



Commission for Energy Regulation

An Coimisiún um Rialáil Fuinnimh

**Request for Expressions of Interest in the Process
for the Designation of an Electrical Safety
Supervisory Body or Bodies**

COMMISSION FOR ENERGY REGULATION

REFERENCE: CER/08/047

14th MARCH, 2008

Preamble

The Commission for Energy Regulation (“the Commission”) is inviting expressions of interest from parties seeking to participate in the process for the designation of an Electricity Safety Supervisory Body or Bodies.

This document sets out the background to, and the requirements of, the Commission with respect to the designation of any Electricity Safety Supervisory Bodies.

This document is accompanied by a Pre-Qualification Questionnaire (Appendix 1), which parties are required to complete and submit in order to register their expression of interest with the Commission and participate in this process.

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DEFINITIONS

In this Expression of Interest (“EOI”), the following words shall have the following definitions:

“**2006 Act**” means the Energy (Miscellaneous Provisions) Act 2006;

“**Award Criteria**” means the criteria to be applied by the Commission in selecting the successful Candidate(s) at Stage 2 as set out in paragraph 7.8;

“**Candidate**” means a person who responds to this EOI;

“**Closing Date**” means the date, specified in Section 8 of the EOI, by which Responses to this EOI are due and beyond which any Response received may be deemed to be invalid;

“**Commission**” means the Commission for Energy Regulation established pursuant to the Electricity Regulation Act, 1999, as amended;

“**Complete Response**” means a Response which is deemed by the Evaluation Team to be complete in accordance with Section 6;

“**Criteria Document**” means a document setting out the criteria relating to the matters listed in Section 9D(5)(a) of the ERA, which at the date of issue of this EOI is the subject of a consultation process *CER/07/213 (refer to Section 2 and Appendix 2)*, and references to the Criteria Document shall include any amendments to that document when it is published in its final form following consultation or any subsequent amendments made thereafter as may be determined by the Commission;

“**Designation Process**” means the process for designation of one or more ESSBs as commenced with this EOI;

“**Expression of Interest**”/“**EOI**” means this request for expressions of interest and any written clarifications or communications issued by the Commission in relation to the EOI and in accordance with its terms;

“**Electricity Safety Supervisory Body**” or “**ESSB**” means an Electrical Safety Supervisory Body appointed by the Commission pursuant to Section 9D of the ERA;

“**ERA**” means the Electricity Regulation Act, 1999 as amended by the Energy (Miscellaneous Provisions) Act 2006;

“**Evaluation Team**” means the evaluation team appointed by the Commission at any time in accordance with paragraphs 4.12 to 4.14;

“**ITT**” means the Invitation to Tender containing the terms and conditions upon which Preferred Candidates will be invited to submit a tender in respect of Stage 2 of this process;

“**Mandatory Conditions**” has the meaning set out in paragraph 5.1

“**PQQ**” means the pre-qualification questionnaire set out in Appendix 1 to this EOI;

“**Preferred Candidate**” means a Candidate that is invited to submit a tender having been selected by the Commission from Stage 1 to proceed to Stage 2 of the Designation Process on foot of the ITT;

“**Process Auditor**” means an independent process auditor as may be appointed by the Commission to oversee this Designation Process.;

“**Response**” means any response received to this EOI which includes, in particular, the completed PQQ and any clarifications or supplementary information provided by the Candidate in respect of the Response and in accordance with the terms of the EOI;

“**Selection Criteria**” means the criteria for selection of Candidates at Stage 1 as set out in paragraph 6.10;

“**Stage 1**” means the first stage of the Designation Process as described in Section 6 of this EOI;

“**Stage 2**” means the second stage of the Designation Process as described in Section 7 of this EOI;

“**Successful Candidate**” means a Candidate that is deemed by the Commission to have submitted the most economically advantageous tender(s) or one of the most economically advantageous tenders pursuant to Stage 2 of the Designation Process;

“**Terms and Conditions of Appointment**” means the terms and conditions of designation of an Electrical Safety Supervisory Body; and

“**Vision Document**” means the Commission's document CER/07/203 published on 8th November 2007 setting out the Commission's vision for the creation of a system for the regulation of electrical contractors in accordance with the ERA.

NOTICE TO PARTIES REVIEWING THE EOI

1. This EOI is being made available by the Commission to persons who express an interest in being short-listed to participate in the Commission's competition to designate one or more Electrical Safety Supervisory Bodies. The Commission issues the EOI on the terms set out herein, for the use of the interested parties. The EOI may not be used for any other purpose and shall be subject to the terms and conditions set out in the EOI.
2. The EOI is issued by way of guidance only. All information contained in it is indicative only and will be superseded by the ITT and Terms and Conditions of Appointment. No representation, warranty or undertaking (express or implied) is or will be made and no liability or responsibility is or will be accepted by the Commission, or its officers, employees or any of its advisers, consultants, contractors and/or agents, and/or the Evaluation Team and/or any Process Auditor as to or with regard to, the adequacy, accuracy or completeness of the EOI, any omissions therefrom, the information or opinions on which it is based, any suggestion made by it or any other written or oral information made available to any interested party or Candidates or their advisers or any third party. Nor does the Commission make any representation, undertaking or warranty (express or implied) with respect to the information contained in this EOI or on which this document is based. Any liability and/or loss of any nature whatsoever and howsoever arising is therefore expressly disclaimed.
3. No information or warranty (express or implied) given at any stage by any party or Candidates other than the Commission has been authorised by the Commission and any such information or warranty should not be relied upon.
4. All dates in the EOI (other than those in Section 8) are target or indicative dates only and may be subject to change at the sole discretion of the Commission.
5. Whilst the information in this EOI document has been provided in good faith, it does not purport to be comprehensive, nor to have been independently verified. Interested parties or Candidates should form their own conclusions. The Commission reserves the right to amend this EOI and any information or documents contained herein or provided to interested parties or Candidates at any time by notice in writing to interested parties, or, as the case may be, Candidates. The Commission is not bound to furnish any party or Candidate with further information.
6. Nothing in this EOI is, or should be relied upon as, a promise or representation as to Commission's ultimate decision in relation to the designation of an ESSB. The Commission reserves the right to suspend or not to proceed with the Designation Process or any part of the process and may terminate the process or any part thereof at any time and, in such event, the Commission shall not be liable, howsoever, to any interested party or Candidate. The Commission also reserves the right to change any procedure in relation to the Designation Process. The Commission does not bind itself to accept the lowest or any tender at all and if the Competition is terminated shall not be obliged to designate any Candidate as an ESSB.

