# Appendix 2A: Framework Agreement

**Tenders to establish a Multi Supplier Framework Agreement for the supply of the equipment of Technology/Construction/Engineering/DCG for Limerick and Clare Education and Training Board in 6 Lots.**

## THIS FRAMEWORK AGREEMENT IS MADE ON THE [date e.g. 2nd] day of [month] 20 [year]:

("the Framework Agreement")

**BETWEEN:**

Limerick and Clare Education and Training Board, whose offices are located at Station Road, E. ("the Contracting Authority"); and

[Insert name of Framework Member] whose principal place of business is at [Address] ("the Framework Member")

(each a "Party" and together the "Parties")

## WHEREAS:

1. By Invitation to Tender advertised in the supplement to the Official Journal of the European Union, OJEU Notice Number _____ of _____ and entitled "_____" ("the RFT") the Contracting Authority invited economic operators ("Tenderers") to participate in a framework agreement for the provision of the Goods described in Appendix 1 of the RFT (the "Goods"). References to the RFT shall include any clarifications in relation to the RFT issued by the Contracting Authority via the messaging facility on www.etenders.gov.ie between [insert date] and [insert date] (the "RFT Clarifications"). The RFT (including the RFT Clarifications) is hereby incorporated by reference into this Framework Agreement.
2. The Framework Member submitted a response to the RFT dated [insert date of tender] ("the Submission"). References to the Submission shall include any clarifications issued in writing by the Framework Member to the Contracting Authority between [insert date] and [insert date] (the "Submission Clarifications"). The Submission (including the Submission Clarifications) is hereby incorporated by reference into this Framework Agreement.
3. The Framework Member was appointed to the framework as a result of the evaluation of its Submission in accordance with the RFT.

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**IT IS HEREBY AGREED AS FOLLOWS:**

## 1. Definitions And Interpretation

**"Commencement Date"** means _____;

**"Contract"** means a contract which is awarded in accordance with this Framework Agreement

**"Goods Contract"** means the template contract attached at Appendix 7 to the RFT;

**"Framework Term"** means the period set out in Clause 2.5 of this Framework Agreement;

**"Month"** means a calendar month;

**"Prime Contractor**" has the meaning set out in Part 1, paragraph 2.5 of the RFT;

**"Subcontractor"** has the meaning set out in Part 1, paragraph 2.5 of the RFT;

Unless otherwise specified herein, a defined term used in this Framework Agreement shall have the same meaning as assigned to it in the RFT.

1.1 To the extent that any specific provision in a Contract is inconsistent or conflicts with any term or condition of this Framework Agreement, the relevant provision of the Contract shall prevail.

1.2 Headings are included for ease of reference only and shall not affect the construction of this Framework Agreement.

1.3 Unless the context requires otherwise, words in the singular may include the plural and vice versa.

1.4 References to any statute, enactment, order, regulation or other legislative instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended, unless specifically indicated otherwise.

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## 2. Appointment Of Framework Member, Scope and Term of The Framework Agreement

2.1 In consideration of payment by the Contracting Authority of the sum of €2.00, the receipt of which is hereby acknowledged by the Framework Member, the Framework Member accepts its appointment under the provisions of this Framework Agreement.

2.2 This Framework Agreement does not entitle the Framework Member to be consulted in respect of or awarded any Contract during the Framework Term. The Contracting Authority may at its or their sole discretion choose not to enter into any Contract pursuant to this Framework Agreement.

2.3 The Contracting Authority does not give any guarantee and/or warrant the actual value of any Goods and/or number of Contracts (if any) which may be procured in connection with this Framework Agreement and the Parties acknowledge that the Contracting Authority is not bound to enter into any Contract or other arrangement with the Framework Member as a result of entering into this Framework Agreement. Without prejudice to the foregoing the Framework Member hereby acknowledges that the Contracting Authority intends (but shall be under no obligation) to promote the Framework Agreement and to encourage use of the Framework Agreement by the Contracting Authority and the Framework Member may be required to provide reasonable assistance in this respect.

