

REQUEST FOR TENDER

FOR

**NATIONAL NETWORK, LOCAL CONNECTIONS
PROGRAMME – FLEXIBILITY SERVICES PILOT
CONTRACT**

SECTION 1 – INSTRUCTIONS TO TENDERERS

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<p>NAME OF CONTRACTING ENTITY: ('Contracting Entity') <i>ESB NETWORKS DAC</i></p>
<p>TENDER FOR: D20/CON/888 - National Network, Local Connections Programme – Flexibility Services Pilot pursuant to a contract.</p>
<p>OJEU NUMBER: 2021/S 250-664928</p>
<p>TENDER RETURN DATE AND TIME : As stated on eTenders for RFT no. 204449 (Step : 2) ('Tender Deadline')</p>
<p>PROCEDURE: Negotiated procedure</p>
<p>CLARIFICATIONS (Pre-Tender): The latest date and time for Tenderers to submit queries or request a clarification is as stated on eTenders for RFT no. 204449 (Step : 2) ('Clarifications Deadline')</p>
<p>CONTACT PERSON: Category Buyer – ESB Networks Procurement</p> <p>E mail: messaging function on eTenders for this RFT no. 204449 (Step: 2)</p>

1. INTRODUCTION AND BACKGROUND

1.1 Contents of the Request for Tender (RFT)

The Contracting Entity invites the Tenderer to tender for the Contract. **Tenderers may only submit a tender for the Zones/Assets for which they have already been prequalified (please refer to ESB Networks prequalification letter dated 7 April 2022 that outlines the Zones/Assets prequalified). Any tenders (or part thereof) received for a Zone/Asset for which the Tenderer has not been prequalified will be rejected.**

The RFT comprises:

- **Section 1: Instructions to Tenderers (this Section)**, which includes Tender completion instructions and requirements, the evaluation criteria and Appendices (including the **Form of Tender** in Appendix 1);
- **Section 2: Proposed Contract**
- **Section 3: Flexibility Specification and Background Information;**
- **Section 4: Pricing Documents;** and
- **Section 5: Returnable Technical Response Information.**

1.2 Background

The Contracting Entity is conducting this Procurement using the negotiated procedure for the purpose of procuring flexibility services for the national electricity distribution system in Ireland. Flexibility Services can be provided by suitably qualified distribution connected customers (generation, storage or demand response individually or via aggregation) that can alter their consumption or generation pattern to support ESB Networks in its role as the Distribution System Operator (DSO) in delivering a safe, secure and efficient distribution system.

Services will take the form of a contracted remunerated service for altering consumption or generation in response to a pre-agreed schedule with ESB Networks or in response to communications/signals from ESB Networks National Distribution Control Centre (NDCC). A payment structure consisting of availability and utilisation is being applied.

The Contracting Entity plans to contract for a number of different services with dedicated service windows in terms of season and time of day/week, with advance notice periods defined depending on the type of network need and the capabilities of the service provider's assets. These flexibility services will be scheduled for delivery or to be available for delivery to meet the ESB Networks requirements during pre-agreed Service Windows and will, be utilised to manage network conditions, as necessary.

Interested parties completed the Pre-Qualification Questionnaire (**PQQ**), which sought responses in relation to, inter alia, their experience and technical capability and their financial standing. The Contracting Entity evaluated the PQQ Responses and has pre-qualified a number of Applicants. The RFT invites Tenders from those Applicants.

The RFT contains further information about the Procurement process, the Services and evaluation questions for Tenderers to complete. Each Tenderer's response should be detailed enough to allow the Contracting Entity to make an informed selection of the most economically advantageous Tender.

1.3 The Contracting Entity

The Contracting Entity is ESB Networks DAC a wholly owned subsidiary of ESB (Electricity Supply Board).

ESB was established in 1927 as a statutory corporation in Ireland under the Electricity (Supply) Act 1927. With a holding of 95%, ESB is majority owned by the Irish Government. The remaining 5% is held by the trustees of an Employee Share Ownership Plan.

ESB Networks DAC is the licensed operator for the electricity Distribution System across Ireland, operating and maintaining this infrastructure, owned by ESB. The Distribution System is extensive and provides all customer connections to the system – currently standing at in excess of c.2.4m customer connections.

The distribution network includes all distribution stations, overhead electricity lines, poles and underground cables which transport electricity from the bulk supply points to all electricity users across the Country. ESB Networks carry out all of the functions under the Distribution System Operator License (DSO) granted by the CRU including planning, construction, maintenance and operation of all medium and low voltage electricity network infrastructure nationwide. In addition, ESB Networks is also responsible for metering of customer end use and provision of data to all electricity supply companies in Ireland.

Further information about ESB can be accessed by clicking on the following link:
https://www.esb.ie/who-we-are/about-esb_and_in_relation_to_ESB_Networks_DAC_at_https://www.esbnetworks.ie/who-we-are/about-esb-networks

It is currently envisaged that ESB Networks DAC shall enter into the Contract with the successful Tenderer(s).

1.4 Scope of the Services

The Contracting Entity intends to procure a multi-supplier Contract for the provision of Flexibility Services for the distribution system.

Tenderers are referred to the Specification at Section 3 (Flexibility Specification) of the RFT for a detailed description.

Charges under the Contract will be payable for (a) Availability and (b) Utilisation. In the case of Utilisation, these charges are payable following issue of a Utilisation Instruction.

Availability refers to the Assets the Contractor is required to maintain as available under the Contract in return for which the Contracting Entity will pay an availability payment. Availability will be paid for the Assets/Units that the Contracting Entity contracts with the

Contractor to maintain as available within the parameters agreed in the Contract for each Asset.

Utilisation refers to the call off and use of flexibility services from a given Contractor for a Flexible Service Unit in a specific Zone. The utilisation quantities shown in the tender documents are an estimate only of the Contracting Entity's total envisaged requirements over the term of the Contract based on current and future expected utilisation. The Contracting Entity does not make any guarantee that these or any quantities will be adhered to and Utilisation Instructions will issue as requirements arise.

The Contracting Entity does not make any guarantee in regard to the award of any Contract and/or the volume or value of Utilisation Instructions to be issued over the lifetime of the Contract. The Contracting Entity reserves the right to procure requirements falling within the scope of this Procurement outside of the Contract, regardless of the value of such requirements or the ability of the Contractor to provide them.

This Procurement is divided into Zones as defined in Flexibility Specification (*Section 3 of the RFT*). Each Zone may result in separate Contract(s) with multiple suppliers. Tenderers are invited to submit Tenders for the Zones and related Assets for which they have already been notified they have prequalified during the selection (PQQ) stage of this Procurement process. The Contracting Entity reserves the right to award a Contract for any, all or none of the Zones and/or associated offers.

Pilot testing – In addition to Utilisation to meet a requirement for Flexibility Services to support the network, the Contracting Entity envisages that it may also be necessary to issue Utilisation Instructions as part of testing over the course of the Contract. This will involve the Contracting Entity calling on the Contractor to provide Utilisation Flexibility Services from Assets within a Zone to secure assurance of how flexibility operates from particular types of assets, different asset owner types and locations can be gained. The Contractor's Utilisation tender rates will apply as set out in the Contract.

1.5 Contract Term

The Contracting Entity proposes to enter into the Contract for a period of two (2) years, with the option to extend the term, at the Contracting Entity's discretion, for a further period of up to one (1) year, subject to satisfactory performance review, under the same terms and conditions.

1.6 Definitions

For the purposes of these Instructions to Tenderers, the capitalised words and expressions used herein have the meanings assigned to them in this document unless the context specifically requires otherwise. It should also be noted that references to the singular includes the plural and vice versa.