7. The Commission, its officers, employees, agents, consultants and/or advisers, the Evaluation Team and/or any Process Auditor shall not be responsible or liable for any oral or written information or advice, nor for any errors or omissions, whether contained in the EOI, the ITT, the draft Terms and Conditions of Appointment or in data or documents disclosed or otherwise provided to a Candidate or any oral discussions or interviews with a Candidate during any of the stages of the Designation Process or otherwise.
8. Upon request by the Commission, the interested party or Candidate shall promptly return this EOI, and any other information supplied to it, together with all copies made thereof to the Commission. The Candidate will delete all electronic copies of the EOI and, as the case may be, any other information and certify same to the Commission. Interested parties or Candidates may be asked to enter into undertakings of confidentiality should it become appropriate to release confidential information to them.
9. Save and to the extent expressly stated in the EOI, the Commission does not accept responsibility and shall not be liable for any loss, damage or expense, which may be incurred by any person, interested party or Candidate in dealing with the EOI, the preparation of a Response, a tender or the Designation Process arising out of the EOI nor for any costs resulting from any interested parties or Candidates participation in any aspect of the process.
10. Any conflict of interest or potential conflict of interest must be disclosed by an interested party or Candidate to the Commission as soon as such conflict of interest or potential conflict of interest becomes apparent. The appropriate course of action to be taken in such event shall be decided upon by the Commission, in its absolute discretion.
11. The EOI does not impose or result in the imposition of any legal or contractual obligations on the part of the Commission and no legal obligations on the part of the Commission will arise unless and until an agreement between the Commission and a Candidate for the designation of a Candidate subject to the Terms and Conditions of Appointment has been formally executed and exchanged. Legal and contractual obligations are imposed on any interested party or Candidate who downloads or responds to this EOI and the Commission reserves the right to enforce such obligations. Copyright (and any other intellectual property rights) in the EOI vests and remains in the Commission and interested parties and Candidates shall not use or copy the EOI, otherwise than in accordance with the EOI without the permission of the Commission.
12. This EOI and all matters arising out of or in connection with or in any way related to the EOI shall be governed and construed in accordance with the laws of Ireland and shall be subject to the exclusive jurisdiction of the Irish Courts.

SECTION 1: INTRODUCTION

- 1.1 The 2006 Act inserted provisions into the ERA creating a new function for the Commission to regulate the activities of electrical contractors with respect to safety (Section 9C). As part of this function, Section 9D of the ERA now provides for the Commission to appoint one or more Electrical Safety Supervisory Bodies.
- 1.2 Section 9C of the ERA was commenced with effect from 12th March 2008. Subject to the provisions of this EOI and the ITT, it is proposed that the relevant parts of Section 9D will take effect further to the appointment of any ESSB following this Designation Process and in accordance with such timeframe as may be specified by the Commission.
- 1.3 The Commission is inviting Responses from parties seeking to participate in the process for designation as an ESSB in accordance with the ERA. A contract notice in respect of this procurement was issued for publication in the Official Journal of the European Union on 14th March 2008
- 1.4 The purpose of this EOI and the accompanying PQQ is to obtain information from interested parties to enable the Commission to make an assessment of whether or not each Candidate is qualified to act as an ESSB.
- 1.5 Based on the Responses it receives to this EOI, the Commission will select Candidates to be invited to submit a tender to be considered for designation as an ESSB and in accordance with the terms of this EOI.
- 1.6 The scheme for the registration and regulation of electrical contractors shall be operated in accordance with a new regulatory system to be specified by the Commission further to the requirements of the ERA. The new regulatory system will have statutory backing and will replace the voluntary, self-regulatory system currently in operation. This voluntary system has been operated by two self-regulatory bodies, with the Commission acting in a limited supervisory capacity.
- 1.7 Any person(s) designated as an ESSB pursuant to this Designation Process will be required to act on behalf of the Commission with respect to undertaking the function for the registration of electrical contractors and the regulation/oversight of their activities. This scheme is to be operated on a not-for-profit, non-discriminatory and national basis.
- 1.8 The Commission has presented its decision on the high-level design of the regulatory system for the regulation of the activities of electrical contractors with respect to safety in the Vision Document. The Vision Document specifies the Commission's decision with respect to the high-level functions of, and requirements to be placed on, any party undertaking the role of an ESSB. The Commission has also released a consultation paper for a Criteria Document, setting out its proposals for the detailed rules for the operation of the new regulatory system and also a consultation paper on the methodology for the economic regulation of any ESSBs designated.

- 1.9 The Designation Process will be a two-stage, restricted procedure for the designation of a person or persons as an ESSB. The decision to designate any Candidate as an ESSB shall be based on the most economically advantageous tender or tenders.
- 1.10 The remainder of this EOI sets out information on:
- (i) the new regulatory system for electrical contractors which is to be implemented (Section 2);
 - (ii) the functions of any Electricity Safety Supervisory Body within that context (Section 3);
 - (iii) the requirements for Responses to be evaluated at Stage 1 (Sections 5 8 and 9);
 - (iv) the Commission's process for the designation of parties in that regard (Sections 4, 5, 6 and 7);
 - (v) procedures for making enquiries (Section 10); and,
 - (vi) additional conditions of participation in the Designation Process (Section 11).
- 1.11 By submitting a Response to this EOI, each Candidate (including, without limitation, every individual member of a Candidate) irrevocably and unconditionally accepts, and agrees to, the terms and conditions of this EOI and will be legally bound thereby.
- 1.12 Candidates' attention is particularly drawn to the notice at the beginning of this EOI and Section 11, both of which contain conditions, disclaimers, requirements and caveats that apply to, and govern this EOI which Candidates are legally bound by in accordance with the above paragraph.
- 1.13 The Commission reserves the right to engage, prior to the issue of the ITT, with Candidates, and other such relevant parties, as deemed appropriate by the Commission in order to create a more detailed, and possibly revised, outline of the scope of services required of an ESSB and the specifications of the requirements as set out in the ITT.

SECTION 2: THE NEW SYSTEM FOR THE REGULATION OF ELECTRICAL CONTRACTORS

- 2.1 The 2006 Act inserted into the ERA, *inter alia*, sections 9C to 9E, providing for the regulation of activities of electrical contractors with respect to safety. The relevant sections of the ERA are set out at Appendix 3 to this EOI.
- 2.2 Section 9C of the ERA was commenced with effect from 12th March 2008. It is proposed that the appropriate parts of Section 9D of the Act will take effect in accordance with such timeframe as may be specified by the Commission.
- 2.3 The Commission's objective with regard to its function is to seek:
- "To protect the safety interests of customers with respect to electrical installation activities through a suitable regulatory system which provides for electrical works to be carried out, tested and certified in compliance with the appropriate technical rules/standards".*
- 2.4 The Commission has embarked upon an extensive programme of designing the framework for the operation of a new regulatory system and, in doing so, has engaged in an extensive consultation process generally and with stakeholders.
- 2.5 The Commission has published the following documentation relating to the design and proposed operation of the new regulatory system:
- a **Vision Document**, setting out the Commission's decision on the design and operation for the new regulatory system. This was developed further to industry and public consultation; and,
 - a **draft Criteria Document** for consultation, setting out the detailed rules for the registration and regulation of electrical contractors. As required by the ERA, the document outlines in detail the proposed requirements surrounding:
 - electrical safety supervision;
 - the safety standards to be achieved and maintained by electrical contractors; and,
 - the requirements and obligations placed upon, and the functions, activities and procedures to be operated by a party designated as an ESSB.
 - A consultation paper presenting the Commission's **Proposed Framework for Economic Regulation** within the new regulatory system.
- 2.6 Interested parties are advised to read the above documents which provide further information on the expected requirements for a party to be designated and in accordance with which an ESSB must operate.
- 2.7 Links to the above documentation are presented in Appendix 2.

