Comhairle Cathrach Bhaile Átha Cliath
Dublin City Council

Multi-Operator Framework Agreement

Terms and Conditions

for the Provision of:	
Electrical Wholesale Goods and Equipment	
PARTIES	
Contracting Authority:	Dublin City Council
Framework Operator:	
Date:	

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Subject to contract

Framework Agreement with a Framework Member in a Multi-Operator Framework for the provision of Electrical Wholesale Goods and Equipment

Parties

Dublin City Council of Civic Offices, Wood Quay, Dublin 8, D08 RF3F, Ireland

(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 advertised on the Irish Government procurement website www.etenders.gov.ie under the open procedure. Following evaluation of its tender against the published award criteria, the Framework Member is now appointed as one of the operators under this Framework Agreement.

Definitions

"Call Off Contract" means any Contract or requirement awarded under this Framework Agreement in accordance with Clause 4 and the Request for Tender.

"Call Off Request" means a written request issued by the Contracting Authority to a Framework Member under the cascade procedure in Clause 4 seeking confirmation of the Framework Member's ability and acceptance to fulfil the relevant requirement. A Call Off Request does not constitute a Purchase Order and does not commence the applicable delivery lead time.

Following confirmation by the relevant Framework Member, the Contracting Authority may issue a Purchase Order or other formal written instruction for the Supplies, at which point the applicable delivery lead time shall commence.

"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;

"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 a new competition between all the Framework Members for the award of a Contract falling within the scope of the Framework Agreement.

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

In the event of any conflict or inconsistency between the documents forming part of this Framework Agreement or any Contract awarded under it, the following order of precedence shall apply:

1. this Framework Agreement;
2. Schedule 1 – Pricing Schedule and those commitments within Schedule 2 expressly identified as contractual pursuant to Clause 6.4;
3. the Request for Tender, including any written clarifications issued by the Contracting Authority;
4. Schedule 4 – Dublin City Council's General Terms and Conditions for the Purchase of Supplies;
5. the remainder of the Framework Member's Tender Response contained in Schedule 2.

The document appearing higher in the above order shall prevail to the extent of the conflict or inconsistency.

1. Appointment of Framework Member

1.1 The Framework Member accepts its appointment as one of several framework operators 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 The operators appointed to the Framework Agreement are:

i) [insert the names of all the framework members including this framework member – if cascade being used in ranked order – if not cascade in alphabetical order (note which one it is) ...]

ii) [insert name]

iii) [insert name]

(the 'Framework Members').

1.3 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.

1.4 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.

1.5 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 four [4] years.

The initial contract shall be for a period of two (2) years. Subject to compliance with the contract and Framework Agreement terms and conditions, Dublin City Council may, at its sole discretion, extend the contract for up to two (2) additional periods of one (1) year each.

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 supply and delivery of Electrical Goods and Equipment within the scope of the Request for Tender and the published contract notice, including the Initial Contract and any further Contracts awarded under the Framework Agreement.

3.2 The maximum value of the framework over the life of the framework is

- Nine Million Euro €9,000,000 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 Contracts under the Framework Agreement

4.1 Contracts and requirements under this Framework Agreement shall be awarded in accordance with the procedures set out in this Clause 4 and Section 3.4 of the Request for Tender.

4.2 Initial Contract and Extensions

Following establishment of the Framework, the initial contract shall be awarded to the highest-ranked Framework Member for a period of two (2) years.

Subject to satisfactory performance and compliance with the Framework Agreement and Contract, the Contracting Authority may, at its sole discretion, extend the initial contract for up to two (2) additional periods of one (1) year each.

Where the Contracting Authority elects to extend the existing contract, no further cascade procedure, mini-competition or re-ranking exercise shall be required solely by reason of that extension.

4.3 Cascade Procedure

The cascade procedure may be used where the highest-ranked Framework Member is unable to fulfil a particular requirement, is subject to relevant performance or availability issues, or where another cascade trigger set out in Section 3.4 of the Request for Tender applies.

In such circumstances, the Contracting Authority may approach the next-ranked Framework Member in ranked order.

Any requirement for Additional / Non-Basket Goods shall be managed in accordance with the award, cascade and pricing provisions set out in Sections 3.4 and 3.8 of the Request for Tender.

4.4 Mini-Competition / Re-ranking

At the end of the initial contract term and/or any subsequent contract term, the Contracting Authority may, at its discretion, conduct a mini-competition to refresh pricing and, where applicable, re-rank Framework Members.

Where the Contracting Authority is satisfied with the performance and operation of the existing highest-ranked Framework Member, it may elect to extend or continue the existing contract arrangements without conducting a mini-competition or re-ranking exercise.