Affiliate(s) means any entity that directly or indirectly controls, is controlled by, or is under common control with another entity;

Applicant means the person or persons that has or have applied to the Contracting Entity by submitting a PQQ Response. The Applicant must be the same legal person or persons, firm or company that is intended to enter into the Contract in the event that the Applicant is successful in the Procurement process;

Asset means the equipment/unit(s) having a unique MPRN from which the Contractor proposes to provide flexibility to the Contracting Entity and for which the Contractor has prequalified and is submitting a response to this RFT. Please also refer to the Proposed Contract section 1. Definitions – “Flexibility Services Asset”;

Availability means that the Flexibility Services, in accordance with the Flexibility Specification, are available to be delivered to the Company for the duration of the Service Window and Delivery Period as tendered in Section 4 (Pricing Schedule).

Bid(s) means the Tender(s) submitted by the tenderer in response to this RFT. Please also see definition of Tender further on in 1.5 Definitions;

Bidder(s) means the Tenderer(s) who submits a bid in response to this RFT. Please also see definition of Tenderer(s) further on in 1.5 Definitions;

Bid Price means Tender Price. Please also see definition of Tender Price further on in 1.5 Definitions;

Consortium means a consortium, joint venture or group of two or more legal persons, acting jointly and submitting a single Tender;

Contract means the contract to be entered into by the Contracting Entity and the Contractor, for the Services;

Contracting Entity means ESB Networks DAC a statutory corporation having its principal place of business at Three Gateway, East Wall Road, Dublin 3

Contract Notice means the contract notice published in the OJEU and on the eTenders website eTenders.gov.ie in respect of this Procurement;

Contractor means the legal entity with which the Contracting Entity will ultimately contract. In these Instructions to Tenderers the use of the word ‘Contractor’ should be interpreted as meaning supplier, service provider, consultant or contractor, as appropriate;

Data Controller has the meaning given to “Controller” 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 the Data Protection Act 2018, 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 from time to time;

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

ESB means Electricity Supply Board, a statutory corporation, having its principal place of business at 27 Lower Fitzwilliam Street, Dublin 2;

ESB Networks DAC means ESB Networks DAC, a wholly owned subsidiary company of ESB, having its principal place of business at Three Gateway, East Wall Road, Dublin 3;

Flexibility Services Unit or FSU means the single or aggregated flexible services asset(s) in the same flexibility zone as tendered in Section 4 (Pricing Schedule). Please also refer to the Proposed Contract section 1. Definitions – “Flexibility Services Unit”;

Insurer means insurer or insurance broker authorised by the relevant competent authority to underwrite that line of business in Ireland and which have a Standard & Poor's (or equivalent) credit rating of at least A- (or equivalent);

Lead Consortium Member means, where the Tenderer is a Consortium, the consortium member identified in the Tenderer's PQQ Response as the Lead Consortium Member;

Maximum Import Capacity (MIC) means the maximum permissible amount of electricity to be imported from the Distribution System at the Connection Point expressed in kVA and referred to as being the “Maximum Import Capacity” in Schedule 1 to the Connection Agreement;

Maximum Export Capacity (MEC) means the maximum permissible amount of electricity to be exported onto the Distribution System at the Connection Point expressed in kVA and referred to as being the “Maximum Export Capacity” in Schedule 1 to the Connection Agreement;

OJEU means the Official Journal of the European Union;

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

Preferred Tenderer(s) means the Tenderer(s) selected or provisionally selected from the Procurement process as the successful Tenderer;

Pre-Qualification Questionnaire or PQQ means the pre-qualification questionnaire that was issued by the Contracting Entity to pre-qualify the Tenderers for specific Zones/Assets and for which the Tenderers have been issued with the RFT;

Pricing Documents means the Form of Tender and pricing documents submitted by Tenderers, included at Section 1 (*Instructions to Tenderers*) and Section 4(*Pricing Documents*) respectively of the RFT;

Product means Secure, Dynamic and Restore as defined in the Section 3 (Flexibility Specification);

Procurement means this procurement pursuant to the OJEU Contract Notice which includes the entire negotiated process;

Proposed Contract means as defined in paragraph 3.7 below (*Proposed Contract Terms*) of these Instructions to Tenderers;

Regulations means the European Union (Award of Contracts by Utility Undertakings) Regulations 2016 (S.I. No. 286 of 2016);

Request for Tender or RFT means this invitation issued by the Contracting Entity to the Tenderers following the pre-qualification stage of the Procurement process, to submit a detailed Tender (together with any written clarifications and/or other information made available by or on behalf of the Contracting Entity in respect of the RFT);

Response or PQQ Response means an application for pre-qualification submitted in response to the Contract Notice and the PQQ including any clarifications requested from, and submitted by, the Applicant;

Services means the provision of Flexibility Services as described in paragraph 1.4 above (*Scope of the Services*) of these Instructions to Tenderers, in the Flexibility Services Specification, Contract and associated documentation;

SH&W Legislation means the Safety, Health & Welfare at Work Act 2005 as subsequently amended, modified or replaced and the Safety, Health & Welfare at Work (Construction) Regulations 2013 (S.I. No. 291 of 2013) as amended, modified or replaced, and all regulations issued under the 2005 Act or otherwise in connection with health and safety;]

Specification means the Contracting Entity's requirements as set forth in Section 3 (*Flexibility Specification*) to the Request for Tender (RFT);

Subcontractor means those sub-contractors and any successor or assignee thereof who is employed or will be employed by the Contractor pursuant to the relevant clauses in the Contract;

Tax Clearance Certificate means a written confirmation from the Office of the Revenue Commissioners that a Contractor's tax affairs are in order at the date of issue of the certificate;

Tenderer(s) means any Applicant(s) who has been invited to submit a Tender and who submits or intends to submit a tender in response to the Request for Tender;

Tender(s) means the tender(s) submitted for the Contract in response to the RFT (including the Pricing Documents);

Tender Price means the price stated in the Form of Tender included in Appendix 1 (*Form of Tender*) of these Instructions to Tenderers and Pricing Documents (Section 4 of the RFT);

Tender Validity Period means as defined in paragraph 3.11 below (*Tender Validity Period*) of these Instructions to Tenderers;

Utilisation means the call off and use of flexibility services by the Contracting Entity from a given Contractor for a specific Zone/Asset/Units;

Utilisation Instruction means an instruction by the Company to the Flexible Service Provider to deliver Flexibility Services in accordance with Schedule 4 of the Contract;

Zone or Flexibility Zone means an area of electrical connectivity where a network need has been identified' or where the Flexibility Services will be provided and to which the Flexibility Services will be delivered. For the purposes of this RFT the Zones are as set out in in Section 3 (Flexibility Specification).

1.7 Purpose and scope of the RFT

The RFT:

- asks Tenderers to submit their Tenders in accordance with these Instructions to Tenderers;
- sets out the overall indicative timetable and process for the Procurement to Tenderers;
- provides Tenderers with sufficient information to enable them to submit a compliant Tender (including providing templates where relevant);
- sets out the award criteria and the Tender evaluation model that will be used to evaluate the Tenders; and
- explains the administrative arrangements for the receipt of Tenders.

1.8 Pre-Tender queries or clarifications about the Services or RFT

Each Tenderer must fully satisfy itself as to the nature and requirements of the RFT. In addition, if a Tenderer considers that any aspect of the RFT is not clear or is ambiguous, contains errors or the Tenderer has any queries regarding the scope of the proposed Contract, the manner in which the evaluation will be undertaken or how any of the award criteria or other requirements will be applied, this must be raised with the Contracting Entity in accordance with this paragraph 1.8 above (*Pre-Tender queries or clarifications about the Services or RFT*).

Any queries or requests for clarifications relating to the RFT must be **submitted in writing through the e-Tenders website**. The deadline for receipt of queries or clarifications is set out on page 1 – Clarifications Deadline. The Contracting Entity's may be contacted via the messaging function in eTenders for this RFT only.

The Contracting Entity will respond to all reasonable queries and clarifications as soon as possible through publishing the Tenderers' questions and the Contracting Entity's response to them on the e-Tenders portal. The Contracting Entity will use reasonable endeavours to respond to queries received before the Clarifications Deadline. The Contracting Entity may, at its discretion (but shall not be obliged to) respond to queries received after this date and time.