2.4 This Framework Agreement does not confer exclusivity on any Framework Member. The Contracting Authority may at their sole discretion opt to carry out a separate contract award procedure for contracts falling within the scope of this Framework Agreement. In this event, the Contracting Authority shall observe all obligations at law and shall not afford any advantage to the Framework Member.

2.5 This Framework Agreement shall take effect on the Commencement Date and expire Two (2) Years thereafter ("the Framework Term") unless terminated earlier in accordance with this Framework Agreement.

2.6 The Contracting Authority reserves the right, at its discretion and subject to its obligations at law, to extend the Framework Term for a period or periods of up to twelve (12) months with a maximum of two (2) such extensions on the same terms and conditions.

## 3. Framework Agreement Management Provisions

3.1 The Framework Member hereby agrees and undertakes to comply with the Framework Agreement management provisions as set out in Annex 1 to this Framework Agreement or as may be notified in writing by the Contracting Authority to the Framework Member from time to time.

## 4. Goods Contract

4.1 This Framework Agreement relates to the provision of the Goods.

4.2 Where the Framework Member is awarded a Contract further to the procedure set out in accordance with clauses 5 and 6, it shall provide the Goods to the Contracting Authority in accordance with the Goods Contract. Subject to the provisions of this Framework Agreement and to the satisfaction of any pre-conditions to the award of a Goods Contract,

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the successful Framework Member shall be required to enter into the Goods Contract with the Contracting Authority.

## 5. Procedure For Award of Contracts

5.1 On each occasion that the Contracting Authority proposes to award a Contract under this Framework Agreement, the Contracting Authority shall issue (by electronic means) Request for Quotes, ("RFQ") in accordance with the following procedure:

Cascade: Where the Cascade method is used to call-off the Goods, the first ranked supplier will be contacted to conduct the required Goods. If the first supplier is unable to provide the required service, is unavailable to carry out the work within the set time limits or in the event of underperformance, the request to provide Goods will be automatically sent to the next Contractor on the list, in descending order.

Request for Quotes: Where the Request for Quotes (RFQ's) is used to call-off the Services, each Framework Member appointed will be contacted to receive an RFQ. On each occasion that the Contracting Authority proposes to award a Contract under this Framework Agreement, the Contracting Authority shall issue a Request for Quotes (RFQ's) to each Framework Member appointed to that lot. Email is the preferred means of communication.

The responses to the RFQ will be evaluated by the contracting Authority and the framework members who responded to the RFQ will be informed of the outcome of the RFQ by email.

RFQ Deadline Date and Time for submissions, by which responses MUST be received. Responses received after this date and time will not be accepted.

5.1.1 The RFQ shall set out:

- the scope and term of the Contract to be awarded;
- the deadline (date and time) for the receipt of responses to the RFQ (each a "Response") taking into account the complexity of the Contract and the time needed to prepare an appropriate Response. Responses received after the deadline will not be considered;
- the types and levels of insurance required for the Contract;
- any additional conditions (if any) that will apply to the Contract in addition to the terms and conditions of the Goods Agreement.

5.1.2 All Responses to the RFQ must be submitted via email only. Responses received in any other manner including e-mail or hardcopy will not be considered.

5.1.3 Any clarifications issued by the Contracting Authority, as applicable, in relation to a RFQ will be communicated via email only.

5.1.4 The Contracting Authority may award a Contract following an evaluation of the Responses based on the award criteria set out in Clause 6.1 below.

5.1.5 The Contracting Authority reserves the right to issue or seek written clarifications.

## 6. Award Criteria

6.1 The award criteria for Request for Quotations (RFQs) for any Lot(s) under this Framework will be varied to reflect the requirements of the Contract to be awarded. At all times, the

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precise scope and weighting of the award criteria for each Contract to be award will be set out clearly in the RFQ.

| Award Criteria | Weighting (range) |
|---|---|
| **Please Note - Range of Criteria that may be used.** | % |
| **Technical Merit** | 0% - 70 % |
| **Methodology** | 0% - 70 % |
| **Account Management Requirements** | 0% - 70 % |
| **Environment/Sustainability** | 0% - 70 % |
| **Ultimate Cost** | 0 % - 100% |

The award criterion used, and the individual weightings applied will be specified in the RFQ for each competition. These will depend on the specific nature and the type of work required. All Framework Members will be invited to compete for such work on the same basis. The required Service Levels (and remedies for breach of these Service Levels if applicable) will be specified in the RFQ for each competition. Agreed Service Levels shall be included in Schedule D at contract signature stage.

