



18 December 2020

Ref: CPD 004 121 149

Dear Sir or Madam,

**INVITATION TO TENDER FOR THE AGGREGATE WORKING PARTIES (AWP)
SECRETARIAT**

I am pleased, on behalf of the Secretary of State for Housing, Communities and Local Government (MHCLG), to invite you to submit a Tender for the provision of the Aggregate Working Parties (AWP) Secretariat.

Your attention is drawn to the Invitation to Tender Information and Instructions (ITT) and the Terms of Participation overleaf. To ensure fairness all Potential Suppliers are required to submit their Tenders in accordance with the ITT and the Terms of Participation. Failure to do so could invalidate the Tender.

I look forward to hearing from you.

Yours faithfully

Joanna Means



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Please note that this and all future correspondence exchanged between this authority and [contractor/ firm] is to be treated as strictly subject to contract until such time as binding contracts shall have been validly concluded between [our respective clients] relating to this proposed transaction. Your continued correspondence with us shall be taken as a firm acceptance of this understanding on behalf of yourselves and your clients



PART 1 – INVITATION TO TENDER (ITT) INFORMATION AND INSTRUCTIONS

1. INTRODUCTION

- 1.1 Welcome to this Procurement which is being run by the Ministry of Housing, Communities and Local Government (MHCLG, referred to as the 'Authority' within this Invitation to Tender (ITT)). Further information on the Authority can be found at: <https://www.gov.uk/government/organisations/ministry-of-housing-communities-and-local-government>.
- 1.2 References to "you" in this ITT are references to your organisation, or the organisation you represent in this Procurement i.e. the legal entity responsible for the information provided.
- 1.3 This ITT contains the information and instructions required by the Potential Supplier to submit a compliant Tender. Words in this ITT which are capitalised have definitions either in the paragraph in which such words appear or in the glossary at paragraph 17 (Glossary) of this Part 1 ITT Information and Instructions.
- 1.4 You are advised to read this ITT carefully as non-compliance with the instructions contained in this document and all its Annexes may result in exclusion of your Tender from this Procurement. If you have read all the instructions and information carefully but are still unsure at any point how to respond, please submit a question following the guidance in paragraph 8 (Questions and Clarifications).
- 1.5 The Terms of Participation at Part 2 of this document will apply throughout this Procurement. They set further rights and obligations which apply to the Potential Supplier and the Authority. Failure to comply with these Terms of Participation will result in your tender being excluded from this Procurement. You must confirm in the Participation Requirements at Annex D1 that you accept the Terms of Participation.
- 1.6 If you are participating in this Procurement as a Group or Group of Economic Operators or intend on using Sub-Contractors please read the guidance in paragraph 10 (Contracting Arrangements (Sub-contractors and Groups of Economic Operators)).
- 1.7 The Authority is using an e-tendering portal to manage this Procurement and to communicate with Potential Suppliers. No hard copy documents will be issued and all communication with the Authority (including submissions of Tenders) must be conducted via the e-tendering portal. The Potential Supplier must ensure that the details of the point of contact nominated in the e-tendering portal are accurate at all times as the Authority will not be under any obligation to contact any other point of contact.
- 1.8 The Authority is managing this Procurement in accordance with the Regulations and specifically in accordance with the [open procedure] (Regulation 27 of the Public Contract Regulations 2015).



2. THE CONTRACT

- 2.1 This Procurement will result in the award of the Contract to up to nine (9) successful Potential Suppliers. Once the Contract has been executed the successful Potential Supplier for each Lot become the Contractors for their Lot under this contract.
- 2.2 The Contract will be for an initial period of 4 years commencing 1ST April 2021 and expiring 31st March 2025. The Authority reserves the right to extend the Contract for a period of up to 1 year in any increment. It is anticipated that break points will be included in the Contract at the end of year 1.
- 2.3 The Authority has a maximum budget of £144,000 per annum ex of VAT for this requirement.
- 2.4 The Terms and Conditions that will govern the Contract are attached at Annex B. The Potential Supplier should carefully review these documents so that you fully understand the rights and obligations they confer on the parties.
- 2.5 The Contract terms are non-negotiable, whether during this Procurement or post award. However, the Potential Supplier may seek clarification of any points of ambiguity or apparent error in relation to the terms throughout the clarification period (see paragraph 8 (Questions and Clarifications)). If, in its sole discretion, the Authority accepts that there is either ambiguity or error, then it will make an appropriate amendment.
- 2.6 Following the Authority's decision to award, the Contract will be updated to incorporate elements of the Tender including (but not limited to) the successful Potential Supplier's charges and the approach to delivering the Services.

3. REQUIREMENT

- 3.1 A detailed description of the Services that the Contractor will be required to supply is set out in the Specification at Schedule 2 and a short description is contained in the OJEU Contract Notice.
- 3.2 The Services covered by this Procurement have been sub-divided into 9 Lots, full details can be found in Appendix 2 to Schedule 2 (Specification),

Lot 1	London
Lot 2	South East
Lot 3	South West
Lot 4	East of England
Lot 5	West Midlands
Lot 6	East Midlands
Lot 7	North West
Lot 8	Yorkshire and Humber
Lot 9	North East



- 3.3 Potential Suppliers have the opportunity to bid for all or any combination of the 9 Lots. However, in order to ensure that the Authority's requirements benefits from a diverse range of Contractors, each Potential Supplier may be awarded a maximum of only 4 Lots.
- 3.4 Where a Potential Supplier is successful in more than 4 Lots, the Potential Supplier will be awarded only 4 of the Lots according to the Potential Supplier's order of preference, and an offer of Contract will be made to the next ranking Potential Supplier in the other Lots.
- 3.5 If no tenders are received for a particular Lot – a Potential Supplier may state that they would be interested tendering for a Lot which has received zero bids. This would be in addition to any Lots as tendered for by the Potential Supplier, and may be in addition to their 4 preferred Lots as stated in clause 3.3. and 3.4 above.
- 3.6 All Potential Suppliers which state that they would be interested in Additional Lots which have received no express tenders in Annex H -Tender Checklist and Confirmation of Lots, will be competed against each other for any Lot(s) for which no express tenders have been received for in accordance with the standard evaluation procedure as stated in the ITT documentation. Potential Providers will then be required to submit an additional Annex C (Pricing) upon request by the Authority for that Lot(s).
- 3.7 If more than one Lot receives no express tenders and multiple Potential Providers state that they would be interested in Additional Lots which have received no express tenders in Annex H -Tender Checklist and Confirmation of Lots; a maximum of one (1) Additional Lot will be awarded per a Potential Supplier. Therefore, if a Potential Provider ranked first in evaluation in more than 1 Additional Lot, then any further Lot would be awarded to the next highest-ranking Potential Provider in order to ensure that a diverse range of Contractors is maintained. It is the Authorities discretion on the allocation of Additional Lots. Lot allocation will be done in a proportionate and fair manner.

4. ACKNOWLEDGEMENT OF RECEIPT OF THIS ITT

- 4.1 You are required to acknowledge receipt of the ITT and state whether or not a Tender will be submitted.
- 4.2 If you do not wish to submit a Tender the Authority would appreciate if you could also state the reasons for not tendering as this may assist future procurement exercises.
- 4.3 The acknowledgement should be made to via the messaging service in the e-tendering portal. In your response please state which Lot(s) you intend to submit a tender for.