SECTION 3: FUNCTIONS AND TERMS AND CONDITIONS OF APPOINTMENT OF AN ESSB

- 3.1 The principal functions of an ESSB shall be the registration, inspection, auditing and monitoring of electrical contractors and their works and activities that they carry out whilst registered with an ESSB.
- 3.2 Each ESSB shall be operated on a not-for-profit basis and an ESSB shall be remunerated through its membership fees and its charges which shall be regulated by the Commission.¹ In this regard, Parties are referred to the Commission's consultation paper presenting the Commission's Proposed Framework for the Economic Regulation within the new regulatory system published on the 14th March 2008 (see Appendix 2).
- 3.3 Without prejudice to the generality of the foregoing, the Commission's draft Criteria Document sets out the following non-exhaustive list of activities which are proposed to be undertaken by any party designated as an ESSB (and which such party shall be obliged to undertake):
- (i) Receipt, processing and evaluation of applications for registration;
 - (ii) Registration of electrical contractors and publication of a register of electrical contractors;
 - (iii) Monitoring, inspection and audit of electrical contractors registered with the ESSB;
 - (iv) Investigation of complaints received and the disciplining of electrical contractors registered with the ESSB;
 - (v) Inspection of works carried out by non-registered parties;
 - (vi) Management of the distribution, sale, recording, control and the validation of certificates;
 - (vii) Public and industry awareness activities;
 - (viii) Interaction and co-ordination of activities with other relevant parties, most particularly any other bodies designated by the Commission and such other agencies, bodies, committees and Government Departments as the Commission may direct from time to time;
 - (ix) Maintaining records of, and reporting on, the activities of the ESSB; and,
 - (x) The operation and use of a new brand which is to be developed for the new regulatory system and which will be used in accordance with the requirements specified by the Commission.
- 3.4 Designation of a Candidate as an ESSB shall result in that Candidate operating the regulatory scheme in accordance with the specifications of the Commission and

¹ Please refer to Proposals for the Economic Regulation of the Gas Safety Supervisory Body and any Electrical Safety Supervisory Bodies to be designated by the Commission. CER/08/050

each ESSB will be subject to oversight and monitoring by the Commission in that regard.

- 3.5 The requirements to be placed on a party acting as an ESSB shall in particular be as specified in:
- (a) the ERA;
 - (b) the Terms and Conditions of Appointment;
 - (c) the finalised Criteria Document;
 - (d) directions issued by the Commission; and,
 - (e) any other applicable laws or requirements of a body exercising a regulatory function.
- 3.6 The designation of a Candidate as an ESSB shall be subject to, and conditional upon, acceptance by that Candidate of, and continuing compliance with, the Terms and Conditions of Appointment.
- 3.7 A draft of the Terms and Conditions of Appointment will be provided in the ITT to Preferred Candidates invited to submit a tender in respect of Stage 2. It is intended that the draft Terms and Conditions of Appointment provided in the ITT will reflect substantially the terms of the Terms and Conditions of Appointment which each Successful Candidate will be required to accept (through execution as a contract) and comply with in order for their designation to become effective.
- 3.8 The Terms and Conditions of Appointment will set out the legal basis which will apply to and govern the relationship between the Commission and each ESSB.
- 3.9 Designation shall be for an initial period of 7 (seven) Years, unless terminated earlier in accordance with the Terms and Conditions of Appointment. This period is to commence upon the conclusion of the Designation Process and shall be specified in the Terms and Conditions of Appointment. Breach of the Terms and Conditions of Appointment may result in the de-designation of an ESSB.
- 3.10 A party designated further to this Designation Process shall not have any automatic or exclusive right to continue to be designated upon the expiry of the initial term of appointment.
- 3.11 On or prior to the expiration of the initial 7-year term of appointment, the Commission reserves the right to operate a further Designation Process to designate a party to act as an ESSB on such terms, conditions and requirements, and for such period, as the Commission may specify and further to such process as the Commission determines.
- 3.12 The ERA requires that any party designated as an ESSB must not be a trade association or performing representative functions on behalf of persons working in the electrical industry and the Terms and Conditions of Appointment will provide for this prohibition.
- 3.13 The Commission reserves the right to appoint none, one or more bodies to act as an ESSB pursuant to this Designation Process.

- 3.14 Pursuant to section 9F of the ERA, the Commission may designate a person as a Gas Safety Supervisory Body. In the event that the Commission engages in a process for the designation of a Gas Safety Supervisory Body pursuant to section 9F of the ERA (the form of designation process to be determined by the Commission at its absolute discretion, subject to applicable laws), nothing shall prevent any Candidate or person who has participated in this Designation Process from applying or being considered for designation in respect of gas, and the Commission shall be entitled, at its absolute discretion and pursuant to such process, to designate a person that is already designated as an ESSB as a Gas Safety Supervisory Body also.

SECTION 4: OVERVIEW OF THE DESIGNATION PROCESS

- 4.1 The Designation Process is a restricted procedure and comprises two stages:
- Stage 1 – Expression of Interest Stage; and,
 - Stage 2 – Detailed Invitation to tender Stage.
- 4.2 This Section 4 of the EOI sets out a general overview of the Designation Process. More detail of Stage 1 and a more detailed overview of Stage 2 are set out in Sections 6 and 7 respectively.
- 4.3 At Stage 1, Candidates are required to submit a Response to this EOI in accordance with this EOI and the PQQ.
- 4.4 Having eliminated any non-compliant Responses that do not meet the Mandatory Conditions as set out in Section 5, the Commission will then, based on the Responses, select by reference to the Selection Criteria, a range of at least five (5) Candidates who are best capable, from the Commission's point of view, of satisfying the Commission's requirements in respect of the activities of an ESSB. The Commission reserves the right, at its absolute discretion, to invite less than five Candidates to submit tenders where it does not receive sufficient Complete Responses which meet the Mandatory Conditions and which satisfy the Selection Criteria.
- 4.5 The Commission will then confirm the Preferred Candidates, who will be invited to submit a tender in respect of the matters described in this EOI and will issue the ITT to them.
- 4.6 The ITT will govern Stage 2 and will provide further detail in relation to that stage of the Designation Process.
- 4.7 The Preferred Candidates who submit tenders in response to the ITT will have their tenders evaluated. Subject to the provisions of the ITT, the most economically advantageous tender or tenders, from the Commission's point of view, will be selected as Successful Candidates by reference to the Award Criteria.
- 4.8 The Commission has the right and discretion to appoint one or more ESSBs following this Designation Process (or not to designate any ESSB). The number of ESSBs to be designated will be determined at Stage 2 of the Designation Process by the Commission, having regard to the matters set out in paragraph 7.11 below, amongst other things.
- 4.9 The Commission is committed to ensuring that the Designation Process is open, fair, transparent and non-discriminatory.

