

**Framework Agreement for Cost Consultancy, Quantity Surveying & Advisory
Services
for the Croí Cónaithe (Cities) 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 **Cost Consultant**).

THE EMPLOYER AND THE COST CONSULTANT AGREE as follows:

1 Framework

- 1.1 The Cost Consultants, referred to as **Participants**, are part of a Framework to provide cost consultancy & advisory services for the Employer.
- 1.2 If, during the **Framework Period**, defined in the attached Framework Rules, the Employer requires cost consultancy & advisory services in connection with the Croí Cónaithe (Cities) Scheme, it may procure the work by awarding **Services Contracts** according to the attached Framework Rules. The Employer 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 Cost Consultant is selected for any work according to the attached Framework Rules, the Cost Consultant agrees to enter a Services Contract in the terms established under this Framework Agreement with the Employer.
- 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 Cost 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 Cost 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 Cost Consultant must promptly appoint a replacement, who must be a director or senior manager of the Cost Consultant and notify the Employer of the new contact person.

- 3.2 The Employer's contact person for communications with the Cost 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 Cost Consultant.

4 Tax Clearance Certificate

At all times during the Framework Period, the Cost 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 Cost 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 Cost Consultant's performance according to the attached Framework Rules and Performance Measurement Table. The Cost Consultant must provide any information required by the Employer for this purpose.

6 Key Personnel

- 6.1 The Cost Consultant relied on the skills of key personnel in its submission to become a Participant in the Framework. Should any of these key personnel become unavailable to perform Services Contracts during the lifetime of the Framework, the Cost Consultant must notify the Employer in writing as soon as the Cost Consultant becomes aware of the unavailability.
- 6.2 The Cost 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.

7 Confidentiality

- 7.1 The Cost Consultant must not disclose to anyone

- official information as defined in the Official Secrets Act 1963 or
- other information the Employer notifies the Cost Consultant is confidential

except as necessary to perform the Cost Consultant's obligations under this Framework Agreement or a Services Contract or to comply with the law.

- 7.2 The Cost Consultant's obligations under this clause 7 and clause 8 are perpetual, and this clause survives termination of this Framework Agreement.

7.3 This clause 7 and clause 8 will also be a term of each Services Contract.

8 **Data Protection and Data Security**

8.1 **Personal Data** means personal data (within the meaning given by the Data Protection (Amendment) Act 2003) that the Cost Consultant, its personnel or subconsultants obtain in connection with the Services.

8.2 **Data Protection Legislation** means the Data Protection Acts 1988 and 2003, Directive 95/46/EU and any other EU regulations, directives, decisions or guidance on data protection or privacy and guidance issued by the Data Protection Commissioner.

8.3 The **Services** means the services to be performed by the Cost Consultant under any Services Contracts.

8.4 The Cost Consultant must comply with the registration requirements and data protection principles applicable to it under the Data Protection Legislation in performing the Services. In respect of any Personal Data provided by the Employer to the Cost Consultant and processed by the Cost Consultant in connection with the Services, the Cost Consultant will be the Data Processor and the Employer will be the Data Controller, as those terms are defined in the Data Protection Legislation.

8.5 The Cost Consultant must maintain proper records of Personal Data.

8.6 The Cost Consultant must process, disclose or obtain Personal Data only to the extent necessary to perform the Services and then only when acting on and subject to the Employer's directions. In particular, the Cost Consultant must not without the Employer's prior written consent—

- transfer Personal Data outside of Ireland (including transfer via electronic media or other electronic means) or
- permit any sub-consultant or other person (not employed by the Cost Consultant) or organisation to process or obtain Personal Data or
- disclose Personal Data to anyone other than the Employer

and, if Personal Data is transferred from a country within the European Economic Area to a country outside the European Economic Area, the Cost Consultant must ensure that the Personal Data are adequately protected in accordance with Article 25 of EU Directive 95/46/EC. In order to achieve this, the Cost Consultant must rely on the Standard Contractual Clauses for the Transfer of Personal Data to Processors established in Third Countries, dated 5 February 2010 (2010/87/EU) as amended from time to time (the **EU Model Clauses**) for the transfer of Personal Data from a data controller to a data processor.

