

Clarification Questions and Answers - RM3809 DPS

Version 9

Information which is new to this version will be highlighted in YELLOW. Previously answered questions will be shaded BLUE

IMPORTANT NOTICE - THE BID PACK HAS BEEN UPDATED AS OF 11.10.2018 - FOUND HERE: <https://ccs-agreements.cabinetoffice.gov.uk/procurement-pipeline/Utilities-switching-services>

Question Number	Question Classification	Date	Question	Published Response	Date Answered	Version No.
FAQ1	DPS SQ - Contract Pad	-	How do I provide my Contract Pad if I do not wish to use the Template Contract Pads within the Application Pack?	Applicant's can use their own Contract Pad during the first 12 months only, following the Commencement Date of this DPS (i.e. 12 months from 23rd August 2018). The applicant shall provide their Contract Pad to the Authority at the same time as their Request to Participate in this DPS. The applicant can send the PDF of their Contract Pad they wish to use to: ussdps@gemserv.com	8/8/2018	1
1	DPS SQ - Question process	06/08/2018	We have registered via the portal in order to potentially participate, however we see that we have to respond Yes to the second question regarding the Agreement and it appears that until we do this we cannot progress further with the process including seeing the Selection Questionnaire. The Agreement is a substantial (81 pages) document so while we are still working through it, is it possible to select Yes to that specific question so that we can see the questionnaire any other requirements but still reserve the right not to participate once we have finished going through the agreement should there be any issues with the Agreement?	Yes, it is possible to select 'yes' to question 1.1.3 and still reserve the right to decline to participate in the DPS Agreement. For the avoidance of doubt, the duly authorised representative is required to declare acceptance of the Terms and Conditions of the DPS agreements in Part 9. It is this declaration that forms the DPS agreement between the Authority and the Supplier. Applicants shall note that the full set of the DPS SQ questions is contained within the Application Pack at the following address: - https://ccs-agreements.cabinetoffice.gov.uk/procurement-pipeline/Utilities-switching-services	8/8/2018	1
2	DPS - Lot 5	08/08/2018	Hi, I would like to register [Supplier] for the Utilities Switching Services in Lot 5. Unfortunately, I could not select this option in the questionnaire. Can you advise when this will be possible?	Throughout the term of the agreement consideration will be looked at for Lots 3,4,5 & 6. If progress has been made towards any of these Lots where they become an addition to Lots 1&2 then this would be made available for suppliers for participation. This is detailed within the Customer Needs (Supplier Specification) point 4.2.1.	10/8/2018	2
3	DPS Platform	09/08/2018	Please could you provide a copy of the Platform Access Term that we will need to sign up to in relation to the above scheme?	We cannot provide them at this time as they are still in draft form, however they will be available on the appointed technology supplier's website soon. A link to these will be provided to Suppliers as they become available. Suppliers are expected to take account of these terms by adjusting their pricing accordingly once they become available.	10/8/2018	2

4	Time scale	17/08/2018	Are we still able to join the DPS after it becomes available to Calls for Competition or is there a cut off date when suppliers will no longer be accepted?	This will not create any issues as you are able to apply to join the DPS Agreement RM3809 at any point during the duration of the DPS Agreement.	23/8/2018	3
5	Switches	17/08/2018	Are you able to advise if many Suppliers have registered and if there have been many "switches"? Can you also advise the Switching fee that is applicable to USS DPS provider?	We are not able to advise as to the number of Suppliers who have registered so far but we can confirm that there have been no 'switches' as yet, as the DPS Agreement is not yet open to Contracting Authorities to call for competition until after 23:59hours on 22nd August 2018. The switching fee will be detailed within the T&C's from Gemserv, CCS do not manage the circulation of this information to suppliers.	23/8/2018	3
6	DPS Agreement clause 4.2	22.08.18	Explanation of the clause 4.2 "the customer shall choose the cheapest tariff/supplier"	Customers can select another option that is not the most competitive priced. In this case, a 'pop up' message will appear advising them that their choice is not the most competitive priced tariff available and asking whether they wish to proceed. The Customer can then choose to continue with their choice or go back and opt for the most competitive priced tariff.	23/8/2018	3
7	Specific agreement questions	04/09/2018	1.11.1 Do you intend to use key subcontractors to help you deliver the requirements? Many UK energy suppliers outsource some aspects of their business to industry service providers – registration and market messaging for example. And many also use third party software. Are you expecting us to include who we use in our bid? 1.16.4 Are you registered with the appropriate professional or trade registers specified for this procurement in the state where your organisation is established? Can you explain what this means – for example does it mean are we registered with Ofgem to be a supplier. 1.18.1 For procurements for services, is it a legal requirement in the state where you are established for you to: possess a particular authorisation, or be a member of a particular organisation, to provide the requirements specified in this procurement? Again can you explain what this means – for example does it mean are we registered with Ofgem to be a supplier.	1.11.1. The subcontractors that need to be listed would be identified by the awarded supplier on the DPS as a key part of the delivery of the service for a customer and failure of a particular subcontractor would result in a risk to the customer for their ongoing services 1.16.4. This would be the Ofgem licence number 1.18.1. If the services you provide require you to possess a particular authorisation or be a member professional body in order to provide that service in your country, then you would select yes and provide details of that body, for example 'Ofgem' for UK suppliers of this service.	13/9/2018	4