Tenderers shall not rely on communications from the Contracting Entity in respect of the Services or RFT unless they are made in accordance with these Instructions to Tenderers.

If a Tenderer becomes aware of any ambiguity, discrepancy, error or omission in or between any RFT documents it must notify the Contracting Entity even after the time for submitting queries has expired.

Confidential Queries:

If a Tenderer believes a query and/or the response relates to a confidential aspect of its Tender, it must mark the query as 'confidential'. If the Contracting Entity, at its discretion, is satisfied that the query and/or its response should be properly regarded as confidential, the nature of the query and its response shall, subject to the following provisions, be kept confidential.

If the Contracting Entity is of the opinion that it would be inappropriate to answer the query on a confidential basis it will notify the Tenderer and require the Tenderer to either withdraw or reformulate the query or to raise any objection within two (2) days of such notification and state the grounds for its objection. If the Tenderer does not withdraw or reformulate the query or raise any objection within the specified period, or the Contracting Entity is of the opinion that, notwithstanding the objection of the Tenderer, the query is not confidential, the Contracting Entity may issue the query and its response to all of the Tenderers.

Supplemental information:

Notwithstanding anything else in the RFT, the Contracting Entity may issue supplemental information to all Tenderers at any time and for any reason (including in light of queries received, confidential or otherwise).

1.9 Clarifications about the contents of the Tenders

The Contracting Entity reserves the right to require any of the Tenderers to attend meetings and/or interviews in Dublin or by video conference or telephone. In such event, the Tenderer will bear all its own costs and expenses in attending any such meeting.

Tenderers should note that the Contracting Entity may elect to hold such meetings and/or interviews with only those Tenderers which the Contracting Entity considers, at its discretion, is necessary to do so.

Tenders shall not be qualified and shall not be accompanied by any statement which could be construed as rendering the Tender ambiguous or equivocal or putting it on a different footing from other Tenders. If a Tender fails to comply in any respect with any requirements of the RFT (whether or not stated to be mandatory or similar) or the Contracting Entity considers the Tender to be ambiguous or that it requires clarification or amplification in any respect, the Contracting Entity may (but is not obliged to) and subject to applicable law, take such action as it considers appropriate in any given case, including (but not limited to):

- (1) disqualify the relevant Tender as non-compliant;
- (2) without prejudice to the Contracting Entity's right to disqualify the Tender:
 - (i) query and/or seek clarification from the Tenderer in respect of the relevant Tender; and/or
 - (ii) request the Tenderer to provide the Contracting Entity with information or items which have not been provided or have been provided in an incorrect form; and/or
 - (iii) waive a requirement or a failure within the Tender which, in the opinion of the Contracting Entity, is not material; and/or
 - (iv) amend a requirement and request all Tenderers to submit revised or additional Tenders on the basis of the amended requirements; and/or
 - (v) negotiate an amendment and/or change to the relevant Tender with the Tenderer.

The Contracting Entity's decision as to whether a Tender is compliant is final.

2. TENDER TIMETABLE

2.1 Key dates

Outlined below is the anticipated Procurement process and timeline (**Timetable**). Tenderers should note that the timescales shown are indicative only and are subject to change at the Contracting Entity's sole discretion. Without in any way limiting, or intending to limit, the Contracting Entity's discretion, it is currently intended that the Procurement process will proceed as follows:

Event	Date /Calendar Quarter
Issue of RFT to Tenderers	As stated on eTenders for this RFT
Deadline for receipt of pre-Tender queries or clarifications (including any queries or clarifications in regard to the Proposed Contract)	Minimum of 7 days prior to Deadline for Receipt of Tenders
Target date for responses to queries/clarifications	As stated on eTenders for this RFT
Deadline for receipt of Tenders	As stated on eTenders for this RFT
Evaluation of Tenders	Q2/Q3 2022
Notification of intention to award Contract	Q3 2022
"Standstill" period	14 days from notification of intention to award contract
Completion and execution of Contract	Q3/Q4 2022
Contract commences	Q4 2022

Any changes to the Procurement Timetable shall be notified to Tenderers as soon as practicable.

2.2 Not Used

2.3 Deadline for Receipt of Tenders

Tenders offered in response to the RFT must arrive in the manner prescribed under paragraph 3.2 below (*Formalities for Tender Submission*) no later than the Tender Deadline.

The Contracting Entity may, however, at its own absolute discretion extend the Tender Deadline, and in such circumstances, the Contracting Entity will notify all Tenderers of any change.

2.4 Not Used

2.5 Not Used

2.6 Contract award

Contract award is subject to the formal approval process of the Contracting Entity. Until all necessary approvals are obtained and the standstill period completed, no contract will be entered into.

Once the Contracting Entity has reached a decision in respect of the Contract award, it will notify all Tenderers of that decision and provide for a standstill period before entering into the Contract.

The award of a Contract does not confer exclusivity on the successful Tenderer(s).

3. TENDER COMPLETION INFORMATION

3.1 Acknowledgement of Receipt of RFT

Tenderers are requested to acknowledge receipt of the RFT documents and confirm within seven (7) days via the e-Tenders portal whether or not they intend to submit a completed Tender.

3.2 Formalities for Tender Submission

All documents comprising the Tender must be **completed and uploaded to the e-Tenders portal by the Tender Deadline.**

The Tender should be clearly marked "D20/CON/888 – Tender for NNLC - Flexibility Services Pilot"

Completed Tenders must be submitted in Microsoft Word or PDF format via the Government eTenders website only (www.eTenders.gov.ie), not later than the **Tender Deadline.**

Except as may be otherwise notified by the Contracting Entity, Tenders submitted by any other means will not be accepted and will be returned.

Tenderers are strongly advised to familiarize themselves with the eTenders portal and to ensure that they allow sufficient time for upload of their Tenders in accordance with eTenders upload limits. Tenderers should take into account the fact that upload speeds vary.

Tenderers are required to separately upload their Tender documents in discrete sections as follows:

1. Cover Letter
2. Pricing documents (including Form of Tender & Pricing Schedule) Completed
3. Response Schedules (Completed)
 - i. Baseline Tool
 - ii. Safety Statement
 - iii. Environmental Policy
4. CSR Declarations (Completed)
5. Miscellaneous
6. GDPR – *(Any document containing personal sensitive information, whether or not the document would, if it did not contain personal sensitive information, otherwise reside within any of the other sections listed above (please refer to the Data Protection clauses within this ITT, the General Data Protection Regulations and Irish Data Protection Act 2018 for information about personal sensitive information)*

A Tender should not be scanned in its entirety into one large document and uploaded. Tenderers must ensure all Tender documents are not corrupt / virus free.

In the event that a Tenderer experiences genuine technical difficulties with the eTenders website (not attributable to that Tenderer), the Tenderer must advise the ESB contact

person by email/phone and the ESB Contact person will determine how the tender should be submitted.

The Tenderer is fully responsible for the safe and timely delivery of the Tender.

The following requirements are to be adhered to when submitting Tenders:

- The pages of the Tender documents should, where possible, be numbered sequentially as "Page [x] of [xx]" and include the date and title of the document on each page of the main body.
- Any additional pre-existing material which is necessary to support the Tender should be included as schedules with cross-references to this material in the main body of the Tender. Cross-references to the RFT should also be included in the Tender whenever this is relevant.
- Where documents are embedded within other documents, Tenderers must upload separate copies of the embedded documents.
- **The Tender must be completed in English** and drafted in accordance with the provisions of the RFT.
- Each Tender must be uniquely named or referenced.
- A table of contents must be provided.
- The Tender must be fully cross-referenced.
- Tenderers should use Ariel font in size 11.

Line spacing must be 1.0 or more.

The Tender must be clear, concise and complete. Tenderers should submit only such information as is necessary to respond effectively to this RFT. Unless specifically requested, extraneous presentation or marketing materials shall not be included.