5. Notification of the Award Following a Mini-Competition

5.1 Where the Contracting Authority conducts a mini-competition in accordance with Section 4, following evaluation of the Supplementary Tenders the Contracting Authority will notify the participating Framework Members in writing of the outcome.

5.2 The notification to the successful Framework Member will confirm the outcome of the mini-competition and, where applicable, the resulting ranking or contract award.

5.3 The notification to unsuccessful Framework Members will include the outcome of the mini-competition and such information regarding the award decision as is required under the applicable procurement rules.

5.4 Where a mini-competition results in a revised Framework ranking, the Contracting Authority will notify all Framework Members of the revised ranking.

6. Fixed Conditions for Contracts

6.1 Prices

Tendered Unit Prices shall remain firm for the initial twelve (12) months from the Commencement Date. Thereafter, prices may be reviewed no more than once in any twelve (12) month period and only by prior written agreement with the Contracting Authority. Any agreed increase shall not apply retrospectively and shall be capped at the positive percentage change in the All Items Consumer Price Index (CPI) published by the Central Statistics Office, calculated by reference to the most recently available index at the date of the request compared with the corresponding index twelve (12) months previously. Where the applicable percentage change is zero or negative, no

price increase shall apply. No separate delivery, fuel, handling or small-order surcharge shall apply unless expressly permitted by the Request for Tender and included in the Tendered Unit Prices in the Pricing Schedule.

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 Tender Commitments

The successful Framework Member's commitments contained in its Operational Proposal, Contract Management Proposal and Mobilisation and Continuity of Supply Proposal shall form part of its contractual obligations under this Framework Agreement and may be used by the Contracting Authority for contract management and performance monitoring. These commitments shall apply in addition to the requirements set out in the Request for Tender, Pricing Schedule and other tender documents.

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. The terms 'registrable interest' and 'relative' shall be interpreted as per Section 2 and the Second Schedule of the Ethics in Public Office Act, 1995. Failure to disclose a conflict of interest may disqualify the Framework Member from tendering for a Contract or invalidate an award of Contract, depending on when the conflict becomes apparent.

7.2 Insurances

The 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.

7.3 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).

7.4 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.

7.5 Data Protection

The Framework Member must operate fully in compliance with all relevant Data Protection legislation and accept the following terms and conditions:

7.5.1 In this Agreement the following terms shall have the meanings respectively ascribed to them:

"Data" means all Confidential Information, whether in oral or written (including electronic) form, created by or in any way originating with the Contracting Authority (including but not limited to his or her employees, agents, independent contractors and/or Sub-contractors) and all information that is the output of any computer processing, or other electronic manipulation of any information that was created by or in any way originating with the Contracting Authority provided under this Agreement and includes any Personal Data;

"Data Controller" has the meaning given under the Data Protection Laws;

"Data Processor" has the meaning given under the Data Protection Laws;

"Data Protection Laws" means all applicable national and EU data protection laws, regulations and guidelines, including but not limited to Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (the "General Data Protection Regulation"), and any guidelines and codes of practice issued by the Office of the Data Protection Commissioner or other supervisory authority for data protection in Ireland.

"Data Subject" has the meaning given under the Data Protection Laws;

“Data Subject Access Request” means a request made by a Data Subject in accordance with rights granted under the Data Protection Laws to access his or her Personal Data;

“Personal Data” has the meaning given under Data Protection Laws;

“Processing” has the meaning given under the Data Protection Laws;

7.5.2 The Framework Member shall comply with all applicable requirements of the Data Protection Laws.

7.5.3 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.

7.5.4 The Framework Member shall, in relation to any Personal Data processed in connection with the performance by the Framework Member of its obligations under this Agreement:

(1) process that Personal Data only on or in accordance with the written instructions of the Contracting Authority;

(2) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Contracting Authority, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

(3) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;

(4) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Contracting Authority has been obtained and the following conditions are fulfilled;

i. appropriate safeguards are in place in relation to the transfer, to ensure that Personal Data is adequately protected in accordance with

Chapter V of Regulation 2016/679 (General Data Protection Regulation);

ii. the data subject has enforceable rights and effective legal remedies;

iii. the Framework Member complies with its obligations under the Data Protection Laws by providing an adequate level of protection to any Personal Data that is transferred; and iv. The Framework Member complies with reasonable instructions notified to it in advance by the Contracting Authority with respect to the processing of the Personal Data;

7.5.5 The Framework Member shall promptly notify the Contracting Authority if it receives a Data Subject Access Request to have access to any Personal Data or any other complaint, correspondence, notice, request any order of the Court or request of any regulatory or government body relating to the Contracting Authority's obligations under the Data Protection Laws and provide full co-operation and assistance to the Contracting Authority in relation to any such complaint, order or request (including, without limitation, by allowing Data Subjects to have access to their data).

