts, omissions, performance, quality, timeliness and outputs of all subconsultants, including Quantity Surveyor reports, tender assessments, estimates, cost advice and final account material.
- 7.3 Nominated subconsultants, including the Quantity Surveyor, shall attend Housing Agency tender, cost, performance, programme or technical meetings when reasonably requested by the Employer.

8 Confidentiality

- 8.1 The Consultant must not disclose to anyone
 - official information as defined in the Official Secrets Act 1963 or
 - information regarding individual dwellings or dwelling owners or occupants which are the subject of the Pyrite Remediation Scheme or
 - other information the Employer notifies the Consultant is confidentialexcept as necessary to perform the Consultant's obligations under this framework agreement or a Services Contract or to comply with the law.
- 8.2 The Consultant must destroy any information (including deleting electronic records using measures satisfactory to the Employer) regarding individual dwellings and dwelling owners and occupants following the completion of the service contract. The Consultant must confirm and demonstrate this destruction to the Employer's satisfaction.
- 8.3 The Consultant's obligations under this clause 7 and clause 8 are perpetual, and this clause survives termination of this framework agreement.
- 8.4 This clause 8 and clause 9 will also be a term of each Services Contract.

9 Data Protection and Data Security

- 9.1 **Personal Data** means personal data within the meaning of Data Protection Legislation that the Consultant, its personnel or subconsultants obtain, receive, access, store, use, disclose or otherwise process in connection with the Services.

- 9.2 **Data Protection Legislation** means all applicable data protection, privacy and information security laws, including the GDPR, the Data Protection Act 2018, any applicable implementing, supplementing or replacement legislation, and binding guidance or decisions of the Data Protection Commission or other competent authority.
- 9.3 The **Services** means the services to be performed by the Consultant under any Services Contracts.
- 9.4 The Consultant must comply with Data Protection Legislation in performing the Services. In respect of any Personal Data processed by the Consultant on behalf of the Employer in connection with the Services, the Employer will be the controller and the Consultant will be the processor, unless the Employer expressly confirms otherwise in writing.
- 9.5 The Consultant must keep records sufficient to demonstrate compliance with this clause 9 and Data Protection Legislation.
- 9.6 The Consultant must process Personal Data only on the Employer's documented instructions and must not, without the Employer's prior written consent—
- transfer Personal Data outside the European Economic Area or permit remote access to Personal Data from outside the European Economic Area, except in accordance with Data Protection Legislation and this clause 9 or
 - appoint, replace or permit any sub-processor, sub-consultant or other person or organisation to process or obtain Personal Data or
 - disclose Personal Data to anyone other than the Employer
- Any transfer of Personal Data outside the European Economic Area must comply with Chapter V of the GDPR and be supported by an adequacy decision, current European Commission standard contractual clauses or another lawful transfer mechanism approved by the Employer.
- The Consultant must limit access to Personal Data to personnel and approved sub-processors who need it for the Services and must ensure they are bound by appropriate confidentiality and data protection obligations.
- 9.7 The Consultant must maintain appropriate technical and organisational security measures for Personal Data, including where appropriate access control, encryption, secure storage and transfer, backups, resilience, vulnerability management, malware protection, incident response, staff training and secure disposal.
- 9.8 The Consultant must notify the Employer without undue delay and, where reasonably practicable, within 24 hours if—
- it receives any request from a data subject to exercise rights under Data Protection Legislation or

- it receives any communication, complaint, investigation notice, direction or enquiry from the Data Protection Commission, another supervisory authority, a court, a public authority or any third party in relation to Personal Data or data protection or
- it becomes aware of any advance in technology or methods of working that mean that the Consultant or the Employer should revise its security measures or
- it becomes aware of any personal data breach or any actual or suspected unauthorised access to, loss, destruction, alteration, disclosure, corruption, unavailability or compromise of Personal Data and must promptly provide the Employer with all reasonable co-operation and information required to respond, notify, investigate, mitigate harm, restore availability and prevent recurrence.

The Consultant must not respond to any such request or communication without the Employer's prior written approval, unless required by law.