All information supplied by Tenderers may be treated as contractually binding on the Tenderers if the Tender is ultimately accepted by the Contracting Entity.

3.3 Form of Tender

The Tenderer must upload a duly executed Form of Tender (included at Appendix 1 (*Form of Tender*) of these Instructions to Tenderers) stating the Tenderer's full correct legal name. This must be the legal name in which the Tenderer prequalified, unless the Contracting Entity has approved a change in accordance with the requirements of the RFT.

The Form of Tender must be signed as follows:

- if the Tenderer is a company incorporated in Ireland, the signature must be that of a director or a person authorised to sign, and the execution must be witnessed. A letter from the company secretary confirming that the director/authorised person has been authorised to sign the document may be requested by the Contracting Entity following the submission of Tenders and must, if requested, be provided. The cost shall be borne by the Tenderer;
- if the Tenderer is an individual, he or she must sign the Form of Tender and the execution must be witnessed;

- if the Tenderer is a company incorporated elsewhere than Ireland, it must execute the Form of Tender under hand according to the laws of its place of incorporation. The execution block in the Form of Tender should be adapted accordingly. A legal opinion from external legal advisors that the Form of Tender has been duly executed in accordance with the requirements of the jurisdiction in which the company is registered may be requested by the Contracting Entity following the submission of Tenders and must, if requested, be provided. The cost shall be borne by the Tenderer.

If the party who will enter into the Contract is one or more human or legal persons (such as a partnership, joint venture or consortium), each of them must execute the Form of Tender.

The Contracting Entity's decision as to whether or not a tender has complied with its requirements shall be binding.

3.4 Variant Tenders

Variant Tenders are not permitted as part of this tender submission.

3.5 Not Used

3.6 Submission of Tenders

Each Tenderer must submit one Tender. The Tender must meet the Contracting Entity's requirements, operate as a standalone tender/bid and not be dependent on any other tender/bid or any other factors external to the Tender itself. The Tender must be capable of being accepted by the Contracting Entity in its own right.

3.7 Proposed Contract Terms

The contract that the Contracting Entity proposes to use as the Contract is attached at Section 2 (Proposed Contract) of the RFT ('**Proposed Contract**'). Tenderers should base their Tender on the Proposed Contract.

While it is anticipated that the Proposed Contract will be subject to some limited negotiations and amendment post Tender, the Contracting Entity expects that the final form of agreement which will be entered into with the successful Tenderer will not differ materially from the Proposed Contract and Tenderers should submit their tender on that basis. Tenderers are referred to paragraph 1.9 above (*Clarifications about the contents of the Tenders*).

This approach is being adopted to ensure that all Tenderers submit Tenders on the same basis with the issues of risk allocation and apportionment being clearly defined and understood in advance of the submission of Tenders. **The Proposed Contract should not be marked-up nor should it be returned with Tenders stated to be subject to future legal or tax review.** If Tenderers have any queries in relation to the Proposed Contract, they can raise these with the Contracting Entity in accordance with paragraph 1.8 above (*Pre-tender queries or clarifications about the Services or RFT*).

3.8 Content of Tenders

Tenders shall consist of:

- the completed Form of Tender executed as indicated in paragraph 3.3 (*Form of Tender*) above;
- the completed Pricing Documents (Section 4 of the RFT);
- The Response Schedules (*Completed*)
 - Baseline Tool
 - Safety Statement
 - Environmental Policy
- CSR Declaration (*Completed*)
- GDPR Folder (*all documents containing personal sensitive information to be placed within this folder*)
- Miscellaneous – (*including the additional information requested in these Instructions to Tenderers*);

In the event that the Contracting Entity issues any supplemental information to the RFT, Tenderers must use the most recently updated issued versions. If replacement pages are issued as supplemental information, Tenderers must insert the most recently issued pages in place of the replaced pages.

Subject to paragraph 3.3 (*Form of Tender*), no amendments or alterations to the format of the Form of Tender or to the format of the attached Pricing Documents are permitted. Any such amendments/alterations may result in the Tender being rejected.

3.9 Documents comprising the Contract

The following documents shall form part of the Contract between the Contracting Entity and the Contractor:

- the Flexibility Services Agreement including:
- the Conditions of Contract;
- the Schedules to the Agreement; and.
- The Flexibility Specification

Tenderers are referred to the Proposed Contract in Section 2 (Proposed Contract) of the RFT.

3.10 Consortia and subcontractors

Consortia:

While a Tenderer is not required to take a particular legal form for the purpose of participating in this Procurement process, the Contracting Entity may, at its discretion, require the Tenderer to contract:

- on the basis of joint and several liability amongst each of the Consortium members;

or

- with a particular single Consortium member as the prime contractor (with some or all of the Consortium members providing collateral warranties and/or guarantees);

or

- as an incorporated or unincorporated special purpose vehicle (with guarantees from the other Consortium members and/or collateral warranties from the other Consortium members);

and in any event in a manner and on terms satisfactory to the Contracting Entity.

The Contracting Entity requires all Tenderers to identify, for information purposes, consistent with the information provided in their PQQ Response, whether and which consortium arrangements apply in the case of their Tender and specify which entity they propose to be the Contractor.

Lead Consortium Member: In the case of a Tender by a Consortium, the Contracting Entity will be entitled, for the purposes of the Procurement process, to communicate with the Tenderer by communicating only with the Lead Consortium Member. The nominated lead Consortium Member shall be authorised by all Consortium members to act as the Tenderer lead and primary contact point for the purposes of the Procurement. By communicating with the Lead Consortium Member, the Contracting Entity shall be deemed to have communicated with all consortium members.

Sub-contracting:

The Contracting Entity requires all Tenderers to identify, for information purposes, consistent with the information provided in their PQQ Response, whether and which subcontracting arrangements apply in the case of their Tender, and in particular, specify the works or services of the Contract it intends to sub-contract, any proposed sub-contractors (to the extent this information is available to the Tenderer at this stage of the Procurement process).

3.11 Tender Validity Period

Tenders shall remain open for acceptance by the Contracting Entity for a period of twenty-six (26) weeks from the Tender Deadline (the '**Tender Validity Period**'), or such further period as the Contracting Entity may agree with the relevant Tenderer.

3.12 Insurance Requirements

The Contracting Entity's insurance requirements are as set out in Clause 13 of the Proposed Contract.

It shall be a pre-condition to the award of the Contract that the successful Tenderer shall have in place insurance with an Insurer (as defined) which meets the Contracting Entity's insurance requirements as set out in the Proposed Contract.

3.13 ESB Safety and Environment Requirements

Please refer to ESB's Suppliers Charter for a summary of ESB's minimum requirements applying to of its Suppliers, Contractors and Service Providers in relation to Health and Safety as well as Environment.

3.14 Not Used

3.15 Withdrawal from this Procurement Competition

Tenderers are requested to provide immediate notification, through eTenders, if at any stage they decide to withdraw from this Procurement competition.

3.16 Award to Runner Up

If the Contract is not concluded with the Preferred Tenderer, the Contracting Entity reserves the right to award the Contract to the Tenderer with the next most economically advantageous Tender and so on and so forth. This shall be without prejudice to the right of the Contracting Entity to cancel this Procurement process and/or initiate a new contract award procedure at its sole discretion.

3.17 Tax Clearance

It shall be a pre-condition of the award of the Contract that the successful Tenderer is compliant with Irish Revenue tax clearance rules.

The Tenderer must be able to provide the following on request:-

- a) Tax Clearance Access Number, and
- b) Tax Reference Number (or PPSN Number if a Tax Reference Number is not available).

The Contracting Entity will use the above information to validate the Tenderer's tax status with Irish Revenue.

In the case of Tenderers who are non-resident in Ireland and who are not registered for Irish Tax, an up to date Tax Clearance Certificate will be accepted instead.

