Comhairle Contae Fhine Gall
Fingal County Council

Single-Operator Framework Agreement

Terms and Conditions

for the Supply of New Backhoe Excavators and Associated Attachments for Fingal County Council	
FCC139-26	
PARTIES	
Contracting Authority:	**Fingal County Council**
Framework Operator:	
Date:	

Note: This document is an indication of the form of agreement which Fingal County Council intends to conclude with the successful economic operator arising from this competitive process. Economic Operators are not required to submit a signed copy of these terms as part of their tender but should indicate any objections which they may have to these terms in the body of their tender.

Subject to contract / contract denied

Framework Agreement with a Framework Member in a Single-Operator Framework for the Supply of New Backhoe Excavators and Associated Attachments for Fingal County Council

Parties

Fingal County Council of County Hall, Main Street, Swords, Co Dublin

(Hereinafter referred to as the 'Contracting Authority)

AND

[insert legal name of Framework Member] of [insert address of Framework Member]

(Hereinafter referred to as the "Framework Member" or "Member")

Background

The Contracting Authority has conducted a tender competition in accordance with Directive *2014/24/EU and all applicable procurement rules for the establishment of a framework agreement (within the meaning of the aforesaid directive) with a single economic operator. The tender competition under the Open procedure was advertised in the Official Journal of the European Union on [insert date] with a reference number of OR on the eTenders website on [insert date] (the 'Contract Notice').

Definitions

"Call Off Contract" means any contract awarded on foot of this framework agreement.

"Call Off Request" means the request issued by the Contracting Authority to a Framework Member instructing that Framework Member, under the Cascade method, to provide the required Supplies.

"Commencement Date" means after [insert date].

"Competitive Procedure" means the process leading to the establishment of this Framework Agreement and/or award of a Contract on foot of this Framework Agreement.

"Contract" means a contract which falls within the scope of this Framework Agreement and for which the Contracting Authority conducts a Competitive Procedure under the terms of this Agreement;

"Framework Agreement" means these terms and conditions, including any Schedules hereto;

"Framework Member" means the supplier or service provider formally appointed to the Framework Agreement on foot of a Competitive Procedure.

"Framework Period" means the period in years set out in Clause 2.2;

"Party" means the Contracting Authority and/or the Framework Members;

"Request for Tender" means the document issued by the Contracting Authority on [insert date], with the aim of establishing the framework agreement.

"Other Conditions" means for example Contract Terms and Conditions, Special Terms and Conditions and/or Service Level Agreement as may be appropriate;

"Supplementary Request for Tender" means an invitation from the Contracting Authority for the Framework Member to respond to a specific requirement which was not specifically covered under the original Request to Tender, but does fall within the Scope of the Framework Agreement

"Supplementary Tender" means the submission of the Framework Member in response to a Supplementary Request for Tender.

"Tender" means the submission by the Framework Members in response to the Request for Tender, together with any clarifications, additions or amendments accepted by the Contracting Authority.

1. Appointment of Framework Member

1.1 The Framework Member accepts its appointment as the Framework Operator to provide Supplies, if instructed to do so from time to time by the Contracting Authority, under the terms and conditions of this Framework Agreement.

1.2 This Framework Agreement sets out, amongst others, the award procedure for Supplies which may be required by the Contracting Authority, the main terms and conditions for any Call-Off Contract, and the obligations of the Framework Member during and after the Framework Period.

1.3 Membership of this Framework does not entitle the Member to be consulted in respect of, or awarded any contract during, the Framework Period. The Contracting Authority may at its sole discretion choose not to enter any contracts falling within the scope of this Framework Agreement, or to terminate the Agreement in accordance with Section 9.

1.4 While this Framework Agreement will in general form the basis for the award of contracts during the Framework Period, the Contracting Authority reserves the right to operate outside the terms of the Framework Agreement, for example if it considers that it is not achieving value-for-money or the nature of the contract would benefit from a separate competitive process.

