Area 10
Asset Delivery

Maintenance and Response Contract

Instructions for Tenderers

INSTRUCTIONS FOR TENDERERS FOR

MAINTENANCE AND RESPONSE CONTRACT

CONTENTS AMENDMENT SHEET

Amend. No.	Revision No.	Amendments	Initials	Date
0	0	Tender Issue	SOS	19/02/18
1	0.1	Tender Amendment 1: Tender conference and Depot tour dates	AN	23/02/18
2	2.1	Tender presentation removed in table 1.9.1	AN	09/03/2018
3	2.1	Amendment to paragraph 3.4.12	AN	09/03/2018
4	2.1	Change to paragraph numbers 3.4.13 & 3.4.14	AN	09/03/2018

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1 THE TENDER PROCESS

These Instructions apply to the tender process for the Area 10 Maintenance and Response Contract.

1.1 Not used

1.2 General

1.2.1 This tender process is carried out under the open procedure following the publication of the OJEU Contract Notice.

1.2.2 Highways England's Vision, Imperatives, Values and Key Objectives for the Area 10 M&R Contract are set out in Annex 2 of the Scope.

1.2.3 The process is conducted in accordance with the open procedure under the Public Contracts Regulations 2015 and seeks to determine the most economically advantageous tender to Highways England. This will be a compliant and affordable bid which meets the selection criteria and which has a validated overall score higher than any other Tenderers' overall score.

1.2.4 Tenders must be submitted in accordance with these Instructions. Tenders not complying with these Instructions may be rejected by Highways England whose decision in the matter will be final. These Instructions will not form part of the proposed contract.

1.2.5 For enquiries contact Highways England via the e-Sourcing portal https://highways.bravosolution.co.uk for Area 10 M&R Contract. The Procurement Officer for this competition is Nicholas Magog at Highways England. Contact with the Procurement Officer must be made via the e-Sourcing portal only. Except where otherwise directed in these Instructions, Tenderers must not contact any person in relation to this competition other than the Procurement Officer or, if nominated, their designated deputy. The name of any designated deputy will be confirmed in writing.

1.2.6 Any queries from Tenderers are to be submitted by the named single point of contact (the Bravo account holder) in their organisation, to communicate with the Procurement Officer.

1.2.7 The contents of these Instructions and of any other documentation sent to Tenderers in respect of this tender process are provided on the basis that they remain the property of Highways England. Tenderers must not release information concerning the tender documents for publication in the press or on radio, television, screen or any other medium. Tenderers must not disclose the fact that they are tendering or release details of the tender documents, other than on an "in confidence" basis to those who have a legitimate need to know or whom they need to consult for the purpose of preparing their tender response. If you are unable or unwilling to comply with this requirement you are required to destroy these Instructions and all

associated documents immediately and not to retain any electronic or paper copies. Tenderers are required to conduct themselves in good faith in all dealings in relation to this tender process.

1.2.8 Under the Freedom of Information Act 2000 (as amended) ("the Act"), the Environmental Information Regulations 2004 ("EIR") and the Public Contracts Regulations 2015, Highways England may be obliged (subject to the application of any relevant exemptions and, where applicable, the public interest test) to disclose information relating to the tender process including any tenders received.

1.2.9 Under the Cabinet Office Efficiency Reform Group's Guidance Note dated December 2010 entitled "Transparency – Publication of New Central Government Contracts", or any later revision, Highways England is obliged to publish any contract resulting from this competition, excluding only information which is exempt from disclosure pursuant to the Act along with the EIR and PCR. The decision as to which materials are excluded from publication rests with Highways England in its sole discretion. Highways England's initial view is that the only materials likely to be excluded from publication on this basis are as follows:

- Part B of the Quality Statement
- Prices in the Price List (but not the total)
- EIR information.

1.2.10 Tenderers should be aware that Highways England could receive requests for any information relating to this contract or tender. While Highways England reserves its discretion in responding to any such information request, Tenderers are invited to request that certain information is not disclosed or published if to do so would prejudice their commercial interests or is otherwise exempt from disclosure under the Act. Requests for nondisclosure under the Act must accompany the tender and include clear and substantive justification and a time limit when any confidential information could be disclosed. The terms of any confidentiality agreement would, if requested, be available for disclosure. Any request by the Tenderer under this paragraph is for information only and will not be taken into account in the tender assessment process, nor will it form part of any contract between Highways England and the Tenderer.

1.2.11 Tenderers must immediately advise Highways England and seek approval of such change if

(a) their ownership or the ownership of any member of their tendering consortium (or their parent company) changes, or

(a) any organisation involved in the preparation of this contract is acquired by them or by any member of their consortium (or an associated company).

1.2.12 If Highways England considers that a change in ownership has created a potential conflict or approval is not obtained, Highways England may exclude the Tenderer from the tender assessment. If excluded, the Tenderer will be notified by the Procurement Officer.

1.2.13 If, at any time during the tender process and/or any subsequent contract, there is any change to a Tenderer's economic or financial standing which means that information submitted by the Tenderer is no longer correct or the Tenderer's ability to perform the contract materially deteriorates, the Tenderer must immediately inform Highways England in writing. Highways England reserves the right to reconsider the economic or financial standing and where necessary, disqualify a Tenderer who has previously passed the Selection Questionnaire stage of this procurement process.