5. PROCUREMENT TIMETABLE

- 5.1 The timetable for this Procurement is set out in Table 1 below.
- 5.2 This timetable may be changed by the Authority at any time. Changes to any of the dates will be made in accordance with the Regulations (where applicable). You



will be informed through the e-tendering portal if the Authority decides that changes to this timetable are necessary.

TABLE 1 – PROCUREMENT TIMETABLE

DATE	ACTIVITY
18 December 2020	Dispatch of the OJEU Contract Notice
18 December 2020	Clarification period starts
14 th January 2021	Clarification period closes (“Tender Clarifications Deadline”) (Please note that any clarification questions submitted between 17 th December and 4 th January will be answered via a bulk upload on the W/C 4 th January)
18 January 2021	Deadline for the publication of responses to Tender Clarification questions
6 th January 2021	Deadline to acknowledge intention to submit a Tender
1 st February 2021	Deadline for submission of Tenders (“Tender Submission Deadline”)
2 nd February 2021 – 22 nd February 2021	Evaluation period
25 th February 2021	Intention to award notices issued to successful and unsuccessful Potential Suppliers.
4 th March	10-day Standstill Period (in accordance with Regulation 87) ends at 23:59 on this day
1 st April	Prospective commencement date for Contract

6. COMPLETING AND SUBMITTING A TENDER

- 6.1 To participate in this competitive tendering exercise, you are required to submit a Tender which fully complies with the instructions in this ITT and its Annexes.
- 6.2 You are strongly advised to read through all documentation and all attachments to ensure understanding of how to submit a fully compliant Tender.
- 6.3 The Authority utilises an e-tendering portal to provide governance around the sourcing process. Your response must be managed through this tool. You are therefore advised of the following:
 - 6.3.1 It is your responsibility to ensure that you have submitted a fully compliant Tender.
 - 6.3.2 You must ensure that you are using the latest versions of this document and its Annexes, as the documentation may be updated from time to time.



- 6.3.3 Any incomplete or incorrect submissions may be deemed non-compliant, and as a result you may be unable to proceed further in the procurement process.
- 6.3.4 Allow plenty of time for completing the Tender. It is advised that this activity commences as soon as possible and is not left until the day of the Tender Submission Deadline.

7. CONTENT OF TENDER

- 7.1 The tender must be submitted in the English (UK) language.
- 7.2 You are required to submit a completed and signed Standard Selection Questionnaire in accordance with the template at Annex D, and a completed Participation Requirements in accordance with the template at Annex D1.
- 7.3 You are also required to submit a Tender complying with the specified limits for each question describing how you will meet the requirement set out in the Specification at Schedule 2 having regard to each of the evaluation criterion set out at Annex F – Award Criteria and Scoring Guidance, and responding to the questions in the order set out. The questions are designed to test Potential Supplier's ability to deliver the requirement as set out in the Specification at Schedule 2. Potential Supplier's responses must clearly demonstrate how they propose to meet the requirements set out in the question and address each element in the order they are asked and within the specified page/word limits.
- 7.4 You must not answer questions by cross referring to other answers or to other materials (e.g. annual company reports located on a web site). Each question answered must be complete in its own right.
- 7.5 The Authority will disregard any part of a response to a question which exceeds the specified page limit (i.e. the excess will be disregarded, not the whole response). The stated page limit or word limit should be in A4 Arial size 10 font and includes spaces and punctuation.
- 7.6 You must explicitly confirm in your tender response that you can provide all mandatory aspects of the Specification set out at Schedule 2. The Authority reserves the right to exclude Potential Suppliers that cannot provide all mandatory aspects of the Specification set out at Schedule 2.
- 7.7 You must complete the Pricing Schedule at Annex C and submit the requested information for delivering the Services in accordance with the template and instructions provided. All pricing in the Tender must be in pounds sterling and excluding VAT. Estimates are not acceptable.
- 7.8 You should not include price information in the main body of the Tender. Price information should be in Annex C only.
- 7.9 You are required to submit a completed and signed Form of Tender in accordance with the template at Annex E.
- 7.10 Where a conflict of interest exists or arises or may exist or arise during the Procurement you must inform the Authority and submit proposals to avoid such



conflicts. In the event the Authority does not accept that your proposals will prevent a conflict of interest from arising the Authority may take such measures to prevent the conflict of interest from arising as it considers appropriate including, but not limited to, excluding you from this Procurement.

- 7.11 A checklist of the documents which require to be submitted for this tender exercise is included at Annex H of the ITT pack. Please include this Annex H as part of your tender return, confirming which Lot(s) are being tendered for as well as confirming all requested documentation has been completed.

8. QUESTIONS AND CLARIFICATIONS

- 8.1 You may raise questions or seek clarification regarding any aspect of this Procurement at any time prior to the Tender Clarifications Deadline (see the Procurement Timetable set out in paragraph 5). Questions must be submitted using the messaging facility provided within the e-tendering portal.
- 8.2 To ensure that all Potential Suppliers have equal access to information regarding this Procurement, the Authority will publish all its responses to questions asked and/or clarifications raised by Potential Suppliers.
- 8.3 You should not refer to your identity in the body of the question. Responses to questions asked and/or clarifications raised will not identify the originator of the question and may be answered in batches, rather than one at a time, with updates appearing at regular (approximately two to three working days) intervals.
- 8.4 If a Potential Supplier wishes to ask a question or seek clarification in confidence it must provide justification for withholding the question and any response. If the Authority does not consider that there is sufficient justification for withholding the question and the corresponding response, the Authority will inform the Potential Supplier and the Potential Supplier will have an opportunity to withdraw the question or clarification. If the question and or clarification is not withdrawn, then the response will be issued to all Potential Suppliers.
- 8.5 You are responsible for monitoring the e-tendering portal and the question and answer bulletins in particular, for any responses to questions, general clarifications or other information issued by the Authority. Answers to such questions may contain important information that could affect how you complete your Tender.
- 8.6 The Authority reserves the right to contact you at any time for clarification on all or any part of its Tender during this Procurement and you should respond promptly to such request.
- 8.7** Please note that clarification questions may be submitted over the Christmas period. *Any questions submitted between the 18th December 2020 and 4th January 2021 will be answered via a bulk upload of questions and answers during the week commencing 4th January 2021.*

9. TENDER RETURN AND VALIDITY

- 9.1 All Tenders must be received by the Authority before the Tender Submission Deadline (see the Procurement Timetable in paragraph 5 for details). It is your



responsibility to ensure that the Tender arrives no later than the time and date stated in the Procurement Timetable (unless the time and/or date are subsequently amended in writing by the Authority).

- 9.2 All Tenders must be submitted to the Authority using the e-tendering portal.
- 9.3 Tenders received on or after the Tender Submission Deadline may be rejected by the Authority to ensure all Potential Suppliers are treated fairly. The decision whether to reject a Tender received after the Tender Submission Deadline is entirely at the Authority's discretion.
- 9.4 The Tender must be based upon the conditions and Specification(s) set out in the ITT and must contain all the information requested otherwise it may be rejected on the basis of being non-compliant.
- 9.5 By submitting a Tender, you agree that the Tender remains valid for acceptance for a period of 90 days from the Tender Submission Deadline.