Payments pursuant to the Contract are subject to on-going tax clearance certification. The Contracting Entity reserves the right to withhold payments pending affirmation of a Contractor's tax clearance status or on production of a valid Tax Clearance Certificate. The Contractor agrees to waive any right it may otherwise have to claim for payment due and or late payment interest under the Contract arising from such withholding of payment.

Further information on tax clearance can be accessed at www.revenue.ie.

3.18 ESB's Supplier Charter and Requirements for Third Parties

ESB expects all suppliers/contractors providing goods, services or works to ESB and/or on behalf of ESB to conduct their business in an honest and ethical manner, in accordance with all applicable laws, and to respect internationally recognised human rights.

ESB's Supplier Charter sets out the basic principles that ESB expects of its suppliers and contractors. ESB's Supplier Charter can be reviewed by following the link [here](#).

It shall be a pre-condition of the award of Contract that the successful Tenderer undertakes to comply with the requirements stated in the ESB Requirements for Third Parties document, full details of which are set out in the Proposed Contract (Schedule 6) included at Section 2 (*Proposed Contract*) of the RFT.

Tenderers are advised to seek their own legal advice in relation to environmental, social and employment legislation.

For works and services executed in the Republic of Ireland, the following websites are a useful source of information:

www.workplacerelations.ie

www.cif.ie

Tenderers are required to ensure that their obligations in relation to employment standards have been taken into account when drawing up their Tender and that the price quoted in their Tender is inclusive of all costs and expenses associated with complying with the terms of this condition.

3.19 Value Added Tax

All sums quoted in the Tender must exclude VAT.

3.20 Payment Terms

Payments terms shall be as set out in the Proposed Contract - Schedule 2 - Part 2 Invoicing/Payment Terms.

3.21 Electronic Invoicing

The Contracting Entity's required method for receiving supplier invoices is via a pdf sent by email to supplier.pdfinvoices@esb.ie

This free of charge service offers many benefits to suppliers, including the elimination of paper invoices and ensures that invoices sent to supplier.pdfinvoices@esb.ie (that are approved for payment and containing all the required information) are processed and are visible on ESB's payment system.

Requirements for emailed invoices:-

- Invoices can only be accepted in PDF format;
- 1 invoice per PDF (may contain multiple pages if relating to a single invoice);
- A maximum of 10 PDFs per e-mail;
- Only original invoices from suppliers can be e-mailed;
- You must ensure you quote a valid purchase order number.

3.22 Tendered Price

Tenderers are requested to submit their Tender Price on a Firm Fixed Price basis.

3.23 Currency

Tenderers are required to quote in euro.

3.24 Not Used

3.25 Not Used

3.26 Not Used

3.27 Not Used

3.28 Not Used

3.29 Not Used

3.30 Not Used

3.31 Not Used

3.32 Covid – 19

Each Tenderer shall be deemed to be providing their Tender in the full knowledge, experience and foresight of the effects, costs and additional services and requirements arising as a consequence of the COVID-19 Pandemic. Therefore, each Tenderer must take account of, and include in their Tender pricing, all delays, additional costs, expenses, materials, works and services as may be reasonably be expected to arise as a consequence of the continuation of the COVID-19 Pandemic. The Contract will provide that the Contractor is entering the Contract in the full knowledge and understanding of the effects of the COVID-19 Pandemic of their costs, services and scope of work and the Contractor will be required when entering into the Contract, to waive any or future claims for additional costs, extensions of time or seek force majeure relief from any of the effects of the COVID-19 Pandemic. Any such Tender pricing for the COVID-19 Pandemic in costs / fees / rates will be evaluated as part of the tender evaluation but in the contract they should be separately listed so that they will not be charged to ESB in the event that

these costs /fees are no longer being incurred or have reduced or removed or mitigated in the future.

Additional information, which includes: Information for Contractors in relation to travel and self-isolation requirements to the Republic of Ireland and the UK, can be viewed at [ESB Covid web page here](#)

4. PROCUREMENT RULES - GENERAL

In submitting a Tender in response to the RFT, it will be deemed by the Contracting Entity that each Tenderer fully understands and accepts all the provisions of the RFT, including these rules. It is each Tenderer's responsibility to ensure that any Consortium member, sub-contractor and adviser abides by these rules. Tenderers shall ensure that they submit a tender in respect of the Zones and Assets for which they have been prequalified only. Tenders received for any other Zone or Asset will be rejected.

4.1 Full and True Disclosure of Information

Tender responses should include sufficient detail to allow an objective and full evaluation of the Tender to be carried out and should be a full and true disclosure of relevant information.

Please note that only the information furnished in the Tenderer's Tender as requested in the RFT (or in subsequent clarifications in accordance with section 1.9 above (*Clarifications about the contents of the Tenders*)) will be evaluated.

4.2 Language

The Tender shall be completed in English.

4.3 Collusion

Any attempt by Tenderers or their advisers to influence the contract award process in any way may result in the Tenderer being disqualified. Specifically, Tenderers shall not directly or indirectly at any time:

- Devise or amend the content of their Tender in accordance with any agreement or arrangement with any other person, other than in good faith with a person who is a proposed partner, supplier, Consortium member or provider of finance;
- Enter into any agreement or arrangement with any other person as to the form or content of any other Tender, or offer to pay any sum of money or valuable consideration to any person to effect changes to the form or content of any other Tender;
- Enter into any agreement or arrangement with any other person that has the effect of prohibiting or excluding that person from submitting a Tender.

4.4 Canvassing

Any attempt by a Tenderer or its adviser to inappropriately influence the award process in any way will result in the Tenderer's Tender being disqualified. Any direct or indirect canvassing by Tenderers or their advisers in relation to this Procurement or any attempt to obtain information from any of the employees or agents of the Contracting Entity concerning another Tenderer may result in disqualification at the discretion of the Contracting Entity.

4.5 Conflict of Interest

Any conflict of interest or potential conflict of interest relating to the Tenderer (including any parent, subsidiary or associated company of the Tenderer or any director, partner or person in an equivalent position in the Tenderer) must be fully disclosed to the Contracting Entity as soon as such conflict or potential conflict becomes apparent. In the event of any conflict or potential conflict of interest, the Contracting Entity shall, at its discretion, decide on the appropriate course of action.

4.6 Confidentiality

The RFT and all information provided by the Contracting Entity pursuant to the RFT, is furnished for the purpose of responding to the RFT. Tenderers shall ensure that it shall not be used, communicated, reproduced or published for any other purpose or forwarded to any third party other than on a confidential and a strict need to know basis to those with whom the Tenderer needs to consult for the purpose of preparing or submitting its Tender.

Tenderers must procure that their personnel and all other of their employees and advisers having access to such information are subject to the same rules as set out in this paragraph and must take all reasonable steps to ensure that its personnel, employees and advisers are made aware of and comply with such rules.

Tenderers should note the requirements of the Contracting Entity (or of its subsidiaries and affiliates) to be compliant with applicable transparency obligations and legal requirements (including but not limited to the EU (Award of Contracts by Utility Undertakings) Regulations 2016, EC (Award of Contracts by Utility Undertakings) (Review Procedures) Regulations 2010 to 2015, Freedom of Information Act 2014 ('FOI Act') or European Communities (Access to Information on the Environment) Regulations 2007 to 2011, to the extent each or any of these are applicable), whereby the Contracting Entity may be required to publish, give notice of, reveal or otherwise disclose all or any part of any information arising from this Procurement process, and the Contracting Entity's right to circulate additional information (whether in response to a query or otherwise) pursuant to section 1.8 above (*Pre-Tender queries or clarifications about the Services or RFT*) of these Instructions to Tenderers.

Without prejudice to the generality of the foregoing, please be aware that information submitted as part of this Procurement may, as appropriate, be shared with, or held by ESB Networks DAC in its capacity as the licensed distribution system operator ('DSO'); or (b) EirGrid plc in its capacity as the licensed transmission system operator ('TSO'). ESB Networks DAC is subject to the FOI Act insofar as records concern its functions under its DSO licence issued under section 14(1) (g) of the Electricity Regulation Act 1999. EirGrid plc is subject to the FOI Act insofar as records concern its functions under its TSO licence issued under section 14 (1) (e) of the Electricity Regulation Act 1999.