1.2.14 Highways England reserves the right to disqualify any Tenderer that fails to inform or advise Highways England in accordance with paragraphs 1.2.11 and 1.2.13.

1.2.15 These Instructions are made in good faith. No warranty is given as to the accuracy or completeness of the information contained in it. Any liability or inaccuracy or incompleteness is expressly disclaimed by Highways England and its advisers. Tenderers are advised to satisfy themselves that they understand all of the requirements of the contract before submitting their tender.

1.2.16 Nothing in these Instructions shall be taken as constituting an offer (whether implied or otherwise), or any agreement, whether express or implied, between Highways England and any other party.

1.2.17 Highways England reserves the right to cancel, amend or vary the tender process at any point prior to the award of the contract (in whole or in part) and with no liability on its part.

1.2.18 Highways England reserves the right not to accept the lowest or any tender for any reason.

1.2.19 Highways England and/ or its advisers are not liable for any costs resulting from any amendment or cancellation of this tendering process nor any other costs, charges, fees, expenses, claims or disbursements (howsoever arising and including third party costs) incurred by those tendering for this contract opportunity.

1.2.20 Tenderers to note that all information provided as part of their Tender must be true and accurate. Highways England reserves the right to reject any tender if the Tenderer provides misleading or false information.

1.2.21 Tenderers are deemed to understand fully the processes that Highways England is required to follow under relevant European and UK legislation, particularly in relation to the Public Contracts Regulations 2015.

1.2.22 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.

1.2.23 For these purposes, Highways England may disclose within Government any of the Tenderer's documents and information (including any that the Tenderer considers to be confidential and/or commercially sensitive, such as specific bid information) submitted by the Tenderer to Highways England during this tender process. The information will not be disclosed outside Government. Tenderers taking part in this competition consent to these terms as part of the tender process.

1.3 Documents

1.3.1 The documents provided to Tenderers are listed in the following Tables:

Table 1.3.1

Document Title	
	Instructions for Tenderers (IfT) Issue 4
	IfT Annex 1 Selection Questionnaire Issue 4
	IfT Annex 2 Supporting Information Issue 4
	IfT Annex 3 Quality Submission A Issue 4
	IfT Annex 4 Quality Submission B Issue 4
	IfT Annex 5 Commercial Submission Issue 4
	Network Information (NI) Issue 4
	Contract Data Part 1 Issue 4
	Form of Agreement Issue 4
	Price List Issue 4
	Pre-Construction Information Issue 4
	Scope Issue 4
	Scope Annex 2 Vision, Values & Key Objectives Issue 4
	Scope Annex 3 Reference Documents Issue 4
	Scope Annex 4 Insurance Requirements Issue 4
	Scope Annex 5 Contract Reviews Issue 4
	Scope Annex 6 Information Systems Issue 4
	Scope Annex 8 Confidentiality & Security Issue 4
	Scope Annex 9 Instruction and Payment Requirements Issue 4

	Scope Annex 10 Cost Capture Data Requirements Issue 4
	Scope Annex 11 Community Issue 4
	Scope Annex 12 Communications Issue 4
	Scope Annex 13 General Health & Safety for Construction Services Issue 4
	Scope Annex 14 Premises Management Issue 4
	Scope Annex 15 Annual Commercial Plan and Service Plan Issue 4
	Scope Annex 17 Performance Management Issue 4
	Scope Annex 18 Continual Improvement and Innovation Issue 4
	Scope Annex 19 Records Issue 4
	Scope Annex 20 Additional Maintenance and Operational Requirements Issue 4
	Scope Annex 21 Client's Stocks Issue 4
	Scope Annex 22 Client's Vehicles & Severe Weather Stocks Issue 4
	Scope Annex 24 Parent Company Guarantee Issue 4
	Scope Annex 25 Form of Novation Issue 4
	Scope Annex 26 Customer Service Issue 4
	Scope Annex 27 Sustainability Issue 4
	Scope Annex 28 Minor Improvements Issue 4
	Quality Statement Part A Template
	Quality Statement Part B Template

Please refer to Area 10 M&R IfT - Full List of tender documents.xlsx

1.3.2 The following parts of the tender documents are included in an editable form to allow preparation of the information required:

Table 1.3.2

Document Title	
	Contract Data Part 2 Issue 4
	Tender Query Form Issue 4
	Service Plan
	Anti Bribery Code of Conduct
	Anti Fraud Code of Conduct
	Information Assurance Solutions
	Lump Sum Resource Schedule
	Schedule of Rates Resource Schedule
	Fair Payment Charter
	Scope Annex 1 Selection Questionnaire (For editing)

1.3.3 If Tenderers experience any difficulties in locating documents listed above, or within any of the reference documents, then a tender query must be made via the Bravo e-Sourcing portal.