10. CONTRACTING ARRANGEMENTS (SUB-CONTRACTORS AND GROUPS OF ECONOMIC OPERATORS)

- 10.1 It is important that the Tender conveys a complete and accurate picture of how the Services will be satisfied. Each Potential Supplier should provide clarity on how it is structured in terms of organisations contributing to the Services.
- 10.2 The Tender must be completed in the name and 'voice' of the economic operator (as defined in the Regulations) or, in the case of a Group of Economic Operators, the economic operators-members that, if awarded, will ultimately enter into the Contract with the Authority and therefore assume liability for performance of the Contract, subject to paragraph 10.6 to 10.10 below.
- 10.3 The Authority does not require all sub-contractors be disclosed. You need only disclose those Sub-contractors who directly contribute to the Potential Supplier's ability to meet its obligations under the Contract. There is no need to specify those Sub-contractors providing general services to the Potential Supplier (such as window cleaners, lawyers, desktop software providers etc.) that indirectly enable the Potential Supplier to perform the Contract. Please read the definition of Sub-contractor in paragraph 17.
- 10.4 With the exception of Sub-Contractors identified in the Tender, no organisation other than the Potential Supplier will be able to provide Services through the Contract, whether, for example, a group company, subsidiary, parent company, holding company, associated company, franchise or fellow franchisee, strategic partner or organisation in any other relationship with the Potential Supplier whatsoever. For the avoidance of doubt, the use of any kind of group companies associated with the Potential Supplier can be only as Sub-Contractors identified in the Tender.
- 10.5 The Potential Supplier must clearly identify when it is relying on a Sub-Contractor in its response to a question, giving the name of the Sub-Contractor and explaining the Sub-contractor's role, capability and experience as the context of the question requires.



- 10.6 If a Group of Economic Operators wish to act jointly to provide the Services they may do so with all parties signing the resultant Contract and assuming joint and several responsibility for performance of the Contract.
- 10.7 Please note that, in accordance with Regulation 19 (6), the Authority may require the Group of Economic Operators to assume a specific legal form for the purpose of concluding the Contract. In this case, the Authority is also likely to require the members of the Group of Economic Operators to nominate a Contract Guarantor for the single legal entity's performance of the Contract.
- 10.8 The Group of Economic Operators should nominate a Lead Contact to lead the bidding process. If the Group of Economic Operators plans to collaborate on a joint and several basis, then the Group of Economic Operators should nominate a Lead Contact to complete the Tender on behalf of all the other members of the Group of Economic Operators.
- 10.9 Where the Lead Contact relies on the capability and/or experience of one or more members of the Group of Economic Operators to demonstrate the Group of Economic Operators' ability to provide the Services in accordance with the requirements of the ITT and the Contract, it must inform the Authority in its Tender.
- 10.10 More specifically, the Tender submitted by the Lead Contact must clearly identify in response to any question, when it is relying on another member of the Group of Economic Operators, the name of the particular member and explain the member's role, capability and experience as the context of the question requires.

11. CHANGES TO THE CONTRACTING ARRANGEMENTS

- 11.1 The Authority recognises that arrangements in relation to sub-contracting and Groups of Economic Operators may be subject to future change, and may not be finalised until a later date. However, any changes to those arrangements may affect a Potential Supplier's ability to deliver the requirements. A Potential Supplier must tell the Authority about any changes to the proposed sub-contracting or to the Group of Economic Operators. The Authority will assess the new information provided and reserves the right to exclude a Potential Supplier prior to any award of contract.
- 11.2 If you are awarded a Contract, any changes to arrangements in relation to sub-contracting and Group of Economic Operators arrangements which are made following the award will be dealt with in accordance with the Amendment and Variation clauses detailed in the Contract Terms and Conditions at Annex B.

12. DATA SECURITY- CYBER ESSENTIALS SCHEME

- 12.1 To be awarded a Contract successfully it will be essential for the Contractor to meet the basic requirements of the Cyber Essentials Scheme, introduced in June 2014. This scheme defines a set of controls which, when properly implemented, provides organisations with basic protection from the most prevalent forms of



threat coming from the internet. You can view the details of the Cyber Essentials Scheme at: <https://www.gov.uk/government/publications/cyber-essentials-scheme-overview>

- 12.2 The easiest way to demonstrate that the Cyber Essentials requirements are met is to gain the Cyber Essentials certificate, which is also likely to be the cheapest way to demonstrate compliance.

12.2.1 The Cyber Essentials Assurance Framework, leading to the awarding of Cyber Essentials and Cyber Essentials Plus certificates for organisations, has been designed in consultation with SMEs, including the Federation for Small Business, to be 'light-touch' and achievable at low cost. The two options give organisations a choice over the level of assurance they wish to gain and the cost of doing so. This scheme offers the right balance between providing additional assurance of an organisation's commitment to implementing cyber security to third parties, while retaining a simple and low cost mechanism for doing so.

12.2.2 The Contractor shall comply with the basic requirements prescribed by Cyber Essentials.

12.2.3 For the avoidance of doubt, no agreement will be signed with a Contractor who does not demonstrate that basic Cyber Essentials requirements are met in full. Please note that it will NOT be acceptable to submit a completed Cyber Essentials Common Questionnaire as evidence of the requirements being met, in the absence of appropriate verification by an independent Certification Body acceptable to the Authority.

12.2.4 Similarly, no Sub-Contractor may be used until it has demonstrated that it meets the basic Cyber Essentials requirements too. The Contractor and any Sub-Contractors will need to renew their evidence of Cyber Essentials compliance at least annually.

13. GREEN CLAIMS CODE

- 13.1 Any environmental claim made in the Tender must comply with the Green Claims Code, which is available at:

<https://www.gov.uk/government/publications/green-claims-guidance>

14. TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS 2006 ("TUPE")

14.1 The Potential Supplier is advised to consider potential implications of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) which may apply to this Contract. It is the responsibility of the successful Potential Supplier to determine if TUPE does apply.

14.2 It is the responsibility of the Potential Supplier to take your own advice and consider whether TUPE is likely to apply in the particular circumstances of the Contract and to act accordingly. The Potential Supplier is encouraged to carry out your own due diligence exercise.



14.3 The Authority makes no representation that the information is complete or accurate. Potential Suppliers' should reflect the financial implications of such a transfer in the pricing models in their Tenders. If TUPE is deemed to apply then the Potential Supplier and the incumbent contractor shall be liable for the financial implications of such transfer, not the Authority.

14.4 Potential Suppliers shall not at any time make use for their own purpose or disclose to any person (except as may be required by law) any of the TUPE information provided to them (whether communicated orally, electronically or in writing). TUPE information shall be deemed to be strictly confidential and for use solely in connection with the preparation of Tenders and the administration of any Contract arising from this Tender.

15. OVERVIEW OF THE EVALUATION PROCESS

15.1 The evaluation procedure is divided into the following key stages, which the Authority may nevertheless decide to run concurrently;

15.1.1 **Compliance/validation** – all Tenders will be checked to ensure compliance with the ITT and that the responses are valid. This includes satisfying all the Participation Requirements at Annex D1 in accordance with paragraph 15.2 below. Non-compliant Tenders may be excluded from this Procurement by the Authority following completion of this process.

15.1.2 **Selection Stage evaluation** - the information submitted in response to the Standard Selection Questionnaire at Annex D will enable the Authority to consider the Potential Supplier's Economic and Financial Standing (paragraph 15.7), Grounds for Exclusion (paragraph **Error! Reference source not found.**) and Technical and Professional Ability (paragraph 15.9, paragraph 15.10 and [paragraph 15.11]). If a Potential Supplier fails to respond fully and accurately the Tender may be deemed non-compliant. The Authority reserves the right to exclude non-compliant Tenders from this Procurement following completion of this process.