- 4.10 In designating one or more ESSBs, the Commission shall have regard to the requirements of the ERA. The ERA specifies the following obligations with respect to designating a party/parties to act as an ESSB:
- the Commission shall not designate a party unless it is satisfied that the party is capable of complying with the Criteria Document; and
 - in determining the number of parties to be appointed, the Commission shall have regard to the costs likely to be incurred (i) by the Commission in carrying out its functions under the ERA and (ii) by final customers.
- 4.11 The Commission reserves the right to terminate the Designation Process at any stage.
- 4.12 Responses and tenders (at Stage 1 and Stage 2) will be evaluated in each case by an Evaluation Team to be appointed by the Commission. This Evaluation Team shall constitute members of staff of the Commission and an independent member appointed by the Commission. The work of the Evaluation Team shall be supported by the staff of the Commission and any advisors appointed by the Commission (legal, technical, economic and financial).
- 4.13 The Commission reserves the right to make changes to, reduce, replace or increase the members of the Evaluation Team at any time, including between during and/or Stage 1 and Stage 2 of the Designation Process.
- 4.14 The Commission shall also appoint a Process Auditor to monitor the evaluation process to be carried out by the Evaluation Team for Stage 1 and Stage 2 of the process.

SECTION 5: ELIGIBILITY

General

- 5.1 Save as expressly provided otherwise, only Candidates whose Responses are deemed to the satisfaction of the Commission to satisfy all requirements specified in this EOI and the PQQ (“Mandatory Conditions”) will be eligible to have their Responses evaluated in the Stage 1 of the Designation Process and to be selected by reference to the Selection Criteria to submit a tender for Stage 2 of the Designation Process. The Mandatory Conditions include, without limitation, the requirements that:
- (i) the Response has been submitted in a timely manner in accordance with the requirements specified in Section 8 of this EOI;
 - (ii) the Response contains all information requested in this EOI and the PQQ;
 - (iii) the Response contains all documents required to be submitted with the PQQ; and
 - (iv) the Response satisfies the requirements set out in this Section 4 for Stage 1, being:
 - i. Minimum turnover (paragraph 5.2 et seq.);
 - ii. Economic and financial standing (paragraph 5.6 et seq.);
 - iii. Professional and technical ability or knowledge (paragraph 5.12 et seq.);
 - iv. Tax clearance cert (paragraph 5.17 et seq) ; and
 - v. Article 45 Certificate (paragraph 5.19 et seq)

Minimum Turnover

- 5.2 Candidates must provide evidence that in each of the **three (3)** preceding financial years the Candidate (or the members of the Candidate) have had a collective minimum turnover of **€750,000**.
- 5.3 In the event that Candidate/Candidates cannot provide the evidence of turnover requested, they shall give reasons as to why they cannot provide this evidence and shall provide upon request such other documentation as deemed appropriate by the Commission.
- 5.4 This comprises the minimum turnover which a Candidate(s) must illustrate to the satisfaction of the Commission in order for a Candidate to be eligible to have its response evaluated in the Stage 1 and to be selected and invited by the Commission to submit a tender for the Stage 2.
- 5.5 Satisfaction of the minimum turnover requirement does not necessarily mean that a Candidate has, to the satisfaction of the Commission, sufficient economic and financial standing to act as an ESSB.

Economic and Financial Standing

- 5.6 Candidates are required to provide evidence of their economic and financial standing by completing section 2 of the PQQ and including in their Response the information and documents referred to in the PQQ and any other relevant information and/or documents. This will be taken into account in the evaluation process accordingly.
- 5.7 If the evidence of economic and financial standing provided by a Candidate is not satisfactory to the Evaluation Team, the Evaluation Team will be entitled to require provision of an unconditional guarantee by a third party, who is of sufficient economic and financial standing, of the Candidate's obligations to substantiate the Candidate's economic and financial standing.
- 5.8 In addition, the Commission reserves the right, as a condition of designation, to require the provision of an indemnity performance bond and/or such other form of security as the Commission considers necessary to substantiate a Successful Candidate's economic and financial standing, including the provision of security by way of a charge, which may include security over the assets of the Candidate.
- 5.9 The Commission reserves the right at any time, at its absolute discretion, to require Candidates to provide evidence that the guarantee, indemnity performance bond or other security referred to in paragraphs 5.7 and/or 5.8 above can be provided.
- 5.10 Preferred Candidates selected or provisionally selected for Stage 2 may be required, by the Commission, at its absolute discretion, and at any time to provide further evidence to verify information provided at Stage 1 or otherwise to substantiate their economic and financial standing, in the form of one or more of the following, which separately or together, will be considered by the Commission in determining in its absolute discretion, whether a Candidate is of sufficient economic and financial standing:
- evidence that the Candidate can provide a guarantee, professional indemnity insurance bond or the security set out in paragraphs 5.7 and 5.8; and/or,
 - such other evidence as may be determined by the Commission as appropriate.
- 5.11 Failure to produce the requested evidence within the specified time may result in the Candidate being excluded from further consideration. If for any reason, the Candidate is unable to supply the relevant documents, alternative documentation may be submitted at the Commission's absolute discretion.

Professional and Technical Ability or Knowledge

- 5.12 Candidates are required to provide, in response to section 3 of the PQQ, evidence of professional and technical ability and/or knowledge which should be such to demonstrate that the Candidate has, to the satisfaction of the Commission, sufficient professional and technical ability and/or knowledge to act as an ESSB.

In providing such evidence, Candidates are advised to have regard to the role and functions of an ESSB as set out in this EOI (Section 3), the Vision Document , the

Criteria Document and Section 9D of the ERA. Without prejudice to the generality of the foregoing, Candidates should provide evidence to demonstrate that, if designated as an ESSB, they shall be capable of performing the functions set out in Section 9D(6)(a)-(f) of the ERA.

- 5.13 The Evaluation Team shall have regard to the foregoing matters in determining if a Candidate has sufficient technical ability and/or knowledge to act as an ESSB. If the Evaluation Team is not satisfied that a Candidate has sufficient technical ability and/or knowledge to act as an ESSB, it may, at its absolute discretion, exclude the Candidate from further consideration.