1.3.4 Any drawings, prints, specifications, data, calculations and analyses issued to Tenderers in connection with this tender remain the property of Highways England. All such information issued to Tenderers may only be used for the purpose of tendering. Such information must not be disclosed to persons unconnected with the tender and must be securely destroyed. These provisions apply equally to drawings and other information supplied for the purpose of the tender, the property rights of which rest in a third party.

1.4 Tender Communications

1.4.1 Any queries from Tenderers regarding the tender documents must be made via the e-sourcing portal using the Tender Query Form provided, and sent to the Procurement Officer via the e-sourcing portal no later than the date shown in the Tender Programme below, unless instructed otherwise by the Procurement Officer.

1.4.2 All tender queries will be responded to by the Procurement Officer provided it is submitted before the deadline as referenced in the Tender Programme below. If any response requires a change to the tender documents then a tender amendment will be issued via the e sourcing portal.

1.4.3 Tender amendments are changes to the tender documents that are made in writing by the Procurement Officer and issued to all Tenderers. Only in exceptional circumstances will tender amendments be issued after tenders have been submitted. In such circumstances, the Procurement Officer will notify all Tenderers of the required action.

1.4.4 Highways England officers and their consultants do not have the authority to make any change to the tender documents except through a tender amendment issued by the Procurement Officer. If a statement is made at any meeting that a Tenderer considers is not in accordance with the tender documents then the Tenderer must refer the matter to the Procurement Officer as a tender query.

1.4.5 Tenderers to note that Highways England will refer any tender queries requesting TUPE information to the relevant Provider and ensure (as far as possible) that responses are provided, but will not guarantee the accuracy or completeness of any information provided. Any request for an extension of the Tender period on the grounds that a tenderer has not been provided with sufficiently detailed information about employees who may be subject to a TUPE transfer as a result of the provision of the services will not be given.

1.5 Tender Conference

1.5.1 Tenderers will have the opportunity to meet the members of Highways England's team at a tender conference. There will be one tender conference will be held on and the indicative date is set out in the Tender Programme below. Tenderers wishing to attend must notify the Procurement Officer within one week of the date of commencement of the Invitation to Tender, via Bravo messaging.

1.5.2 The conference will be held to explain, discuss and answer questions on the tender process. During this conference, the following presentations will be given by Highways England:

- the proposed contract by Highways England, identifying and explaining any project specific issues of importance to the tender submission,
- the tender process and timetable,
- the tender return requirements and
- the tender assessment approach by Highways England as detailed in these Instructions.

There will also be a Question and Answer session.

1.5.3 Tenderers will have an opportunity to ask questions at this conference but must not rely upon any statement made by Highways England's team unless confirmed in writing by the Procurement Officer. Any questions raised will be treated as tender queries and dealt with in accordance with the procedure set out at section 1.4 above.

1.6 Mid-tender Conference – Not used

1.7 Tender Clinic

1.7.1 One Tender Clinic is available for each Tenderer and, if required, will be held at Highways England's office or other suitable location. Tenderers requesting a Tender Clinic must advise the Procurement Officer and set out the topics to be covered at the Clinic. The Procurement Officer will then fix a date and time for the Clinic.

1.7.2 Tender Clinics will take the form of a question and answer session. The questions should be marked confidential and submitted by the e-Sourcing portal to the Procurement Officer at least 2 working days in advance of the Tender Clinic. This will allow Highways England to arrange appropriate representatives to attend the Tender Clinic. Highways England cannot guarantee an immediate reply to new questions raised at the Tender Clinic.

1.7.3 The duration of individual Tender Clinics will depend on the number of questions submitted, but will be limited to a maximum of 45 minutes per Tenderer and four attendees per Tenderer.

1.8 Pre-recorded Presentations

1.8.1 Tenderers will have the opportunity to access pre-recorded presentations that provide information on:

- What a good tender looks like
- Information on the contract

1.8.2 Details on how to access this information will be issued by the Procurement Officer during the Tender period.

1.9 Inspections

1.9.1 Tenderers wishing to visit any land or property associated with the contract must notify the Procurement Officer within one week of the date of commencement of the Invitation to Tender, via Bravo messaging.

1.9.2 Liability for any damage or disturbance caused to such land or property rests with the Tenderer.

1.10 Database Access

1.10.1 Tenderers requiring access to Highways England's databases are to provide the name of one nominated person and confirm which databases they require access to. Tenderers must provide this information to the Procurement Officer within one week of the Invitation to Tender.

1.11 Tender Programme

1.11.1 The indicative tender programme is shown in the Table below:

Table 1.9.1

Item	Activity	Date
	Issue tender documents	20/02/2018
	~~Tender presentation conference~~	~~27/02/2018~~
	Tender Conference	06/03/2018
	Depot Tours	12/03/2018 - 16/03/2018
	Data Room	19/03/2018
	Tender clinic	27/03/2018
	Last day for tender queries	19/04/2018
	Tender submission time & date	12:00 noon on

		10/05/2018
	Quality, Health & Safety and Financial Assessment	16/05/2018 – 15/06/2018
	Validation & Sustainability	13/08/2018 – 23/08/2018
	Preferred bidders identified	24/08/2018
	Selection Questionnaire Assessment	27/08/2018 – 31/08/2018
	Initial notification of winning tender and feedback to Tenderers	17/09/2018
	10 day standstill period	18/09/2018 – 27/09/2018
	Award	28/09/2018
	Starting date	01/10/2018
	Access date	01/04/2019