15.1.3 **Award Stage evaluation** - All Tenders that pass the Selection Stage will be assessed against the Award Criteria at Annex F in accordance with paragraph 15.12 below.

15.2 Compliance/validation stage

15.3 Prior to commencing the formal evaluation process, Tenders will be checked to ensure they are compliant with the requirements of this ITT and its Annexes. Any non-compliant Tenders may, including in the event further questions are asked or clarification is sought by the Authority but fail to produce a satisfactory response, be excluded by the Authority without proceeding to the next stage of evaluation.

15.4 If the Potential Supplier cannot answer 'Yes' to the questions in the Participation Requirements at Annex D1 your Tender shall be excluded from further involvement in this procurement.



15.5 Potential Suppliers who are excluded on grounds of non-compliance will be notified accordingly.

15.6 Selection Stage evaluation

15.7 Selection Stage evaluation – Grounds for Exclusion

15.7.1 This is the information submitted by the Potential Supplier in response to Section 2 (Grounds for Mandatory Exclusion) and Section 3 (Grounds for Discretionary Exclusion) of the Standard Selection Questionnaire at Annex D.

15.7.2 In certain circumstances the Authority is required by law to exclude Potential Suppliers from participating in this Procurement. If the Potential Supplier and every organisation it relies upon to meet the selection criteria cannot answer 'no' to every statement in Section 2 of the Standard Selection Questionnaire at Annex D then, subject to paragraph **Error! Reference source not found.**, your Tender shall be excluded from further participation in this Procurement.

15.7.3 The Authority is entitled (in its sole discretion) to exclude a Potential Supplier from further participation in this Procurement if any of the statements in response to Section 3 of the Standard Selection Questionnaire at Annex D apply. If the Potential Supplier and every organisation it relies upon to meet the selection criteria cannot answer 'no' to every statement it is possible, subject to paragraph **Error! Reference source not found.**, that your Tender will be excluded from this Procurement.

15.7.4 'Self Cleaning' (covering both mandatory and discretionary exclusion)

15.7.5 If a Potential Supplier provides sufficient evidence that remedial action has taken place subsequently that effectively "self cleans" the situation, the Authority could decide that the Potential Supplier shall not be excluded from this Procurement. As a minimum the Potential Supplier will have to demonstrate that they or the relevant organisation that they are relying upon to meet the selection criteria have:

15.7.5.1 Paid or undertaken to pay compensation in respect of any damage caused by any criminal offence or misconduct;

15.7.5.2 clarified the facts and circumstances in a comprehensive manner by actively collaborating with the investigating authorities; and

15.7.5.3 taken concrete technical, organisational and personnel measures that are appropriate to prevent further criminal offences or misconduct.



15.7.5.4 The measures taken will be evaluated by the Authority taking into account the gravity and particular circumstances of the criminal offence or misconduct.

15.8 Selection Stage evaluation – Economic and Financial Standing

15.8.1 The information submitted by the Potential Supplier in response to Section 4 (Economic and Financial Standing) and Section 5 of the Standard Selection Questionnaire at Annex D, will be used to carry out an assessment of the Potential Suppliers economic and financial standing. The Potential Supplier's financial standing will be scored on a pass/fail basis as outlined in Table 2 below.

15.8.2 In order to avoid issues of over-dependency the Authority would expect any Potential Supplier in relation to this Contract (including Sub-Contractors and Group of Economic Operators) to have a minimum turnover of twice the estimate Lot value, for this contract the minimum turnover will be twice the annual value per Lot. Prior to award of Contract, if the Authority is concerned regarding the level of dependency, the Potential Supplier may be requested by the Authority at its absolute discretion to put in place financial or other guarantees as a pre-condition of contracting.

TABLE 2 – ECONOMIC AND FINANCIAL STANDING CRITERIA

Information Requested	Guidance	Score
Economic and Financial Standing (Regulation 58)	The Potential Supplier [has confirmed that they are able to provide] [has provided] the Economic and Financial Standing information requested under 4.1 of the Standard Selection Questionnaire at Annex D [which the Authority considers sufficient for the purposes of assessing whether the Potential Supplier meets the requirements in paragraph 15.8.2 of the ITT]; AND [has self-certified that they meet the requirements in paragraph 15.8.2 of the ITT] [has been assessed as meeting the requirements in paragraph 15.8.2 of the ITT based on the submitted information [and credit report checks]]	PASS
	The Potential Supplier [has confirmed that they are able to provide] [has provided] the Economic and Financial Standing information requested under 4.1 of the Standard Selection Questionnaire at Annex D [which the Authority considers sufficient for the purposes of assessing whether the Potential Supplier meets the requirements in paragraph 15.8.2 of the ITT]; AND [has self-certified that they do not meet the requirements in paragraph 15.8.2 of the ITT but has confirmed, through their response to Section 5 of the Standard Selection Questionnaire at Annex D, that they are prepared to offer a suitable guarantee] [has been assessed as not meeting the requirements in paragraph 15.8.2 of the ITT based on the submitted information [and credit report checks] but has confirmed, through their response to Section 5 of the Standard Selection Questionnaire at Annex D, that they are prepared to offer a suitable guarantee]	PASS



	The Potential Supplier [has not confirmed that they are able to provide] [has not provided] the Economic and Financial Standing information requested under 4.1 of the Standard Selection Questionnaire at Annex D [which the Authority considers sufficient for the purposes of assessing whether the Potential Supplier meets the requirements in paragraph 15.8.2 of the ITT];	FAIL
	The Potential Supplier [has self-certified that they do not meet the requirements in paragraph 15.8.2 of the ITT and has confirmed, through their response to Section 5 of the Standard Selection Questionnaire at Annex D, that they are not prepared to offer a suitable guarantee] [has been assessed as not meeting the requirements in paragraph 15.8.2 of the ITT based on the submitted information [and credit report checks] and has confirmed, through their response to Section 5 of the Standard Selection Questionnaire at Annex D that they are not prepared to offer a suitable guarantee]	FAIL

15.9 Selection Stage evaluation – Technical and Professional Ability

15.9.1 The Authority will assess the responses to Section 6 (Technical and Professional Ability) of the Standard Selection Questionnaire at Annex D against the evaluation criteria provided in Table 3 below.

TABLE 3 – TECHNICAL AND PROFESSIONAL ABILITY CRITERIA

Information Requested	Guidance	Score
Technical and Professional Ability (Regulation 58) Experience and Contract Examples	The Potential Supplier has provided relevant examples that demonstrate they can deliver the requirements as set out in the Specification at Schedule 2; and, where they intend to sub-contract a proportion of the contract, the Potential Supplier has provided evidence of maintaining healthy supply chains with their sub-contractors; OR the Potential Supplier has provided a clear rationale, which the Authority in its sole discretion accepts, as to why they are unable to provide at least one example; and, where they intend to sub-contract a proportion of the contract, the Potential Supplier has provided evidence of maintaining healthy supply chains with their sub-contractors.	PASS
	The Potential Supplier has not provided relevant examples that demonstrate they can deliver the requirements as set out in the Specification at Schedule 2; and/or, where they intend to sub-contract a proportion of the contract, the Potential Supplier has not provided evidence of maintaining healthy supply chains with their sub-contractors; OR the Potential Supplier has not provided a clear rationale, which the Authority in its sole discretion accepts, as to why they are unable to provide at least one example; and/or, where they intend to sub-contract a proportion of the contract, the Potential Supplier has not provided evidence of maintaining healthy supply chains with their sub-contractors.	FAIL

15.10 Selection Stage evaluation – Technical and Professional Ability – Modern Slavery Act 2015



15.10.1 The Authority will assess the responses to Section 7 (Modern Slavery Act 2015: Requirements under Modern Slavery Act 2015) of the Standard Selection Questionnaire at Annex D against the evaluation criteria provided in Table 4 below.