Reliance on Third Party Resources in relation to Economic and Financial Standing/Technical and Professional Knowledge or Ability

- 5.14 Where, in order to prove its financial and economic standing and/or professional and technical ability or knowledge, a Candidate relies on the resources of entities or undertakings with which it is directly or indirectly linked, whatever the nature of those links may be (including, for example, reliance on a parent company's resources), the Candidate must establish to the satisfaction of the Commission that it has available to it the resources of those entities or undertakings which are necessary for the satisfaction of the Commission's requirements. For example, a letter from such other entity confirming that it will provide the necessary support may suffice at this stage. The Commission reserves the right, at its absolute discretion, to require further assurances in relation to the availability of resources to the Candidate so as to clearly demonstrate that such resources are available to the Candidate and that the Commission may have full recourse to such resources.
- 5.15 If sufficient evidence is not provided, the Candidate will be evaluated based on its own financial standing and/or technical ability and/or knowledge.
- 5.16 Candidates should note that a contractual commitment addressed to the Commission may be required at the contract execution stage from any such supporting entity. Candidates relying on third party resources must clearly indicate this when submitting their Response.

Sub-Contractors

- 5.17 Candidates are required to disclose the names and addresses of any material sub-contractors they proposed (presently or in the future) to employ, stating the services to be provided by each. The Commission reserves the right to request evidence of any agreements between the parties in this respect and to comment upon them and take them into account in the evaluation process
- 5.18 The Candidate will remain solely liable under the Terms and Conditions of Appointment to the Commission for its and any of its sub-contractors acts, errors or omissions despite the use of any sub-contractor, except if otherwise expressly agreed by the Commission in writing on a case by case basis.

Tax Clearance Certificate

- 5.19 Each Candidate (and each member of the Candidate) is required to provide in its Response a copy of a current Tax Clearance Certificate issued by the Irish Revenue Commissioners.

- 5.20 5.18 Successful Candidates may be required to produce a current Tax Clearance Certificate prior to designation as an ESSB taking effect (see paragraph 7.18 below).

Article 45 Certificate

- 5.21 A Candidate must, and in the case where the Candidate is a consortium, partnership, a joint venture, or group of any kind, all members of the partnership, consortium, joint venture or group must also each provide a declaration in the form provided in Appendix 4 that the Candidate's personal situation does not fall within any of the circumstances referred to in Article 45 of the Public Sector Directive¹.
- 5.22 In the case of a consortium or group, this can be by the execution by each party on its own behalf or by the execution by a single party on its own behalf and as an authorised signatory on behalf of all other members of the Candidate. The Commission reserves the right to request evidence of such authorisation.

Insurance

- 5.23 The Successful Candidate(s) will be required, as a condition of designation to put in place and maintain levels of insurance to be specified by the Commission, which will be adequate having regard to the role and functions of an ESSB.
- 5.24 Preferred Candidates selected or provisionally selected for Stage 2 may be required, by the Commission, at its absolute discretion, and at any time to provide evidence that the Candidate has the ability to take out specified minimum levels of insurance.

¹ Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the Coordination of Procedures for the Award of Public Works Contracts, Public Supply Contracts and Public Service Contracts (as amended and extended).

SECTION 6: DETAILS OF STAGE 1 AND SELECTION CRITERIA

- 6.1 The purpose of Stage 1 is to select parties as Preferred Candidates who are to be invited to submit a tender in response to the ITT (Stage 2).
- 6.2 The Stage 1 evaluation will be conducted on the basis of each Candidate's detailed and complete Response and on the basis of information contained in relevant documents submitted further to, and in accordance with, the requirements specified in the PQQ.
- 6.3 The Commission will be entitled, at its absolute discretion, to reject any Response received after the Closing Date, specified in Section 8 of this document.
- 6.4 Save as expressly permitted in this EOI, after the Closing Date Candidates will not be able to revise or enhance any aspect of their Response or any Response to the PQQ.
- 6.5 The Stage 1 evaluation begins with a determination by the Evaluation Team as to whether the information required to be submitted with each Response is complete and valid. A Response is complete and valid (a "Complete Response") if it satisfies the Mandatory Conditions.
- 6.6 If the Evaluation Team determines that a Response is incomplete or does not otherwise comply with the Mandatory Conditions, the Evaluation Team shall be entitled to reject the Response as being non-compliant and eliminate the Candidate from the Designation Process. Subject to the continuing right of the Evaluation Team to reject the Response, the Evaluation Team shall be entitled in its absolute discretion to:
 - (i) send a deficiency notice to the relevant Candidate(s) requesting the provision of additional information which has not been provided or has been provided in an incorrect form or clarification of any information within a specified time; and/or
 - (ii) meet with, raise issues and/or seek clarification or supplementary information from the Candidate in respect of the Response and/or the non-compliance; and/or,
 - (iii) waive a requirement which, in the opinion of the Evaluation Team, is minor or procedural.
- 6.7 The Evaluation Team shall have the final determination on whether a Response is a Complete Response and, if a Response is deemed not to be a Complete Response, the absolute discretion to eliminate the Candidate from the Designation Process or to seek further information and determine following same whether the Response of a Candidate should be eliminated or permitted to proceed to evaluation in Stage 1.

- 6.8 The Evaluation Team shall have the right, at any time, to ask Candidates for supplementary information, clarification or elaboration of their Responses to assist in the evaluation of Responses. Candidates should respond to such requests within seven (7) calendar days of the date of the request or such later or earlier date as the Evaluation Team may, at its absolute discretion, specify. Candidates may be asked to attend a clarification or elaboration meeting and must comply with such a request. In such event, the Candidate will bear all its costs and expenses in attending any such meeting.
- 6.9 Responses to requests for supplementary information, clarification or elaboration may not materially change any elements of the Response submitted. No unsolicited information submitted after the Closing Date for receipt of Responses will be taken into consideration by the Evaluation Team except as otherwise provided in this EOI. Material and information received by the Evaluation Team after the Closing Date which has been specifically requested by the Evaluation Team for the purposes of supplementary information, clarification or elaboration may be taken into account in the evaluation process.
- 6.10 The Evaluation Team shall evaluate all Complete Responses against the following Selection Criteria and shall apply the following weightings:

Selection Criteria	Weightings
I. Experience and expertise in relation to the operation and management of similar or comparable projects, with particular reference to the operation and management of a registration scheme or similar administrative role.	70%
II. Experience and expertise in relation to the technical capability of the type required for similar or comparable projects, with particular reference to safety and electrical safety.	30%

- 6.11 Candidates will be assessed on the above Selection Criteria based on their Responses to the section of the PQQ dealing with their experience and technical ability (Section 3 of the PQQ).
- 6.12 The Evaluation Team will prepare a report on the Complete Responses and its assessment/evaluation of those Responses for the Commission's consideration. This report shall include a recommendation to the Commission on which Candidates, if any, to invite to participate in Stage 2 of the Designation Process.
- 6.13 The Commission will determine and make the decision on which Candidates should be invited to proceed to Stage 2.
- 6.14 As noted above, the Commission proposes to select a range of at least five (5) Candidates who are best capable, from the Commission's point of view, of

- satisfying the Commission's requirements for inclusion in Stage 2. The Commission reserves the right, at its absolute discretion, to invite less than five Candidates to submit tenders where it does not receive sufficient Complete Responses that meet the Minimum Conditions and satisfy the Selection Criteria.
- 6.15 The Commission shall have the right and discretion to reduce the number of Candidates as it deems appropriate from the Complete Responses, by reference to the Selection Criteria.
 - 6.16 Those Candidates selected pursuant to the above provisions will go forward to Stage 2 (and are deemed to be "Preferred Candidates").
 - 6.17 A list of those Preferred Candidates may be made public by the Commission.