1.12 Form of Contract

1.12.1 The successful Tenderer should note that the form of contract is the NEC4 Term Service Contract June 2017 and additional conditions of contract listed in the Contract Data issued with these Instructions, will form the basis of the agreement between Highways England and the successful Tenderer. The successful Tenderer will be required to enter into the agreement on the terms contained in the form of contract. Highways England is bound by the Public Contract Regulations 2015 and cannot enter into any negotiations on the tender or terms of the form of contract. Any Tenderer who is unwilling to accept the terms of the contract will be disqualified from the process.

2 SUBMISSION OF TENDERS

2.1 General

2.1.1 Tenders and supporting documents must be written in English and priced in Pounds Sterling.

2.1.2 Tenders are to be presented as five separate Submissions as follows:

Submission 1 – Selection Questionnaire

Submission 2 – Supporting Information

Submission 3 – Quality Submission Part 1

Submission 4 – Quality Submission Part 2

Submission 5 – Commercial Submission

2.1.3 Tenderers must submit all the information set out below:

2.1.4 Tenderers are to note that all documents below must be completed and returned for their submission to be assessed as compliant. Failure to do so may result in the tender being rejected.

(a) The following Submission 1 (Selection Questionnaire) must be completed and submitted by Tenderers via the BRAVO e-tendering Qualification Envelope.

Submission 1 – Selection Questionnaire
Area 10 M&R Ift Annex 1 Selection Questionnaire
PART 1: Potential supplier information
PART 2: Exclusion grounds
PART 3: Selection questions

(b) The following Submission 2 (Initial Assessment) documents are to be completed and submitted by Tenderers via the BRAVO Technical Envelope. The Submission 2 tables below outline this.

Submission 2 – Supporting Information (General)
Area 10 M&R Ift Annex 2 supporting information
Small and Medium Sized Enterprises (SME) Subcontracting Statement
Proposed Information Assurance Solutions
Completed Fair Payment Charter
Completed Anti Fraud Code of Conduct

Completed Anti Bribery Code of Conduct
Summary of relevant insurance policies and certificates
Statement undertaking responsibility for dealing with insurance claims (or parts of such claims) within the excess amount
Confirmation of registration under the HM Revenue and Customs Construction Industry Scheme
Statement confirming willingness, if awarded the contract, to accept the appointment and duties of principal contractor
Any request for non-disclosure under the Freedom of Information Act 2000
Confirmation that the Named Parent Company(s) will enter into the Parent Company Guarantee (if required)
Legal Opinion for non-United Kingdom Registered Companies

(c) The following Submission 3 (Quality Submission Part 1) documents are to be completed and submitted by Tenderers via the BRAVO Technical Envelope. Tenderers must submit a Submission 3 response for each Lot tendered for:

Submission 3 – Quality Submission Part 1
Area 10 M&R Ift Annex 3 Quality Submission Part 1
Part A
Part B

(d) The following Submission 4 (Quality Submission Part 2) documents are to be completed and submitted by Tenderers via the BRAVO e-tendering portal in the Bravo Technical envelope. Tenderers must submit a Submission 4 response for each Lot tendered for:

Submission 4 – Quality Submission Part 2
Area 10 M&R Ift Annex 4 Quality Submission Part 2
Contract Overview
Health and Safety Statement
Service Plan

(e) The following Submission 5 (Commercial Submission) documents are to be completed and submitted by tenderers via the BRAVO Commercial Envelope.

Submission 5 – Commercial Submission
Area 10 M&R Ift Annex 5 Commercial Submission
Contract Data Part Two

Price List
Lump Sum and Schedule of Rates Resource Schedules

Note: All the above documents must be submitted as separate documents (files) that are clearly identifiable from the document name within the respective Submissions 1 to 5

2.1.5 Tenders must be submitted in accordance with these Instructions and the tender documents including any tender amendments. Tenders must not be qualified or accompanied by statements or a covering letter that might be construed as rendering the tender ambiguous. Unauthorised alterations or additions must not be made to any component of the tender documents. Highways England's decision as to whether or not a tender complies with these Instructions will be final.

2.1.6 Tenders not submitted via the Bravo e-Sourcing portal by the tender return date and time may be excluded from further consideration. Offers must remain open for acceptance for 210 calendar days from the tender return date.

2.1.7 Documents are to be returned in Microsoft Office 2010 compatible format. Where proprietary software is used for process maps etc., pdf format must be used. When uploading tender submissions into Highways England's e-Sourcing portal, upload the electronic files for each Submission, as set out in 2.1.4 above, into separate Zip files. No file is to be larger than 20MB. Label each Zip file with the Tenderers name, Submission number and Lot ID (if applicable).

2.1.8 No unauthorised alteration or additions must be made to any component of the tender documents. The tender must be submitted via Highways England Bravo e-Sourcing portal at https://highways.bravosolution.co.uk for Area 10 Maintenance and Response Contract.