- 9.9 The Consultant must assist the Employer with compliance with Data Protection Legislation, including security, breach notification, data subject rights, impact assessments, prior consultation and accountability obligations.
- 9.10 Upon the Employer's direction or upon completion or termination of the relevant Services, the Consultant must promptly—
- amend, restrict, return, transfer, anonymise or securely delete Personal Data as directed by the Employer
 - provide the Employer with a copy of all Personal Data held by the Consultant in the format and on the media reasonably specified by the Employer
 - provide the Employer with any data required by the Employer for assisting law enforcement.
 - certify in writing that deletion, return, anonymisation or transfer has been completed, except to the extent that retention is required by law.
- 9.11 The Consultant must provide information reasonably required to demonstrate compliance with this clause 9 and must permit reasonable audits or inspections by the Employer or its authorised representatives.
- 9.12 Any approved sub-processor must be bound by written data protection and security obligations no less protective than this clause 9, and the Consultant remains liable for its acts and omissions.
- 9.13 To the extent that the Consultant has access to the Employer's computer systems in performing the Services, the Consultant must not (and must ensure that the Consultant's personnel do not) knowingly or recklessly introduce, by any medium, any computer virus (being any malware, undocumented malicious data, code, programme or other internal component (e.g. computer worm, computer time bomb or similar component), intended or designed to damage, destroy, alter or disrupt any computer programme, firmware or hardware or intended or designed to, in any manner, reveal, damage, destroy, alter or disrupt any data or other information which can be detected

using good industry standard anti-computer virus software and procedures) into those systems. The Consultant must use good industry standard computer virus scanners (updated with the then-most current computer virus signatures and data sets) to scan all such media immediately prior to introducing it to the Employer's computer system.

- 9.14 The Consultant warrants that material it provides to the Employer will be free from known malware at delivery.
- 9.15 If the Consultant breaches this clause 9, or if a personal data breach or security incident occurs, the Consultant must co-operate with the Employer to investigate, contain, remedy and reduce adverse effects.

10 Conflict of Interests

- 10.1 The Consultant must disclose any conflict of interest or potential conflict of interest to the Employer as soon as the conflict becomes known to the Consultant. In particular, if the Consultant, or a sub-consultant, was a member of a design team which designed a housing scheme subject to remediation under this Framework Agreement, the Consultant must inform the Employer. The Employer shall, in its absolute discretion, decide on the appropriate course of action which may include:

- exclusion of the Consultant from participating in the call-off for services contracts for that particular housing scheme
- terminate the framework agreement with the Consultant
- no action

11 Termination

- 11.1 The Employer may terminate this framework agreement by written notice to the Consultant:

- if a Services Contract with the Consultant is terminated or
- according to the attached Framework Rules or
- if the Consultant breaks this framework agreement or
- if any statement made by the Consultant in connection with the procedure by which this framework agreement was awarded to the Consultant was untrue when made or (in a respect considered by the Employer to be material) subsequently ceases to be true or
- without cause, if the Employer also terminates its agreements with the other Participants in the framework.

- 11.2 The Consultant must inform the Employer if, as a result of any event or change in circumstances, the Consultant ceases to satisfy any of the minimum suitability criteria for award of this framework agreement.

11.3 Termination of this framework agreement does not affect any Services Contract already entered into.

11.4 The Consultant is not entitled to any payment because this framework agreement has been terminated.

12 **Limitation on liability**

Except for a breach of clauses 8 or 9, neither the Consultant nor the Employer has any liability to the other under or in connection with this framework agreement for breach of contract, negligence, breach of duty or anything else. This does not affect their liability under any Services Contract.

13 **This framework agreement**

13.1 The Consultant may not assign rights under this framework agreement.

13.2 This framework agreement, the documents referred to in it, and any Service Contracts entered into under it, are the entire agreement between the Employer and the Consultant about the framework and the work to be done under it.

13.3 This framework agreement can only be changed in writing, signed by authorised representatives of the Employer and the Consultant.

13.4 This framework agreement is governed by and to be construed according to Irish law.

SIGNED by the Employer and the Consultant on the date at the top of this framework agreement

Signed on behalf of the Employer

.....
[name]
[title]

Signed on behalf of the Consultant

.....
[name]
[title]

Framework Rules

1 The Framework

- 1.1 The Employer has established a framework for the procurement of construction design professional services as specified in the tender documents and the Employer's written notification to the Consultant of its inclusion on the list of Participants in the framework. The framework consists of a **Framework Agreement** between the Employer and each of the **Participants**. Each Framework Agreement incorporates these rules.
- 1.2 If, during the Framework Period, the Employer needs construction design professional services as described in rule 1.1 above, the Employer may procure it by awarding Services Contracts according to these rules. The Employer may also procure the Services in other ways and does not guarantee that any work will be procured under these rules.
- 1.3 The **Framework Period** begins on and ends **two calendar years** after this date or, at the sole discretion of the Employer, four calendar years after this date (four calendar years maximum).