8	Penetration testing	04/09/2018	Can you clarify specifically which elements of infrastructure you require penetration testing under question 1.27.7 in Part 8 of the Supplier Questionnaire?	The penetration testing would involve assessing that all elements of the DPS platform and information exchanges with both supplier and customer to ensure that they are both secure and have incorporated all relevant HMG and NCSC guidance. In addition the security test shall also confirm that there are no vulnerabilities present in the implemented solution. Any such test shall be undertaken by a certified third party under either the NCSC CHECK scheme (https://www.ncsc.gov.uk/scheme/penetration-testing) or by a CREST certified individual (https://www.crest-approved.org)	13/9/2018	4
9	Agreement timescale	05/09/2018	Can you confirm that the Agreement will be deemed to be in force from August 23rd 2018 even if it is signed after the date and, if so, explain how this will work in practice? Will all obligations on the supplier apply retrospectively?	The DPS will be live from the 23rd August 2018 for the 4yr term and agreements between a supplier and customer will come into place anytime after this date. The period of the agreement will be specified by the customer.	13/9/2018	4
10	Platform	05/09/2018	Will the DPS have the ability to separate supplies in Northern Ireland from those in England/Scotland/Wales as it currently only refers to the United Kingdom?	The DPS will not be able to identify supplies in Northern Ireland from those in England/Scotland/Wales as stated its UK wide	13/9/2018	4
11	Agreement T&C	05/09/2018	Can you confirm that the Supplier will have no right, other than for Force Majeure, to terminate the Agreement?	We can confirm that as per Clause 9 of the DPS Agreement - Termination and Suspension, that the Supplier will have no other right to terminate the Agreement, except for Clause 9.13 - Termination for continuing Force Majeure Event	18/9/2018	5
12	Non defined terms	05/09/2018	There are a number of terms that are used in the Agreement but not defined. Please can you provide an updated Agreement with all terms defined.	In response to your question raised regarding defined terms, CCS can confirm that the following terms have now been defined, and will be included in the DPS Agreement for RM3809 and published via the following URL address: https://ccs-agreements.cabinetoffice.gov.uk/procurement-pipeline/Utilities-switching-services as v.3: - Balancing and Settlement Code (BSC) - Uniform Network Code - Contract Pad CCS can confirm 'Project Specification' has been undefined, as this reference was defined in error.	18/9/2018	5
13	CCS use of agreement	05/09/2018	Can you confirm that CCS will also be using the DPS to procure Utilities Services?	The DPS has been developed for customers to use to procure new energy agreements by switching supplier based on their order requirements. At this stage there is no requirement for CCS to utilise it.	13/9/2018	4
14	Platform	05/09/2018	As suggested by the response to question 6 in Clarification Log, can you confirm whether the Customer will see multiple Suppliers prices like a normal switching service or just the lowest?	Customers will see multiple supplier prices.	13/9/2018	4