2.1.9 Before a tender can be accepted the Tenderer must answer all the applicable questions within the Bravo Technical Envelope, confirming that you have read, understood and accepted specific documents.

2.2 Not used

3 TENDER ASSESSMENT

3.1 General

3.1.1 Highways England assessment of tenders will be carried out in four stages.

3.1.2 The relationship between the tender assessment stages and the tender Submissions is shown on the table below:

Assessment Stages	Stage 1 Completeness Check	Stage 2 Quality & Commercial	Stage 3 Validation & Sustainability	Stage 4 Selection Assessment
Tender Submission	1 Selection Questionnaire			1 Selection Questionnaire
	2 Supporting Information			2 Supporting Information
	3 Quality Submission Part 1	3 Quality Submission Part 1	3 Quality Submission Part 1	
	4 Quality Submission Part 2	4 Quality Submission Part 2	4 Quality Submission Part 2	
	5 Commercial Submission	5 Commercial Submission	5 Commercial Submission	

3.1.3 During the evaluation period, Highways England reserves the right to seek clarification in writing or by means of a clarification meeting (and confirmed in writing) from any or all of the Tenderers solely to assist it in its consideration of their tender but shall be under no obligation to do so.

3.1.4 The Tenderer acknowledges that any documents and information submitted by him as part of his tender or for assessment and/or validation purposes represent his proposals for meeting Highways England's requirements, but do not in any way override or modify those requirements. If awarded the contract, the Tenderer will remain liable to comply with all the obligations set out in the documents forming part of the contract. The Tenderer will not be relieved from compliance with these obligations by any:

(a) validation, due diligence or sustainability check carried out by the Highways England on any part of the tender,

(b) evidence, assumptions or other information provided by the Tenderer with his tender or for the purposes set out in paragraph (a) above or

(c) clarification requested by Highways England and provided by the Tenderer (whether orally or in writing) as part of the assessment process.

3.1.5 During all assessment stages tenders will be checked for compliance. A tender that:

(a) is not submitted in accordance with these Instructions and the tender documents including any tender amendments,

(b) is qualified or accompanied by statements or a covering letter that might be construed as rendering the tender equivocal or

(c) includes unauthorised alterations or additions made to any component of the tender documents,

may result in the tender being rejected. Highways England's decision will be final.

3.2 Stage 1

3.2.1 In this stage, the Procurement Officer will undertake an initial check for tender completeness, including:

(a) correct documents & submissions have been made

(b) the format of submitted documents is correct

(c) the page count and font size in submitted documents is correct

(d) that no further documents submitted beyond those required

(e) the Selection Questionnaire has been self-certified as a pass

(f) if applicable, the tenderer's Construction Line account is live, up to date and verified.

A tender that does not meet these conditions may result in the tender being rejected. Highways England's decision will be final.

3.3 Stage 2

3.3.1 In this stage, the following assessments will take place:

(a) a Quality Assessment Panel will assess Quality Submission Part 1 and Quality Submission Part 2 (excluding the Health and Safety Statement). Evaluation information is included in Annex 3.

(b) a Health and Safety Assessment Panel will assess the Health and Safety Statement in Quality Submission Part 2. Evaluation information is included in Annex 4.

(c) a Financial Assessment Panel will assess the Commercial Submission. Evaluation information is included in Annex 5.

all assessments will be based wholly on the contents of those Submissions (subject to clarifications set out above) which must therefore contain all the information which Tenderers wish to be considered.

3.3.2 The Financial Assessment Panel, the Quality Evaluation Panel, and the Health and Safety Assessment Panel will work independently and will not have access to each other's assessments prior to validation and the sustainability check.

Combining Quality, Health & Safety and Financial Scores

3.3.3 The Tenderer's Total Tender Score will be calculated using the Total Quality Score, the Total H&S Score and the financial score combined in the ratio 60:20:20 applied:

Assessment	Weighting
Total Quality Score	60%
Total H&S Score	20%
Financial Score	20%
Total Tender Score	100%

The Total Tender Score will be rounded to the nearest one decimal place. If any two Tenderers have the same Total Tender Score they will be ranked in order of highest Total Quality Score.

3.3.4 An affordability review of the highest scoring tender will be carried out. If the price of the highest scoring tender is considered to be unaffordable then Highways England may

- revise the scope and request all Tenderers to submit new tenders or
- cancel this Invitation to Tender and evaluation process

3.3.5 The tender with the highest Total Tender Score and an affordable price will be validated. In the event of more than one Tenderer with the same Total Tender Score, these tenders will be validated. Highways England may validate more tenders if there are Tenderers with Total Tender Scores close to the highest Total Tender Score.

3.3.6 Not used

3.3.7 The Procurement Officer will inform Tenderers whether or not they have been identified for validation. Such notifications must not be taken as inferring acceptance of any tender.