TABLE 4 – TECHNICAL AND PROFESSIONAL ABILITY CRITERIA – MODERN SLAVERY ACT 2015

Information Requested	Guidance	Score
Technical and Professional Ability (Regulation 58) Requirements under Modern Slavery Act 2015	Where the Potential Supplier is a relevant commercial organisation as defined by section 54 ("Transparency in supply chains etc.") of the Modern Slavery Act 2015 ("the Act"), they have confirmed they are compliant with the annual reporting requirements contained within Section 54 of the Act 2015 and provided the relevant url; OR where the Potential Supplier is a relevant commercial organisation as defined by section 54 ("Transparency in supply chains etc.") of the Modern Slavery Act 2015 ("the Act"), they have provided an explanation, which the Authority in its sole discretion accepts, as to why they are not compliant with the annual reporting requirements contained within Section 54 of the Act 2015.	PASS
	Where the Potential Supplier is a relevant commercial organisation as defined by section 54 ("Transparency in supply chains etc.") of the Modern Slavery Act 2015 ("the Act"), they have not confirmed they are compliant with the annual reporting requirements contained within Section 54 of the Act 2015 nor provided the relevant url; OR where the Potential Supplier is a relevant commercial organisation as defined by section 54 ("Transparency in supply chains etc.") of the Modern Slavery Act 2015 ("the Act"), they have not provided an explanation, which the Authority in its sole discretion accepts, as to why they are not compliant with the annual reporting requirements contained within Section 54 of the Act 2015.	FAIL

15.11 Selection Stage evaluation – Technical and Professional Ability – additional questions

15.11.1 The Authority will assess the responses to Section 8 (Additional Questions) of the Standard Selection Questionnaire at Annex D against the evaluation criteria provided in Table 5 below.

TABLE 5 – TECHNICAL AND PROFESSIONAL ABILITY – ADDITIONAL QUESTIONS- Insurance

Information Requested	Guidance	Score
Insurance	The Potential Supplier has provided evidence that they already have in place, the levels of insurance cover indicated in Annex D – Standard Selection Questionnaire, OR The Potential Supplier	PASS



	has provided a statement that they will commit to obtain and are able to obtain, prior to the commencement of the contract, the levels of insurance cover indicated in Annex D – Standard Selection Questionnaire.	
Insurance	The Potential Provider has not provided evidence that they already have in place, the levels of insurance cover indicated in Annex D – Standard Selection Questionnaire, OR has not OR The Potential Supplier is unwilling to provided a statement that they will commit to obtain and are able to obtain, prior to the commencement of the contract, the levels of insurance cover indicated in the Annex D – Standard Selection Questionnaire.	FAIL

15.12 Award Stage Evaluation

15.12.1 Following evaluation of Tenders at the Selection Stage, those Potential Suppliers whose Tenders:

15.12.1.1 pass the compliance checks stated at paragraph 15.2; and

15.12.1.2 have been successful at the Selection Stage

will proceed to the Award Stage evaluation. All other Tenders will be excluded from this Procurement.

15.12.2 Potential Suppliers who do not meet the criteria at the Selection Stage evaluation or are excluded on grounds of non-compliance will be notified accordingly.

15.12.3 The maximum score capable of being achieved by a Potential Supplier will be 100% which is the combined sum of the percentage breakdown for the quality evaluation (set out in paragraph 15.13) and the price evaluation (set out in paragraph 15.19) respectively as set out below.

QUALITY	PRICE	MAXIMUM SCORE
70%	30%	100%

15.13 Quality Evaluation

15.13.1 The Quality Evaluation consists of:

15.13.1.1 Mandatory criteria – assessed on a ‘pass/fail’ basis. If a Potential Supplier receives a ‘fail’ for any of these questions their tender will be excluded from further participation in this Procurement.

15.13.1.2 Scoring criteria – assessed in accordance with the Scoring Guidance set out at Annex F. If a Potential Supplier fails to meet any specified minimum threshold stated in the Award



Criteria at Annex F their tender will be excluded from further participation in this Procurement.

15.13.2 The evaluation of each response to the Quality questions will be conducted and consensus checked in accordance with paragraph 15.14 (Consensus Marking Procedure).

15.14 Consensus Marking Procedure

15.14.1 The Consensus Marking Procedure is a two-step process, comprising of:

15.14.1.1 Independent evaluation; and

15.14.1.2 Group consensus marking.

15.15 During the independent evaluation process each evaluator will separately (i.e. without conferring with other evaluators) scrutinise the quality of answers given in the Tender. Evaluators will apply the criteria applicable to the question as set out in the evaluation guidance to determine the overall quality of each answer. Each evaluator will then allocate a mark for the answer in accordance with the Scoring Guidance set out at Annex F and will also provide justification for that mark.

15.16 When the independent evaluation exercise has been completed by all of the evaluators, a group consensus marking exercise will be coordinated by an independent facilitator.

15.17 During the group consensus meeting, each evaluator will discuss the quality of the answers given to a question and review his/her justification for attributing the score in accordance with the Scoring Guidance set out at Annex F. The evaluators will continue to discuss the answers until a consensus score has been reached.

15.18 The independent facilitator will record the consensus score and the justification for the consensus score.

15.19 Price Evaluation

15.19.1 Failure to submit a completed Price Schedule Template at Annex C in accordance with the given instructions, may result in your Tender being deemed as non-compliant. Any Tender which is deemed non-compliant will be excluded from further participation for the purposes of this Procurement.

15.19.2 The Price Evaluation will be undertaken by different evaluators to those individuals involved with the Quality Evaluation.

15.19.3 **Abnormally Low Tenders-** if the Authority believes that a Potential Supplier's price submission is abnormally low, in accordance with Regulation 69, it may exclude the Tender from further participation in this Procurement. The steps that the Authority will take in this event will be to request in writing an explanation of the abnormally low pricing, assess such explanation and, where in the opinion of the Authority the explanation does not satisfactorily account for the low level of price, exclude the Tender .



15.19.4 The Authority reserves the right to seek verification of any prices that it deems abnormally low in respect of the delivery of Services required.

15.19.5 The Price Schedule at Annex C will be scored in accordance with the Authority's 'Lowest Cost Price Scoring' methodology.

15.19.6 The Authority will evaluate the total fixed prices submitted by the Potential Suppliers. The Tender with the lowest total fixed price achieves the maximum score and all other Tenders are reduced by reference to the lowest price using the formula below.

$$\frac{\text{Lowest Price Tendered}}{\text{Tender price}} \times \text{Maximum Score Available}$$

15.20 Final Score

15.20.1 The Quality Score [awarded for a Lot] awarded will be added to the Price Score [for the same Lot] to determine the final score for each Potential Supplier [in the applicable Lot] ("Final Score").]

16. FINAL DECISION TO AWARD

16.1 Following evaluation of Potential Suppliers' Tenders in accordance with the evaluation process set out in this ITT, the Potential Supplier who offers the most economically advantageous Tender will be awarded the Contract.

16.2 The most economically advantageous Tender [for a particular Lot] will be the Potential Supplier scoring the highest Final Score and that Potential Supplier shall be ranked first.

