Comhairle Cathrach & Contae Luimnigh

Limerick City & County Council

Comhairle Cathrach agus Contae Luimnigh

Limerick City and County Council

Multi-Operator Framework Agreement

for a

for Electrical Works/Services for Limerick City and County Council.

For Information

Prepared by:
Service Operations Directorate,
Dooradoyle,
Limerick.

Agreement

Framework Agreement with a Framework Member in a Multi-Operator Framework for Electrical Works in Limerick City and County Council.

The parties to this Framework Agreement are:

The Employer being Limerick City and County Council (LCCC) of Merchants Quay, Limerick (hereinafter referred to as the 'Contracting Authority')

AND

The Contractor: _____

of _____

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

LCCC 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

Unless otherwise directed the following definitions shall apply in this Framework Agreement.

"Call Off Contract" means any contract awarded on foot of this framework agreement.
"Commencement Date" means the date of signing 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

"Framework Period" means the period in years set out in this agreement.

"Other Conditions" means for example Contract Terms and Conditions, Special Terms and Condition or as may be appropriate and directed.

"Mini-Competition/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.

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Appointment of Framework Member

The Framework Member accepts its appointment as one of several framework operators to provide Electrical Works/Services, if instructed to do so from time to time by LCCC under the terms and conditions of this Framework Agreement.

The operators appointed to the Framework Agreement are listed in Schedule 1

1) [insert the names of all the framework members]
2) [insert name]
3) [insert name], etc.

(the 'Framework Members').

Note that ranking is subject to change on foot of mini –competitions that may be run annually for the duration of the Framework.

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

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.

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.

Period of Framework Agreement

The Framework Agreement shall take effect on the Commencement Date.

The Framework Agreement will be for a period of 2 years.

The Contracting Authority reserves the right to extend the Framework Agreement for a period or periods of up to 1 year with a maximum of two such extension or extensions on the same terms and conditions.

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.

Scope of Framework Agreement

This Framework Agreement relates to the provision of Electrical Works/Services for LCCC.

The maximum value of the framework over the life of the framework is € 200,000

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

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Procedure for the award of Call-Off Contracts

As and when the Contracting Authority decides to source Works/Services through this Framework Agreement, then it may award a Call-Off Contract to the Framework Member based on the Tender in accordance with the process for Mini-Tenders or using the cascade method, as appropriate.

When a Call-Off Contract is awarded to the Framework Member the Contracting Authority and the Framework Member shall enter a contract in accordance with the relevant Contract Terms and Conditions.

The Call-Off Contract shall be within the scope of Contracts defined for the Framework Agreement.

Mini-Competition Procedure

The Contracting Authority may complete a Supplementary Request for Tender indicating the scope of the Call-Off Contract to be awarded and the award criteria.

The Contracting Authority shall fix a deadline for the receipt of the Supplementary Request for Tender considering the complexity of the scope of requirements and the time needed to prepare an appropriate response.

The Contracting Authority will issue the Supplementary Request for Tender by email or using the e-tenders portal to all Framework Members.

Supplementary Tenders shall be submitted in writing, and their content shall remain confidential until at least the stipulated time limit for replies has expired.

Any clarifications requested by a Framework Member in relation to a Supplementary Request for Tender shall be submitted in writing by email and any responses containing further material information will be issued in writing to all other Framework Members.

Award Criteria

The criteria for the award of a Call-Off Contract will be the Most Economically Advantageous Tender in terms of one or more of the following award criteria: 100% Price

To reflect the requirements of the particular Call-Off Contract to be awarded, each Supplementary Request for Tender will set out the precise award criteria, scope and weightings applicable to the award of the Call-Off Contract in question.

Following evaluation of all valid Supplementary Tenders received against the award criteria set out in the Supplementary Request for Tender, the Contracting Authority may enter into the Call-Off Contract with the successful Framework Member.

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Cascade Procedure

Where all the terms necessary for the performance of a Call-Off Contract are included in this Framework Agreement, the Contracting Authority may issue a Call-Off Request to a Framework Member at any time during the Framework Period.

The ranking of the Framework Members as determined by the objective criteria used to establish this Framework Agreement and contained in the Request for Tender for each Lot / Area is as follows:

1) [_____] (the 'First-Ranked Framework Member')
2) [_____] (the 'Second-Ranked Framework Member')
3) [_____] (the 'Third-Ranked Framework Member')
4) [_____] (the 'Fourth-Ranked Framework Member') etc.

The Contracting Authority will communicate any changes to this ranking by email to all Framework Members.

The Contracting Authority will complete a Call-Off Request indicating the scope and term of the Call-Off Contract to be awarded. This may be in the form of a Purchase Order or by other means.

The Contracting Authority will consult with the First-Ranked Framework Member to establish whether any capacity/performance issues or a Conflict of Interest dictate that the First-Ranked Framework Member is unable to perform the proposed Call-Off Contract. If the First-Ranked Framework Member is unable to perform the Call-Off Contract, the Contracting Authority will consult with the next ranked Framework Member. This process will be repeated until the Contracting Authority has deemed that a Framework Member is not precluded from performing the Call-Off Contract.

The Contracting Authority will issue the Call-Off Request to the First-Ranked Framework indicating the relevant deadline for the receipt of confirmation by the First-Ranked Framework Member of its acceptance of the Call-Off Request.