Network Resilience

3.3.8 In order to ensure the resilience of the network and promote the participation of a diverse supplier base in Highways England's procurements, a market share test will be applied. If the tender of:

- the Tenderer,
- any Consortium Member of an unincorporated joint venture, or
- the parent company of any Consortium Member of an incorporated joint venture,

with the highest Total Tender Score is awarded the contract, and when combined with:

(a) any other existing Asset Support (ASC) Contracts and Maintenance and Response (M&R) contracts which are not being replaced by these current competitions awarded to the Tenderer and

(b) any other competition for a proposed Asset Support Contract or Maintenance and Response Contract where the Tenderer is currently in Stage 3, or later stage, of the tender assessment process

would mean the Tenderer/ Consortium Member/ parent company, if awarded such further contracts, would be the Provider/ Contractor for:

(c) five (5) or more Asset Support Contracts and Maintenance & Response Contracts

then Highways England will not consider that tender further. The tender with the next highest Total Tender Score is then considered for market share. This process continues until a tender is identified that passes the market share test.

3.3.9 For the purposes of paragraph 3.3.8:

(a) Consortium means a consortium of two or more persons or organisations who together

- comprise the Tenderer by way of an unincorporated joint venture or

- comprise all the members of any Incorporated Joint Venture Party which is the Tenderer.

3.3.10 Consortium Member means an organisation or person which is a member of a Consortium.

3.4 Stage 3

3.4.1 This stage will involve a validation assessment of the quality submissions, the commercial submission and a sustainability check of those tenders identified for validation.

3.4.2 The Quality Assessment Panel, Health and Safety Assessment Panel and the Financial Assessment Panel will combine (the Panel) to validate any part of those tenders that have been identified for validation. The Panel will collaborate on the items to be validated.

3.4.3 The validation assessment will seek to provide Highways England with the adequate level of confidence that:

(a) the Tenderer will be able to deliver the requirements of the contract sustainably,

(b) the proposed approach will deliver the service,

(c) the tender provides suitable resource to deliver the proposed approach,

(d) the prices are suitable to provide the proposed resources and

(e) the tender has been developed from past evidence to support this.

3.4.4 The contract must operate as a viable business for both partners. The Panel will seek to validate the required level of service can be delivered at an affordable cost, whilst providing an adequate level of profit for the winning Tenderer. Tenders will be subject to scrutiny, and may be rejected if considered not sustainable.

3.4.5 During the validation and sustainability process the assessors again re-assess their level of confidence in both the Tenderers approach (as proposed in Part A together with their other submissions) and their capacity and capability to deliver this approach based on the additional evidence provided.

3.4.6 The tender cannot be modified during the validation stage and the Panel will not reconsider the Part A Quality marks. However the Panel will seek to validate any aspect of the tender in order to substantiate their level of

confidence marking at validation. The Panel's confidence will be reflected in reassessed Part B marks however Part B marks cannot be increased above those assessed in Stage 2.

3.4.7 In the validation assessment, the Panel will:

(a) consider all of the information available to it during the tender process, not only in respect of the quality submission, but also in respect of the financial submission, in order to validate the tender,

(b) request additional or original evidence (examples below) on areas that the Panel considers to be high risk or key areas. The Panel will look to evaluate this as a risk based assessment based on the confidence given by evidence provided,

(c) use any practical means, and may approach any person or organisation named in the Tender as part of the validation. The validation may include review of any submitted information and/or meetings with the Tenderer and other persons such as Clients and the Tenderers staff.

3.4.8 The Panel will request evidence or explanation on, but will not be limited to, the following:

- any element of the pricing information to substantiate the build-up and calculations behind any of the following items are based on costs actually incurred/ forecast Defined Cost (or forecast cost where appropriate). The Panel may wish to interview appropriate accounting staff to provide the level of satisfaction required:
    - Lump Sum services,
    - Schedule of Rates services (Cyclic maintenance),
    - Schedule of Rates services (Non Cyclic activities)
    - Fee percentages
- that the resources proposed are likely to deliver the level of service set out in the Quality Statement and may seek further clarification from the Tenderer to enable it to understand the submission better.
- that the resources proposed can and will be obtained and delivered by the Tenderer if awarded the contract
- to substantiate the claims in Part B evidence to the proposed approach,
- that the commercial approach to risk is realistic and appropriate

- that the Tenderer will be able to deliver the requirements if the tender is accepted,

- further detail and evidence used to produce the Health and Safety Statement

3.4.9 Failure to provide satisfactory evidence to support any part of this aspect of the tender may result in the tender being rejected.

3.4.10 The Panel will score their new level of confidence in the Tender at validation using the Part B and Validation Marks criteria detailed in Annex 3 and Annex 4. A Validation Mark is assigned to each Process (or Procedure) or Risk in the Quality Statement and Health and Safety Statement.

3.4.11 All Quality Statement and Health and Safety Statement scores for the Tenderer are then recalculated using the lower the Part B Mark and the Validation Mark, to combine with the Part A Marks to produce the Combined Marks and subsequent scores. The new Total Quality Score, the Total H&S Score, and the Total Tender Score for the Tenderer are then recalculated. The Tender is retested for rejection based on the minimum marks and scores using the new marks and scores, if the Tender fails to meet the minimum threshold the Tender will be rejected.