2. Period of Framework Agreement

2.1 The Framework Agreement shall take effect on the Commencement Date.

2.2 The Framework Agreement will be for a period of 4 years.

For the avoidance of doubt, the Contracting Authority confirms that the period of any Contracts awarded under this Framework Agreement may extend beyond the date of expiry of the agreement.

3. Scope of Framework Agreement

3.1 This Framework Agreement relates to the provision of New Backhoe Excavators and Associated Attachments for Fingal County Council.

3.2 The maximum value of the framework over the life of the framework will not exceed €800,000.00 excluding VAT.

It should be emphasized that this value is not a guarantee of any spend over the life of the Framework Agreement.

4. Procedure for the Award of Call Off Contracts

4.1 Contracts awarded under the framework may be by direct appointment to the Framework Member.

4.2 Where the terms of the original tender competition did not specifically address the needs relating to a specific contract which falls within the scope of the framework the Contracting Authority will invite a Supplementary Tender from the Framework Member.

4.3 On each occasion that a Contract is awarded to a Framework Member pursuant to this Clause, the Contracting Authority and the successful Framework Member shall enter into a contract in accordance with the Terms and Conditions, as well as any Special Terms and Conditions that will be set out in the invitation to provide a Supplementary Tender.

5. Notification of the Award of a Call Off Contract

5.1 When the Contracting Authority has made an award decision pursuant to Clause 4, the Contracting Authority will issue a notification in writing to the Framework Member.

6. Fixed Conditions for Contracts

6.1 Prices

The maximum price chargeable by the Framework Member during the initial 12 Months of the Framework Agreement is as set out in Schedule 1. Price changes, if applicable, will be in line with the Consumer Price Index or by any method agreed between the various parties.

6.2 Contract Manager

The Framework Member must nominate a contract manager to liaise with the Contracting Authority to ensure the successful operation of this Framework Agreement.

6.3 Personnel

The resources nominated by the Framework Member must be those used in the award of any contract under the framework and as detailed in Schedule 2.

Regarding personnel assigned to deliver services under the framework, where the successful Framework Member proposes to replace a nominated person, the proposed replacement

person must be of equal or better qualifications and expertise than that of the original nominated person(s). Any replacements must be notified in writing to the Contracting Authority and must be agreed by the Contracting Authority prior to their commencement of any work under the Framework Agreement.

6.4 Service Level Agreement

Contracts under this framework agreement may be subject to the application of a Service Level Agreement which will outline the Key Performance Indicators applicable to the contract. The applicable Service Level Agreement is contained in Schedule D of the applicable Goods/Services Contract at Schedule 4.

7. Obligations of Framework Member

7.1 Conflict of Interest

The Framework Member is required to inform the Contracting Authority of any conflict of interest of which it becomes aware during the period of the Framework Agreement. Any registrable interest involving the Framework Member and the Contracting Authority or employees of the Contracting Authority or their relatives must be communicated to the Contracting Authority immediately.

7.2 Interference and Inducement to Purchase

Any effort by the tenderer to unduly influence the Contracting Authority, relevant agency personnel or any other relevant persons or bodies in the process of examination, clarification, evaluation and comparison of tenders and in decisions concerning the Award of Contract shall have their tender rejected. The presumptions (including as to any gift, consideration or advantage) and other provisions under the Criminal Justice Act 2018 (Ireland), and all other measures for the time being governing the subject-matter in any applicable jurisdiction, shall be applicable.

7.3 Insurances

Each Framework Member is required to maintain, at a minimum, the levels and forms of insurance set out in the tender documents and as detailed in Schedule 3 of this Framework Agreement.

7.4 Tax Clearance

The Framework Member shall maintain a tax clearance status as declared by the Irish Revenue Commissioners throughout the Framework Period and the period of any Contract being executed under the Framework Agreement (whichever is longer).

7.5 Assignment

The Framework Member shall not assign the benefit of its appointment under this Framework Agreement, or under any Contract, or any part thereof, unless with the prior written agreement of the Contracting Authority.