7.5.6 The Framework Member shall without undue delay report in writing to the Contracting Authority any data compromise involving Personal Data, or any circumstances that could have resulted in unauthorised access to or disclosure of Personal Data.

7.5.7 The Framework Member shall assist the Contracting Authority in ensuring compliance with its obligations under the Data Protection Laws with respect to security, impact assessments and consultations with supervisory authorities and regulators.

7.5.8 The Framework Member shall at the written direction of the Contracting Authority, amend, delete or return Personal Data and copies thereof to the Contracting Authority on termination of this Agreement unless the Framework Member is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Framework Member to store the Personal Data.

7.5.9 The Framework Member shall permit the Contracting Authority, the Office of the Data Protection Commissioner or other supervisory authority for data protection in Ireland, and/ or their nominee to conduct audits and or inspections of the Framework Member's facilities, and to have access to all data protection, confidentiality and security procedures, data equipment, mechanisms, documentation, databases, archives, data storage devices, electronic communications and storage systems used by the Framework Member in any way for the provision of the Services. The Framework Member shall comply with all reasonable directions of the Contracting Authority arising out of any such inspection, audit or review.

7.5.10 The Framework Member shall fully comply with and implement policies which are communicated or notified to the Framework Member by the Contracting Authority from time to time.

7.5.11 The Framework Member shall maintain complete and accurate records and information to demonstrate its compliance with this clause 7 and allow for inspections and contribute to any audits by the Contracting Authority or the Contracting Authority's designated auditor.

7.5.12 The Framework Member shall:

(1) take all reasonable precautions to preserve the integrity of any Personal Data which it processes and to prevent any corruption or loss of such Personal Data;

(2) ensure that a back-up copy of any and all such Personal Data is made [insert frequency] and this copy is recorded on media from which the data can be reloaded if there is any corruption or loss of the data; and

(3) in such an event and if attributable to any default by the Framework Member or any Sub-contractor, promptly restore the Personal Data at its own expense or, at the Contracting Authority's option, reimburse the Contracting Authority for any reasonable expenses it incurs in having the Personal Data restored by a third party.

7.5.13 The Contracting Authority consents to the Framework Member appointing [insert third-party processor] as a third-party processor of Personal Data under this Agreement. The Framework Member confirms that it has entered or (as the case may be) will enter into a written agreement incorporating terms which are substantially similar to those set out in this clause 7 as between the Contracting Authority and the Framework Member, the Framework Member shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 7.

7.5.14 Save for clauses 7.5.2, 7.5.3, 7.5.4(4) and 7.5.5, all the obligations on the Framework Member in this clause 7 relating to the processing of Personal Data shall apply to the processing of all Data.

7.5.15 The provisions of this clause 7 shall survive termination and or expiry of this Agreement for any reason.

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 three (3) months written notice to the Contracting Authority.

Any termination by the Framework Member under this Clause shall be subject to the Framework Member continuing to comply with its obligations during the notice period, including the orderly completion or transition of outstanding orders and the exit and transition obligations in Clause 8.4.

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;

8.4 Exit and Transition

On expiry or termination of this Framework Agreement or any Contract awarded under it, the Framework Member shall provide reasonable cooperation and assistance to the Contracting Authority to facilitate an orderly transition to a replacement supplier or alternative arrangement and to minimise disruption to the Contracting Authority's services. This shall include, where applicable, cooperation in relation to outstanding orders, backorders, returns, credits, warranty matters and the provision of relevant contract, product, item and reporting information.

9. Termination of Framework Agreement

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

[Name of contact for notices]

[Address Line 1]

[Address Line 2]

[Address Line 3]

E-mail address: [insert email]

Tel: [insert number]

Fax: [insert number]

The Framework Member

[Name of contact for notices]

[Address Line 1]

[Address Line 2]

[Address Line 3]

E-mail address: [insert email]

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Tel: [insert number]

Fax: [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:

Date:

Witnessed by:

(signature)

Witness name:

(Block letters)

On behalf of the Framework Member

Name:

(Block letters)

Position:

Signature:

Date:

Witnessed by:

DRAFT

(signature)

Witness name:

(Block letters)

DRAFT

Schedules to this agreement:

Schedule 1 – Pricing Schedule
Successful Framework Member's final Appendix A.

Schedule 2 – Tender Response Document
Successful Framework Member's final TRD, including the Form of Tender and the successful responses to Criteria A, B and C.

Schedule 3 – Insurances
Evidence of required insurances.

Schedule 4 – Contract Terms and Conditions
Dublin City Council General Terms and Conditions for the Purchase of Supplies, February 2017.

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Schedule 1 – Pricing Schedule

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Schedule 2 – Tender Response Document

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Schedule 3 – Insurances

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Schedule 4 – Contract Terms and Conditions
Dublin City Council General Terms and Conditions for the Purchase of Supplies, February 2017.

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