3.4.12 If following validation the Tenderer's Total Tender Score remains the highest and has not been rejected, then:

- that Tenderer becomes the Preferred Bidder and moves forward to Stage 4.

If following validation the Tenderer's Total Tender Score does not remain the highest or has been rejected, then:

- that Tenderer is not currently taken forward to Stage 4, and

- an affordability review is carried out on the Tenderer with the current highest Total Tender Score from Stage 2 that passes the market share test. If a tender that originally failed the market share test, but following a change in circumstance may pass the market share test, that tender is reconsidered. Then the Tenderer with the now highest, affordable, Total Tender Score is validated.

3.4.13 This process continues until a tender with a validated, affordable and unrejected Total Tender Score higher than other tenderers has been identified. This Tenderer then moves forward to Stage 4.

~~3.4.13~~3.4.14 Tenderers to note that this validation (including sustainability) assessment is in addition to and without prejudice to Highways England's rights to undertake due diligence in relation to a potentially abnormally low offer under the Public Contracts Regulations 2015, as amended. Highways

England may undertake due diligence in relation to a potentially abnormally low offer on any aspect of a tender and at any stage of the procurement process.

3.5 Stage 4

3.5.1 When instructed, the Tenderer that has moved forward from Stage 3 must submit the evidence which supports their declarations in Parts 1 and 2 of the Selection Questionnaire within the time stated. Highways England will check the evidence before the award of a contract. If the required evidence is not provided within the time stated in the instruction or the evidence does not validate the statements made, the tender will be rejected. Highways England will assess the responses to Part 3 of the Selection Questionnaire; evaluation information is included in Annex 1. Tenderers may be instructed to provide evidence to support any of the statements made, and if so the evidence must be provided in the time stated. The assessment will be completed on a pass/fail basis. In the event of a tender being given a “fail” against any of criteria, the tender will be rejected.

3.5.2 Highways England will contact the Tenderer if a Parent Company Guarantee (or other guarantee agreed in accordance with these Instructions) is required before a tender can be accepted and will specify the parent company from whom a Parent Company Guarantee must be provided.

3.5.3 If the Tenderer passes the Selection Questionnaire assessment then that Tenderer becomes the Preferred Bidder.

3.5.4 If the Tenderer fails the Selection Questionnaire assessment, an affordability review is carried out on the Tenderer with the next highest total combined score from Stage 2 that passes the market share test. If a tender that originally failed the market share test, but following a change in circumstance may pass the market share test, that tender is reconsidered.

3.5.5 The Tenderer with the next highest, affordable, total combined score is validated. This process continues until a tender with a validated and affordable, total combined score higher than other tenderers has been identified. This Tenderer then moves forward to stage 4.

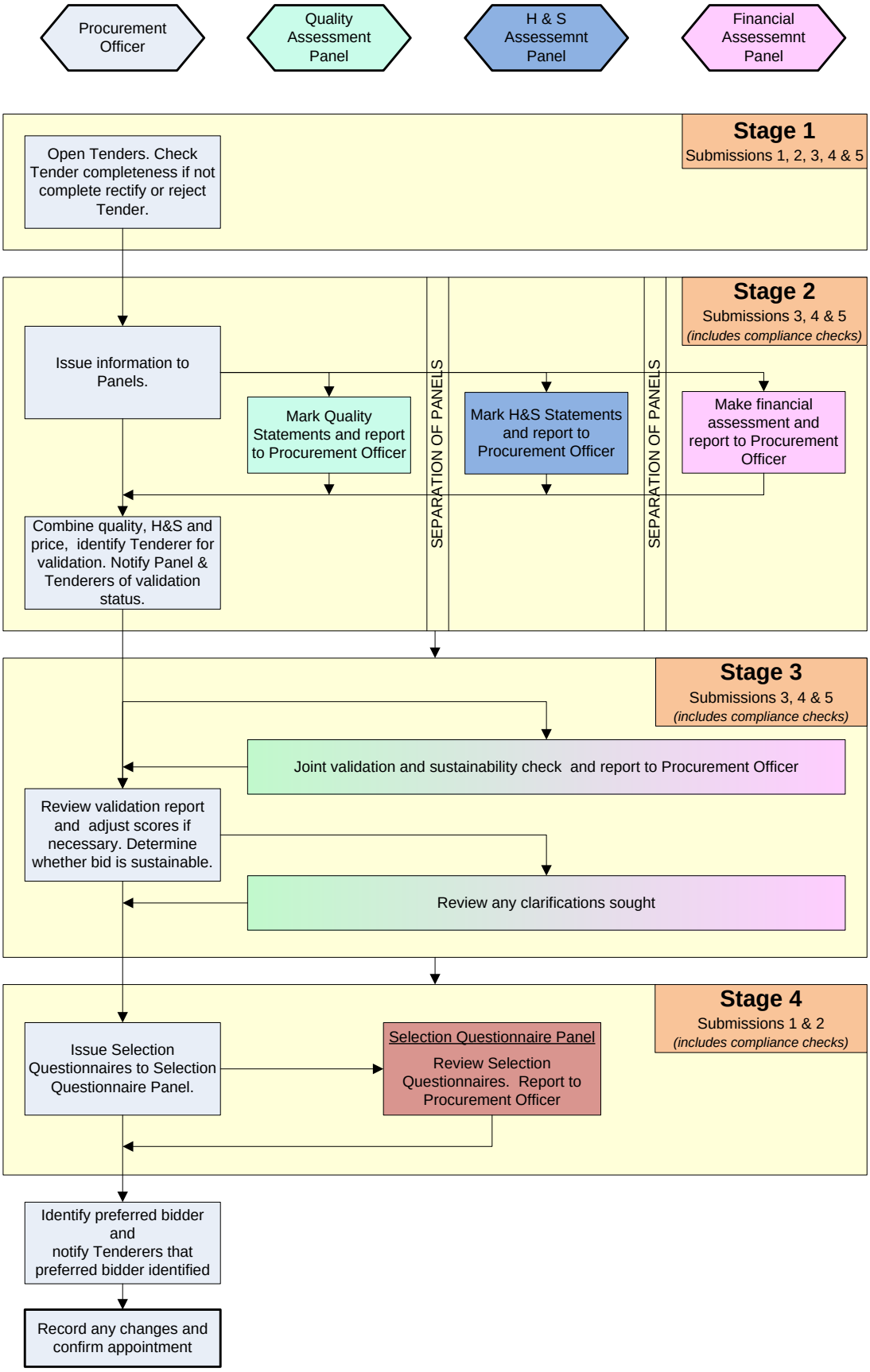
3.5.6 This process continues until a Tenderer passes the Selection Questionnaire assessment and becomes the Preferred Bidder.