The First-Ranked Framework Member shall inform the Contracting Authority within the stipulated deadline whether it accepts the Call-Off Request. Upon receipt of this acceptance, the Contracting Authority will enter the Call-Off Contract with the First-Ranked Framework Member.

If the First-Ranked Framework Member does not accept the Call-Off Request, the Contracting Authority will issue that Call-Off Request to the next ranked Framework Member seeking their acceptance. This process will be repeated until a Framework Member has accepted the Call-Off Request or the Contracting Authority terminates the award procedure.

Ranking Relegation Procedure (Cascade only)

The Contracting Authority reserves the right to relegate the First-Ranked Framework Member and move them to last position in the ranking under one of the following circumstances:

Where the First-Ranked Framework Member does not perform a Call-Off Contract to the requirements set out in this Framework Agreement or the Call-Off Request on more than two (2) occasions and the Contracting Authority is not satisfied with the reasons provided by the First-Ranked Framework Member to justify the poor/non-performance, or where the First-Ranked Framework Member has not accepted a Call-Off Request on more than two (2) consecutive occasions.

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Notification of the award of a Call-Off Contract

When the Contracting Authority has made an award decision the Contracting Authority will issue a notification in writing (by post or electronic means) to all Framework Members that have submitted a Supplementary Tender. The notification will contain the following information:

- in the case of the successful Framework Member, any decisions reached concerning the award of the Call-Off Contract

and in the case of the unsuccessful Framework Members:

- any decisions reached concerning the award of the Call-Off Contract. o the name of the successful Framework Member.
- summary information on the reason for rejection.

Fixed Conditions for Contracts

Prices

The maximum price chargeable by the Framework Member during the initial 2 years of the Framework Agreement is as set out in the Form of Tender.

Personnel

The resources nominated by the Framework Member must be those used in the award of any contract under the framework.

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.

Obligations of Framework Member

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.

Insurances

Each Framework Member is required to maintain, at a minimum, the levels and forms of insurance set out in the tender documents.

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).

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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.

Termination of Appointment

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 Members. This Agreement may be terminated by the Framework Member, without liability for compensation or damages, by serving three months written notice to the Contracting Authority.

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

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.

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).

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:

- The Member commits a material breach of any term or condition of this Framework Agreement, or a Contract concluded under the Framework Agreement
- 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 days of notice given by the Contracting Authority requiring the Member to do so
- The Member convenes a meeting for the purposes of, or proposes to enter into any arrangement or composition for the benefit of its creditors
- 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
- 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
- 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;
- An encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Member
- 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
- 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
- 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.

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Termination of Framework Agreement

The Contracting Authority reserves the right to terminate this Agreement by providing three months' notice in writing to the Framework Members. 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.

Termination of the Framework Agreement shall not relieve or discharge the Framework Member from any obligations which may have accrued prior to such termination.

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.

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.

Performance Review, Termination and Promotion

On completion of each Task Order/Mini-Competition, if so requested by the Employer, the Framework Participant concerned must collate and provide to the Employer the information required for the Employer to review that Participant's performance according to the Performance Measurement Table below.

The Employer may review Framework Participants' performance of their Task Orders, and the contract, from time to time during the Term, according to the attached Performance Measurement Table.

In this rule, a Participant is said to have reached Level 1, Level 2 or Level 3, if, during the listed measurement period for an indicator in the attached Performance Measurement Table, occurrences of that indicator equal or exceed the number listed in the column headed "Level 1", "Level 2", or "Level 3".

If a Participant has reached Level 1, the Employer will give that Participant a written notification and the Participant must demonstrate to the Employer's satisfaction that it has implemented steps to redress the problem.

If a Participant has reached Level 2, the Employer will exclude that Participant from each call off in which it is due to participate until the Participant has demonstrated to the Employer's satisfaction that it has implemented steps to redress the problem. This Rule will apply temporarily during this period as if the excluded Participant's Term had been terminated.

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If a Participant has reached Level 3 the Employer will terminate that Participant's Term.

No	*Employer Objective*	*Indicator*	*Measurement Period*	*Level 1*	*Level 2*	*Level 3*
1	Health and Safety	Prohibition Notice from HSA	Term	-	1	2
		Failure to comply with LCCC SMS	12 months	1	2	3
		Failure to maintain safety measures as set out in safety and health plan	12 months	1	2	3
		Failure to provide a full information for a safety file within [30] days after completion of work under a Task Order	12 months	1	2	3
2	Quality of Work	Defect of a significant nature such as would impact on the proper functioning of the works	12 months	2	4	6
3	Programme	Failure to adhere to agreed programme for works	Term	3	4	5
		Failure to attend site within two hours for Response Maintenance call	12 months	2	3	4
4	Contract Administration	Every request for tender should be answered	Term	3	4	5
		Failure to identify change order items within 1 month of the items occurring	Term	3	4	5
		Failure to tender when invited	Term	3	4	5

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Notices

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]
Tel: [insert number]
Fax: [insert number]

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:

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

- If sent by pre-paid post, four 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)

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

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.

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

For Information Only

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:
(signature)

Witness name:
(Block letters)

Schedule:

Schedule 1: List of Framework Participants (in ranking order)

1 -
2 -
3 -
4 -
5 -
6 -
7 -
8 -
9 –
10 -

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