4.7 Data Protection

The Contracting Entity will be a Data Controller in respect of any Personal Data required to be provided by the Tenderer in response to this RFT.

The Tenderer, as Data Controller in respect of any Personal Data provided by it in its Tender, is required to confirm in the Form of Tender (in Appendix 1 of these Instructions to Tenderers) that all Data Subjects whose Personal Data is provided by the Tenderer have consented to the processing of such Personal Data by the Tenderer, the Contracting Entity, the evaluation team and the supplier of the etenders.gov.ie website, for the purposes of the participation of the Tenderer in this Procurement or that the Tenderer otherwise has a legal basis for providing such Personal Data to the Contracting Entity for the purposes of its participation in this Procurement.

Please refer to Clause 18 of the Proposed Contract for Data Protection requirements under the Contract.

- **Data Protection Non-Commercial Entities**

The Contracting Entity does not require personal data to be provided in response to the RFT and do not consider it necessary to complete a submission. However, if you do consider it necessary to provide personal data related to non-commercial entities, which cannot be anonymised, a data transfer agreement may be required. Please contact ESB Networks in advance of submitting the data via the messaging function in eTenders for this Procurement process to request the data transfer agreement form. This is required to ensure compliance with General Data Protection Regulations (GDPR). Tender Responses received that include personal data related non-commercial entities and do not have a transfer agreement in place will be rejected by the Contracting Entity.

4.8 Intellectual Property

All materials provided by the Contracting Entity for the purposes of this Procurement are copyright to, and will remain the copyright and intellectual property of the Contracting Entity, and all rights therein are reserved.

4.9 Publicity

No publicity in relation to the proposed Contract or the Procurement in general is permitted unless and until the Contracting Entity has given express prior written consent to the relevant communication. In particular, no statement should be made to the press or other similar organisations regarding the nature of any Tender without the express written consent of the Contracting Entity. The Contracting Entity retains the right to publicise or otherwise disclose to any third party information in relation to the proposed Contract (including details of Tender Price), the identity of Tenderers, the selection of the Preferred Tenderer or the Procurement process in general.

4.10 The Contracting Entity's Rights

Without limiting its discretion to take any step permitted by law, the Contracting Entity reserves the right to: (i) change without notice the basis of, or the procedures (including the indicative target dates or Timetable) for the Procurement process; (ii) seek clarification or documents in respect of a Tender; (iii) disqualify any, or all, of the Tenders; (iv) amend the RFT, its requirements and any information contained herein at any time by notice, in writing, to the Tenderers, (v) not invite a Tenderer to proceed further; (vi) terminate the Procurement process at any time (or, for the avoidance of doubt, cancel any individual Zone); (vii) disqualify any Tenderer that is guilty of serious misrepresentation in relation to its Tender, expression of interest, the PQQ or the Procurement process, (viii) withdraw the RFT at any time, or to re-invite Tenders on the same or any alternative basis, (ix) choose not to award any contract as a result of the Procurement process, (x) choose not to award any or all Zones or part thereof as a result of the Procurement process for any reason at the Contracting Entity's discretion, (xi) disqualify any Tenderer that does not submit a compliant Tender in accordance with the Instructions to Tenderers in the RFT, (xii) issue a revised Proposed Contract, (xiii) re-start any stage of the Procurement process.

- **Contracting Entity's Budget**

Each flexibility zone will have a 2+1 year budgetary ceiling for operational expenditure based on alternative network solutions for the equivalent 2 + 1 year period covering the pilot. Cost recovery mechanisms are in place for Price Review Period 5 (PR5) covering 2021-2025 to ensure that ESB Networks spend is appropriate to efficiently deliver necessary services and make necessary investments in infrastructure.

The Contracting Entity reserves the right to cancel this Procurement process and not to proceed to contract award where overall tendered costs for this Flexibility Pilot cannot be supported within its budgetary ceiling.

When the contracted flexible capacity exceeds ESB Networks needs in a zone at any given time, and on the basis that all assets deliver the same technical value to the system, utilisation will be based on Price. Note, availability, if applicable, will continue be paid to all FSPs whose Contract includes Availability.

4.11 Verification

Tenders are submitted on the basis that each Tenderer consents to the Contracting Entity carrying out any necessary actions to verify the information that the Tenderer has provided. The Contracting Entity may (but is not obliged to), in order to verify information provided in a Tender, contact and visit and/or meet Tenderers and/or referees which might be provided in the Tender and may conduct any investigations (either itself or through such third parties as it may, at its discretion, consider appropriate) it considers necessary in connection with Tender responses, including by reference to information independently sourced from the market or otherwise. The Tenderers must facilitate same, upon request.

4.12 Tenderer Eligibility

Tenderers are reminded that the Pre-qualification Questionnaire eligibility and other requirements set out therein apply to this Procurement process at all times (including the Contract award and up to the final stage of Contract performance). Tenderers are permitted to submit a tender response for the Zones/Assets for which they have been prequalified only during the selection stage of this Procurement process. The Contracting Entity reserves the right, at its discretion, to re-assess the eligibility, financial standing, experience and or technical capability of any Tenderer (or its members), and other requirements, at any point(s) throughout this Procurement process and during the term of the Contract, to ensure that the Tenderer continues to remain eligible and have the requisite requirements for the Contract.

Without prejudice to the generality of the foregoing, if the Tenderer (or parent company guarantor) becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against it, has an examiner appointed, compounds with its creditors or carries on business under a receiver, trustee or manager for the benefit of its creditors, or if any act is done or event occurs which under applicable laws has a similar effect to any of these events or acts, it may result in the Tenderer being disqualified from any further participation in the Procurement process irrespective of the progress of the Procurement process.

The Contracting Entity also reserves the right to seek additional contractual and commercial safeguards in the event that the financial position of the Tenderer deteriorates. The Contracting Entity also reserves the right not to award the Contract to a Tenderer in such circumstances.

4.13 Change in Circumstances

If, as a result of a change in circumstances or otherwise, any information given by a Tenderer to the Contracting Entity, in a Tender or otherwise, including in a Prequalification Questionnaire Response, was (when submitted) or has become (by reference to the facts as they then stand) untrue, incomplete or misleading, the Tenderer must so inform the Contracting Entity as soon as it becomes aware of this. If appropriate, the Tenderer may make a request under paragraph 1.8 above (*Pre-tender Queries or Clarifications about the Services or RFT*) to change information in its prequalification submission. The Contracting Entity may at its discretion decide whether to accept or reject the change.

If it comes to the Contracting Entity's attention that:

- there has been a change in circumstances concerning a Tenderer that could affect the Contracting Entity's assessment of that Tenderer's Tender or the Contracting Entity's decision to invite the Tenderer to submit a Tender, or
- information submitted by a Tenderer was (when submitted) or has become (by reference to the facts as they then stand) untrue, incomplete or misleading;

the Contracting Entity may (but is not required to) revise its assessment of the Candidate's Tender or Prequalification Questionnaire Response on the basis of the information then available to the Contracting Entity.

4.14 Multiple Participation

Where any Tenderer or any member of a Tenderer wishes to participate in more than one bidding team for this Procurement, it must contact the Contracting Entity promptly to seek the Contracting Entity's consent if it has not already done so as part of the Pre-qualification stage. No Tenderer may be involved with (including acting as adviser to) more than one bidder without the prior approval of the Contracting Entity. Tenderers who wish to be involved with more than one bidder must notify the Contracting Entity at least four (4) weeks prior to submitting Tenders and the Contracting Entity will take such steps as it considers appropriate, which may include prohibiting the Tenderer from being involved with more than one bidder or making such involvement conditional on certain requirements being met.