16.3 Where the Final Score achieved by multiple Potential Suppliers ranks them equal [in the applicable Lot], then the Potential Supplier with the highest score for the [Annex C - Price] element will be deemed the winner and awarded the Contract / [then the scores for each sub-criterion in order of importance will be considered. Where the sub-criteria are of equal weight an average of the scores across those criteria will be taken].

16.4 The Authority will inform all Potential Suppliers of its intention to award the Contract via the e-tendering portal.

16.5 Should the successful Potential Supplier decline to accept a Contract, then it will be offered to the next ranked Potential Supplier, until it has been accepted.

16.6 Following a Standstill Period of ten (10) calendar days and subject to there being no substantive challenge to that intention, a Contract will be formally awarded, to the successful Potential Supplier.

16.7 The conclusion of the Contract (including the satisfaction of any conditions precedent) is subject to the provision of due 'certificates, statements and other means of proof' where Potential Suppliers have to this point relied on self-certification.



17. GLOSSARY

Authority	means the Ministry for Housing, Communities and Local Government as described in paragraph 1.1 whose offices are located at Fry Building, 2 Marsham Street, London, SW1P 4DF.
Contract	means the contractually-binding Terms and Conditions set out at Annex B of this ITT to be entered into between the Authority and the successful Potential Supplier at the conclusion of this Procurement;
Contract Guarantor	means any person acceptable to the Authority to give a Contract Guarantee (see Annex G Schedule 23 (Guarantee));
Contractor	means a Potential Supplier with whom the Authority has concluded a Contract;
Cyber Essentials	means one of the two levels of certification which are available under the Cyber Essentials Scheme;
Cyber Essentials Data	means sensitive and personal information and other relevant information as referred to in the Cyber Essentials Scheme
Cyber Essentials Scheme	means the Cyber Essentials Scheme developed by the Government which provides a clear statement of the basic controls all organisations should implement to mitigate the risk from common internet based threats. Details of the Cyber Essentials scheme can be found here: https://www.gov.uk/government/publications/cyber-essentials-scheme-overview
e-tendering Portal	means the online tender management and administration system used by the Authority;
FoIA	means the Freedom of Information Act 2000 as amended and any subordinate legislation made thereunder from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
EIR	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations;



Group	means in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company. Holding company and subsidiary shall mean a "holding company" and "subsidiary" that latter term being defined in section 1159 of the Companies Act 2006;
Group of Economic Operators	means a group of economic operators acting jointly and severally to provide the Services
Invitation to Tender or ITT	means this invitation to tender document together with its Annexes, published by the Authority in relation to this Procurement;
Lead Contact	means the member of the Group of Economic Operators who is authorised in writing by each of the other members to that Group of Economic Operators to provide the Tender;
Lot	means a discrete sub-division of the Services which are the subject of this Procurement as described in the OJEU Contract Notice.
OJEU Contract Notice	means the advertisement for this Procurement issued in the Official Journal of the European Union;
Price Score	means the score awarded to a Potential Supplier at the conclusion of the price evaluation process calculated in accordance with paragraph 15.19.6;
Potential Supplier	means an organisation participating in this Procurement and is intended to cover any economic operator as defined by the Public Contracts Regulations 2015 (referred to as the "regulations") and could be a registered company; the lead contact for a group of economic operators; charitable organisation; Voluntary Community and Social Enterprise (VCSE); Special Purpose Vehicle; or other form of entity;
Procurement	means the process used to establish a Contract that facilitates the supply of the Services to Contracting Authorities as described in the OJEU Contract Notice;
Procurement Timetable	means the timetable set out in paragraph 5 as amended in writing from time to time by the Authority;
Regulations	means the Public Contracts Regulations 2015 (http://www.legislation.gov.uk/ukSI/2015/102/contents/made) as amended from time to time;
Quality Score	means the score awarded to a Potential Supplier at the conclusion of the quality evaluation process calculated in accordance with paragraph 15.13



Services	means the Services that may be provided by the Contractor, as set out at Schedule 2 Specification;
Small Enterprise or SME	means an economic organisation falling within the category of micro, small and medium-sized enterprises defined by the Commission Recommendation of 6 May 2003. See also http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/sme-definition/ ;
Standstill Period	means a period of ten calendar days following the sending by the Authority (in this instance by electronic means) of the Authority's notice of decision to conclude the Contract tendered via the Official Journal of the European Union, during which the Authority must not conclude the Contract with the successful Potential Supplier(s) as set out in Regulation 87 (2);
Sub-Contractor	means a third party which: a) provides the Services (or any part of them); b) provides facilities or services necessary for the provision of the Services (or any part of them); and/or c) is responsible for the management, direction or control of the Services (or any part of them); pursuant to any contract or agreement (or proposed contract or agreement), other than the Contract.
Tender	means the Potential Supplier's formal offer in response to the Invitation to Tender;
Tender Clarifications Deadline	means the time and date set out in paragraph 5 for the latest submission of clarification questions;
Tender Submission Deadline	means the time and date set out in paragraph 5 for the latest uploading of Tenders; and
Total Score	means the score calculated in accordance with 15.20.



PART 2 –TERMS OF PARTICIPATION

1. INTRODUCTION

- 1.1 These Terms of Participation set out the conditions of participation in this Procurement, including:
 - 1.1.1 rules in relation to the conduct of Potential Suppliers; and
 - 1.1.2 specific rights of the Authority and limits to the Authority's liability, which apply throughout this Procurement.

2. INTERPRETATION

- 2.1 Except where specified or the context requires, capitalised expressions in these Terms of Participation shall have the meaning given to them in the glossary in Part 1 of this Invitation to Tender. In these Terms of Participation any reference to 'person' includes, but is not limited to, any person, firm, body or association, corporate or incorporate.

3. CONDUCT - GENERAL

- 3.1 The Potential Supplier shall abide by these Terms of Participation and any instructions given in the Invitation to Tender.
- 3.2 An obligation on the Potential Supplier to do, or to refrain from doing, any act or thing under the Invitation to Tender including these Terms of Participation shall include an obligation upon the Potential Supplier to procure that all its directors, office holders, staff, members of its Group of Economic Operators (if it acts as Lead Contact), companies within its Group, Sub-Contractors, advisers or agents involved or connected with this Procurement also do, or refrain from doing, such act or thing.

4. CONDUCT - SPECIFIC OBLIGATIONS

- 4.1 Contact during this Procurement exercise and canvassing
 - 4.1.1 The Potential Supplier must not directly or indirectly canvass any Minister, officer, public sector employee, member or agent regarding this Procurement or attempt to obtain any information from the same regarding this Procurement (except where and as permitted by the Invitation to Tender). Any attempt by the Potential Supplier to do so may result in the Potential Supplier's disqualification from this Procurement.
- 4.2 Involvement in multiple tenders
 - 4.2.1 If a Potential Supplier is connected with the submission of multiple tenders for the same requirement or Lot (as applicable), including (without limit) where:
 - 4.2.1.1 it submits a Tender in its own name and as a Sub-Contractor and/or a member of a Group of Economic Operators connected with a separate tender or



- 4.2.1.2 it submits a Tender in its own name which is similar to a separate tender from another Potential Supplier within its Group,

then the Authority retains the right to make further enquiries regarding each tender to satisfy itself that such involvement does not cause potential or actual conflicts of interest, Contractor capacity problems, restrictions or distortions in competition between Potential Suppliers in this Procurement. The Authority may require the Potential Supplier or withdraw all or part of its Tender if, in the Authority's reasonable opinion and at its sole discretion, any of the above issues have arisen or may arise.