SECTION 7: OVERVIEW OF STAGE 2 AND AWARD CRITERIA

- 7.1 The following description is a brief outline of Stage 2. The detailed requirements associated with Stage 2 shall be specified by the Commission at the outset of the Stage 2 process and in the ITT and other documentation released to Preferred Candidates at that time.
- 7.2 The purpose of Stage 2 is to evaluate the proposals of parties to operate as an ESSB in accordance with the Award Criteria specified by the Commission, with a view to selecting one or more Preferred Candidates to act as ESSBs.
- 7.3 Eligibility to participate in Stage 2 shall be exclusively limited to the Preferred Candidates selected pursuant to Stage 1 and who are invited by the Commission to participate in Stage 2.
- 7.4 Stage 2 shall entail the completion and response of detailed tenders which shall be in accordance with the requirements and timeframe confirmed to Preferred Candidates by the Commission in the ITT and any accompanying documentation.
- 7.5 The Commission shall appoint an Evaluation Team for the purposes of receiving and evaluating submissions received at Stage 2 from Preferred Candidates.
- 7.6 The Commission shall have the right to disregard any Stage 2 response which is deemed, by the Evaluation Team, to be incomplete or in contravention of the stated requirements of Stage 2, as specified in the ITT.
- 7.7 The Commission shall determine which Candidate(s) to designate on the basis of the “*most economically advantageous tender or tenders*” in accordance with the award criteria.
- 7.8 The individual Award Criteria which will be taken into account in making this assessment are as follows:

▪ Quality and credibility of the Candidate’s proposal and implementation plan for establishment as an ESSB	50%
▪ Cost ²	35%
▪ Time required to establish the operation of the service	15%

² In evaluating the a Candidate’s proposal in respect of cost, the Commission, or the Evaluation Team, as appropriate, shall have regard to such matters as shall be specified in the ITT, which may include, without limitation, (i) the price of the services to be provided by the Candidate to third parties if designated as an ESSB; (ii) the estimated establishment and operational costs of a Candidate if designated as an ESSB and (iii) the costs likely to be incurred by Commission and by final customers in the event of designation of that Candidate as an ESSB (in this regard see Section 9D(2) ERA set out in Appendix 3).

- 7.9 It is intended that Preferred Candidates will be required to achieve minimum scores for the above qualitative and time criteria, such scores to be set out in the ITT. Where the Commission has set such minimum scores, any Preferred Candidate whose tender fails to meet any one of those minimum scores will be excluded from further consideration.
- 7.10 For tenders passing any minimum scoring thresholds, the marks for each of the Award Criteria will be summed. The highest scoring tender or tenders will represent the most economically advantageous tender(s) to the Commission.
- 7.11 In determining the number of parties to be designated as an ESSB, the Commission will have regard to, amongst other things, the requirements of Section 9D(2)(a), (b) and (c) of the ERA. Preferred Candidates may be required to submit alternate bids based on the number of bodies ultimately designated (i.e. costs if it is the only body, one of two, one of three etc.). The Commission reserves the right to designate one or more ESSBs or not to designate any as a result of this Designation Process.
- 7.12 Further to the carrying out of the evaluation process on Stage 2 Responses, the Evaluation Team will prepare a report on the Complete Responses and its assessment/evaluation of those Responses for the Commission's consideration. This report shall include a recommendation to the Commission on which Preferred Candidates, if any, are proposed to be deemed Successful Candidates.
- 7.13 The Commission shall make the final decision regarding which, if any, of the Preferred Candidates shall be provisionally selected for designation (any such Preferred Candidate is to be deemed a Successful Candidate).
- 7.14 The Commission shall publish its decision and there shall be a standstill period for a minimum of 14 days between the award decision and entering into any binding agreement with a Successful Candidate in accordance with applicable law.
- 7.15 Those Preferred Candidate(s) who participate in the Stage 2 process but who are unsuccessful will be offered a debriefing on their Response.
- 7.16 Subject to the below paragraphs, the decision of the Commission will be final.
- 7.17 The Commission will notify each Successful Candidate in writing of its provisional selection. As a condition of such provisional selection. A Successful Candidate may be required to provide additional evidence confirming its economic and financial standing or to comply with any other notified conditions to the satisfaction of the Commission. Candidates should note the above comments in Section 4 on economic and financial standing in this respect.
- 7.18 Without prejudice to the foregoing, prior to designation of any Successful Candidate as an ESSB taking effect and within a timeline specified by the Commission, the Successful Candidate may be required among other things to:
- put in place insurance in accordance with minimum insurance requirements to be specified by the Commission; and/or,

- put in place a guarantee, indemnity performance bond or such other security as the Commission may deem appropriate; and/or,
- adopt such corporate structure and put in place such corporate governance requirements as may be specified by the Commission.

7.19 A Successful Candidate will be required to produce for inspection by the Commission a current Tax Clearance Certificate or, if not Irish resident, a Statement of Suitability issued by the Irish Revenue Commissioners.

SECTION 8: FORMAT AND SUBMISSION OF RESPONSES TO THIS EOI

- 8.1 The following Section sets out the procedure to be followed by all Candidates when submitting their Responses to the Commission.
- 8.2 Candidates are advised to refer to the Closing Date for Responses in paragraph 8.7 below.

Presentation of Responses

- 8.3 Responses shall be in the form of a fully completed PQQ and the supporting documents requested therein.
- 8.4 The completed PQQ shall be enclosed in a sealed envelope, clearly marked:

“Designation of Party or Parties to act as an Electrical Safety Supervisory Body or Bodies”

and addressed to:

Siobhan Keating,
Commission for Energy Regulation,
The Exchange,
Belgard Square North,
Tallaght,
Dublin 24,
Ireland.

- 8.5 The number of copies of completed PQQ documents required is **five (5)** hard copies and one copy in CD Rom format. The Candidate is fully responsible for the safe and timely delivery of the PQQ.
- 8.6 Responses shall be in the English language.

Note: Faxed, emailed or late tenders may not be considered

Closing Date for Receipt of Responses:

- 8.7 The closing date for receipt of tenders is day **25th April 2008 at 12:00 noon GMT.**

Freedom of Information:

- 8.8 All Responses to this EOI will be treated in confidence and no information contained therein will be communicated to any third party without the written permission of the Candidate except insofar as is specifically required for the consideration and evaluation of the Response or as may be required under law, including the Freedom of Information Acts 1997 and 2003, EU and Irish Government Procurement Procedures or in response to questions, debates or other parliamentary procedures in or of the Oireachtas (the Irish Parliament).