2 Participants and Clients

- 2.1 The Participants are as listed below, in the order in which they were ranked by the application of the award criteria in the tender evaluation. The maximum number of Participants is **eight**.
- 2.2 The framework shall be managed to support programme delivery, maintain capacity across the panel, avoid over-reliance on any one Participant and ensure an appropriate spread of work, having regard to performance, capacity, quality, responsiveness and value for money.

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- 2.3 However, a Participant whose Framework Agreement has been terminated will no longer be considered a Participant under these rules, and a Participant whose

participation has been excluded under rule 4.2 will not be considered a Participant for the duration of the exclusion.

- 2.4 The Clients are the Employer and those local authorities participating in the framework.

3 Call-off

- 3.1 Framework allocation protocol: in managing the framework and allocating work, the Employer may have regard to workload balance, available capacity, past performance, quality of outputs, responsiveness, cost-control performance, named personnel availability, nominated subconsultant availability and overall programme requirements.
- 3.2 Capacity declaration: prior to award of any Services Contract, the Participant shall submit, where requested, a capacity statement confirming current live workload, named staff availability, Quantity Surveyor availability, PSDP availability, nominated subconsultant availability and ability to meet the programme requirements for the proposed assignment.
- 3.3 Right to bypass: the Employer may bypass a Participant for a call-off where it reasonably considers that the Participant lacks sufficient capacity, has unresolved performance concerns, cannot provide the required named personnel or subconsultants, or where allocation would create a risk to programme delivery, quality, responsiveness or value for money.
- 3.4 Call-off by Competition (mini-competition)
- 3.4.1 When a Client decides to procure work under this rule 3.1, the Client (or the Employer) will send each Participant a written invitation to tender.
- The invitation will be sent by email to each Participant's current email address as given in or notified under the Framework Agreement.
- The invitation will include (or refer to) the relevant schedules A and B particulars to the Standard Conditions of Engagement for Consultancy Services (Technical) and include details of the required services.
- 3.4.2 The invitation will fix a time limit for Participants to send in tenders taking account of such factors as the complexity of the subject-matter of the Services Contract and the time needed to send in tenders.
- 3.4.3 The award process for Services Contracts tendered under this rule 3.1 will be conducted in accordance with these rules and any procedures stated in the invitation to tender.
- 3.4.4 Participants wishing to be considered for a Services Contract must submit a tender complying with the invitation to tender.
- 3.4.5 Tenders must propose resources (including key personnel) that are consistent with the Participant's tender proposal (including the suitability assessment questionnaire) for its

Framework Agreement. Tendered hourly rates must not exceed the maximum hourly rates tendered by the Participant to gain entry on to the framework.

3.4.6 The award criteria for Services Contracts awarded under a procedure initiated under this Rule 3.1 will be as follows (with the range of weighting given in brackets):

- a) price [40 – 100%]
- b) resources (hours devoted to the project) [0 - 70%] - the total hours for stage services excluding travel time and meetings
- c) project assessment (project specific issues) [0 - 70%].

The above criteria are not listed in order of importance. The Client may attach different weightings to them for different Services Contracts, depending on the service requirement, and will indicate the weightings in the invitation to tender.

3.5 For complex, higher-risk or programme-critical projects, the Client may apply appropriate quality-focused weightings so that price does not dominate the assessment. Relevant quality considerations may include methodology, team composition, named personnel, capacity, programme approach, tender-reporting approach, cost-control approach and relevant past performance under the framework, where lawfully applicable and stated in the invitation to tender.

3.6 Call-off based on the original call to competition (Participant ranking)

3.6.1 When a Client decides to procure work under this rule 3.6, the Client (or the Employer) will send the highest ranked Participant a written invitation to confirm that it has the resources to perform the services in the timescales outlined in the invitation.

The invitation will be sent by email to the Participant's current email address as given in, or notified under, the Framework Agreement.

The invitation will include (or refer to) the relevant schedules A and B particulars to the Standard Conditions of Engagement for Consultancy Services (Technical), and include details of the required services.

3.6.2 The invitation will fix a time limit for the Participant to confirm that it has the resources to perform the services in the timescales outlined in the invitation.

3.6.3 Tenders must propose resources (including key personnel) that are consistent with the Participant's tender proposal (including the suitability assessment questionnaire) for its Framework Agreement. Proposed hourly rates must not exceed the maximum hourly rates tendered by the Participant to gain entry on to the framework.

3.6.4 If the Client is not satisfied with the Participant's proposal, the Client may

- a) ask the next highest ranked Participant to submit a tender under this rule 3.6 or
- b) procure the services using call-off by competition under rule 3.4.

3.6.5 A Service Contract awarded under this rule 3.6 will provide for payment on the basis of the time charges tendered in the Participant's tender for the framework agreement.