4.3 Collusive Behaviour

4.3.1 A Potential Supplier must not:

- 4.3.1.1 collude with nor disclose the fact of their intention to submit a tender to other Potential Suppliers.
- 4.3.1.2 fix or adjust any element of its Tender by agreement or arrangement with any other person, except where, but subject always to paragraph 4.2, such prohibited acts are undertaken with persons who are also participants in the Potential Suppliers' Tender, such as members of its Group of Economic Operators (if it acts as a Lead Contact), companies within its Group or Sub-Contractors, or where disclosure to such person is made in confidence in order to obtain quotations necessary for the preparation of its Tender or obtain any necessary security;
- 4.3.1.3 communicate with any person other than the Authority the value, price or rates set out in its Tender or information which would enable the precise or approximate value, price or rates to be calculated by any other person, except where such communication is undertaken with persons who are also participants in the Potential Suppliers' Tender, such as members of its Group of Economic Operators (if it acts as a Lead Contact), companies within its Group or Sub-Contractors, or where disclosure to such person is made in confidence in order to obtain quotations necessary for the preparation of its Tender or obtain any necessary security;
- 4.3.1.4 enter into any agreement or arrangement with any other person, so that person refrains from submitting a tender;
- 4.3.1.5 share, permit or disclose to another person, access to any information relating to its Tender (or another tender to which it is party); or
- 4.3.1.6 offer or agree to pay or give or do pay or give any sum or sums of money, inducement or valuable consideration directly or indirectly to any other person for doing or having done or causing or having



caused to be done in relation to its Tender, any other tender or proposed tender, any act or omission.

4.3.2 If a Potential Supplier breaches paragraph 4.3.1, the Authority may (without prejudice to any other criminal or civil remedies available to it) exclude the Potential Supplier from further participation in this Procurement.

4.3.3 The Authority may require a Potential Supplier to put in place any procedures or undertake any such action(s) that the Authority in its sole discretion considers necessary to prevent or curtail any collusive behaviour.

5. RIGHT TO VERIFY INFORMATION

5.1 The Authority may contact (or may require the Potential Supplier to contact on its behalf) any of the Potential Supplier's customers, members of its Group of Economic Operators (if it acts as Lead Contact), Sub-Contractors or other third parties to whom information relates in the Potential Supplier's Tender, to ask that they testify that such information is accurate and true.

5.2 The Authority reserves the right to seek third party independent advice or assistance to validate information submitted by a Potential Supplier and/or to assist in the tender evaluation process.

5.3 The Authority reserves the right to conduct site visits of any premises indicated by the Potential Supplier to be used in connection with the Potential Supplier's provision of the Services and/or audits at any time during this Procurement.

5.4 The Authority may require the Potential Supplier to clarify aspects of its Tender in writing and/or provide additional information. Failure to respond adequately may result in the rejection of the Potential Supplier's Tender and its elimination from further participation in all or part of this Procurement.

6. RIGHT TO CANCEL OR VARY THIS PROCUREMENT

6.1 The Authority reserves the right, subject to the rules set out in the Regulations, to:

6.1.1 change the basis of or the procedures for this Procurement at any time;

6.1.2 amend, clarify, add to or withdraw all or any part of the Invitation to Tender at any time during this Procurement, including varying any timetable or deadlines set out in the Invitation to Tender; and:

6.1.3 cancel all or part of this Procurement at any stage at any time, including for the reason stated in paragraph 6.3 below; and

6.1.4 not conclude a Contract or award a contract for some or all of the Services for which tenders are invited; and

6.2 Potential Suppliers accept and acknowledge that, and in accordance with the Regulations, the Authority is not bound to accept any Tender or obliged to conclude a Contract or award a Contract with any Potential Supplier at all.

6.3 If the Authority deems that none of the tenders received in response to the Invitation to Tender are satisfactory, it reserves the right to terminate all or part of this Procurement.



7. RIGHT TO EXCLUDE

- 7.1 The Authority may exclude a Potential Supplier's Tender from this Procurement if the Potential Supplier fails to provide to the Authority:
- 7.1.1 any information requested;
 - 7.1.2 a full and satisfactory response to any question or information request;
 - 7.1.3 a Tender, or response to the Authority's queries, within any specified timescales; and/or
 - 7.1.4 documentation referred to in its Tender.
- 7.2 The Authority may exclude a Potential Supplier from any participation in this Procurement at any stage, if the Potential Supplier:
- 7.2.1 fails to comply fully with the requirements of this Procurement as set out in the Invitation to Tender;
 - 7.2.2 has breached these Terms of Participation; or
 - 7.2.3 has committed a wilful omission or misrepresentation in its Tender.
- 7.3 If the Authority has the right to exclude a Potential Supplier under these Terms of Participation or the Invitation to Tender it may (in its sole discretion):
- 7.3.1 exclude the affected Tender but allow the Potential Supplier to participate as member of a Group of Economic Operators or Sub-Contractor in another Tender; or
 - 7.3.2 completely exclude the Potential Supplier from any involvement in this Procurement in its own name, or as member of a Group of Economic Operators or Sub-Contractor in another Tender.
- 7.4 The Authority may exclude a Potential Supplier from participation in this Procurement where there is a change in identity, control, financial standing or other factor impacting on the selection and/or award process, which would affect or would have affected the Authority's evaluation of the Potential Supplier's Tender in accordance with the Regulations.

8. STATUS OF THE INVITATION TO TENDER

- 8.1 No information contained in the Invitation to Tender or in any communication made between the Authority and a Potential Supplier in connection with this Procurement shall be relied upon as constituting agreement or representation that a Contract shall be concluded or any contract be entered into in accordance with the Potential Supplier's Tender or at all.
- 8.2 The Authority shall not be committed to any course of action as a result of:
- 8.2.1 issuing the Invitation to Tender relating to this Procurement;
 - 8.2.2 any communications with Potential Suppliers or their representatives, agents or advisers in respect of this Procurement; and/or



- 8.2.3 any communications between Potential Suppliers, the Authority and/or any relevant Contracting Authority and any other party (whether directly or through their agents or representatives) in respect of this Procurement.
- 8.3 The Invitation to Tender have been prepared in good faith but do not purport to be a comprehensive statement of all matters relevant to this Procurement nor has it been independently verified. Neither the Authority nor its advisers, directors, officers, members, employees or other staff or agents:
- 8.3.1 accept any liability or responsibility for the adequacy, accuracy or completeness of the Invitation to Tender,
- 8.3.2 make any representation or warranty, express or implied, with respect to the information the Invitation to Tender contains nor shall any of them be liable for any loss of damage arising as a result of reliance on such information or any subsequent communication.
- 8.4 The Potential Supplier shall form its own conclusions and make its own independent assessment of the requirements of the terms and conditions of the draft Contract (Annex B) and should seek its own financial and legal advice about the methods and resources needed to meet the Authority's requirements.
- 8.5 It is the Potential Supplier's sole responsibility to undertake such investigations and take such advice (including professional advice) as it considers appropriate in order to make decisions regarding the content of its Tender and in order to verify any information provided to it during the Procurement and to query any ambiguity, whether actual or potential.
- 8.6 The Authority does not accept responsibility for the Potential Suppliers' assessment of the requirements of this Procurement.
- 8.7 The Potential Supplier is responsible at its own expense, for obtaining all information required to prepare its Tender.
- 8.8 Any exclusions of liability of the Authority in this paragraph 8 do not apply to the extent of any deceit or fraudulent misrepresentation made by or on behalf of the Authority.
- 9. CONCLUDING THE CONTRACT**
- 9.1 The Potential Supplier undertakes that, in the event of a Potential Supplier's Tender being accepted by the Authority and the Authority confirming in writing such acceptance to the Potential Supplier, the Potential Supplier shall execute the Contract as amended to accommodate aspects of the Tender within 7 calendar days, (or any other longer period of time as determined by the Authority at its sole discretion) of being called upon to do so by the Authority.
- 10. COSTS**
- 10.1 The Authority will not reimburse any costs incurred by a Potential Supplier (including the costs or expenses of any members of its Group of Economic Operators (if acting as a Lead Contact), Sub-Contractors or advisors) in connection with the preparation and/or submission of the Potential Supplier's Tender, including (without limit) where:



- 10.1.1 this Procurement is cancelled, shortened or delayed for any reason (including, without limitation, where such action is necessary due to non-compliance or potential non-compliance with the law, including the Regulations);
- 10.1.2 all or any part of the Invitation to Tender is at any time amended, clarified, added to or withdrawn for any reason;
- 10.1.3 a Contract is not concluded or a Contract is not awarded in respect of some or all of the Services for which tenders are invited; or
- 10.1.4 the Potential Supplier and/or its Tender is disqualified from participation in this Procurement for any reason, including breach of these Terms of Participation.

11. CONFIDENTIALITY

- 11.1 Subject to the exceptions referred to in paragraph 11.2, the contents of the Invitation to Tender are being made available by the Authority on the conditions that the Potential Supplier:
 - 11.1.1 treats the Invitation to Tender (the “**Information**”) as confidential at all times, unless the Information is already in the public domain;
 - 11.1.2 does not disclose, copy, reproduce, distribute or pass any of the Information to any other person at any time or allow any of these things to happen, except where, and to the extent that, the Information has been publicised in accordance with paragraph 12 (Freedom of Information) or paragraph 13 (Transparency);
 - 11.1.3 only uses the Information for the purposes of preparing a Tender (or deciding whether to respond); and
 - 11.1.4 does not undertake any promotional or similar activity related to this Procurement within any section of the media during this Procurement.
- 11.2 A Potential Supplier may disclose, distribute or pass any of the Information to its members of its Group of Economic Operators (if acting as a Lead Contact), Sub-Contractors, advisers or to any other person provided that:
 - 11.2.1 this is done for the sole purpose of enabling the Potential Supplier to submit its Tender and the person receiving the Information undertakes in writing (such written undertaking to be made available to the Authority on the Authority’s request) to keep the Information confidential on the same terms imposed by these Terms of Participation; or
 - 11.2.2 it obtains the Authority’s prior written consent in relation to such disclosure, distribution or passing of Information; or
 - 11.2.3 the disclosure is made for the sole purpose of obtaining legal advice from external lawyers in relation to this Procurement; or
 - 11.2.4 the Potential Supplier is legally required to make such a disclosure; or
 - 11.2.5 the Information has been published in accordance with paragraphs 12 (Freedom of Information) and 13 (Transparency).



- 11.3 The Authority may disclose information submitted by Potential Suppliers during this Procurement to its officers, employees, agents or advisers or other government departments who are stakeholders in this Procurement.
- 11.4 All Central Government Departments and their Executive Agencies and Non Departmental Public Bodies are subject to control and reporting within Government. In particular, they report to the Cabinet Office and HM Treasury for all expenditure. Further, the Cabinet Office has a cross Government role delivering overall Government Policy on public procurement – including ensuring value for money and related aspects of good procurement practice.
- 11.5 For these purposes, the Authority may disclose within HM Government any of the Potential Supplier's documentation or information (including any that the Potential Supplier considers to be confidential and/or commercially sensitive such as specific information in its Tender) submitted by the Potential Supplier to the Authority during this Procurement. Potential Suppliers taking part in this competition consent to such disclosure as part of their participation in the competition process.

12. FREEDOM OF INFORMATION

- 12.1 In accordance with the obligations and duties placed upon public authorities by the FoIA and the EIR and in accordance with any government Code of Practice on the discharge of public authorities' functions under the FoIA (as defined in the glossary in paragraph 17 of the ITT), all information submitted to the Authority may be disclosed under a request for information made pursuant to the FoIA and the EIR (as defined in the glossary in paragraph 17 of the ITT).
- 12.2 A Potential Supplier should note that the information disclosed pursuant to a FoIA or EIR request may include, but is not limited to, the disclosure of its Tender (including any attachments or embedded documents) and/or any score or details of the evaluation of its Tender.
- 12.3 If the Potential Supplier considers any part of its Tender or any other information it submits to be confidential or commercially sensitive, the Potential Supplier should:
- 12.3.1 clearly identify such information as confidential or commercially sensitive;
 - 12.3.2 explain the potential implications of disclosure of such information taking into account and specifically addressing the public interest test as set out in the FoIA; and
 - 12.3.3 provide an estimate of the period of time during which it believes that such information will remain confidential or commercially sensitive.
- 12.4 If the Potential Supplier identifies that part of its Tender or other information it submits is confidential or commercially sensitive, the Authority in its sole discretion will consider whether or not to withhold such information from publication. The Potential Suppliers should note that, even where information is identified as confidential or commercially sensitive, the Authority may be required to disclose such information in accordance with the FoIA or the EIR.



- 12.5 The Authority is required to form an independent judgement of whether the Potential Supplier's information referred to in paragraph 12.4 is exempt from disclosure under the FoIA or the EIR and whether the public interest favours disclosure or not. The Authority cannot guarantee that any information indicated as being confidential or commercially sensitive by the Potential Supplier will be withheld from publication.
- 12.6 If the Potential Supplier receives a request for information under the FoIA or the EIR during and in relation to this Procurement, it should be immediately referred to the Authority.

13. TRANSPARENCY

- 13.1 Potential Suppliers should be aware that in accordance with the Government's transparency agenda, it is the Authority's intention to publish the resultant Contract (except any information which is exempt from disclosure in accordance with the provisions of the FOIA or EIR) on the Contracts Finder website:

<https://www.contractsfinder.service.gov.uk/Search>

14. INTELLECTUAL PROPERTY RIGHTS

- 14.1 The Invitation to Tender issued in connection with this Procurement shall remain the property of the Authority and shall be used by the Potential Supplier only for the purposes of this Procurement.
- 14.2 The Potential Supplier grants the Authority an irrevocable, perpetual, non-exclusive licence to copy, amend and reproduce any intellectual property contained within its Tender for the purposes of carrying out this Procurement; complying with the law and/or any government guidance; and/or carrying out the Authority's business activities. This licence shall also permit the Authority to sublicense the use of the Potential Supplier's Tender to its advisers or sub-contractors or other Contracting Authorities for the same purposes.

15. NO INDUCEMENT OR INCENTIVE

The Potential Supplier acknowledges and agrees that nothing contained within the Invitation to Tender shall constitute an inducement or incentive nor shall have in any other way persuaded a Potential Supplier to submit a Tender or enter into the Contract or any other contractual agreement.

16. LAW AND JURISDICTION

- 16.1 Any dispute (including non-contractual disputes or claims) relating to this Procurement shall be governed by and construed in accordance with the laws of England and Wales.
- 16.2 The courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Procurement (including non-contractual disputes or claims).