- 8.9 Candidates are asked to consider if any of the information supplied by them in Response to this EOI should not be disclosed because of its sensitivity. If this is the case, Candidates should specify the information, which is sensitive, and the reasons for its sensitivity. The Commission cannot guarantee that any information provided by Candidates, either in Response to this EOI or in the course of any contract awarded as a result thereof will not be released pursuant to Commission's obligations under law, including the Freedom of Information Acts 1997 and 2003, EU and Irish Government Procurement Procedures, and accepts no liability whatsoever in respect of any information provided which is subsequently released or in respect of any consequential damage suffered as a result of such obligations.

Consortia

- 8.10 If the Candidate is a consortium or grouping of members, the Candidate must specify the commercial and legal relationship amongst its members and any agreements giving effect to same. The Commission reserves the right to request copies of any such agreements. The principal point of contact for the Candidate must be identified in the PQQ and a representative of that person should sign the Article 45 Certificate and the Acceptance Certificate on behalf of the Candidate. All other members of the Candidate are required to provide evidence, in the form set out in Appendix 6 to this EOI, of authorisation for that person to sign on their behalf. .
- 8.11 It should be noted that if a consortium is designated as an ESSB, each member of the Candidate will be legally bound by the Terms and Conditions of Appointment.
- 8.12 The Commission may require, as a condition of designation, that a Successful Candidate which is a consortium take a particular legal form as the Commission deems appropriate prior to such designation.

Relationship between Candidates

- 8.13 A Candidate is required to certify that it has no economic, legal, commercial or financial relationship with another Candidate submitting a separate Response to the EOI. If a Candidate is unable to so certify, the Candidate must identify the other Candidate and the economic, legal commercial or financial relationship in question. The Commission reserves the right, acting reasonably, in such circumstances, to reject the response of such Candidate and eliminate it from the Designation Process. In arriving at this decision, the Commission will have regard to the nature and complexity of the requirements of an ESSB, the extent of expertise available for particular disciplines connected with the Designation Process and the protections and procedures put in place or agreed to be put in place by a Candidate to protect against or minimise any conflict arising.

Acceptance of Terms and Conditions

- 8.14 A Candidate must, in returning its Response, confirm that he accepts the terms and conditions of this EOI and as set out in Appendix 5.

Conflicts

- 8.15 A Candidate must disclose in its Response any potential conflicts of interest or potential perceived conflicts of interest which a candidate might have with any aspect of this process, or its Response or with any other Candidate.

Compliant Response

- 8.16 Candidates should note that a Response which fails to meet or address any of the requirements laid down in this EOI and the PQQ will be interpreted by the Commission as failing to comply with the Mandatory Conditions of this EOI and may, in the absolute discretion of the Commission, be rejected and eliminated from the Designation Process. The onus is on Candidates to ensure that their Responses are complete in every respect.
- 8.17 Candidates are referred to the checklist at the back page of the PQQ.

SECTION 9: PROCEDURE FOR OPENING RESPONSES

- 9.1 All Responses will be opened together in a closed meeting, as soon as possible after the Closing Date.
- 9.2 Responses received after the closing date for receipt will not be accepted and will be returned unopened to the sender. Responses will be evaluated in accordance with Section 6 of this EOI.
- 9.3 The opening will take place in the presence of such persons as the Commission, in its absolute discretion, deems appropriate, and which shall include at least 2 members of staff of the Commission.
- 9.4 Details of each Response shall be recorded as they are opened.

SECTION 10: ENQUIRIES

- 10.1 Any requests for clarification on any aspect of this document, or on Stage 1 of the Designation Process, are required to be made in writing to the Commission in accordance with the details specified below.
- 10.2 The Commission requests that any such requests should be made in electronic correspondence.

Contact Name:	Karen Trant
Email:	ktrant@cer.ie
Correspondence Address	Commission for Energy Regulation, The Exchange, Belgard Square North, Tallaght, Dublin 24 Ireland
Due Date for Submission of Comments/Clarification Requests:	5.00pm GMT on 28th March 2008

- 10.3 All requests for information shall be summarised and the Commission shall publish the comments received and the Commission's response to the clarifications requests received on its website and the website of E-Tenders/OJEC on **3rd April 2008**.
- 10.4 Any comments/requests received beyond the due date specified above may not be considered by the Commission.
- 10.5 The details of any party submitting comments/request for clarification shall be held in confidence by the Commission and the Commission will not release the identity or details of any party making a request for clarification.

SECTION 11: ADDITIONAL CONDITIONS OF DESIGNATION PROCESS

- 11.1 All Responses (including rejected Responses) must remain open and valid for twelve (12) months from the Closing Date. No Response may be withdrawn after its acceptance.
- 11.2 Candidates must not canvass directly or indirectly any member of the Commission, officer or employee of the Commission, its advisers, or any member of the Evaluation Team. Failure to comply with this requirement will result in disqualification from the selection process.
- 11.3 Collusion, or any attempt by interested parties/Candidates to influence, in any way, the Designation Process, will result in the disqualification of that/those interested parties/Candidate(s). Examples of such improper influence are collusion, price fixing, bid rotation or market division.
- 11.4 The Commission may disqualify a Candidate if the Candidate is economically, legally, commercially, financially or otherwise related to one or more other Candidates in a way that would impede in any way the incentive that the Candidate should have to compete to be a successful Candidate in the competition.
- 11.5 This EOI is confidential and personal to each Candidate who has requested a copy of it and received such copy. Candidates may not release details of this EOI to third parties other than on a confidential basis to those who have a legitimate need to know or with whom they need to consult for the purpose of preparing the Response. All information supplied to Candidates as part of the process remains confidential and is to be treated as such. Failure to comply with the confidentiality of this process may disqualify a Candidate.
- 11.6 No publicity whatever regarding this EOI, the competition and/or process is permitted unless and until the Commission has consented in writing, at its absolute discretion, to the relevant communication.
- 11.7 If a Candidate discovers any error or omissions in this EOI, the Candidate must immediately notify the Commission in writing of such error or omission.
- 11.8 Except as expressly permitted in this EOI, Candidates must submit a fully compliant Response which is not qualified in any way.
- 11.9 No representation, warranty or undertaking, express or implied, in respect of any error or misstatement by or on behalf of the Commission is made or given to any Candidate and no responsibility or liability is accepted by the Commission for the accuracy or completeness of this EOI or omissions therefrom. Any and all liability and/or loss of any nature whatever and however arising (including liability and/or loss in any way resulting from the process and competition which arises out of this EOI) is hereby expressly disclaimed and excluded by the Commission. This exclusion operates to the fullest extent permitted by applicable law.