4 Performance Review and Termination

- 4.1 On completion of each Services Contract, the Participant concerned must collate and provide to the Employer the information required for the Employer to review that Participants' performance according to the attached Performance Measurement Table. The Employer may also request that the Participant collate and provide to the Employer this information during the term of a Service Contract. The Employer may review Participants' performance of their Services Contracts and Framework Agreements at the end of each year of the Framework Period (or at any time during the Framework Period) according to the Performance Measurement Table below.
- 4.2 If a Participant has reached 'Failure Level 1' for any indicator according to the Performance Measurement Table below, the Employer may give that Participant a written warning notice and may exclude that Participant from further call-offs until the Participant has demonstrated to the Employer's satisfaction that it has implemented steps to redress the problem.
- 4.3 Where the Employer identifies performance concerns, the Participant shall submit a corrective action plan within five working days, or such other period specified by the Employer. The Employer may withhold further allocations until the corrective action plan has been implemented to the Employer's satisfaction.
- 4.4 If a Participant
- receives two warning notices during the Framework Period or
 - has reached 'Failure Level 2' for any indicator according to the attached Performance Measurement Table
- the Employer may terminate that Participant's Framework Agreement.
- 4.5 The Employer may give each Participant details of the results of its annual performance review and of the average results for each item and the average overall score.

Performance Measurement Table

No.	Employer's Objective	Indicator	Measurement Period	Failure Level 1 (Rule 4.2)	Failure Level 2 (Rule 4.4)
1.	Timely delivery of consultancy service	Meeting the performance periods for service delivery	At end of each Staged Services, (as per Schedule B of relevant Mini-Competition), on Certification of Date of Substantial Completion of Works Contracts and at issue of Defects Certificate for Works Contracts	Substantive delays in delivery of Staged Services, Certification of Substantial Completion or Defects Certificate	Continuous non-delivery of service
2.	Quality of service	Compliance with the Description of Services and associated published guidance	At end of each Staged Services, (as per Schedule B of relevant Mini-Competition), on Certification of Date of Substantial Completion of Works Contracts and at issue of Defects Certificate for Works	Substantive non-delivery of service(s) in accordance with Description of Services	Substantive non-delivery of service(s) in accordance with Description of Services at Certification of Substantial Completion and issue of Defects Certificate
3.	Quality of service	Substantiated complaint to the Employer from home owner or occupant regarding	At any point during service delivery	More than 1 complaint in any 6 month period	More than 3 complaints in any 6 month period

		behaviour or actions of the Participant in delivering the service(s)			
4.	Quality of service	Replacing loss of key personnel relied upon at Prequalification stage with suitable replacements	At any point during service delivery	Replacement with personnel who do not achieve minimum prequalification criteria	Failure to nominate suitable replacement for more than 3 months
5.	Value for money	Failure to adhere to maximum hourly rates	At any point during Service delivery	N/A	Use of hourly rates in excess of maximum hourly rates
6.	Quality of service	Tender report quality, including clarity of recommendation, comparison against estimate, rate benchmarking, preliminaries, risk allowances, value-for-money analysis and PRB-ready wording.	At each tender recommendation on stage	Report requires substantive amendment before Employer/PRB consideration	Repeated failure to provide tender reports suitable for Employer/PRB consideration
7.	Value for money	Cost-control performance, including estimate accuracy, management of tender variances, abnormal rates, variations, compensation	At tender, construction and final account stages	Substantive unexplained variance, weak QS assessment or late cost reporting	Repeated weak cost control or failure to provide adequate QS assessment

		events and final account reporting.			
8.	Programme delivery	Responsiveness, site attendance, record keeping, key-stage inspections, handback attendance and timely issue of minutes/certification.	During each Services Contract	Substantive failure to attend, record, respond or certify in accordance with programme needs	Repeated or material failure impacting programme delivery or homeowner handback
9.	Consultant team management	Performance and availability of nominated subconsultants, including QS, PSDP and specialist skills providers.	During each Services Contract	Subconsultant availability or output quality causes delay or rework	Repeated subconsultant failure or unapproved substitution

Note: The Employer decides what is a substantive delay, taking into account the volume of work included within any Service Contract. However, a delay of 10 working days in the delivery of any milestone (e.g. inviting tenders from contractors) will be considered a substantive delay. Where substantial completion is delayed on a remediation project, the Employer will review the performance of both the Participant and the Contractor to determine what contribution, if any, the Participant made to the delay.

The Employer may also take performance review outcomes into account when determining future invitations, call-offs, workload allocation, participation in mini-competitions or the appropriate spread of work across the framework.