15	Agreement documents	05/09/2018	There are a number of items, including the Platform Access Terms & Customer Needs, that are clearly intended to be a binding and material part of the Agreement yet have not been provided at this stage. Can you confirm when these items will be made available?	The Customer Needs document has already been provided and is entitled RM3809 Utilities Switching Services - Customer Needs v1 and is contained in the Application Pack. Regarding the Platform Access Terms please refer to the response provided to Clarification Question Number 3	18/9/2018	5
16	Clause 9.2.7	05/09/2018	Can you confirm that if the Supplier does not agree to any variations to the Agreement that CCS proposes as per clause 11.2 then CCS has the right to terminate the DPS Agreement and, more importantly, the Customers can terminate all Utilities Services Contracts as per clause 9.2.7?	Crown Commercial Service (CCS) can confirm that in the event that a supplier does not agree to a variation(s) as detailed in clause 11.2, CCS may give written notice to the Supplier to terminate the DPS Agreement. Additionally, and in accordance with clause 9.2 - CCS may terminate this DPS Agreement and a Customer may terminate any Contract for material Default at any time if the Parties fail to agree a variation in accordance with Clause 11.2 (Variations to the DPS).	13/9/2018	4
17	Clause 14.4	05/09/2018	Can you confirm whether CCS will provide a Letter of Authority from the Customer if it exercises its right to act as Agent under clause 14.4?	Crown Commercial Service (CCS) can confirm that in the event that the customer requests for CCS to act as an Agent or Trustee as detailed in clause 14.4, appropriate means of correspondence will be provided by the customer to the supplier to confirm such changes.	13/9/2018	4
18	Managing dispute	05/09/2018	Can you provide the reasons that CCS may consider a dispute is not suitable for either mediation or arbitration and what the process for resolving the dispute will be in the latter case as there is no next step as currently drafted?	CCS can confirm the reasons that both mediation and arbitration methodologies may not be suitable to support a dispute in relation to a DPS Agreement, are determined on a case by case basis and will be communicated by CCS between the parties, including next steps.	18/9/2018	5
19	Schedule 4	05/09/2018	Can you clarify the criteria in Schedule 4 that will be used to determine whether terms offer a "better commercial position"?	CCS have reviewed your comments and can confirm that this Clause 4 of DPS Schedule 4 will be removed.	18/9/2018	5
20	Schedule 8	05/09/2018	Can you explain the inclusion of clauses 2.7.1 and 2.7.3 in Schedule 8 when there is no specified requirement in the Agreement on the Supplier in relation to these two clauses?	2.7.1 - CCS will have supplier meetings to look at the DPS performance and discuss with the supplier how their agreements are running and feedback. These meetings will be annually. 2.7.3 - Engage with the supplier on the industry and where the DPS sits from a commercial perspective and understand customer agreements in place	13/9/2018	4
21	Anonymised information	05/09/2018	Can you explain why CCS need to see anonymised information relating to utility supplies to a Customer even when the Contract was not concluded through the DPS?	CCS will receive monthly MI once a customer has placed an agreement through the DPS as per template within the application pack. CCS may also request information on MI templates used outside of the DPS as part MI development going forward. CCS want to ensure we are constantly engaged with suppliers to work together and these discussions will contribute to this.	18/9/2018	5
22	Schedule 4	05/09/2018	Can you confirm that you will be providing a Micro-Business appropriate version of the clauses from the Agreement that take precedence over the Supplier's Terms & Conditions as per Schedule 4?	CCS can confirm that there will be no additional documents provided to detail which clauses from the DPS Agreement take precedence over the Contract Terms (Schedule 4). Any such clauses will be determined on a case by case basis where required and will be communicated to the parties by CCS.	18/9/2018	5