3.5.7 The Procurement Officer will inform Tenderers whether or not they have been identified as the Preferred Bidder. Such notifications must not be taken as inferring acceptance of any tender.

3.6 Evaluation Flowchart and Marking/Scoring Example

3.6.1 A flow chart of the evaluation process is given below

Flow Chart showing the tender evaluation process for open procedure



4 TENDER AWARD

4.1.1 Highways England reserves the right not to proceed with any proposal made in response to this invitation.

4.1.2 As soon as possible once the award decision has been made, Highways England will inform the unsuccessful Tenderers of its decision in accordance with Regulation 86 of the Public Contracts Regulations 2015. Tenderers will be given written feedback on their tender shortly after the assessment has been completed as set out in the Table 4.1.2.

Table 4.1.2

FEEDBACK
To assist Tenderers, the feedback below will be provided following the completion of the tendering process and will be issued with the notice of the award decision in accordance with Regulation 86 of the Public Contracts Regulations 2015.
1 General
- Number of tenders assessed - Dates of tender invitation and return - Tender amendments
2 Contract Requirements
- Criteria for award of contract - The reason for the decision including the characteristics and relative advantages of the successful tender. - Total Tender Scores for the tenderer and the successful tenderer the contract may be awarded to. - Requirements for tender return – information provided as part of the bid
3 Review of Compliance
- Compliance check
4 Assessment Process
- Quality Scoring - summary of the Quality Statement marking process as set out in the Instructions for Tenderers - Financial Scoring – summary of the Financial information scoring process as set out in the Instructions for Tenderers. - Health and Safety Scoring – summary of the Health and Safety marking process as set out in the Instructions for Tenderers. - Determining the Tender(s) to be Validated – summary of the process to determine the Total Tender Score as set out in the Instructions for Tenderers. - Validation and Sustainability – summary of the process as set out in the Instructions for Tenderers.

	- Selection Questionnaire – summary of the Selection Questionnaire scoring process as set out in the Instructions for Tenderers.
5	**Quality Assessment**
	- Total Quality Scores for the tenderer and the successful tenderer the contract may be awarded to. - A breakdown of your individual quality mark for each section of the Quality Statement together with a brief narrative explaining why the successful tenderer scored more heavily in the relevant areas
6	**Health and Safety Assessment**
	- Total Health and Safety Scores for the tenderer and the successful tenderer the contract may be awarded to. - A breakdown of your individual quality mark for each section of the Health and Safety Statement together with a brief narrative explaining why the successful tenderer scored more heavily in the relevant areas
6	**Financial Assessment**
	- Financial Scores for the tenderer and the successful tenderer the contract may be awarded to. - A breakdown of your individual assessed total price for financial tender assessment purposes together with the successful tenderer's price for any elements that are cheaper than the unsuccessful tenderers price
7	**Validation and Sustainability and Selection Questionnaire**
	- A breakdown of the issues raised during your validation & sustainability together with a record of the responses received and the marks for each of the quality criteria. - A breakdown of the Total Tender Score for the tenderer and the successful tenderer the contract may be awarded to - Result of evaluation of the Selection Questionnaire
8	**Additional information**
	- The date of the end of the standstill period
All feedback will be offered in written format.	

4.1.3 Prior to the award of any contract the Preferred Bidder must provide evidence that insurance required by the contract is in place.

4.1.4 Any drawings and other documents not returned with the tender should be deleted from the Tenderer's computers and all hard copies destroyed.

4.1.5 Details of the contract award will be published in the Official Journal of the European Union.