7.6 Data Protection

The Framework Member must operate fully in compliance with all relevant Data Protection legislation and the Parties acknowledge that for the purposes of the Data Protection Laws, the Contracting Authority is the Data Controller and the Framework Member is the Data Processor in respect of Data which is Personal Data.

7.6 Confidentiality/Freedom of Information

7.6.1 The Framework Member must not disclose to anyone information that the Contracting Authority notifies the Framework Member is confidential except as necessary to perform the Framework Member's obligations under this Framework Agreement or a Call-Off Contract or to comply with the law.

7.6.2 The Framework Member undertakes to comply with all reasonable directions of the Contracting Authority with regard to the use and application of all and any confidential information and shall comply with the Confidentiality Agreement as set out.

7.6.3 The Framework Member acknowledges that the Contracting Authority is subject to the Freedom of Information Act 2014, as amended. In the event of the Contracting Authority receiving a request for information related to this Framework Agreement, the Contracting Authority shall consult with the Framework Member in respect of the request. The Framework Member shall identify any information that is not to be disclosed on grounds of commercial sensitivity and shall state the reasons for this sensitivity. The Contracting Authority will consult the Framework Member about this commercially sensitive information before making a decision on any Freedom of Information request received. The final decision on disclosure rests with the Office of the Information Commissioner and ultimately, the Irish courts.

7.7 Audit

The Framework Member shall keep and maintain until a minimum of six (6) years after the expiry of the Framework Period, full and proper records and all documents relating to the performance of its obligations under this Framework Agreement and shall allow the Contracting Authority and any auditors access to such records.

7.8 Publicity

Unless otherwise directed by the Contracting Authority, the Framework Member shall not make any press announcements or publicise this Framework Agreement in any way without the Contracting Authority's prior written consent.

7.9 Performance Review

The Contracting Authority and Framework Member shall liaise on a regular basis to address any issues arising which may impact on the performance of this Agreement and/or a Call-Off Contract to agree milestones, compliance schedules and operational protocols as required by the Contracting Authority from time to time. If requested in writing by the Contracting Authority, the Framework Member shall meet formally with the Contracting Authority to report on progress and shall comply with all written directions of the Contracting Authority.

8. Termination of Appointment

8.1 This Agreement may be terminated by the Contracting Authority, without liability for compensation or damages, by serving three (3) months written notice to the Framework Member. This Agreement may be terminated by the Framework Member, without liability for compensation or damages, by serving six (6) months written notice to the Contracting Authority.

8.2 The Contracting Authority also reserves the right to terminate the framework agreement in the following circumstances:

8.2.1 Where improved value for money in terms of cost and/or quality is available through an alternative public procurement process established by the sector or at Government level.

8.2.2 Where the business needs of the organisation have changed, and the framework no longer meets those needs and/or where the budget available for the requirements defined by the framework agreement has substantially altered (increased or decreased).

8.3 Without prejudice to any other rights or remedies to which it may be entitled, the Contracting Authority shall be entitled to terminate the appointment of the Framework Member forthwith and without liability by giving notice at any time if:

8.3.1 The Member commits a material breach of any term or condition of this Framework Agreement, or a Contract concluded under the Framework Agreement;

8.3.2 The Member fails to perform any obligation or responsibility under this Agreement, or a Contract concluded under the Framework Agreement, and, if such breach is capable of being remedied, fails to remedy the breach within fourteen (14) days of notice given by the Contracting Authority requiring the Member to do so;

8.3.3 The Member convenes a meeting for the purposes of, or proposes to enter into any arrangement or composition for the benefit of its creditors;

8.3.4 The Member is unable to pay its debts within the meaning of Section 570 of the Companies Act, 2014 or any analogous provision of law;

8.3.5 An order is made, or an effective resolution is passed for the winding up of the Member's company other than for the purpose of restructuring the terms of which have been agreed by the Contracting Authority;

8.3.6 A petition is presented, or an order is made, or a resolution passed, or any analogous proceedings or action is taken for the appointment of an examiner, administrator, receiver, trustee or any similar officer over the Members company;

8.3.7 An encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Member;

8.3.8 The Contracting Authority reasonably believes that any of the events mentioned above is about to occur in relation to the Member and notifies the Member;

8.3.9 The Member has committed any fraudulent act or any criminal activity or is guilty of gross negligence in the performance of this agreement or the relevant Contract;

8.3.10 Any representation made by the Member in connection with this Agreement or a Contract shall in the opinion of the Contracting Authority prove to be untrue or incorrect in a material respect as of the date when made.