23	T&C Amendment	13/09/2018	N/A	Agreement terms have been updated on the 07.09.18 and are located within the CCS website and contracts finder titled 'RM3809 - Utilities Switching Services Dynamic Purchasing System Agreement v2'. Also supplied is a summary of what the amends are on a separate document titled 'RM3809 - UPDATE OVERVIEW_ 'Utilities Switching Services Dynamic Purchasing System Agreement' now is v2	13/9/2018	4
24	Insurance	12/09/2018	Is it possible to register while we sort out the insurance in parallel?	Once you submit your application, there is a defined time period within which the application needs to be reviewed and a decision made as to whether the application passes all the criteria. Therefore, if you think you will have your insurance in place within the next 5 working days, then please submit your application and we can begin reviewing it. However, if you think it will take longer to get your insurance, then it is better to wait before submitting otherwise your application may fail and you will have to resubmit.	13/9/2018	4
25	Non defined terms	20/09/2018	Continuation of question 12 above Undefined terms; Mandatory Requirements - 2.3.4 Framework Tender - Schedule 4.4	In response to your question raised regarding defined terms, CCS can confirm that the following term has now been defined, and will be included in the DPS Agreement for RM3809 and published via the following URL address: https://ccs-agreements.cabinetoffice.gov.uk/procurement-pipeline/Utilities-switching-services as v.3: - Mandatory Requirements - Are the service requirements as detailed in paragraph 4 and its sub paragraphs contained within the Customer Needs document. - Framework Tender - regarding your query on the definition of 'Framework Tender' - please see the response to Clarification Question 19, this wording has now been removed.	28/9/2018	6
26	Insurance	20/09/2018	Can you explain why you need PI insurance and what situations you want it to cover. Also it's a pass/fail question but if you fail us on another question then we are faced with the cost of putting it in place and then not needing it so can you confirm that you can waive the need to buy it until we know we have passed on your other criteria.	We can confirm that Professional Indemnity Insurance has been removed from the Selection Questionnaire and is no longer a requirement. The Selection Questionnaire has been updated on the DPS and a new PDF version created within the application pack excluding Professional Indemnity Insurance.	18/10/2018	7
27	Apprenticeship Scheme	20/09/2018	We don't currently operate an apprenticeship scheme and whilst this may be something we may do in the future we hadn't planned to offer one in the immediate future as its time consuming and costly to put in place for a smaller supplier like us. As it's a pass/fail question if you fail us on another question then we are faced with the cost of putting it in place so can you confirm that you can waive the need to put this in place until we know we have passed on your other criteria.	We can confirm that the Selection Questionnaire has been updated to reflect amendments with the Apprenticeships question, and this is now not a Pass/Fail question. The Supplier selects the appropriate box and could be requested to provide evidence if they have contracts above £10m. We were unable to add in a N/A box but the application pack has been updated with a new PDF version.	18/10/2018	7

28	T&Cs	25/09/2018	Can you specifically explain the reason why there is the requirement to impose an additional 15 pages of CCS' terms & conditions from the DPS Agreement on top of the contract pad and the supplier's terms & conditions, which are currently accepted by a large number of customers without alteration?	This issue has been addressed as part of the revision of the Terms and Conditions and is detailed in the revised Terms and Conditions v3 document.	18/10/2018	7
29	Clause 9.2.10	25/09/2018	Can you specifically explain what an "MI default", as per clause 9.2.10, is and why you believe this constitutes a DPS and Contract termination event?	Please refer to DPS Schedule 1 - Definitions and Interpretations as MI Default is a defined term within this Schedule.	18/10/2018	7
30	Clause 9.2	25/09/2018	Can you specifically explain why under clause 9.20 the Customer is expected to only be liable for mark to market losses in the event of either a no cause termination or a Supplier termination due to a Customer breach and not any lost income or margin the Supplier will suffer as a result of the termination?	This issue has been addressed as part of the revision of the Terms and Conditions and is detailed in the revised Terms and Conditions v3 document.	18/10/2018	7
31	Clause 3.8	25/09/2018	Clause 3.8 of the DPS Agreement states that there is no promise or representation by CCS in respect of the value associated with the DPS Agreement, yet the PASS/FAIL obligation on Suppliers in Section 9 is based on an assumed value of the Agreement of over £10m. Can you explain this contradiction and confirm which is correct?	please refer to the response for Clarification Question 27.	18/10/2018	7
32	Clause 2.7.1	25/09/2018	Further to your response to question 20, clause 2.7.1 in Schedule 8 specifically refers to "... the Supplier's supply chain performance, and its usage of SMEs to supply and/or deliver goods and services". The Supplier's supply chain performance and any use of SMEs or otherwise are not relevant to the DPS Agreement so this should be removed. The same also applies to the reference to "... progress against Government efficiency targets" in clause 2.7.3.	In the event a Supplier specifies their Sub-Contractors in accordance with Attachment 6 - Sub-Contractor Details of the Bid pack and Clause 12.4 to Clause 12.9 of the DPS Agreement, Suppliers will be required to meet Clause 2.7.1 and Clause 2.7.3	18/10/2018	7
33	Further to answer 9 above	25/09/2018	Further to your response to question 9, you have not clarified how the contract will function when signed in arrears and what obligations would be placed on the Supplier retrospectively.	The supplier will sign the Agreement at the date they are appointed to join the DPS and this will not be the date the DPS was launched. The DPS Agreement is between the Supplier and CCS.	18/10/2018	7
34	Clause 3.6	25/09/2018	Further to your response to question 13, can you then clarify why clause 3.6 states "The DPS Agreement allows CCS and each Customer to order the Utilities Services from the Supplier in accordance with the Call for Competition Process through the platform"?	CCS can confirm we will not be using the DPS and the reference to this in Clause 3.6 has been updated to reflect this.	18/10/2018	7