8.7 The Cost Consultant must ensure that access to Personal Data is limited to those of its employees who need access to the Personal Data in connection with providing the Services and only to those parts of the Personal Data as is strictly necessary for performance of that employee's duties in connection with the Services.

- 8.8 The Cost Consultant must ensure that all its employees are informed of the confidential nature of the Personal Data and have been sufficiently trained to comply with the Cost Consultant's duties under this Framework Agreement and the law and their own personal duties and obligations under the law. The Cost Consultant must also take steps to ensure compliance with this clause by any person who has access to the Personal Data provided by the Employer.
- 8.9 The Cost Consultant must implement and maintain appropriate (having regard to the state of technological development, the cost of implantation, the harm that may result from breach of measures and the nature of the Personal Data to be protected) technical and organisational security measures against unauthorised access to, or unauthorised alteration, disclosure or destruction of, Personal Data and against all other unlawful forms of processing and must maintain proper records of all training carried out by it with regard to technical and organisational data security measures. The Cost Consultant must promptly implement any direction of the Employer to improve the technical and organisational measures.
- 8.10 The Cost Consultant must promptly notify the Employer if—
- it receives an access, modification, or erasure request from a Personal Data subject or
 - it receives any communication or notification from the Data Protection Commissioner or from any third party in relation to the Personal Data or to data protection or
 - it becomes aware of any advance in technology or methods of working that mean that the Cost Consultant or the Employer should revise its security measures or
 - any Personal Data is lost or destroyed or becomes damaged, corrupted or unusable
- and must provide the Employer with full co-operation and assistance in relation to any request, communication or notification received under this sub-clause.
- 8.11 Upon the Employer's direction, the Cost Consultant must promptly—
- amend, transfer, or delete Personal Data
 - provide the Employer with a copy of all Personal Data held by the Cost 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.
- 8.12 The Cost Consultant must permit persons authorised by the Employer access to all relevant premises, systems, personnel, records and information of the Cost Consultant during normal working hours for the purpose of inspecting, testing, and auditing the technical and organisational Personal Data security measures operated by the Cost Consultant.
- 8.13 To the extent that the Cost Consultant has access to the Employer's computer systems in performing the Services, the Cost Consultant must not (and must ensure that the Cost

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 Cost 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.

8.14 The Cost Consultant warrants that any data it provides to the Employer will at the date of delivery be free of computer viruses.

8.15 If the Cost Consultant fails to comply with sub-clauses 8.11 to 8.13, the Cost Consultant must co-operate with the Employer (without prejudice to the Employer's other rights and remedies) to the extent reasonably required to reduce the adverse effects on the Employer of the computer virus, including the effects of any loss of operational efficiency and/or data loss.

9 Conflict of Interests

9.1 The Cost Consultant must disclose any conflict of interest or potential conflict of interest to the Employer as soon as the conflict becomes known to the Cost Consultant. The Employer shall, in its absolute discretion, decide on the appropriate course of action which may include:

- exclusion of the Cost Consultant from participating in the call-off for services contracts for that particular scheme
- terminate the Framework Agreement with the Cost Consultant
- no action

10 Termination

10.1 The Employer may terminate this Framework Agreement by written notice to the Cost Consultant:

- if a Services Contract with the Cost Consultant is terminated or
- according to the attached Framework Rules or
- if the Cost Consultant breaks this Framework Agreement or
- if any statement made by the Cost Consultant in connection with the procedure by which this Framework Agreement was awarded to the Cost 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.

- 10.2 The Cost Consultant must inform the Employer if, as a result of any event or change in circumstances, the Cost Consultant ceases to satisfy any of the minimum suitability criteria for award of this Framework Agreement.
- 10.3 Termination of this Framework Agreement does not affect any Services Contract already entered into.
- 10.4 The Cost Consultant is not entitled to any payment because this Framework Agreement has been terminated.