4.15 Split Contracts

Where appropriate, the Contracting Entity reserves the right to divide the Contract between Tenderers and to accept all or part of the itemised tender.

4.16 Use of Standards

If reference is made in any of the Procurement documentation to a particular standard, make, source, process, trademark, type or patent, this is not to be regarded as a de facto requirement. In all such cases it should be understood that the reference in question is accompanied by the words "or equivalent". Note however that the Contracting Entity's decision as to whether any 'equivalent' to such requirements proposed by a Tenderer is acceptable shall be final. The Contracting Entity reserves the right to require that its own exacting requirements specified are met (i.e. the Contracting Entity does not give any guarantee that an 'equivalent' would be acceptable).

4.17 Retention of Documents

After the Procurement process is completed, the Contracting Entity will retain copies of all Tenders and documentation received for such period as required in accordance with applicable laws.

4.18 No Prior Knowledge

Tenderers must not make assumptions that the Contracting Entity or any of its advisers has prior knowledge of their organisation or their service provision other than knowledge imparted through the information included in the Tenderer's PQQ Response. Tenderers will only be evaluated on the information provided in their Tender (as may be clarified in accordance with the provisions of this RFT).

4.19 No Contract

No information contained in this document or in any communication made between the Contracting Entity and any Tenderer in connection with the RFT shall be relied upon as constituting a contract, or part of a contract, or an offer to make a contract or creating any legal relationship between the Contracting Entity and the Tenderer. There will be no contract in respect of the Services or this Procurement between the Contracting Entity and any Tenderer (save for in respect of the Tenderer's confidentiality obligations pursuant to paragraph 4.6 above (*Confidentiality*) or 4.9 above (*Publicity*) of this RFT) unless and until a contract is finally and formally concluded at the end of the Procurement procedure for the specified supplies, services and/or works and any conditions precedent to such contracts effectiveness have been fulfilled. The Contracting Entity has no obligation to enter into a contract with any Tenderer. No such Contract will contain any representations or warranty in respect of this RFT. The Contracting Entity does not bind itself to accept the lowest price or any Tender.

Any notification of Preferred Tenderer status shall not give rise to any enforceable rights by the Tenderer.

4.20 Applicable Law

Irish law is applicable to this RFT and Procurement process. The Irish courts shall have exclusive jurisdiction in relation to any disputes arising from the RFT and or the procurement process.

4.21 Costs

No liability will be accepted for a Tenderer's costs in connection with this Procurement procedure, including (without limitation) the preparation of Tenders, Site visits, presentations and attendance at meetings, irrespective of the outcome, and whether or not the procedure is cancelled or postponed.

4.22 Disclaimer

The Contracting Entity and its advisers do not warrant or represent that the RFT, or any other information given to a Tenderer, is accurate or complete. No liability is accepted for any error, misstatement, or omission (negligent or otherwise) in this document, or in any other information given to Tenderers. Tenderers are responsible for obtaining their own taxation, legal, technical and other appropriate advice, and undertaking their own due diligence in relation to this Procurement, at their own cost and expense.

5. TENDER EVALUATION

5.1 Evaluation Stages

Without prejudice to the Contracting Entity's rights within these Instructions to Tenderers, Tenders shall be evaluated as follows per Zone:

- **Stage 1 - Completeness:** Tenders will be checked for completeness to ensure that each Tenderer has provided a complete Tender and has submitted all necessary supporting documentation where required. Following any clarifications as described in paragraph 1.9 above (*Clarifications about the contents of the Tenders*) above, and at the Contracting Entity's discretion, the Contracting Entity may decide not to give further consideration to an incomplete Tender which will then be excluded from this Procurement process and the Tenderer will be notified accordingly.
- **Stage 2 - Compliance:** Tenders which are not excluded from this Procurement process for incompleteness will be checked for compliance. This stage will include a Validation process to ensure that the responses provided by the Tenderers in their tender are consistent with PQQ responses and remain valid.

Validation

To ensure that the submitted tender/bid is technically feasible Bid validation will be carried out. For a tender response to be deemed valid it must:

1. Alignment with PQQ Responses - Part of the validation process relates to responses already submitted by tenderers in their PQQ application as well as the tenderers RFT response. Tenderers are therefore required to confirm in Appendix 2 to this ITT that the responses submitted in their PQQ application remain valid and unchanged.
2. Each Flexible Service Unit included in the tender response shall consist of Flexible Service Assets which were pre-qualified for a Zone, as set out by the tenderer for that Zone in their PQQ response, and must include a valid tender response for at least one of the products (subject to the requirement for FSP's to submit a Tender for the 2nd product in the zone if bidding for Restore) set out in the Flexibility Specification (Section 3 of the ITT) for that pre-qualified Zone.

Non-compliant Tenders will be dealt with in accordance with paragraph 1.9 above (*Clarifications about the contents of the Tenders*) above.

- **Stage 3 – Pass/Fail Criteria:** Tenders which are not excluded from this Procurement process for incompleteness or for non-compliance will be evaluated in accordance with the Pass/Fail Criteria set out in Section 6.1 Technical Criteria Evaluation below. Tenders which on examination and assessment fail to meet

any of the requirements of the Pass/Fail Criteria will not progress further and will be excluded from this Procurement process and the Tenderer will be notified accordingly.

- **Stage 4 – Commercial – (Pricing):** Those Tenders that have progressed through the previous evaluation stages above to (*this*) stage 4 will be commercially evaluated as set out in section 6.2 Commercial Evaluation.
- **Next Steps:** Following the evaluation described above, the Contracting Entity may at its discretion decide to enter into detailed post-tender negotiations with any or all of the Tenderers: see paragraph 5.4 below (*Post Tender Negotiations*) below.
- **Sequence of Evaluation Stages:** For the avoidance of doubt, any one or more of the stages above may happen in sequence or concurrently.

5.2 Correction of Errors in Pricing

Tenders determined to be compliant will be checked for any material errors in computation as follows:

- Where there is a discrepancy between amounts in figures and words the amount in words will govern.
- Where there is a discrepancy between the unit price and the total amount derived from the multiplication of the unit price and the quantity, the unit price as quoted will normally govern, unless, in the opinion of the Contracting Entity's representative, there is a gross arithmetical error in the unit price, in which event, the extended amount as quoted will govern.

The amount stated in the Form of Tender will be adjusted by the Contracting Entity in accordance with the above procedure for the correction of errors and, with the concurrence of the Tenderer, shall be considered as binding upon the Tenderer. A Tenderer not accepting the correction of errors as outlined will have its Tender rejected.

5.3 Award Criteria

The criterion for the award of the Contract is the most economically advantageous Tender (MEAT) in terms of least cost technically acceptable, which will be evaluated per Zone on the basis of the criteria set out in Section 6 Criteria Evaluation below

5.4 Post Tender Negotiation

Following the evaluation of Tenders, the Contracting Entity reserves the right to take any step it considers appropriate, at its discretion. This may include, without limitation:-

- a) Entering into negotiation with some or all of the Tenderers;
- b) Moving directly to the contract award stage with no post tender negotiations;
- c) Revising its requirements and requesting further tenders from some or all of the Tenderers to reflect those revised requirements;

- d) Requesting best and final offers from some or all of the Tenderers; and/or
- e) Holding exclusive negotiations with a Preferred Tenderer.

5.5 Abnormally low Tenders

If, in the Contracting Entity's opinion, the overall tendered amount is abnormally low or any tendered percentage (where relevant) or amounts (including any rates tendered for valuation of extra work) are abnormally low, the Contracting Entity may require the Tenderer to provide further written details of the constituent elements of the overall tendered amount or the tendered percentage or rates or any other information which the Contracting Entity considers relevant. This may include (without limitation) the information listed in Regulation 93 of the European Union (Award of Contracts by Utility Undertakings) Regulations 2016. Any failure to provide such information, where requested, may exclude the Tender from further consideration. The Contracting Entity may reject a Tender where the details supplied under this section does not satisfactorily account for the low level of tendered amount or tendered percentage (where relevant) or abnormal rates taking into account the matters referred to in the aforementioned Regulation 93.