6.2 No enforceable commitment of any kind, contractual or otherwise will exist unless and until a formal written Contract has been executed by or on behalf of the Contracting Authority.

6.3 The Contracting Authority may cancel an RFQ at any time prior to a Contract being executed by the Contracting Authority. Any notification of preferred bidder status by the Contracting Authority shall not give rise to any enforceable rights by the Framework Member.

6.4 The Contracting Authority will require the Framework Member, to whom it has decided to award the Contract, to supply up-to-date evidence as set out in this RFT. Where the Framework Member cannot provide up-to-date evidence to demonstrate that each entity concerned meets the Selection Criteria and the compliance requirements specified in the RFT, then the Contracting Authority may proceed to offer the Contract to the next highest-ranked Tenderer.

## 7. Applicable Law and Jurisdiction

7.1 This Framework Agreement and any Contract(s) awarded under it will be subject to the laws of Ireland and to the exclusive jurisdiction of the Irish courts.

## 8. Compliance With Laws

8.1 The Framework Member shall comply with all applicable laws relating to the discharge of its obligations under this Framework Agreement and any and all Contract(s).

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## 9. Tax clearance

9.1 The Framework Member shall comply with all applicable EU and domestic taxation laws and requirements.

9.2 Prior to the award of any Contract, the Framework Member shall promptly supply its Tax Clearance Access Number and Tax Reference Number to facilitate online verification of their tax status by the Contracting Authority. By supplying these numbers, the Framework Member acknowledges and agrees that the Contracting Authority has the permission of the successful Tenderer to verify its tax cleared position online. Where relevant, the provisions of this paragraph 9.2 apply equally to Subcontractors.

## 10. Anti-Competitive Conduct

10.1 Without prejudice to the generality of clause 8.1, the Framework Member shall comply with the Competition Act 2002 (as amended, the "2002 Act"). The 2002 Act makes it a criminal offence for tenderers to collude on prices or terms in a public procurement competition.

## 11. Conflicts Of Interest

11.1 Any actual or potential conflict of interest on the part of a Framework Member (including for the purposes of this clause 11 any employee(s), supplier(s) agents or Subcontractor(s)) (a "Conflict") must be fully disclosed to the Contracting Authority immediately in writing as soon as the Conflict becomes apparent to the Framework Member. In the event of any Conflict, the Contracting Authority may invite the Framework Member to propose means by which the Conflict might be removed. The Contracting Authority will, in their absolute discretion, decide on the appropriate course of action.

## 12. Registerable Interest

12.1 Any registerable interest involving a Framework Member and the Contracting Authority, member of the Government, member of the Oireachtas (Parliament), or employees of the Contracting Authorities and/or divisions/agencies under the aegis of the relevant Ministers, and their relatives, must be fully disclosed in any Response. In the event of this information only coming to the notice of a Framework Member after the submission of a Response, it must be communicated to the Contracting Authority immediately upon such information becoming known. The terms 'registerable interest' and 'relative' shall be interpreted as per Section 2 of the Ethics in Public Office Act 1995.

## 13. CONFIDENTIALITY

13.1 All communications between the Contracting Authority and the Framework Member must be treated as being strictly confidential. 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(s) executed by the Framework Member pursuant to clause 13.2 below. All of the Framework Member's employees and personnel, including Subcontractors and their employees and personnel, who provide the Goods may be required, at the absolute discretion of the Contracting Authority, to sign a confidentiality agreement in a format as determined by the Contracting Authority.

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13.2 The Framework Member shall execute a Confidentiality Agreement in the form set out at Appendix 8 to the RFT.

13.3 No publicity regarding this Framework Agreement or any Mini Competition or Contract pursuant to this Framework Agreement is permitted unless and until the Contracting Authority has given their prior written consent to the relevant communication.