11 Limitation on Liability

Except for a breach of clauses 7 or 8, neither the Cost 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.

12 This Framework Agreement

- 12.1 The Cost Consultant may not assign rights under this Framework Agreement.
- 12.2 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 Cost Consultant about the Framework and the work to be done under it.
- 12.3 This Framework Agreement can only be changed in writing, signed by authorised representatives of the Employer and the Cost Consultant.
- 12.4 This Framework Agreement is governed by and to be construed according to Irish law.

SIGNED by the Employer and the Cost Consultant on the date at the top of this Framework Agreement

Signed on behalf of the Employer

.....
[name]
[title]

Signed on behalf of the Cost Consultant

.....
[name]
[title]

Framework Rules

1 The Framework

- 1.1 The Employer has established a Framework for the procurement of cost consultancy & advice services as specified in the tender documents and the Employer's written notification to the Cost 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 requires cost consultancy & advice 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 **five**.

1.
2.
3.
4.
5.

- 2.2 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.

3 Call-Off

3.1 Call-off based on the original call to competition (Participant ranking/Cascade)

- 3.1.1 When the Employer decides to procure work under this rule 3.1, 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.

- 3.1.2 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 and has no conflict of interest with the proposed service.

- 3.1.3 Tenderers 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.

- 3.1.4 If the Employer is not satisfied with the Participant's proposal or if there is a conflict of interest, the Employer may

- a) (i) ask the next highest ranked Participant to submit a tender under this rule 3.1
- (ii) if not satisfied with the next highest ranked Participant's proposal as per rule 3.1.4 a) (i) above, ask the next highest ranked Participant and so on until the Employer is satisfied or the list is exhausted

or

- b) procure the services using call-off by competition under rule 3.2.

- 3.1.5 A Service Contract awarded under this rule 3.1 will provide for payment on the basis of the time charges tendered in the Participant's tender for the Framework Agreement.

- 3.1.6 It is currently the intention of the Employer to award Service Contracts on a cascading basis, as described under this Rule 3.1, based on the results of this tender competition.

3.2 Call-off by Mini-Competition

- 3.2.1 When the Employer decides to procure work under this rule 3.2, 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.

- 3.2.2 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.
- 3.2.3 The award process for Services Contracts tendered under this rule 3.2 will be conducted in accordance with these rules and any procedures stated in the invitation to tender.
- 3.2.4 Participants wishing to be considered for a Services Contract must submit a tender complying with the invitation to tender.
- 3.2.5 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.
- 3.2.6 The award criteria for Services Contracts awarded under a procedure initiated under this Rule 3.2 will be as follows (with the range of weighting given in brackets):
- a) price [60 – 100%]
 - b) resources (hours devoted to the project) [0 - 40%] - the total hours for stage services excluding travel time and meetings

The above criteria are not listed in order of importance. The Employer 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.

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 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.

- 4.4 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 4.3)
1.	Timely delivery of consultancy service	Meeting the performance periods for service delivery	At end of each Staged Services, (as per Schedule B of the relevant tender)	Substantive delays in delivery of Staged Services as per Description of Services	Continuous non-delivery of service
2.	Quality of service	Compliance with the Description of Services	At end of each Staged Services, (as per Schedule B of the relevant tender)	Substantive non-delivery of service(s) as per Description of Services	Substantive non-delivery of service(s) in accordance with Description of Services
3.	Quality of service	Replacing loss of key personnel relied upon at tendering 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
4.	Resourcing of service	The personnel assigned to the project not as qualified & experienced as the proposed team listed in the tenderer's response to Quality Criteria A	At any point during service delivery	Personnel carrying out service not as qualified & experienced as proposed in tender submission.	Continued failure for a 3 month period after notification of Failure Level 1
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

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 will be considered a substantive delay.