- 11.10 Any material information or change in events which relates to a Candidate and/or its Response that comes to light subsequent to the submission of a Response must be promptly brought to the attention of the Commission by the relevant Candidate by e-mail and letter to the addresses indicated in Section 10 of this document.
- 11.11 The Commission is under no obligation to designate an ESSB based on the lowest priced or any Response(s) or tender(s) it may receive.
- 11.12 This EOI is issued by way of guidance only. All information contained in it is indicative only and will be superseded by the ITT to the extent that there is any inconsistency between the two.
- 11.13 The Commission reserves, at its absolute discretion, the right, at any time until the conclusion or termination of the Designation Process, to amend or modify any documents in or related to this EOI in any respect by way of clarification, addition, deletion or otherwise,. The Commission will inform Candidates of any such amendments or modifications, if appropriate.
- 11.14 It shall be a condition of designation that an ESSB must comply with all applicable laws, regulations, codes of practice and decisions of competent authorities (including, without limitation, the Vision Document and Criteria Document). Candidates are solely responsible for making themselves aware of any rights, obligations and liabilities which may arise on a Candidate's designation as an ESSB, or which apply to the performance of its functions as an ESSB under any applicable laws including, without limitation, the ERA, Vision Document, the Criteria Document, public procurement laws and the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 (S.I. No. 131 of 2003).
- 11.15 It shall be an enduring condition of designation of any ESSB that the ESSB and any subcontractors (domestic or otherwise) appointed by the ESSB are required to produce for inspection by the Commission a current Tax Clearance Certificate (or, where deemed appropriate by the Commission a tax number) issued by the Irish Revenue Commissioners within two (2) weeks of request by the Commission or such further period as may be permitted by the Commission.

APPENDIX 1: PRE-QUALIFICATION QUESTIONNAIRE

Please refer to the Pre-Qualification Questionnaire published with this EOI – reference CER/08/047A.

APPENDIX 2: REFERENCE MATERIALS

Please note the following reference materials as referred to throughout this EOI:

Reference Item	Reference/Location/Link
Commission for Energy Regulation's Website:	www.cer.ie
Vision Decision and Response Paper: <i>"Vision for the Regulation of Electrical Contractors with Respect to Safety"</i>	CER/07/203 CER/07/204
Criteria Document (Consultation Document): <i>"Proposed Criteria for the Regulation of Electrical Contractors"</i>	CER/07/213-1/2/3/4/5
Economic Regulation (Consultation Document): <i>"Proposals for the Economic Regulation of the Gas Safety Supervisory Body and any Electrical Safety Supervisory Bodies to be designated by the Commission"</i>	CER/08/050

All of the above documentation is available on the Commission's website.

APPENDIX 3: LEGISLATION

Sections 9C – 9E of the Energy Regulation Acts 1999 and 2000, as inserted by Section 4 of the Electricity (Miscellaneous Provisions) Act 2006 can be found at the following web-link:

LINK: <http://www.oireachtas.ie/documents/bills28/acts/2006/a4006.pdf>

APPENDIX 4: ARTICLE 45 CERTIFICATE

ARTICLE 45 CERTIFICATE³

Extract from Council Directive 2004/18/EC co-ordinating procedures for the award of public service contracts, Article 45

- “1. Any candidate or negotiatee who has been the subject of a conviction by final judgment of which the contracting authority is aware for one or more of the reasons listed below shall be excluded from participation in a public contract:
- (a) participation in a criminal organisation, as defined in Article 2(1) of Council Joint Action 98/733/JHA (1);
 - (b) corruption, as defined in Article 3 of the Council Act of 26 May 1997 and Article 3(1) of Council Joint Action 98/742/JHA respectively;
 - (c) fraud within the meaning of Article 1 of the Convention relating to the protection of the financial interests of the European Communities;
 - (d) money laundering, as defined in Article 1 of Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering.
2. Any economic operator may be excluded from participation in a contract where that economic operator:
- (a) is bankrupt or is being wound up, where his affairs are being administered by the court, where he has entered into an arrangement with creditors, where he has suspended business activities or is in any analogous situation arising from a similar procedure under national laws and regulations;
 - (b) is the subject of proceedings for a declaration of bankruptcy, for an order for compulsory winding up or administration by the court or of an arrangement with creditors or of any other similar proceedings under national laws and regulations;
 - (c) has been convicted by a judgment which has the force of res judicata in accordance with the legal provisions of the country of any offence concerning his professional conduct;
 - (d) has been guilty of grave professional misconduct proven by any means which the contracting authorities can demonstrate;

³ Candidates which comprise a group or consortium are referred, in particular, to Section 8.3 of the EOI.

- (e) has not fulfilled obligations relating to the payment of social security contributions in accordance with the legal provisions of the country in which he is established or with those of the country of the contracting authority;
- (f) has not fulfilled obligations relating to the payment of taxes in accordance with the legal provisions of the country in which he is established or with those of the country of the contracting authority;
- (g) is guilty of serious misrepresentation in supplying the information required under this Section or has not supplied such information.”

Each member of the Candidate hereby agrees, declares and certifies that it does not fall within any of the matters set out in Article 45 of Council Directive 2004/18/EC co-ordinating procedures for the award of public service contracts.

Signed as an authorised signatory
for and on behalf of all
Members of the Candidate
in the presence of:

Authorised Signatory: _____

Name: _____

Position (Job Title): _____

Candidate Entity: _____

Date: _____

Witness Name: _____

APPENDIX 5: ACCEPTANCE CERTIFICATE

ACCEPTANCE CERTIFICATE⁴

Each member of the Candidate hereby agrees and declares that all members of the Candidate accept the terms and conditions of the EOI and are fully and legally bound thereby. In the case of a consortium or group of organisations, the members of the Candidate shall be jointly and severally liable for compliance with the terms and conditions of this EOI.

In addition, each member of the Candidate hereby agrees and declares that to the best of their knowledge the answers submitted in the PQQ enclosed with this Response, and the documentation submitted therewith, are correct and accurate and not misleading.

Signed as an authorised signatory
for and on behalf of all
members of the Candidate
in the presence of:

Authorised Signatory: _____

Name: _____

Position (Job Title): _____

Candidate Entity: _____

Date: _____

Witness Name: _____

⁴ Candidates which comprise a group or consortium are referred, in particular, to section 8.3 of the EOI.

APPENDIX 6: AUTHORISATION TO SIGN FOR CONSORTIUM OR GROUP OF MEMBERS

If the Candidate is a consortium or group of members, the table below is to be signed and completed by EACH member of the Candidate. This can be on the same sheet or on separate sheets.

This should be completed by all organisations identified in section 1.2 of the PQQ.

I/we confirm that [] of
[] is authorised to act as agent for and on behalf of all members of the Candidate and is the principal contact for the Candidate in dealings with the Commission for the purpose of this process (including Stage One and Stage Two).

Name of Candidate member organisation	Name of signatory	Position in relevant organisation	Signature (for and on behalf of the organisation identified in column 1)

(Please note: Power of Attorney not required at this stage)