## 14. NOTICES

14.1 Any notice or other written communication to be given under this Framework Agreement shall either be delivered personally or sent by registered post or email. The Parties will from time to time agree primary and alternative contact persons and details for the purposes of this clause 14.

14.2 All notices shall be deemed to have been served as follows:

1. if personally delivered, at the time of delivery;
2. if posted by registered post, at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authorities (and not returned undelivered); and
3. if communicated by email, on the next calendar day following transmission.

## 15. GIFTS

15.1 The Framework Member shall not offer, give or agree to give to any person holding an office in the Contracting Authority, any gift or consideration of any kind as an inducement or reward in relation to the obtaining or execution of any Contract. In the event of any breach of this clause 15.1, the Contracting Authority may terminate this Framework Agreement and any existing Contract(s) respectively and recover from the Framework Member any loss resulting from any such termination.

## 16. Costs And Expenses of Framework Agreement

16.1 All costs and expenses incurred by the Framework Member relating to its participation in this Framework Agreement and in any Request for Quotation (RFQ) shall be borne solely by the Framework Member. Neither the Contracting Authority shall have any responsibility or liability for any costs or expenses of whatsoever nature incurred by the Framework Member in this regard.

## 17. TERMINATION

17. 1 This Framework Agreement may be terminated by the Contracting Authority, without liability for compensation or damages, by serving One (1) months written notice to the Framework Member.

17.2 The Contracting Authority shall have the right (in addition to its rights under clause 17.1 and any other rights which it has at law) to terminate this Framework Agreement immediately and without liability for compensation or damages on the happening of any of the following events:

17.2.1 If the Framework Member commits any serious breach or a series of breaches of any provision of this Framework Agreement and fails to remedy such breach(es) to the reasonable satisfaction of the Contracting Authority, (if the breach(es) are capable of remedy), within 30 days after receipt of a request in writing from the

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Contracting Authority. Without prejudice to the generality of the foregoing, a failure to comply with the Framework Agreement management provisions as set out in Annex 1 to this Framework Agreement shall be deemed to be a serious breach of this Framework Agreement;

17.2.2 If the Framework Member commits any serious breach or a series of breaches of any Contract awarded pursuant to this Framework Agreement and fails to remedy such breach(es) to the reasonable satisfaction of the Contracting Authority, within 30 days after a receipt of a request in writing from the Contracting Authority.

17.2.3 If the Framework Member becomes insolvent, becomes bankrupt, is wound up, enters into examinership, commences winding up, has a receiving order made against it, makes any arrangement with its creditors generally or takes or suffers any similar action as a result of debt, or an event having an equivalent effect

17.2.4 In circumstances where the Contracting Authority becomes aware that any of the exclusion grounds listed in Regulation 57 of the European Union (Award of Public Authority Contracts) Regulations 2016 (Statutory Instrument 284 of 2016) apply to the Framework Member;

17.2.5 In circumstances where the Contracting Authority becomes aware of any conflict of interest on the part of the Framework Member which cannot, in the opinion of the Contracting Authority, be removed by other means; and

17.2.6 In circumstances where the Contracting Authority becomes aware of any registrable interest on the part of the Framework Member.

17.3 Subject to clause 17.2.2, the termination of a Contract awarded under this Framework Agreement does not affect the validity of this Framework Agreement.

17.4 Termination of this Framework Agreement shall not affect any antecedent and accrued rights, obligations or liabilities of either Party, nor shall it affect any provision of this Framework Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.

## 18. FREEDOM OF INFORMATION

18.1 The Framework Member acknowledges that the Contracting Authority is subject to the Freedom of Information Act 2014 and the European Communities (Access to Information on the Environment) Regulations 2007 to 2014. Information furnished to the Contracting Authority by the Framework Member may be released pursuant to the Contracting Authority's statutory obligations. If the Framework Member considers that any of the information supplied by it to the Contracting Authority under this Framework Agreement or any Contract should not be disclosed because of its sensitivity it should, when providing the information, indicate this and specify the reason for its sensitivity. The Contracting Authority will consult the Framework Member about this sensitive information before making a decision on any request received under the above legislation. The Contracting Authority accepts no liability whatsoever in respect of any information provided which is subsequently released (irrespective of notification) or in respect of any consequential damage suffered as a result of such obligations.