35	Penetration testing	25/09/2018	Further to your response to question 8, can you clarify your statement regarding the penetration testing of the DPS platform and how this relates to the requirements on the Supplier? In addition, as far as we aware, the process for the Supplier to exchange information with the platform has not been fully defined or communicated as yet (surely it will make up part of the Platform Access Terms), so it is not possible to commit to that yet.	The CHECK requirement has been removed from Cyber Essentials as this was intended for the Plus version but for this DPS CCS are using the Basic Cyber Essentials. The Selection Questionnaire has been updated and a revised Selection Questionnaire PDF has been added to the application pack	18/10/2018	7
36	Commission	25/09/2018	What commissions will be payable to the Appointed Technology Provider and CCS upon the Supplier successfully acquiring a Customer through the Call for Competition Process? Will the Customer be made aware of these commissions when signing up to use the Portal?	The Appointed Technology Provider will be providing visibility of their Acceptance Terms w/c 01.10.18. The Acceptance Terms are between The Appointed Technology Provider and the Supplier. Any further information required on this please email ussdps@gemserv.com	18/10/2018	7
37	Cyber	18/10/2018	I've had a quick scan over the T&Cs and there is no reference to cyber essentials anymore, is this required now or not? The charges (16. Charges Payable) are these just Gemserv's charges or do these incorporate CCS charges too?	The Platform Access Terms refer to use of the Supplier Portal and are separate to the CCS Terms and Conditions, hence why there is no mention of Cyber Essentials in these. Cyber Essentials remains a part of the DPS Agreement. Version 3 of the DPS Agreement has now been published and Clauses 7.49 and 7.51 outline the new Cyber Essentials requirements. The charges for Switching are Gemserv's as detailed within their Acceptance Terms. These charges are the only applicable ones for Suppliers upon a successful switch.	19/10/2018	8
38	ISO 14001	18/10/2018	We were recently due to proceed with ISO 14001 certification, but due to cost-benefit, our organisation has decided to delay this for another year. What is the minimum acceptable position for this? I note that 4.9.6 sets out the alternative, but within what time frame is this applicable?	If a supplier does not hold ISO14001 but has another nationally recognised equivalent accredited standard then please provide information and this can be assessed and decided at that point if an acceptable alternative.	19/10/2018	8
39	Schedule 4	25/10/2018	With reference to Schedule 4 of the DPS Agreement, please can you provide a copy of all the clauses listed under bullet point 2 "with the necessary changes made" so that it is clear how they will apply between the Customer and the Supplier as part of the Contract. As per the drafting in Schedule 4, they clearly take precedence over the Supplier's own Terms & Conditions but are currently in no way drafted for that purpose.	To review the full details of each clause detailed in point 2 of DPS Schedule 4 – Template Contract, please refer to each of the clause references within the DPS Agreement. All clauses listed in point 2 of DPS Schedule 4 – Template Contract; from clause 4 (award procedure) – clause 17.3 (Dispute Resolution) relate to the commercial DPS Agreement between CCS and the Supplier and therefore do not apply to the customer and supplier relationship. Schedule 2 (Specification) has not undergone any changes and therefore does impact on the contract between the customer and the supplier.	26/10/2018	9
40	Cyber	25/10/2018	Can you explain why the option to provide an evidence-based equivalent to the Cyber Essentials certificate has been removed from clause 7.49 in the latest draft of the DPS Agreement (V3)?	Cyber Essentials has been adjusted throughout the DPS. To confirm the requirement now is that a supplier has to achieve Cyber Essentials basic level within 12 months of a Suppliers first Call for Competition. If a Supplier has ISO27001 this would be acceptable and Cyber Essentials would not be a requirement.	26/10/2018	9