6. CRITERIA EVALUATION

The Contracting Entity will evaluate tenders per Zone separately as set out below. Where the tender is submitted as aggregated per Zone it will be evaluated as aggregated – i.e. the Contracting Entity will not disaggregate bids.

6.1 Technical Criteria Evaluation

Tender responses that have progressed through Evaluation Stage 1 Completeness and Stage 2 Compliance will be technically evaluated on the basis of Stage 3 Pass/Fail as set out below.

Each tender response will be evaluated per Zone on its ability to meet the specified requirements as outlined in Appendix 1 of the Flexibility Specification under the following headings:-

- (a) minimum unit capacity threshold;
- (b) Delivery Period (*a Pass is achieved by meeting at least the minimum 30 minutes requirement as set out in Flexibility Specification – table 3*);
- (c) Service Window (*a Pass is achieved by fully or partially meeting the Service Window as set out in Flexibility Specification – Appendix 1*)

Only Tender responses that meet the full technical evaluation criteria requirements listed above per Zone for the Flexible Service Unit/Flexible Service Assets tendered, in accordance with the Flexibility Specification, will progress to Commercial Evaluation. Tenders that fail the technical criteria evaluation will not progress any further in the Procurement process.

6.2 Commercial – Tender Price Evaluation

Tenders that have successfully progressed through the previous stages of the Evaluation will be commercially evaluated on the basis of least cost per Zone on a Product-by-Product basis for Secure and Dynamic and in the case of Restore, in conjunction with the other product in the Zone as set out below:

For the purposes of Commercial Evaluation only, tender prices will be evaluated on the basis of a Levelised Cost evaluation model. Levelised Cost model is the weighted sum applied to the Utilisation cost and Availability cost (if applicable to the Product) by the Contracting Entity for evaluation purposes. It also takes account of single FSU's able to provide multiple Products, resulting in a lower overall Levelised Cost for the Zone. Please refer to the Pricing Documents (*section 4 of the RFT*) for details on Levelised Cost model.

The Levelised Cost model is for evaluation purposes only and is not related to the Settlement (outlined in Schedule 2 of the Flexibility Services Contract).

Please refer to Pricing documents (Section 4 of the RFT) for further information on bid structure pricing and Levelised Model Evaluation.

Following the Commercial Evaluation, tenders will be ranked in order of lowest to highest on the basis of the Levelised Model, further detailed in the Pricing documents, to enable the Contracting Entity identify the most economically advantageous Tender (MEAT) in terms of least cost technically acceptable.

Appendix 1 – Form of Tender

ESB NETWORKS DAC
Two Gateway
East Wall Road
Dublin 3

Date:

Procurement of D20/CON/888 NNLC – FLEXIBILITY SERVICES PILOT

Dear Sirs,

1. We have examined and understood in full the tender documents and all of the information made available by the Contracting Entity in connection with the Procurement and we are satisfied that there are no ambiguities or discrepancies in such documents and information and we offer to carry out the Services as defined therein subject to and upon the terms and conditions contained therein, at the rates and/or prices quoted by us in our Pricing Documents and on the basis of our Tender excluding VAT.
2. We certify that this is a bona fide Tender, intended to be competitive, and that we have not fixed or adjusted the amount of the Tender by or under or in accordance with any agreement or arrangement with any other person. We also certify that we have not done and we undertake that we will not do at any time before the date and time for the return of this Tender any of the following acts:
 - a) communicate to a person other than the Contracting Entity the amount or approximate amount of the Tender, except where the disclosure, in confidence, of the approximate amount of the Tender was necessary to obtain insurance premium quotations required for the preparation of the Tender;
 - b) enter into any agreement or arrangement with any other person that he or she shall refrain from tendering or as to the amount of any Tender to be submitted; and
 - c) offer or pay or give or agree to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done any act or thing of the sort described above in relation to any other Tender or proposed Tender covered by the tender documents and confirm that in this letter, the word “person” includes any person or persons and anybody or association, corporate or unincorporated, and “agreement or arrangement” includes any such transaction, formal or informal, whether legally binding or not.
3. We confirm that we understand and accept the terms of the Proposed Contract in the form issued by the Contracting Entity and we also agree and undertake, if and when required by the Contracting Entity, to execute and deliver the Contract to be finalised by Contracting Entity embodying the terms and conditions contained therein. We confirm that all necessary internal approvals to submit the Tender have been obtained.
4. We confirm that all of the information supplied in our Tender is true and accurate and that there have been no changes to the information supplied in our initial Pre-Qualification Response, save any changes which have been already consented to by the Contracting Entity.
5. We confirm that, save to the extent disclosed to the Contracting Entity in the Procurement process (if any):

- a. we are not aware of any relationships that we, our employees, shareholders or families have with any member or employee of the Contracting Entity or with any persons advising the Contracting Entity in connection with this Procurement;
 - b. we are not aware of any conflict of interest or potential conflict of interest arising in relation to our participation in this Procurement process.
- 6. We confirm that all Data Subjects whose Personal Data is provided in our Tender have consented to the processing of such Personal Data by us, the Contracting Entity, your evaluation team and the supplier of the etenders.gov.ie website, for the purposes of our participation in this Procurement or that we otherwise have a legal basis for providing such Personal Data to the Contracting Entity for the purposes of our participation in this Procurement and that we will provide evidence of such consent and / or legal basis to the Contracting Entity upon request.
- 7. Not used
- 8. We acknowledge that, save for our irrevocable offer to keep our tender open for acceptance for the Tender Validity Period, and the confidentiality obligation set out at paragraph 4.6(*Confidentiality*) and 4.9(*Publicity*), no legally binding agreement exists between us unless and until the execution by us both of the Contract.
- 9. We understand that you are not bound to accept the lowest priced Tender or any Tender you may receive.
- 10. In consideration of the Contracting Entity supplying us with the tender documents, we agree to abide by this Tender until the expiry of the Tender Validity Period or such further period as may be agreed between us, and it shall remain binding on us and may be accepted by the Contracting Entity at any time before the expiration of such period.
- 11. Defined terms not defined in this Form of Tender shall have the meaning given to them in the tender documents.

SIGNED for and on behalf of Tenderer :

Signature [.....]

Company.....

Position.....

Registered
Address.....]

Witnessed by:[.....]

Appendix 2 –Validation

Please confirm that your responses submitted in your PQQ Application remains current and valid in its entirety by answering the questions below and returning this Appendix 2, fully completed, with your tender response..:

PQQ Section	Yes or No response required
<p>General Validation:</p> <p>All of the responses provided in the PQQ Application and subsequent clarifications remain current and valid</p>	<input type="checkbox"/>
<p>Question specific Validation – please confirm the following:</p>	
<p>B9.2 Confirm ‘Yes’ response provided in response to “<i>Please confirm that units for flexibility provision can meet or exceed ESB Networks minimum requirement (100kW individually or in aggregate) for flexibility in the specific locations covered by this PQQ for which you are submitting a PQQ response</i>”– ensuring that the tender submission meets the 100kW minimum requirement.</p>	<input type="checkbox"/>
<p>B9.9/B9.10 Confirm ‘MIC’ and ‘MEC’ response provided in response to “<i>B.9.9 Maximum Import Capacity (MIC)</i>” and to “<i>B.9.10 Maximum Export Capacity (MEC)</i>” – ensuring that the Flexible capacity submitted in the Tender does not exceed the MIC/MEC (whichever is applicable);</p>	<input type="checkbox"/>
<p>B9.11 Confirm Pass response provided in response to “<i>Meter Point Reference Number (11 digits): MPRN provided = Pass; not provided = Fail</i>” – ensuring that the MPRN’s submitted in the Tender are in the correct zone.</p>	<input type="checkbox"/>