## 19. DISPUTE RESOLUTION

19.1 In the event of any dispute arising out of or relating to this Agreement (the "Dispute"), the Parties shall first seek settlement of the Dispute as set out below.

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19.2 The Dispute shall be referred as soon as practicable to [insert Contractor senior contact] within the Contractor and to [insert Contracting Authority contact] within the Contracting Authority respectively.

19.3 If the Dispute has not been resolved within fifteen (15) Business Days (or such longer period as may be agreed in writing by the Parties) of being referred to the nominated representatives, then either Party may refer the Dispute to an independent mediator, the identity of whom shall be agreed in advance by the Parties.

19.4 If the Parties are unable to agree on a mediator or if the mediator agreed upon is unable or unwilling to act, either Party may within twenty-one (21) days from the date of the proposal to appoint a Mediator or within twenty-one (21) days of notice to either Party that the mediator is unable to act, apply to CEDR Ireland to appoint a mediator.

19.5 Any submissions made to and discussions involving the mediator, of whatever nature, shall be treated in strict confidence and without prejudice to the rights and/or liabilities of the Parties in any legal proceedings and, for the avoidance of doubt, are agreed to be without prejudice and legally privileged. The Parties shall make written submissions to the mediator within ten (10) Business Days of his/her appointment.

19.6 The Parties shall share equally the cost of the mediator. The costs of all experts and any other third parties who, at the request of any Party, shall have been instructed in the mediation, shall be for the sole account of, and shall be discharged by that Party.

19.7 For the avoidance of doubt, the obligations of the Parties under this Agreement shall not cease, or be suspended or delayed by the reference of a dispute to mediation. The Contractor shall comply fully with the requirements of the Agreement at all times.

19.8 If, and to the extent that, any Dispute has not been settled pursuant to the mediation within [insert] days of the commencement of the mediation, either party may apply to the Irish courts at any time thereafter.

**IN WITNESS WHEREOF** this Framework Agreement has been executed by the Parties hereto as of the date first above written.

| | |
|---|---|
| **SIGNED** by _____, <br><br> being an Officer so authorised <br> by the **CONTRACTING AUTHORITY** <br> in the presence of: <br> _____ <br> **Witness** | **SIGNED** by _____, <br><br> being an Officer so authorised <br> by the **FRAMEWORK MEMBER** <br> in the presence of: <br> _____ <br> **Witness** |
| | |

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# ANNEX 1 TO THE FRAMEWORK AGREEMENT

**Review of Performance of Framework members**

- Framework member's performance will be continually monitored over the term of the Framework Agreement. The format will be agreed between the Contracting Authority and the framework members. A formal annual review will take place on the anniversary of the establishment of the Framework. Cost competitiveness, quality of service and turnaround time will be the considered for measuring performance.

- **Please note: Frequent non-responses to requirements, or consistent poor performance issues may result in removal from the Framework**.

*FRAMEWORK AGREEMENT MANAGEMENT PROVISIONS Reporting to the Contracting Authority*

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Upon requested by the Contracting Authority, Framework Members will be required to provide the following **minimum** management information to the Contracting Authority on bi-annual basis:

| | |
|---|---|
| **Date:** | |
| **Framework Member:** | |
| **Framework Member's Key Account Manager:** | |
| **Email Address:** | |
| **Current Engagement Title and Short Description: (please include applicable Lot)** | |
| **Estimated € Value of Engagement:** | **€ Insert Amount** |
| **Start Date of Engagement:** | |
| **Proposed End Date of Engagement:** | |
| **Actual End Date (if completed):** | |
| **Amount Billed To Date:** | **€ Insert Amount** |

It is a condition of the Framework Agreement that additional and different reports may be requested and required during the lifetime of the Framework Agreement and any Contracts awarded.

All management information should be readily available for the Contracting Authority within five (5) working days from the written request. Reports shall be made available in such electronic and paper formats as may be requested by the Contracting Authority.

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