9. Termination of Framework Agreement

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9.1 In circumstances outlined in Section 8.1 and 8.2, the Contracting Authority reserves the right to terminate this Agreement by providing three (3) months' notice in writing to the Framework Member. The Framework Member shall have no claim for damages or otherwise against the Contracting Authority as a result of the Contracting Authority terminating this Framework Agreement in accordance with this Clause.

9.2 In circumstances outlined in Section 8.3, the Contracting Authority reserves the right to terminate this Agreement by providing fourteen (14) days' notice in writing to the Framework Member. The Framework Member shall have no claim for damages or otherwise against the Contracting Authority as a result of the Contracting Authority terminating this Framework Agreement in accordance with this Clause.

9.3 Termination of the Framework Agreement pursuant to Clause 9.1 and Clause 9.2 shall not relieve or discharge the Framework Member from any obligations which may have accrued prior to such termination.

9.4 For the avoidance of doubt, termination of this Framework Agreement shall not affect the validity of any Contract entered into by the Contracting Authority and any provider of the service pursuant to that Framework Agreement.

9.5 It shall be the sole responsibility of the tenderer to fulfil its obligations under the Framework Agreement and any and all Contracts awarded thereunder, notwithstanding any changes in circulars, laws, regulations, taxation, duties or other factors which might arise following the withdrawal of the United Kingdom from membership of the EU. Failure to comply with this requirement may result in the termination of the Framework Agreement and / or any Contract associated with the Framework Agreement, at the absolute discretion of the Contracting Authority.

10. Notices

10.1 The address, email and telephone numbers of the parties for the purpose of the giving of notices under this Agreement are as follows:

The Contracting Authority

Fingal County Council

County Hall

Main Street

Swords

Co Dublin

E-mail address: [insert email]

Tel: [insert number]

The Framework Member

[Name of contact for notices]

[Address Line 1]

[Address Line 2]

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[Address Line 3]

E-mail address: [insert email]

Tel: [insert number]

10.2 Any notice or other communication whether required or permitted to be given by one party hereto to the other shall be in writing and shall be deemed to have been duly given if signed by or on behalf of a duly authorised officer of the party giving the notice and:

10.2.1 If delivered, at the time of delivery to the addressee or its duly authorised agent;

10.2.2 If sent by pre-paid post, four (4) days after posting if addressed to the party to whom such notice is to be given at the address set forth for such party in this Agreement (or such other address as is from time to time notified to the other party hereto);

10.2.3 If transmitted electronically on receipt of 'read receipt' or equivalent.

10.3 All notices to the Contracting Authority or the Framework Member from the other party under this Agreement or the relevant Contract shall be in writing and sent to the appropriate address set out above.

10.4 All notices, documents and communications provided under this Agreement or the relevant Contract shall be in the English language.

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SIGNED:

On behalf of the CONTRACTING AUTHORITY

Name:

(Block letters)

Position:

Signature:

Witnessed by:

(signature)

Witness name:

(Block letters)

On behalf of the Framework Member

Name:

(Block letters)

Position:

Signature:

Witnessed by:

(signature)

Witness name:

(Block letters)

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Schedules to this agreement:

Schedule 1: Pricing Schedule - Form of Tender – from the Framework Members' tender response

Schedule 2: Resources – from the Framework Members' tender response

Schedule 3: Insurances – evidence of insurances in place as per levels required for the framework

Schedule 4: Proposed Contract Terms and Conditions

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Schedule 4: Proposed Contract Terms and Conditions

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